LEGISLATIVE COUNCIL

Tuesday 3 May 1994

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 1, 24, 28, 29, 33 and 35.

TRANSPORT MINISTER'S OFFICE

1. **The Hon. ANNE LEVY:**

1. What was the total cost of establishing her new ministerial office in STA House, including any alterations, refurbishing, new furniture and fittings and equipment for the office?

2. What use is currently being made of the Ministerial Office previously occupied during the ALP Government and now not being used by a Liberal Minister?

The Hon. DIANA LAIDLAW:

1. The total cost to date, of establishing the new Ministerial office in STA House has been $1 937. A proposal to make modifications to the office layout in order to accommodate staff has been costed at $66 000.

2. I am advised that the ministerial office previously occupied by the former Minister of Transport Development on the 12th floor of the SGIC building in Victoria Square, is now occupied by the Minister for Emergency Services and Correctional Services and 11 staff.

MOTOR VEHICLE INSPECTIONS

24. **The Hon. BARBARA WIESE:** Will the Minister table advice received from:

1. the Vehicle Theft Committee; and

2. the Road Transport Agency

concerning compulsory inspections?

The Hon. DIANA LAIDLAW:

1&2 The Vehicle Theft Reduction Committee has not furnished written advice to me as Minister. I am, however, aware of proposals under consideration by that Committee and these have been reflected in a draft discussion paper which has been prepared by the Department of Transport and circulated to organisations represented on the Vehicle Theft Reduction Committee.

I will be happy to provide the Honourable Member with a copy of the discussion paper if she wishes and will provide any final copy of the paper to the investigation into compulsory vehicle inspections proposed to be undertaken by the Parliamentary Environment, Resources and Development Committee.

ARTS SUBSCRIPTIONS

28. **The Hon. ANNE LEVY:**

1. What were the total marketing costs for the subscription series in 1994 for each of State Theatre, State Opera and the Adelaide Festival Centre Trust?

2. How many subscribers did each organisation achieve for 1994?

3. What were the similar figures (marketing costs and number of subscribers) in 1993 for the same organisations (where applicable)?

The Hon. DIANA LAIDLAW:

1. State Theatre

The total marketing costs for 1994 are $123 428. These have included the employment of additional staff and the costs of creating a new corporate logo and stationery.

State Opera

The marketing costs for State Opera's 1994 subscription series are $55 000.

Adelaide Festival Centre Trust

The marketing costs of the Festival Centre's World Theatre subscription series are $32 000. This series is a new initiative for 1994.

2. State Theatre

3 300 subscribers to date, including 600 new subscribers. Smaller subscriptions to be sold later in the year.

State Opera

3 200 subscribers to date.

Adelaide Festival Centre Trust

400 subscribers to date.

3. State Theatre

In 1993 State Theatre's marketing costs were $83 253, and the organisation had 3 911 subscribers.

State Opera

In 1993 State Opera's marketing costs were $68 620, and the organisation had 4 108 subscribers.

Adelaide Festival Centre Trust

There was no World Theatre subscription series in 1993.

WOMEN'S REGISTER

29. **The Hon. ANNE LEVY:** How many women have placed their names on the Women's Register for possible appointment to Government Boards and Committees as at 11 December 1993 and 31 March 1994?

The Hon. DIANA LAIDLAW: As at 11 December 1993, 347 women had placed their names on the Women's Register for possible appointment to Government boards and committees.

There was no exact tally taken on 31 March 1994, but at 18 April 1994 a total of 498 names had been received for the register making 151 names that have been added since 11 December 1993. Of those applications received since the State election 50 were on the previous Government's Women's Register application form and the remainder have been on the Liberal Government's 'Breakthrough' Register application form.

Applications are being received on a daily basis from women throughout South Australia.

NETTING REVIEW

33. **The Hon. R.R. ROBERTS:**

1. Can the Minister for Primary Industries ascertain when the Netting Review Committee will report on the impacts of netting in coastal waters?

2. What are the names of the Members of the Committee and whom do they represent?

3. What will the study cost?

4. Will the Minister table the report of the Committee?

The Hon. D.S. BAKER:

1. The Netting Review Committee will be reporting on the impacts of commercial and recreational netting in South Australian coastal waters. It is expected that the Committee's report will be finalised by the end of August 1994.

2. The membership of the committee and the organisation or fishing group that they represent are as follows:

Mr David Hall (Chairman)	Primary Industries SA—Fisheries
Mr Jon Presser (Exec Officer)	Primary Industries SA—Fisheries
Dr Keith Jones	South Australian Research and Development Institute
Mr John Winwood	South Australian Recreational Fishing Advisory Council
Mr Peter Peterson	South Australian Fishing Industry Council
Mr Bruce Harris	Recreational Line Fishers
Mr Norm Byron	Commercial Line Fishers
Mr Adrian Fletcher	Commercial Net Fishers
Mr Barry Treloar	Recreational Net Fishers

3. The estimated cost of travel to attend meetings, report printing and sundry items is in the order of $3750. Government costs are to be met from existing budget allocations. Industry members are expected to meet their respective costs.

4. The Minister will table the Committee's report.

FORESTRY REVIEW

35. **The Hon. R.R. ROBERTS:**

1. Can the Minister for Primary Industries ascertain who is conducting the Forestry Review?

2. When will the Review be completed?

3. What are the terms of reference for the Review?

4. What will be the cost of the Review?
5. Will the Minister table a copy of the Review Report?

The Hon. D.S. BAKER:

1. Yes.
2. The final draft report is due to be submitted on 20 June, 1994.
3. The Terms of Reference are:

The Minister for South Australian Primary Industries wishes to review the operations of the South Australian forestry group. The specific outcomes sought for the review are recommendations which will lead to the optimising of the commercial returns to the State from its forestry activities. The review must recognise the need to maintain perpetually sustainable forestry management practices.

4. The cost proposal was for a staged consultancy process. The initial contract has been accepted at a cost of $75 500.
5. Yes.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Auditor-General, Supplementary Annual Report, 1992-93.
Members of Parliament (Register of Interests) Act, 1983—Registrar's Statement, April 1994.

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

Senior Secondary Assessment Board of South Australia—Report, 1993—Amended Table 5.
Teachers' Registration Board of South Australia—Report, 1993.

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

Remuneration Tribunal—Report relating to Determination No. 1 of 1994.
Rules of Court—Supreme Court—Supreme Court Act 1935—Alteration of Documents—Pecuniary Damages.

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

Coast Protection Board—Report, 1992-93.
Regulation under the following Act—
Formula One Power Board Grand Prix.
District Council By-law—Mannum—No. 11—Moveable Signs.
Corporation By-law—Mitcham—No. 2—Streets and Public Places.

AUDIT COMMISSION REPORT

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to make a ministerial statement about the report of the South Australian Commission of Audit.

Leave granted.

The Hon. R.I. LUCAS: I table the report of the Independent South Australian Commission of Audit and advise members that I understand that in the not too distant future copies will be provided to all members of the Legislative Council as well. The report is in two volumes covering 855 pages, plus an overview.

There are 336 recommendations. It is the most comprehensive of the audit reports commissioned by State Governments in recent years. It is also the most detailed single analysis of South Australia's finances in our State's history. The Government appointed this commission as one of its first actions because of our concern that the Parliament and the public had not been told the full truth about South Australia's financial position. With this report we now have Labor's albatross—Labor's $10 billion black hole. This is the Labor legacy, and this is the week for those responsible to apologise.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We will see by Friday if Labor members have had the decency to say they are sorry for the chaos they have caused to our State economy and to the public sector.

The report shows that: at the bottom line, South Australians are $10 billion worse off than the former Government claimed—the financial black hole created by the former Government's mismanagement of assets and liabilities held in the name of taxpayers is that much worse than the former Government advised to Parliament; an increasing liability for superannuation and other entitlements of public servants which the former Government refused to acknowledge; under the former Government's 'Meeting the Challenge' strategy, the State's financial position would have continued to deteriorate; as a result, the South Australian Government now owes $9 909 for every man, woman and child in South Australia and the unfunded liability for superannuation is now increasing at the rate of $200 million a year.

The report also exposes gross mismanagement of the public sector by the former Government in a wide range of areas. As a result, unless action is taken now, we will be consigning future generations of South Australians to higher tax bills and lower standards of services because an increasing amount of Government funding will be required to pay for the debt and other liabilities run up by past mistakes and mismanagement. South Australia cannot go on living beyond its means in this way—pushing onto future generations the cost of Government today. The report of the Audit Commission shows that this cost is much higher than South Australians had been led to believe.

This report has been prepared by four Commissioners and their dedicated staff. They have worked round the clock in recent weeks to meet the deadline for reporting set in the commission's terms of reference announced by the Premier within 48 hours of the Government's taking office. The Government thanks all those who made submissions to the commission. The Government is tabling the report on the first parliamentary sitting day after receiving it. At the outset, I advise the House of the process the Government will adopt in responding to the report. The commission has advised that the Government should report publicly its detailed response by the end of October 1994 (Introduction to Report—P.xxxviii). The Government will do that.

Of course, in a report with so many recommendations from an independent commission with an advisory role, not every recommendation is likely to be accepted by the Government. By the end of October, there will be a Government response to Parliament on each and every one of the commission's recommendations. Naturally, some Government decisions will be taken and implemented sooner. Some major decisions will be implemented as part of the 1994-95 State budget. A financial statement to be released by the Government during June will foreshadow other decisions.

The Government will also make a statement before the end of June about its future approach to public sector separation packages, while amendments to the Government Management and Employment Act will be introduced in the budget session to provide a better framework for the consideration of public sector staffing issues. As part of this process, a policy statement on public sector employment tenure will be developed, recognising the view the former Government expressed in the 'Meeting the Challenge' statement that 'future employment will not always confer tenure'. To assist the Government in addressing these and other issues as a response to the report of the Audit Commission, today the

Premier has invited written submissions from all interested parties on the commission's recommendations. Those submissions should be made to the Premier by 24 May. The Premier is writing to all public servants today to advise them of the Government's continuing commitment to consultation and equity.

In inviting comment and offering consultation, the Premier has emphasised that the Government is also seeking cooperation. The extent to which employees, management and unions are prepared to cooperate in the challenge to achieve budget savings and improve efficiency and quality of service delivery will obviously have an important bearing on what final decisions the Government is obliged to take in response to the recommendations of the Audit Commission. We are prepared to talk to public sector unions about the changes required, but we cannot guarantee to achieve consensus if union demands on the Government are unreasonable in view of the mess we have inherited.

In considering this report, the Government will be guided very much by the commission's advice that 'strong leadership will be required from the Government to bring about a sustained improvement in public sector performance with a greater role for Ministers in championing reform within their agencies'. (Volume 1—page 326.) On behalf of the Government, the Premier recognises that this is a benchmark from which we must be judged. The task we inherited is challenging, and we accept that.

The commission's first recommendation is that:

> The South Australian Government should fundamentally reassess its role in the economy in order to concentrate on its core functions and to promote efficiency and effectiveness in service provision. (Volume 1—page 30.)

Essentially, throughout its report the commission is saying that South Australians have a clear choice between restoring an affordable and efficient public sector relevant to the present and future needs of South Australians or maintaining a public sector which has become inefficient and a growing burden and drag on South Australia's economic and social well-being to the point where the State risks permanent national and international obscurity and a continuing decline in living standards. To the Government, this is no choice at all.

As we recognised at the election, changes of approach and changes of culture are essential. The Government accepts that it has a duty to ensure that any burden imposed by change in the short term and the longer-term benefits of change are fairly shared. As a community we must accept this challenge together because, as the commission has reported, there are significant opportunities for South Australia to grasp. It has stated, 'The outlook for the State economy is presently healthier than at any time since the recession began.' (Volume 1—page 49.)

Reflecting its optimism, the commission has entitled its report *Charting the Way Forward*. In considering barriers to the way forward, it has looked back to report that 'South Australia began to lose its competitive edge a couple of decades ago'. (Volume 1—page 3.) It needs to be recognised that the problems identified by the commission involve much more than the recent financial losses of the State Government. They go to the heart of failed Government responsibility: to a failure to give leadership; to a failure to manage; to a failure to provide efficient public services for South Australians; and to a failure to respond in sufficient time or in any adequate way to the State's deteriorating financial position. These are failures at the highest levels of government which have developed and become entrenched over a long period—at least a decade.

Let the Council be quite clear about this point: the ultimate responsibility for the failures exposed in this report lies not with public servants but with elected Government. As the commission has reported, the community has 'felt let down by Government. Unfortunately, this has left a legacy of distrust of the public sector in some sections of the community.' (Volume 1—page 6.) This makes it all the more important for all South Australians to make a mature and balanced assessment of this report.

This report has not been written in ideological terms, and it will not be assessed by the Government in that way. It is, above all else, a manifesto to manage our State towards a much better future for all South Australians. The commission's report must be seen as charting the way ahead well into the next century, with an agenda for change and progress as comprehensive as any contemplated by our State since the expansion of our economy into manufacturing 60 years ago.

Accordingly, the Government will not be stampeded into immediate decisions or reaction to all the major recommendations in this report. The Government expects that there will be some in the community who will attempt to use the current marginal seat by-election environment to demand assurances that the Government will not do this or that.

South Australia's future is too important to be played with like this. Such demands would simply repeat the sort of behaviour which the commission believes has let down the community in the past. Of course, the Government could have withheld this report until after the unforeseen Torrens by-election, but that also would have been wrong. Equally, the Premier could have come before the Parliament to say, 'Things are much worse than we have been led to believe and, therefore, all previous commitments are to be reviewed.'

It is true that this report shows that the Parliament and the public were grossly misled by the former Government about South Australia's actual financial position. However, the Premier will not turn his back on the job he was elected to do. Indeed, this report only reinforces our determination to do what is right and required to rebuild our State—not tear it down—and to work in partnership with the public sector to achieve benefits for all South Australians.

I remind the Council that the Government pledged to rebuild jobs, to reduce debt, to restore the standards of key Government services and to regain public respect for the institutions of Government. It is this last commitment we continue to honour in tabling this report today, just before a by-election. In this report, there is further guidance for what needs to be done to establish firmly the other foundations of our platform to rebuild jobs, reduce debt and restore the standards of key Government services.

In considering the State's financial position, the commission has disclosed a new major financial burden in warning of the need to look beyond net public sector debt and address the increasing unfunded liabilities of the Government, particularly those related to superannuation. The commission has taken the position that liability for superannuation is 'another form of borrowing by the Government and is in many ways equivalent to debt' (Volume 1, page 120). As such, these liabilities can be seen as a ticking financial time bomb. The commission has described them 'as a substantial risk factor to the State'. The full extent of these unfunded liabilities, which means that South Australia owes much more than the former Government acknowledged, has never before been publicly recognised. As far back as April 1988—six

years ago—the Auditor-General raised with the former Government the need to report on these liabilities in more detail. In the 1990 report of the Auditor-General, almost four years ago, it was stated that 'progress has been slow in providing information concerning the accumulated cost of these liabilities'.

In fact, the former Government did not want this Parliament or the public to know. Full disclosure of the increasing unfunded liability would have compounded public concern and anger about its financial mismanagement. The former Government ducked these hard decisions, content to leave them to future generations of South Australians—an act of financial vandalism.

Already these liabilities amount to half the size of the current State debt. They are set to blow up in the face of taxpayers not yet born unless some action is taken now. They would more than double in real terms over the next 28 years to more than $7 000 million if the practice of the former Government continued of meeting benefits only as they arose. Put another way, under this arrangement the liabilities would increase at the rate of $14 840 every hour of every day for the next 28 years unless current arrangements were changed.

In the year 2021, taxpayers would be having to meet a daily bill of almost $2 million for public sector superannuation. While some funding has been set aside to meet the liability of the guarantee scheme, the commission believes that, unless further action is taken, the growing cost of superannuation will force increased taxes and lower levels of service on future taxpayers. The commission has therefore recommended that all current schemes, except the guarantee scheme, be closed to new entrants. The Government has decided to introduce legislation to close the voluntary South Australian Superannuation (Lump Sum) Scheme and the Police Superannuation (Lump Sum) Scheme to new entrants, effective from the opening of business tomorrow morning. This action will prevent a sudden influx of new beneficiaries.

The legislation will be introduced by the Treasurer later this afternoon. The effect of this legislation is a freeze on new entrants to allow the Government a period of time to consider the whole issue of superannuation costs, including those related to the schemes for parliamentarians and judges. It should be noted that there is not the same pressure for entry to these two latter schemes, for which membership is compulsory. At the same time, superannuation will still be provided for new employees, who will immediately receive coverage from the guarantee scheme in line with general community standards.

The Audit Commission has also recommended a 30 year program to achieve full funding of currently projected liabilities. To achieve this would cost the Government an additional $113 million next year alone. This is just one of the financial black holes the former Government deliberately concealed. The commission has confirmed previous reports by the Auditor-General in stating that the issue of superannuation costs has been looming for some years. The commission has also advised that 'the failure to fully recognise that liability in the financial accounts of the Government and its constituent liabilities has permitted that liability to grow to what must be regarded by the community as an unacceptable level'.

Superannuation liabilities are included in a balance sheet for the entire public sector developed by the commission, which contains further direct evidence of the former Government's failure to disclose the true financial position of the public sector to the Parliament and the public. This balance sheet puts the public sector's net asset position at just under $4 000 million at June 1993. This is almost $10 billion less than the net asset position reported by the former Government in its last budget presented to this Parliament (Financial Statement 1993-94, page 7.9). In other words, the commission has found a $10 billion black hole in the Government's financial position. The former Government deliberately inflated the value of assets to set against debt and deflated liabilities to achieve this misleading result.

Total public sector assets identified by the Audit Commission have a value of just under $21.8 billion—$5.6 billion less than the former Government's estimate. Liabilities exceed the former Government's estimate by almost $4.3 billion. The commission has also identified contingent liabilities of about $10 billion. In September last year the Auditor-General advised Parliament that the former Government had been unable to identify all such liabilities. Now we know why. The Audit Commission has also reported that the former Government's failure to publish forward estimates of revenue and spending contributed to the State's true financial position being concealed.

Since 1987 the Auditor-General had been advising the former Government to publish forward estimates, but it failed to do so. The commission has stated that, as a result, 'neither the Parliament nor the community has been able to understand and judge either the longer term implications of the annual budget or the Government's performance'. The work of the Audit Commission shows quite clearly how the former Government's persistent refusal to heed the advice of the Auditor-General in successive reports left this Parliament and the public uninformed and unaware of the full extent of the mess Labor was creating.

While the former Government manipulated financial figures to suggest an improving financial position, the Audit Commission has advised that South Australia's fiscal deficit for this financial year is estimated to be the highest of all the States in per capita terms. The deficit is $343 million, or $234 for every man, woman and child in South Australia, compared with surpluses of $146 per capita in Queensland and $49 in Tasmania.

Nor do the former Government's debt reduction targets stand up to any scrutiny. In his Meeting the Challenge statement the former Premier claimed his policies would reduce public sector debt to 22 per cent of Gross State Product in 1996. However, the Audit Commission has found that the debt would be stuck at 25 per cent in 1996 under a continuation of the policies in Meeting the Challenge—an unacceptable level. Meeting the Challenge estimated that at June 1993 budget supported debt—that is, debt serviced from taxation—was $4.9 billion. The Audit Commission puts it at $6.1 billion. The Audit Commission report well and truly discredits Meeting the Challenge and the former Government's claims to have established a strategy to restore the State's finances. The targets were entirely fictitious and non-achievable. As the commission has demonstrated, the former Government failed to achieve the level of public sector reform required, while it simply ignored the growing unfunded liability for superannuation.

As the Liberal Party said at the election, we will clean-up the mess left by Labor. The financial position we have inherited has occurred despite the Audit Commission's finding that, under the former Government, spending and taxation increased at a faster rate than in any other State. In its management of the public sector, the former Government neglected to protect South Australia's competitive position.

Hence, companies looked elsewhere to establish new factories.

The commission has reported that, overall, wages and salaries in the private sector in South Australia are 2.4 per cent below the national average, but in the State public sector they are 2.6 per cent above the national average, 7 per cent higher in education and 7.9 per cent higher in health. A further result of these higher public sector salaries is a loss to South Australia of $51 million in Commonwealth funding this financial year as recommended by the Grants Commission. Revelations by the Audit Commission about public sector salaries and other benefits, including superannuation, require the Government and the public sector to consider whether it is any longer fair to have entitlements so far out of line with those in the private sector.

In relation to education, the commission advises that South Australia has the highest average teaching salary costs of all the States, meaning that the average cost per student in South Australia is also higher than anywhere else. The Premier indicates that he is sure that South Australians would be prepared to pay more for an important service such as education if there was demonstrable evidence that the much higher cost guaranteed much better education standards and facilities for our children. However, South Australians must now ask themselves whether we can continue to afford many more teachers paid higher average salaries when the commission has also reported that:

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

The commission has also reported that a very high level of Education Department employees are absent for workers compensation reasons and that the education of our children has suffered as a consequence.

The Government now understands why certain representatives of the South Australian Institute of Teachers have been so fearful of the report of this commission. It is symptomatic of the former Government's failure to address this issue that, according to the commission, only 36 per cent of Government agencies have a good employee safety record and the Government has a stress claim incident rate at least six times higher than the private sector.

While insisting on improved safety practices in the private sector, the former Government refused to apply the same standards to its own activities. The former Government's record in staff training was no better. For example, the commission has reported that an average of only 17 per cent of staff employed in the financial management area have any formal accounting qualifications, with very few of these having qualifications and experience in cost accounting.

It is no wonder, given these failures, that the commission has reported that South Australia had the worst performing public trading enterprises of any State under the former Government.

In ETSA and Government-owned ports labour productivity is measured as the lowest anywhere in Australia, according to the commission. Public services like ETSA, the Housing Trust, the E&WS and the ports were built up by the Playford Liberal Government between the late 1930s and the mid 1960s to a level where they were the most efficient in Australia. It is a tragedy for all South Australians that they have been allowed to run down to such low standards of service by successive Labor Governments, as the report of the Audit Commission has now exposed.

The Commission of Audit has recognised some of the changes that the Government has already initiated to improve levels of service, for example, in urban passenger transport and in public hospitals through casemix funding. The commission has endorsed our moves for strict performance agreements with senior public executives; for a whole of Government integrated management cycle in which the budget is presented earlier and the strategic planning process is directly linked with annual budgeting and reporting; for contestability and out-sourcing in some public sector activities including health and information technology to maximise efficiency gains and to give real encouragement to local industry; for basic skills testing in education and devolving greater management responsibility to the level of the individual school; for regionalisation of health administration; and for giving the private sector the opportunity to build the State's next major prison.

The commission also offers some advice to all South Australians as follows:

> In particular, there is a need to change the community's expectations about, and understanding of, public expenditure levels. There needs to be the development in the community of an understanding that a reduction in staffing or a rationalisation in the number of service delivery points does not necessarily mean a lowering of standards.

We have higher than average staffing levels now; we have numerous service delivery points. However, South Australians are not receiving an adequate standard of service in many areas. The Government is committed to providing high standards of service to the public and to do so on an internationally competitive basis. It is vital in the debate we will now have over the next few months to focus just as much on the level and efficiency of the service as on who actually provides the service.

In many areas a vital role will remain for the public sector. But the public sector can only be efficient and respected by the public if it is prepared to accept the challenge of change which has faced everyone else in recent years. The whole culture of the public sector must change to one of helping to rebuild South Australia's economic and financial position. The report of the Audit Commission is there for us all to assess. The Government is committed to bringing about major reform of the public sector and to restoring our State's financial position. We will put the broad interests of our community and people at the forefront in doing so.

As the Premier has said, the Government accepts the challenge to achieve the commitment from senior public sector executives and the change of culture across the public sector that will be necessary to chart the way forward to a better future for South Australia. I commend the report to the Parliament and to the people of South Australia for their consideration. The challenges ahead are greater than most South Australians have faced before in their lifetime. We must no longer postpone the day when we confront these challenges. The Government is ready to face the challenge and the Government knows that the people of South Australia are also ready to face the challenge.

EDUCATION BUDGET

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to make a ministerial statement about the education budget.

Leave granted.

The Hon. R.I. LUCAS: The Premier's ministerial statement outlines in stark detail the enormity of the problems facing South Australia and the new Government. The Commission of Audit has made a comprehensive series of recommendations affecting most Government departments and agencies. There is clearly a significant number of recommendations that affect the operation of the Department for Education and Children's Services. Some of the major findings of the Commission of Audit on education issues are as follows:

1. The annual cost of educating a student at a South Australian Government school is, on average, 9 per cent or $393 per student higher than the Australian average.

2. South Australia has 931 more teachers and 680 more non-teaching staff when compared to the national average. South Australia has the lowest student to teacher ratio of all States in 1994. The annual cost of these extra staff is $62 million.

3. Significant over capacity exists in our schools to the extent that 49 per cent of the total space in schools is under utilised.

4. The real extent of backlog maintenance is about $50 million.

5. South Australia has more smaller schools and fewer larger schools than the national average. Theoretically, if South Australia could raise enrolments to optimum levels, up to 150 schools would become surplus. However, the commission acknowledges that such a change is not feasible and that allowance has to be made for geographic, demographic and social needs, asset management utilisation, and other factors relating to individual schools. It is important to note that therefore it is not correct to say that the commission has recommended the closure of 150 schools in South Australia.

6. While it is often claimed that South Australia's higher expenditure on education leads to a better quality of education, no convincing evidence has been presented which links South Australia's higher expenditure with improved outcomes. Indeed, the South Australian Institute of Teachers has resisted attempts in the past to assess educational attainment of students and the quality of teaching.

7. The commission's first recommendation is to support the introduction of basic skills testing and the attribution of levels of performance by teachers within the framework of National Curriculum Profiles and Statements.

8. As school holidays greatly exceed the 20-day level of leave entitlement, teachers should be prepared to undertake training and development programs outside school hours.

9. The curriculum guarantee agreement entered into by the previous Government with SAIT in 1989 has ensured that the Education Department is constrained in its executive decision making and has resulted in substantial ongoing, unnecessary expense. Some elements of the agreement directly contradict the Education Act 1972.

10. This agreement has meant that each year, even though we have a surplus of teachers, between 220 and 250 new permanent teachers have been appointed to fill country positions. The annual cost of this institutionalised surplus of teachers is about $15 million and $35 million was spent this year on TSPs for surplus teachers.

11. 'Fall back' positions in the agreement—that is, after five years as principal a person cannot drop below deputy principal level—mean that it is possible for a classroom teacher to be paid a deputy principal's salary rate in certain circumstances. The annual cost of this fall back provision could be up to $5 million.

12. Leadership positions in schools account for 29 per cent of total teaching staff in schools. This is one factor in causing average salary costs for teachers (including leadership and promotion positions) in South Australia being 10 per cent higher than the national average. This 10 per cent differential is equivalent to annual salary costs of $54 million. The fact that there is no quota on the number of teachers who can be classified as advanced skills teachers is further increasing average salary costs.

13. School Card expenditure should be reduced by streamlining processes and restricting eligibility.

14. The 2 per cent of total employment target level of contract teachers numbers should be removed and the number of contracts should equate broadly to the number of temporary vacancies.

15. In term one of 1994 there were 1 060 full-time equivalent teachers on leave without pay. When these teachers return to schools they will add to the existing surplus of teachers.

As the Premier has indicated, the Commission of Audit is an advisory body only. It cannot make decisions or give directives to Government. The Government will consider the recommendations and it will make decisions after it has taken advice on the issues raised. The Liberal Party's promise not to cut the 1993-94 education budget has been kept as no changes have been made to the total level of funding for Education and Children's Services for this year. As I indicated in this House two months ago in response to a question from the Leader of the Opposition I obviously can give no guarantees about the level of funding for the 1994-95 budget until Cabinet has finalised its consideration of the commission report and its deliberation for the 1994-95 Budget. Therefore, as with all other Ministers, any specific funding committees for this year and beyond will need to be reviewed in the light of the Commission of Audit report.

HINDMARSH ISLAND

The Hon. DIANA LAIDLAW: I seek leave to incorporate in *Hansard* a ministerial statement given by my colleague the Hon. Michael Armitage in another place today on Hindmarsh Island.

The PRESIDENT: You should be requesting leave to table it.

The Hon. DIANA LAIDLAW: Why can't I put it in *Hansard*?

The PRESIDENT: We do not normally do that. I have refused leave in the past other than for purely statistical information. The Minister can table the document.

The Hon. DIANA LAIDLAW: Therefore, I seek leave to read the ministerial statement issued by the Hon. Michael Armitage.

Leave granted.

The Hon. C.J. Sumner: We can read it in the House of Assembly *Hansard* if it was given today.

The Hon. DIANA LAIDLAW: I want to put it in *Hansard*.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The Hon. Dr. Armitage has made the following statement:

I rise to inform the House that I have today reluctantly issued an authorisation to the Department of Road Transport to allow damage to Aboriginal sites to the minimal extent necessary to allow the construction of a bridge to Hindmarsh Island. This authority has been

given under section 23 of the Aboriginal Heritage Act following consultations with the Aboriginal community and further archaeological site work. My statutory discretion under the Act is a personal one as Minister. Earlier I had considered that my discretions were subject to the collective decisions of Cabinet. However, following discussions with the Government's legal advisers, I was made aware of the fact that the use of my statutory discretion under section 23 is not determined by any decisions of Cabinet or even any contractual obligations of the Government. I have come to this decision aware of these facts. Yet, it gave me no pleasure to make this decision.

First, the Government has explored all legal measures to extricate ourselves from this difficult situation. Secondly, as Minister for Aboriginal Affairs, I recognise that Aboriginal sites will be damaged by the construction and this fact causes great distress to the Aboriginal community. The Lower Murray Aboriginal Heritage Committee, representing the Ngarrindjeri people, remains implacably opposed to the construction of the bridge.

I have met with representatives of the committee on at least four occasions and discussed their concerns. My staff and I have had numerous written and telephone communications with members of the committee and their legal representatives. All of these communications leave me in no doubt of the Aboriginal opposition to the construction of the bridge and that the community will be extremely disappointed. In coming to my decision I was determined that I should be fully briefed on what sites were to be affected. I directed that a full survey of the sites to be affected by the bridge be completed as a matter of urgency. The report from this survey was made available to me at the end of last week, having been carried out between 20-29 April. Despite all the time available to the previous Government, this was the first detailed archaeological survey of the area to be affected.

It is clear that it is not practicable both for the sites in the proposed bridge alignment to be protected and preserved and for the bridge to be constructed. In making my decision I was aware of the fact that the bridge alignment follows the existing Brooking Street and ferry alignment, which have already physically damaged the site. Considering the full extent of other interests to be weighted up, I have concluded that I need to authorise damage to the sites to allow bridge construction to go ahead. However, my authorisation is subject to a series of strict conditions designed to minimise the damage to the sites in the area.

The Lower Murray Aboriginal Heritage Committee is also concerned about the secondary impact of the bridge on other Aboriginal sites on Hindmarsh Island and in the region. I assure the committee that the Government is determined to do all that it can within its power to ensure that any further development on Hindmarsh Island is pursued in a way which respects Aboriginal culture and heritage. The Government will complete the survey of Aboriginal sites on Hindmarsh Island, at a cost of $35 000, as a matter of priority. The Lower Murray Aboriginal Heritage Committee will be asked to be involved in this process.

Further, I give my commitment that the Department of State Aboriginal Affairs and I will work with the Lower Murray Aboriginal Heritage Committee to explore in a positive manner a range of other proposals such as fostering Aboriginal cultural tourism and Aboriginal involvement in the management of the Coorong National Park, and environmental management initiatives on Hindmarsh Island. In conclusion, I would urge all of the parties involved in the development of this issue, Aboriginal and non-Aboriginal, Government and non-government, to review critically their participation. I believe that the Government and the Aboriginal community share two common goals—a commitment to economic development and a respect for Aboriginal culture and history. The challenge for all of us is how to promote one without forgoing the other.

QUESTION TIME

AUDIT COMMISSION REPORT

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Leader of the Government a question on the Audit Commission and education.

Leave granted.

The Hon. C.J. SUMNER: We have just heard a misleading account of the Audit Commission's recommendations from the Minister in this place. Not only was it misleading, but it was a miserable attempt to get the Liberal Government off the hook on the promises it made prior to the last election.

Members interjecting:

The PRESIDENT: Order! I am having difficulty hearing the Leader present his question.

The Hon. C.J. SUMNER: In my speech on the Supply Bill some weeks ago I predicted just this response from the Government. The Government is relying on the tactic used in Victoria and Western Australia of having an Audit Commission and then claiming that the situation is worse than anticipated, worse than it knew. That situation is just not true. The Liberal Party has had to construct figures to fit its preconceived scenario of the situation being worse than anticipated—a situation that it says it did not know about. That is just not true. The $10 billion is constructed by the Liberal Party—the so-called $10 billion black hole—to justify its broken promises. The Liberal Party knew and has known for years that the superannuation scheme in this State is an unfunded superannuation scheme, just as it is in every State in Australia except Queensland. It cannot now come into this Council and claim that that is part of a black hole which it did not know about. It knew that superannuation liabilities were unfunded.

The Hon. Anne Levy interjecting:

The Hon. C.J. SUMNER: As my colleagues interject and quite properly inform the Council, the Hon. Mr Davis, who is still on the back bench, has been making speeches about it for years. They cannot claim in any circumstances that they did not know. Professor Graham Scott of Flinders University referred to the South Australian financial statements produced over the past few years as the best kept set of books in the country. The Audit Commission acknowledges—and this has been conveniently ignored by the Leader—the work done in the provision of information to the Parliament and the public on the finances of the State.

What the Audit Commission has done, and what the Leader conveniently omits to talk about, is to confirm what Labor said before the election when this issue of State finances was debated.

The Hon. R.I. Lucas: Is this an explanation?

The Hon. C.J. SUMNER: Yes. The Labor Party said that—

Members interjecting:

The PRESIDENT: Order! The reason for this amount of interjection is, I believe, because the question is being couched in terms of opinion. I suggest that the Leader couch his question in other terms.

The Hon. C.J. SUMNER: The reason for the interjections is that members are not prepared to show me the same courtesy in asking my question as the Opposition showed the Minister, in particular, when he made his statement on the Audit Commission report. The fact is that these issues were discussed before the election. The fact is that the Labor Party said that the Liberal Party's proposals to maintain or reduce taxation; to increase expenditure in education, health, law and order; and to reduce debt by $1 billion did not add up. It does not add up now; it did not add up then, and the Labor Party explained that during the debate prior to the election.

The options now available to the Liberal Party are to increase taxes, to reduce expenditure (including in those areas where they promised increases) or to modify its debt target. It has no other choice. That is a fact; that is not an opinion. That is exactly what the Liberal Party was told prior to the election in December last year.

The threat to education spending, despite the commitments made by the Liberal Party prior to the election, is particularly frightening. It promised $240 million expenditure on schools over the next three years. It promised an increase in education expenditure in the next budget. Now, the Minister in his ministerial statement on education gives us the softening up process which will lead to those commitments being broken.

As I said, the threat to education is frightening. The Liberal Party knew prior to the election—because it was all out in the open through the Grants Commission report, the A.D. Little Report and the Ernst and Young consultancy on the public sector, in particular—that in order to reach an Australian standard, as the Audit Commission recommends, education expenditure would have to be cut. The Liberal Party knew that before the election, but it chose to ignore it for its own purposes. An amount of $55 million will have to be cut from education expenditure, just to meet that target to which the Audit Commission refers.

The question of school closures was debated during the election campaign. The Liberal Party denied that it would be involved in school closures. It is no wonder that the Liberal members of Parliament opposed the Bill that I introduced to give notice of school closures in the future. It is quite clear from the Audit Commission report that we now have the spectre of a significant number of school closures.

Page 130 of the Audit Commission report states that the adoption of what it says are optimum numbers for schools (300 for primary schools and 600 to 800 for secondary schools) could mean that up to 140 primary and 10 secondary schools could become surplus. That is made clear by the Audit Commission.

The Hon. R.I. Lucas: What does the report say next?

The Hon. C.J. SUMNER: You have already dealt with this issue and you can answer—

The Hon. R.I. Lucas: That it is not feasible.

The Hon. C.J. SUMNER: The commission does not say that it is not feasible.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Who is this? I heard him in silence; I think he should give me the same courtesy. Whether or not it is feasible is a matter with which the Minister will have to deal, but the issue is whether it is 140 primary schools and 10 secondary schools or 20, 30, 40 or 50. How many is it? Is it none? If it is none, the Minister should tell the Council that there will not be any school closures. If he is not going to close 150 schools, that is great, let him tell us. In answering the question let him tell us and the public of South Australia how many schools will be closed because of the recommendations of the Audit Commission report.

Members interjecting:

The Hon. C.J. SUMNER: They are very agitated, Mr President—I don't know why.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: They seem to be very worried about the Audit Commission report—and so they should be, because the Audit Commission report has given the lie to what they promised before the last election, what they knew before the last election could not be achieved and what has now been established by the Audit Commission as not being able to be achieved.

My question to the Minister is: in the light of the commission's discussion on the question of school sizes—that is, as to whether school sizes should be increased to an optimum number, to which the commission refers, in order to generate a saving of up to 150 schools becoming surplus—does the Minister believe that the closure of schools will be necessary in the next and ensuing financial year; and, if so, what plans does the Government have in this area?

The Hon. R.I. LUCAS: That was an explanation in search of a question.

An honourable member interjecting:

The Hon. R.I. LUCAS: Exactly. We had 10 minutes of wandering around with an explanation—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —desperately searching for a question. I thought after that 10 minutes of explanation that we might have got something a little better than that miserable little question whipped out right at the end of the explanation. We have had an 800 page Audit Commission report. The Labor Party has had this report for four hours in a lock-up. There are only 30 or 40 pages on the Education Department, and what we get after 10 minutes of explanation and wandering is a wimpy little question about school closures, which the Leader of the Opposition has already asked on a number of occasions, prior to the release of the Audit Commission report.

If this is the standard of questions that are going to be trotted up, we do not want to miss any of Question Time today. The former Ministers of the Labor Government on this front bench—with the exception of the Hon. Carolyn Pickles—and the Leader of the Opposition have a real cheek to stand up in this Chamber and ask questions in relation to the Audit Commission and the state of finances for 1994-95. The Leader of the Opposition and the other members of the Labor Cabinets over recent years ought to hang their heads in shame for the extent of the financial mismanagement that they have inflicted on the public sector and on the people of South Australia. The extent of that financial mismanagement is revealed in all its gory detail in the 800 pages of the Audit Commission report.

I can only recommend that the former Ministers who were in charge of ports, of transport and of public sector services read the 800 pages of this Commission of Audit report or the sections that applied to their portfolio, because they should be hanging their heads in shame today for the $10 billion black hole that has now been revealed. The Leader of the Opposition tried to dismiss it because he does not understand it. He does not understand the extent of the $10 billion black hole. The extent of the Leader of the Opposition's grasp of matters economic has been a matter of some debate by members in this Chamber over recent years. Clearly, the Leader of the Opposition does not understand the extent of the financial mess that has now been revealed by the Commission of Audit report. There is this $10 billion black hole, and there is the extent of the increasing growth of unfunded liabilities, particularly in relation to superannuation and other areas.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, the Leader of the Opposition continues to bleat that we knew that. Quite clearly the extent of the hidden unfunded liabilities was never revealed by the Leader of the Opposition when he was in Government. I challenge the Leader of the Opposition or other members of the former discredited and disgraced Labor Governments to bring to this Chamber this afternoon evidence of where they have placed on the public record the true extent of the unfunded liabilities that have been revealed by the

Commission of Audit. I challenge the Leader of the Opposition, the Hon. Barbara Wiese and the Hon. Anne Levy to bring to this Chamber the detail of the extent—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: The Hon. Anne Levy talks about warnings that have been given by members in this Chamber—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —and in other Chambers about the problems in relation to superannuation. It is true that there have been warnings, because the Auditor-General has warned as well over the past six years about the need to get on top of this question of unfunded superannuation liabilities and unfunded liabilities. The warnings have been there in general terms, but never before has the true extent of the unfunded superannuation liability been revealed to the Parliament or to the community by the former Government. The fact that—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: It is not the Hon. Legh Davis's responsibility to be revealing the exact nature and extent of unfunded superannuation liabilities. The Hon. Legh Davis is doing a good job in highlighting what you should have been doing in Government, instead of sitting around the Cabinet table for the past 10 years—

The Hon. Diana Laidlaw: With your ears blocked.

The Hon. R.I. LUCAS: —with your ears blocked and sitting on your hands. It is the responsibility of the Leader of the Opposition and other members, if they want to make those claims—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, you're getting a hiding on this section; you want to move on to schools.

Members interjecting:

The Hon. R.I. LUCAS: You could never describe that explanation as a simple question. If members opposite want to make those claims, they should bring before this Chamber this afternoon the documents that show where the former Labor Government revealed the extent and the nature of the unfunded superannuation liabilities that are before us.

Let me turn—willingly and happily—to the subject of schools. Again, what a cheek the Leader of the Opposition and now Opposition spokesperson on education has in relation to school closures. First, he gets his facts wrong, which is not uncommon. I quote him directly from what will be recorded in *Hansard* tomorrow:

> The Liberal Party has denied that we would be involved in school closures prior to the election.

Nothing could be further from the truth.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I do not know how thick the shadow Minister is—

The Hon. L.H. Davis: It's a new area for him.

The Hon. R.I. LUCAS: It is a new area and it takes him some time to get on top of it. During the election campaign I spent eight weeks doing interviews with members of the media, saying, 'At least we were being honest in Opposition.' At least I was saying as a shadow Minister, 'Yes, we would continue with a program of school closures.'

The Hon. C.J. Sumner: Hear, hear! Now we're getting somewhere.

The Hon. R.I. LUCAS: The shadow Minister says, 'At least we are now getting somewhere.' All I can say is that the shadow Minister is very low on the learning curve at the moment. I spent eight weeks during the election campaign indicating that we would continue, if elected to government, with a program of school closures—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: No—and I indicated that the Labor Government had closed some 70 schools over recent years leading up to the last election.

The Hon. Anne Levy: Three.

The Hon. R.I. LUCAS: Three. What nonsense! The shadow Minister does not understand education; what would you expect from the former Minister for the Arts? She obviously knows even less than the shadow Minister for Education when she suggests that they closed only three. I would suggest that members opposite go and talk to the parents of Morphettville, Oaklands and Pinnaroo Primary Schools and the parents of the 70 schools closed down by the former Labor Government. The statement that there were only three school closures is revealed for what it is: as I said, absolute and arrant nonsense.

Prior to the election, I indicated that we would continue with a minimal program of school closures, continuing the Labor Government's program of rationalisation and school closures. I happily and willingly indicate that there has been no change in my position now as Minister for Education to the position that I put on the public record on dozens of occasions when I was the shadow Education Minister, that is, the nonsense position that the Leader of the Opposition and the Labor Government tried to put that they would not have any school closures at all over the coming four years. As I indicated on a previous occasion, they also wanted to keep open schools which, for example, might have had 500 students in them but which, for whatever reason, had dropped to 20 or 30 students. Even if there happened to be a school a kilometre up the road on a bus route, what the Labor Party, including the Leader of the Opposition, when in government, was trying to suggest was that the Labor Government would keep even that school open. Everyone knows that the position that the Leader of the Opposition, when in government and his colleagues were trying to put—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well you can't distance yourself from it now by way of gesture; that was your position. My position was exactly the opposite to that—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Not now, it was then and it still is now—that we will continue with a minimal program of school closures. That is the policy of the new Government. It is a policy that has been restated by the Premier today in a press conference. It has been a policy I have announced in this Chamber to the Leader of the Opposition on at least two or three separate occasions. It is a policy that I put down on dozens and dozens of occasions in the lead up to the election when I was doing interviews with members of the media.

EDUCATION POLICY

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

Leave granted.

The Hon. CAROLYN PICKLES: Before the election Premier Dean Brown said on 28 November 1993, 'There will be no cuts to this year's budget and education spending will increase in 1994-95,' which is somewhat of a different

statement from that made this afternoon by the Minister. I quote from the speech he has just made as follows:

> As I indicated in this House two months ago in response to a question from the Leader of the Opposition, I obviously can give no guarantees about the level of funding for the 1994-95 budget until Cabinet has finalised its consideration of the commission report and its deliberation for the 1994-95 budget.

When asked for an assurance that the Government would not renege on its election promises, Deputy Premier Stephen Baker on 29 March 1994 would say only that the Government was under 'some obligation' to meet its promises. The Minister for Education and Children's Services (Hon. Mr Lucas) on 12 April 1994, when asked about the Government's pre-election promises, said 'Ministers can make no guarantees in relation to future funding levels.' Finally, when the Premier was asked in Parliament on 13 April if he stood by his promise to increase spending on education, he twice evaded the question.

We have just been given copies of the Audit Commission report and, as the Minister has noted, the Opposition was given one copy of the report this morning and we have managed to go through this. It is very nice of the Minister to say that I am actually allowed to ask questions about this issue. In the recommendations on education (from 12.1 to 12.71), which follow the economic rationalist model for education introduced in the UK, in New Zealand and most recently in Victoria—

Members interjecting:

The Hon. CAROLYN PICKLES: It is a fact. This model challenges the concept of a universal franchise and is directed towards education at a cost, schools run as business units, rather than education with universal standards and equity in resources. The conclusion, on page 153 of the report (12.6), notes:

> The commission, from its review of the Education Department, has identified a range of significant issues. The most critical are the high cost per capita of providing school education, and restrictive work and management practices. The education system industrial agreement goes beyond the accepted definition of industrial issues and has resulted in inflexibilities and costly work practices.

I am sure the Institute of Teachers will be very interested in these comments—not that its members had an opportunity to see them, because the Government did not permit them to enter the lockup.

Members interjecting:

The Hon. CAROLYN PICKLES: You did not even let them have a look at this report this morning. The report continues:

> The commission is not satisfied that the additional costs borne by the community as a result of the factors identified result in better educational outcomes in South Australia than elsewhere in Australia.

And the Minister noted that in his speech this afternoon. Does the Minister support the recommendations of the Audit Commission for the devolution of the education system, reductions in the number of teachers, rationalisation of schools, optimum school sizes and school closures, or does he stand by his Leader's election promise to increase spending on education during 1994-95?

The Hon. R.I. LUCAS: I give the Hon. Carolyn Pickles some degree of credit: she at least listened to the ministerial statement I put down in the Chamber this afternoon. I can add no more to my response. The Government, in relation to funding decisions for 1994-95, will consider the advice it gets from the Institute of Teachers, parents, business and industry, other unions, anyone else who has an interest—and, indeed, the shadow Minister if she is so inclined—before the Cabinet makes decisions in relation to the 1994-95 budget round. So, it really is a question now for the Cabinet to sit back and listen, and to receive submissions from all those interested and concerned. The Premier has indicated a process through which that can occur and, at the end of that, the Cabinet will be required to make its decisions in relation to the individual departments and agencies. Of course, as members would understand, I will be part of that Cabinet process.

The Hon. CAROLYN PICKLES: As a supplementary question, I ask the Minister: does he stand by his Leader's election promise to increase spending on education during 1994-95?

The Hon. R.I. LUCAS: And my answer to the honourable member is exactly the same: I refer her to the ministerial statement.

PUBLIC TRANSPORT

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about public transport fares.

Leave granted.

The Hon. BARBARA WIESE: If the Audit Commission position on public transport issues is followed by the Government, fares for public transport users are sure to go up. The Audit Commission has recommended a review of the current fare structure for public transport. In particular, the report observes that certain categories of passengers benefit 'disproportionately' from Government subsidies for public transport. The report recommends, for example, the examination of the reintroduction of fares based on distance travelled, which would mean that many people who live in the outer suburbs because they cannot afford to live closer to the city would be further disadvantaged by having to pay higher fares. My questions to the Minister are:

1. Does the Government agree with the Audit Commission that the current fare structure is a problem?

2. Does the Minister intend to introduce increased fares for certain passengers as suggested by the Audit Commission, namely, higher fares for rail passengers; higher fares for people living in the outer suburbs commuting by bus; higher fares for interpeak concession users, who are usually pensioners and other beneficiaries; and school students travelling on multitrip tickets? If so, by how much will fares increase and what cost recovery ratio will the Government aim for in setting fares in the future?

The Hon. DIANA LAIDLAW: I appreciate that the honourable member has not had long to read this report, but she clearly has misread it in respect of urban passenger transport. There is not one recommendation made by the auditor—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Yes, you said 'they recommended', 'recommended', 'recommended'.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, it has not made any recommendations in respect of any area. What it has said is that it could be reviewed by Government: it could be.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: No, there is no recommendation by the Audit Commission.

The Hon. Barbara Wiese: Read the words.

The Hon. DIANA LAIDLAW: I have read the words, and I have noted it very clearly. I have noted that, in terms of

the 300-odd recommendations, there is no specific recommendation in terms of urban passenger transport. It has simply suggested that there is a number of areas that the Government could review, one of which is fare structure. The report highlights in this section that cash fare revenue recovers only about 21 per cent of the STA's operating costs, or 16 per cent of total expenditure. The Government has not made any decision on this matter. It will be one of the matters on which I suspect there will be a great deal of community discussion in the next three weeks, during which period the Government will encourage people to respond to these matters.

Although, as I say, it is not a specific recommendation, I believe the fact that it has been highlighted in this report will attract people to comment on the issue, and the Government will be making no decision on this matter until at least that three week period is up because, as the honourable member would appreciate, unions, including the Public Transport Union, have asked for at least three weeks to comment on matters in this report, and we will oblige them in that respect.

HINDMARSH ISLAND BRIDGE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport (and she may wish to refer the question to the Minister for Aboriginal Affairs as well) a question about her statement on Hindmarsh Island.

Leave granted.

The Hon. M.J. ELLIOTT: In the statement made by the Minister for Transport today on behalf of the Minister for Aboriginal Affairs I note that the Minister recognised that Aboriginal sites will be damaged by the construction of the bridge and that this fact causes great distress to the Aboriginal community. I have indeed spent a deal of time talking to members of the Aboriginal community and they do consider it a matter of great importance, and I relay that to this Council. I note also that the Minister has said the Government has explored all legal matters to extricate itself from this difficult situation. In the third paragraph the Minister said:

> I had considered that my discretions were subject to the collective decisions of Cabinet. However, following discussions with the Government's legal advisers I was made aware of the fact that the use of my statutory discretion under section 23 is not determined by any decisions of Cabinet or even by contractual obligations of the Government. I have come to this decision aware of these facts.

So one of the questions I ask the Minister is: does this mean that the contractual obligations in no way influenced the Minister, that had the Minister made a decision not to allow the bridge to proceed or, in fact, if the Minister had simply allowed the heritage site to be recognised, the contractual obligations effectively would have been voided and the legal obligations of the Government and the amount of monies it might have had to pay—

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I am not asking you: I am asking the Minister. I am going by the words that the Minister used in the statement. My questions are:

1. If it appears that the discretion is not affected by contractual obligations, does that mean that the Minister in making the decision to allow the heritage value of that site to be recognised would not have caused any legal action against the Government?

2. Noting that the Minister himself has said that the site is an important one, will the Minister release all reports prepared for him in relation to the heritage value of the sites associated with the bridge?

3. The Minister was expected to make a report on this matter last Friday: is it any coincidence that it has come out on the same day as the Audit Commission report?

The Hon. DIANA LAIDLAW: I am sorry to hear the honourable member trivialise this issue to the degree that he has because, as the Minister for Aboriginal Affairs noted in the report, this matter will cause great distress to the Aboriginal community. The Minister himself has noted that it causes him no pleasure and I know that it has in fact caused him a great deal of anguish.

Members interjecting:

The Hon. DIANA LAIDLAW: Well, it is anguish. Nobody chooses to be put in the position in which you have put our Government and, in particular, the Minister for Aboriginal Affairs—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —if we are to build this bridge.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: Therefore, I have made every endeavour to get out of the contracts that your Government should not have entered into at that time. But it did so and we are left with them.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: And I have sought to get out of them. We have sought every means to get out of them. I will refer—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: We did not know about the Aboriginal situation, to the extent that it says in this report that there was no study undertaken of the foreshore. I think it is particularly interesting that the former Minister of Transport Development is not interjecting. She is not interjecting because she knows that there was no study undertaken of these matters, although they were in fact highlighted as areas of concern in the—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Yes, and they indicated that there was concern in relation to the foreshore, but the former Government did not undertake thorough studies as we have just undertaken in respect of this survey that I have released, and that have been undertaken in recent days. I will refer the specific questions to the Minister for Aboriginal Affairs in the other place and bring back a reply for the honourable member.

TELEPHONE INTERCEPTS

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about delays in answering questions.

Leave granted.

The Hon. C.J. SUMNER: On 10 March, some several weeks ago, I asked a question of the Attorney-General about suggestions that had been made about representatives of the South Australian Police Force recording phone or other conversations with the former President of this Chamber, the Hon. Gordon Bruce. On 21 April in another place the Hon. Wayne Matthew, who is the Minister directly responsible for the police, so we understand, answered a question asked by

Mr Quirke, the member for Playford, to the effect that he had signed off an answer—they were his words on 21 April, that he had signed the answer—that it was with the Attorney-General and that he expected the Attorney-General to be able to provide the Council with an answer fairly soon. We still have not had the answer. We have had no statement from the Government. It is now 3 May, some seven weeks since that question was asked, on an issue of some public importance I would have thought. We still have no answer, but the fact is that Mr Matthew apparently signed off on the answer, on his own admission, and the Attorney-General has it. One can only assume that the hold-up is now fairly and squarely with the Attorney-General. My questions to him are:

1. Why is there a delay in answering this question?

2. When will it be replied to?

3. Will the Minister give an undertaking that the reply will be provided before the Council rises for the winter recess?

The Hon. K.T. GRIFFIN: I can give the undertaking that it will be answered before the end of this session.

Members interjecting:

The Hon. K.T. GRIFFIN: There is nothing deliberate about it. I do not know when it came into my office, but I know I looked at it last week and there is some information I have sought to supplement the information provided to me. If I can get it this week I will certainly provide it, but certainly it will be before the end of the session.

ECONOMIC DEVELOPMENT ADVISORY BOARD

The Hon. R.R. ROBERTS: I direct the following questions to the Premier through the Leader in this place:

1. Which members of the recently appointed Economic Development Advisory Board are current or former members of the Liberal Party of Australia (South Australian Division)?

2. Which of the companies associated with members of the Economic Development Advisory Board made donations to the Liberal Party of Australia (South Australian Division) prior to the last State election and what was the amount of their donation?

3. Did any companies associated with the members of the Economic Development Advisory Board print and/or authorise campaign material for the Liberal Party of Australia (South Australian Division) prior to the last State election and, if so, which companies were involved?

The Hon. R.I. LUCAS: I would have thought that it is probably more appropriate that these questions be put on notice, but I will be happy to refer them to the Premier, the appropriate Minister or person and bring back a reply.

SPEED CAMERAS

In reply to **Hon. G. WEATHERILL** (14 April).

The Hon. K.T. GRIFFIN: The Minister for Emergency Services has advised that speed cameras will not be used on South Road between Marion and Sturt Road, until the Department of Transport completes the speed limit signing of the area.

RUNDLE MALL INCIDENTS

In reply to **Hon. G. WEATHERILL** (30 March).

The Hon. K.T. GRIFFIN: As a result of the story on page 2 of the *Advertiser* on 28 March 1994, the Commissioner of Police made numerous inquiries in relation to the allegation of police failing to assist a member of the public who had been assaulted. The report quoted a woman witness who stated:

> A couple of police walked by and somebody asked them if they were going to do anything and they said they couldn't do anything. They didn't help the guy who had been beaten up. That was pretty disappointing.

The witness has admitted to the Commissioner of Police that she saw two persons in uniform heading in the general direction to where a fracas was taking place. She was unable to verify whether these two persons in uniform attended to the person allegedly being assaulted; whether their attention had been drawn to the incident; or whether the persons in uniform had said, 'We cannot do anything about that'.

Indeed, apart from witnessing an incident and seeing what she presumed to be police officers walking in the general direction, she admitted that she knows little of substance of what actually took place, and left the scene.

Because of the seriousness of the allegation published in the *Advertiser*, the Commissioner of Police launched an investigation to ascertain the movements of all police patrols that may have been in the vicinity at the time of the alleged incident. The Commissioner of Police categorically rejects the claim that police were either present at the incident, or in any way derelict in their duty.

In further reply to the question asked by the honourable member, police patrols are issued with portable UHF hand-held radio sets that enable them to be in constant communication with the Police Communications Centre and other patrols and, in fact, all patrols that night were so equipped.

The response time on that night was not slow. At 11.24 p.m. an anonymous person telephoned police stating that a male person had been knocked to the ground at the east end of Rundle Mall. A number of other telephone calls followed. A patrol was despatched to this incident at 11.29 p.m. and was supported by other foot and vehicle patrols. At 11.33 p.m. a patrol located the group of youths at the corner of North Terrace and Blyth Street. The distance from where the gang was first reported to where they were eventually spoken to was approximately one kilometre.

It should be highlighted that the total time which elapsed from the first telephone call in relation to the assault at 11.24 p.m. to when the group were spoken to by police at 11.33 p.m. was only nine minutes. In view of the number of calls received, the differing nature of the calls and the distance travelled by the group from Frome Road to North Terrace/Blyth Street, the police response at the time was very prompt.

From inquiries made by police at the time, there were 10 persons in the group, comprising nine males and one female. This differs markedly from the article in the *Advertiser* that states that the group consisted of twenty persons.

A total of four persons were assaulted, with two persons being charged with one of the assaults. One Asian male person was assaulted on North Terrace, not in Rundle Mall as quoted in the *Advertiser* who had assaulted him from the group detained by the police near Blyth Street. Two of the persons assaulted declined to make a formal report to police at the time.

MOUNT BURR SAWMILL

In reply to **Hon. T.G. ROBERTS** (13 April).

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

1. The Forestry Review is due to be completed by the end of May 1994.

2. The future role of the mill in Forwood Products' plan depends upon the outcome of the Forestry Review and the volumes and sizes of log available for processing in the future. After the report has been received, decisions will be taken as to how the total log available can be best utilised for the benefit of the region and the State. I know Forwood Products are keen to maintain their operations at Mount Burr if sufficient log is available.

3. I have previously indicated the mill will remain open. Scope for future expansion depends entirely upon the Forestry Review report due in May.

GULF ST VINCENT

In reply to **Hon. R.R. ROBERTS** (12 April).

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

The Gulf St Vincent Prawn Fishers Management Committee recommended that the fishery should be opened after careful consideration of the results of research surveys conducted by the South Australian Research and Development Institute and industry vessels prior to the opening.

The results considered by the Management Committee indicated that a significant volume of prawns were available to be harvested in certain areas within the Gulf. The data also showed that there may only be a limited opportunity to harvest these prawns. It was also clear that substantial economic benefit would be lost from South Australia if the fishery remained closed.

It should be noted that the House of Assembly Select Committee recommended that "Decisions as to total catch, lines of demarcation of the Fishery, and target size be determined by the Management Committee at the commencement of each season." To this end, the area to be fished and a harvesting strategy was developed by the management committee prior to fishing. The harvesting strategy involved the development of an agreed target size for harvestable prawns, the implementation of a strategy for trials to identify areas within the Gulf where fish of appropriate size and sufficient quantities were available and the establishment of a 'Committee at Sea' made up of 3 licence operators to monitor fishing.

The implementation of this harvesting strategy has been extremely successful to date.

A number of issues need to be discussed in relation to the concept of establishing total catch strategies or quotas for this fishery. The introduction of a quota or Total Allowable Catch (TAC) system requires a great deal of biological and administrative staff support as well as extra enforcement effort.

There are a number of well documented prerequisites that fishery managers consider essential before embarking on a quota control system. These include the ability to set an appropriate TAC, the mechanism for allocating the TAC if this is to be done equitably, a system for monitoring the catches of individual fishers and adequate enforcement capabilities to ensure compliance with the quotas. We should consider whether these prerequisites can be met for prawn stocks and in particular for the Gulf of St Vincent prawn fishery.

In general, prawn stocks are dynamic and a quota would have to be set on the basis of harvestable biomass estimates provided on a monthly basis. These monthly quotas would need to be then distributed equitably amongst fishermen. A system to do this has yet to be developed. The nature of the prawn fishing operation may also cause frequent quota over-runs. A system would need to be developed which allowed prawns to be landed in excess of quota and with subsequent compensatory reductions later in the season. Regardless of what system is developed to handle the problems caused through quota implementation, a great deal of administrative effort is involved.

The cost of providing the necessary biological, administrative and compliance support for a quota system in this prawn fishery would be high. At this stage such a system would not be cost efficient.

The success of any quota system also relies upon a number of other factors including the need for a cooperative and cohesive industry and confidence in management of the fishery. If this is achieved for the Gulf St Vincent prawn fishery and the cost of implementing a quota system is appropriate then a quota system could be considered in future.

In reply to **Hon. R.R. ROBERTS** (13 April).

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

A two night survey was undertaken 4 and 5 April 1994 in selected areas of Gulf St Vincent using four industry vessels. A meeting of the Gulf St Vincent Prawn Fishery Management Committee took place on 6 April 1994.

Due to the short lead time between the completion of the survey (the morning of 6 April) a summary of survey results (in hand written form) was presented to the Management Committee at its meeting. This information was used to determine the April harvesting strategy.

The committee requested the information (along with a final report of the February 1994 survey) be distributed to all licence holders. This was carried out by the secretary of the Management Committee on 15 April 1994.

Therefore, once again the member is incorrect in his understanding of the management of the Gulf St Vincent prawn fishery and the operation of the Management Committee.

LEGAL AID

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

The Hon. K.T. GRIFFIN: I note that all applications for legal aid are subject to means and merits tests, as well as the guidelines, which outline whether a particular type of legal matter or area of the law falls within the Commission's eligibility criteria or not.

In answering the specific question, I deal only with the Commission's guidelines, but in responding fully to a question relating to potential eligibility for a grant of legal aid, it is necessary to also refer to the means and merits tests of the Legal Services Commission which apply to all applications for legal aid. Details of how these tests operate are set out in the Commission's Assignments Manual. See Chapters two and three of the manual for details.

In answer to the specific question I advise as follows:

Matrimonial Property

Where the property is to be sold, or where one spouse is to raise monies to purchase the other spouse's interest, it is considered that the contingent legal costs should be et from the proceeds of raised monies, in the absence of extraordinary circumstances. In cases where the Commission is satisfied legal costs cannot reasonably be raised, or where it is not clear whether monies are to be raised or the property sold, in that one of the parties is seeking transfer of the property for no consideration, or use and occupation, legal aid may be granted but the full costs of the matter will normally be secured by way of registered charge over the Real Estate (Statutory Charge). (See Assignments Manual, chapter four at page 33).

Access and Custody

The Commission can provide legal assistance for any problem, but because of limited financial resources and relative priorities the Commission does not usually provide assistance in applications for or disputes over custody and access (other than emergency situations or applications by children) unless a genuine attempt to settle the matter by agreement has failed. (See Assignments Manual, chapter four at page 31)

Special/Exceptional Circumstances

The guidelines are capable of waiver in cases involving special or exceptional circumstances. These can include undue hardship, financial or otherwise, to the applicant if legal assistance was not provided, or emergency situations in which the liberty,livelihood, possessions or physical and mental well being of the applicant and any dependants are threatened. (See Assignments Manual, chapter four at page 34).

POLICE RESOURCES

In reply to **Hon. R.R. ROBERTS** (30 March).

The Hon. K.T. GRIFFIN:

1. There are no existing circumstances requiring the redeployment of country police resources to the Adelaide metropolitan area.
2. Strategies aimed at countering criminal activity are planned and implemented on a Statewide basis.
3. There is no proportional nexus between the numbers of police in the country and those in the Adelaide metropolitan area. Staffing levels are established for each individual district, country or metropolitan, on the basis of needs analysis which takes account of issues such as demographics, geographic location, workload, availability of other police support and any special circumstances unique to a particular location.

MINISTERIAL ACCOMMODATION

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Transport a question about ministerial offices.

Leave granted.

The Hon. ANNE LEVY: With great joy today I heard that I was to get an answer to a question that I put on notice 11 weeks ago. So people complaining about a wait of seven weeks do not know the frustration of waiting 11 weeks.

The Hon. Carolyn Pickles interjecting:

The Hon. ANNE LEVY: I put the question on notice on 15 February. I asked what was the cost of refurbishing the

ministerial office and I am told in the answer that so far they have spent $1 937. However, it is said that there is a proposal to spend $66 000 on that office with no indication of whether or not it will being spent. I then asked what use is currently being made of the ministerial office previously occupied during the ALP Government and now not being used by a Liberal Minister. Obviously that question has not been understood or certainly has not been answered. That may be deliberate or just a lack of understanding of the English language, because I am told what has happened to the office of the previous Minister of Transport Development. That is not what I asked.

In the previous Government, 13 Ministers inhabited 13 ministerial offices. The new Government has 13 Ministers and has established a new ministerial office. So, one of the previous 13 offices is now not being used as a ministerial office. My question related to what use is now being made of that office which was a ministerial office under the previous Government and which is not a ministerial office under the current Government, given that it has the same number of ministers and one new ministerial office. I now ask the question which I thought I was asking on 15 February and for which I have been awaiting an answer for 11 weeks:

1. Will the $66 000 proposed to be spent on the Minister's new ministerial office be spent or not? If that sum is to be spent on the office, when will it be spent?

2. What use is now being made of the ministerial office occupied by a previous Labor Minister that is not now occupied by a Liberal Minister? I am not saying which one it is, but there is obviously one of the old ministerial offices that is not used as a ministerial office now. What use is being made of it? I hope I do not have to wait 11 weeks for this answer.

The Hon. DIANA LAIDLAW: Don't get too excited. It is not clear from the second part of the former Minister's question what she was getting at. I am able to provide advice off the cuff, but I will get it checked. It is my understanding that at least one of those former ministerial offices was required, by the people who own or tenant those offices, for refitting and that we were required to vacate that office and find new premises, and that that had to happen quite quickly.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: It didn't take 11 weeks. I did not understand that question. I could have advised the honourable member about the $1 000 or so that it cost to move my office. I thought that she may wish to know the estimate of alterations may be if they did proceed. Therefore, out of courtesy to the honourable member, I sought to provide as much information as possible. It took longer to get that information from SACON. Next time perhaps I will not try to provide the honourable member with as much information as I thought she deserved and in that way may be able to get the answer to her earlier. There has been no application for that money to be spent on this office: it was simply a quotation from SACON. It seems to be pretty expensive to me and it will be assessed.

The Hon. Anne Levy: You will not spend it.

The Hon. DIANA LAIDLAW: I have not applied for it.

ENERGY DISPUTE

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Mines and Energy, a question about a dispute between the Electricity Trust of South Australia and the Gas Company.

Leave granted.

The Hon. T. CROTHERS: Those of us in this place would be aware that a considerable difference of opinion has arisen recently between ETSA and the Gas Company over a particular advertising campaign in which ETSA was recently engaged. This campaign ran for 2 1/2 weeks and was centred on the claim that 'on average people in all-electric homes spend less money on energy than people who are not in that position'.

This dispute between the two instrumentalities finished up in court, which resulted in an appeal lodged by ETSA against an injunction which had previously been issued by the courts in favour of the Gas Company and which had the effect of stopping ETSA proceeding with the advertising campaign to which I have previously referred.

The consequence of that was that the ETSA appeal was dismissed. I acknowledge that the Gas Company spokesperson, Mr Jack McKean, and the ETSA spokesperson, Mr Ralph Faithfull, both agree that the court action between the two parties should not have occurred. In this respect I refer members to the article on page 5 of the *Advertiser* of Tuesday 3 May. I agree wholeheartedly with both Mr McKean and Mr Faithfull. It worries me, however, that the cost of litigation of this nature (and I am sure that it would have been substantial) will ultimately be passed on to the customers of both the litigants who happen to be, in the main, the residents of South Australia both in the domestic and manufacturing arenas. A recurrence of actions of this nature must be kept to a minimum, or, if at all possible, absolutely avoided. It is to that end that I now direct the following questions to the Minister:

1. Does the charter of the State Ombudsman provide him with the capacity to intercede in matters of this nature to try to obtain a less costly way of settling issues such as this?

2. Does the Minister agree with me that matters of this nature being handled in this manner must ultimately lead to additional cost to the South Australian user and a diminished capacity with respect to research and development being undertaken by both parties to whom I have referred?

3. If no avenue of resolution currently exists in South Australia for Government instrumentalities such as ETSA for conflict resolution that would be less costly to South Australians than the present system of litigation, would the Minister endeavour to put a mechanism in place in order to find a method whereby this type of dispute can be sorted out before placing it before our courts in order for the courts to arbitrate on it?

The Hon. K.T. GRIFFIN: So far as the Ombudsman is concerned, he has jurisdiction under his Act to deal with administrative acts by agencies of Government and Government departments as well as local government. No responsibility is placed upon or power given to the Ombudsman to become involved in disputes between a Government agency and an agency in the private sector. So, it is not an area within the jurisdiction of the Ombudsman. So far as dispute resolution is concerned, under the previous Labor Government Acts which relate to various levels of the courts were amended, with our support at the time, to provide the courts with a much greater focus upon mediation, conciliation, alternate dispute resolution and calling in of experts to arbitrate and a range of alternatives to the actual formal court process. It is up to the courts and individual parties as to the extent to which that is used once proceedings have been issued.

The only other point I make is that with two big commercial organisations that have a dispute that cannot be resolved by some form of negotiation between them, as with any other dispute, ultimately one has to look toward some independent person or body such as the courts to resolve the dispute. So far as the particular dispute between ETSA and the South Australian Gas Company is concerned, I will refer that matter to the Minister for Mines and Energy and bring back a reply.

The Hon. T. CROTHERS: Is the Attorney-General indicating to me by his answer that he believes that the Government, of which he is a member, will do nothing with respect to trying to put some mechanism in place relative to conflict resolution? It is a very important matter to me because it means simply that, if he does not, and the Government chooses to sit on its hands on the issue, increased and unnecessary costs will be imposed on users of both utilities and also on the State taxpayer. What does he intend to do?

The PRESIDENT: I presume that that was a supplementary question.

The Hon. K.T. GRIFFIN: It went further than that, Mr President. I made clear that we strongly support alternative dispute resolutions and I said that the previous Government put in place some mechanisms, through courts legislation, to provide alternatives. It is a question of where you draw the line. What are the limits to finding alternative means of resolving disputes? Presumably people are reasonably adult but even that does not necessarily mean that one can achieve some satisfactory resolution of dispute without the intervention of a body such as the court.

SELECT COMMITTEE ON THE REDEVELOPMENT OF THE MARINELAND COMPLEX AND RELATED MATTERS

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

That the select committee have leave to sit during the recess and report on the first day of next session.

Motion carried.

SELECT COMMITTEE ON THE CIRCUMSTANCES RELATED TO THE STIRLING COUNCIL PERTAINING TO AND ARISING FROM THE ASH WEDNESDAY 1980 BUSHFIRES AND RELATED MATTERS

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

That the select committee have leave to sit during the recess and report on the first day of the next session.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (ADMINISTRATION) AMENDMENT BILL

In Committee.

(Continued from 21 April. Page 629.)

Clause 6—'Substitution of section 30.'

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

Page 7, lines 1 to 18—Leave out proposed new section 30A and insert—

Stress-related disabilities

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

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

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

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

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

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

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

I repeat the observation that I made during the second reading debate. Whilst I acknowledge that there are difficulties in some areas in terms of the level of stress claims, I believe those are quite capable of being resolved other than by legislative means. Effectively, what the Government has done by way of its clause 30A is make stress virtually non-claimable. That is one way of solving stress claims, but if too many people claim for a bad back why not bring in a clause that makes it virtually impossible to claim for a bad back? I understand the difficulties that exist in this area, but I believe they are surmountable in other ways. The methodology that the Government is using will deny many legitimate claims, and I believe that is an unconscionable action by the Government.

The Democrats were prepared when a previous amending Bill to this legislation came through 15 months ago to amend the stress clauses recognising that there were some clear difficulties with definition. I indicate that if in the longer term there is real evidence of a problem with the definitions we will be willing to consider it, but at this stage I do not believe that to be the case.

I have reverted to something that is akin to the present legislative position, but I have made some changes, particularly in relation to reasonable actions taken in a reasonable manner that under this Act affect the worker. That is the major change to the present Act.

I challenge employers who have problems with stress claims in the workplace to look at their own management practices to begin with. It is no accident that the Education Department, in particular, has a high number of claims. Having worked in the Education Department I know that, while it is good at educating children, it is appallingly bad at handling its employees: it is a bad manager of teachers. I think there is a real misunderstanding as to what causes stress. Some people say that if you cannot handle teaching you should not be there. What they fail to understand is that often with teachers the problem is not the act of standing in front of a classroom of children who may be incredibly difficult to deal with and who bring a large number of problems from their home environment often due, for instance, to societal dislocation.

That is not the cause of the stress, and it is often not the case that the poor teachers suffer from stress. In fact, there are some very appalling teachers who suffer no stress whatsoever. They go into a classroom and there is a riot from

beginning to end, they leave and their blood pressure has not moved one point. On the other hand, some very good teachers suffer very real stress.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: They might have followed the previous teacher. The problem often occurs because the principal is not handling the staff properly, because of the way in which management tools such as the four year and the 10 year rules are applied, or because of inadequate support. Governments almost on an annual basis change requisite methodologies and curriculum. Those sorts of changes are more likely to create stress than a standard classroom situation, from which some people assume the stress comes. I believe that, substantially, there is a personnel management problem in that department.

The Audit Commission has noted certain areas and suggests that perhaps some departments should not be exempt. I agree absolutely: they have been incompetent and they should have been kicked a long time ago—the present circumstances should never have arisen.

However, there is another area of concern. For a long time recommendations have been made to the WorkCover Corporation about the way it handles stress claims and determines which claims are legitimate and which are not, in order to minimise what may become a long-term stress claim that might otherwise have been a short-term one. There have been many recommendations for change but they simply have not been implemented. I suppose it is worth noting that stress claims are not a particular problem among exempt employers. That might be indicative of the fact that they have to handle the claims themselves up front. Perhaps they have been more realistic in approaching the problems head on: they have not been able to hide from them.

I will not explore the various suggestions that have been made other than to note that there have been many recommendations as to the way in which stress claims should be handled which would lead to improved diagnosis and treatment and, most importantly at the end of the day, substantially less costs. They would be achieved without denying people who have a legitimate claim the right to make it.

The Hon. K.T. GRIFFIN: The Government does not accept the amendment, although I am pleased to note that in what he had to say the honourable member indicated that he was still prepared to give some further consideration, as I understand what he was saying, to some alternatives. The Government's object was to endeavour to have the focus on the event which caused the stress and to ensure that the stress was actually arising out of employment—not just partially but wholly or predominantly.

Of course, to some extent that reflects the provision in the current Act, but not significantly, because what we do seek to do in relation to dismissal, demotion or discipline is to remove an element in the present Act which we say is distracting from the principal issue that ought to be addressed by an employer and by any tribunal in the event of a dispute. What we are seeking to do is focus upon the reasonable action taken by the employer to transfer. Why should we introduce another element which I would suggest is irrelevant to the action, that is, whether it was that the reasonable action was taken in a reasonable manner? That is very much a matter for assessment by the tribunal if it gets to the point of a dispute.

In our view the focus ought to be on whether or not the action was reasonable. If the action was reasonable (an employer, for example, may have given the notice in writing or enclosed it with a pay cheque or in some other way that might have been abrupt), it seems to the Government that that is irrelevant in determining whether any stress which might evolve from the reasonable action is compensable.

Of course, there have been cases, and they were the reason why a decision was taken in the 1980s to actually make specific reference to stress. Since there has been a provision in the principal Act relating to stress, it has been identified that there are some abuses of the system, and the Government's proposal is designed to address the real issue, that is, whether stress, very largely, arose from employment.

If one analyses the Government's amendment in the Bill, one has to acknowledge, in my view, that the approach, whilst it tightens it up, is nevertheless reasonable. One should ask why stress which partially arises out of a domestic situation (it may be a matrimonial dispute, where it is compounded by stress at work because decisions have to be taken, for example) should be taken into consideration in determining the liability of the employer, because the employer has no control over the stress which occurs outside the workplace and should have a responsibility only for that stress which arises out of employment? Even in those circumstances, I would suggest that in some occupations stress is an integral part of the employment, and in those circumstances, one would expect that an employee would recognise that it is to be a high-pressured job, working late hours or long hours, or that it may involve dealing with difficult customers, sorting out problems or whatever. But in those circumstances, one should not be compensated, in my view, for something which is acknowledged to be an integral part of the employment.

One might even say that as members of Parliament—and fortunately we are not compensated for stress-related disorders—we all acknowledge that significant stress is involved. To some extent we cope with stress in differing ways and with differing rates of success. Whilst it may be argued that an employer should provide some assistance to employees on a means by which stress can be managed, it seems to me that the employer should not have to be responsible particularly for stress which is clearly part of the job description and job function.

So, it is in that context that we do not support the amendment by the Hon. Mr Elliott, believing that changes do have to be made to the present environment under the principal Act. But, if we are not to succeed in opposing that amendment, at least I am pleased that the door for further consideration is kept open.

The Hon. R.R. ROBERTS: Stress is an area that has already had a fair revision over the past few years. This is the first of a serious of amendments that starts to argue again whether the employer or the employee is liable. They are amendments which seek to apportion blame again. These arguments were well canvassed in the introduction of WorkCover when we decided very clearly that one of the principal objectives of the original WorkCover scheme was that it was to be a no fault scheme.

My preferred position is that there does not need to be too much change in the stress area, because the changes that took place a couple of years ago already took into account most of the argument that was proposed at that stage.

When members have talked about stress and the public sector vis-a-vis the private sector, they have noticed a difference in the levels of stress that have been reported. People have talked about this, and the Audit Commission

goes into some detail today about the levels of employment and responsibilities within the public sector. It needs explaining and at least putting on the record that over the past few years any rationalisation in the Public Service as a result of the Audit Commission, for instance, will not be new or unique. There has been continual downsizing of the Public Service over the past 10 years. In many areas, people have been moved around in those departments, shifted from pillar to post, and given more responsibility and less power within their working day life. That would explain some of the reasons why stress has taken place in those areas.

I find it sad also that there is a need in subparagraph (iv) of the Hon. Mr Elliott's amendment for reasonable action to be taken in a reasonable manner under the Act affecting the worker. The Hon. Mr Elliott touched on this subject when he talked about some of the ways in which the administration of stress claims have taken place. It is a bit of an indictment when we must put into legislation that action taken under the Act must be considered to give an out to somebody on a stress claim.

One would have hoped that, with a system of WorkCover that has been working for three or four years, we would have developed sufficient methods and techniques for sensitively handling stress cases so that they do not become a burden on the scheme simply by the fact that they continue to go on and on. I concur in the Hon. Mr Elliott's assertion that a greater emphasis needs to be placed on the handling of the claims and that we ought to be developing better techniques, and that would take away the need to continue to look at stress claims. Having made those few points, I indicate to the Committee that we will be supporting the Hon. Mr Elliott's amendment.

The Hon. M.J. ELLIOTT: A number of people have spoken to me suggesting that the whole clause in the legislation and the principal Act about stress should be totally deleted, arguing that stress is just a disability that should be treated in the same way as any other. But at some time in the past a decision was made that it needed to be specifically noted. It may have been for legal reasons, because most other things are physical disabilities, whether or not stress would be covered. But stress is not a disability: stress causes the disability. I note that the Minister said in responding that one must accept that stress is part of the job. Surely, that is a bit like saying to a miner, 'You have to occasionally expect a mine collapse, therefore if you do get injured in a mine collapse, that is bad luck,' or saying to a person lifting loads, 'At some time when you lift a load you might do your back in, but it's part of your job, therefore you should accept it.' The logic is the same. Simply to say that stress is part of the job and therefore you should expect and accept the consequences is exactly the same as saying to a miner, 'You have to accept the mine falling in' or, to a person who lifts loads, 'You have to expect that you might do your back in occasionally.' There is a logical inconsistency in trying to put that sort of argument.

I note also that it talks about stress arising out of employment exceeding the level that would normally and reasonably be expected in employment of the relevant kind. That is a bit like saying that if your back gives after lifting 110 kilos, that was too much; you were asked to lift too much, therefore there is a claim for a bad back, but if your back collapses after lifting less than 110 kilos, your back should be able to take it so, obviously, you had a weak back, therefore no compensation is available. The logic is the same. To say that you should be able to put up with stress in a work environment is the same as saying that a certain load should be acceptable to be lifted and that if your back gives out below that load, obviously, you had a weakness.

Then I look at 30A(c)(iv), which talks about a 'reasonable requirement under this Act'. 'Reasonable requirement', for instance, can be having the country police officer attending accidents as part of his job. You could say that that is a reasonable requirement; if that is stressful then no claim should arise. But what if a person, particularly the country policeman, attends an accident involving someone he knows, or an accident involving children? Some officers in places like Bordertown would find themselves called out to quite severe accidents on—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: It certainly does. What you are talking about, stress, which has arisen out of a reasonable requirement, a reasonable requirement of the job—

The Hon. K.T. Griffin: It is a requirement under this Act. It is a requirement to go to the medical practitioner or to go to undertake some therapy. It does not relate to a requirement by your employer to go out to an accident scene.

The Hon. M.J. ELLIOTT: I must concede that I misread that: it does not apply to that. It still does apply, though, to 30A(b), where you are looking again at something that should be normally and reasonably expected in employment of the relevant kind. Going to accidents is normally and reasonably expected, and who can predict who will cope and who will not? If they do not happen to cope, particularly if the mechanisms within the department have not been designed to help people cope if they hit problems, that would be of concern. I took the example of police. I have been approached by members of the Police Department, who have expressed concern. They said they believe that stress is handled pretty well in their department at the moment, and their major concern was that, if the amendments happened in the way that is proposed, the necessity for the department to handle stress adequately would be removed.

So, unlike some people who are concerned simply that the right to claim stress could be removed, other departments reckon stress is being handled very well and their major concern was that this would remove the obligation from the department to do its job properly. What you then have is a lot of stressed police officers that we do not have now. I do not want to see, because of legislation like this, police officers who are stressed out in the community; I do not want to see stressed teachers in the classroom teaching my children; I do not want to see stressed social workers working in very difficult situations. Removing the claim does not remove the stress. Again, I believe that the Government's behaviour in this area is unconscionable; it is the easy way out.

There are other solutions, and the Government has already given an indication that it will now tackle stress in a very serious manner. I note that there are submissions ready to go before the board, particularly in relation to the Education Department. I say 'Hooray' and 'About time'. It is a pity it did not happen years ago, and that is something the previous Government must accept a great responsibility for. But the new Government must continue to try to solve the problem that way and not to try to do it by the legislative quick fix.

The Hon. T.G. ROBERTS: It is unfortunate that it is financial statistics that bring issues before legislators to look either at amendments or at fresh legislation to overcome problems, but in the case of stress related disabilities and illnesses in the workplace it is the unflattering figures of the public sector that first brought to the attention of the Government the problems associated with diagnosis of stress as a

compensable disability in the work force. It comes about mainly because of the financial management of managing generally either the public sector or private sector, but, as the Hon. Mr Elliott says, separating out the causes of stress is the major problem for us as legislators. Either you acknowledge it as a compensable disability or you do as we are doing now: put so many impediments in its place that it becomes so hard to diagnose and recognise it that it is no longer a claim, so that people then react differently to it.

In general, what they will do is what happens a lot in the private sector: many claims are not processed. People take alternative action. If they find they have a stressful work environment, in good times they will just leave it, sometimes with an outburst, while in other cases they will just not tell anybody and leave. Unfortunately, with the economic times we find ourselves in, the turnover of labour has been a lot less than in the past, so that people then must contend with the workplaces they work from, so they try to handle the problems caused (in most cases) by bad management of their day to day work task, no matter what it is.

You then have an aggravated form of stress, where it is not recognised and not managed, and there is very little support and assistance for people in those circumstances. I have personal knowledge of a teacher who not only is unable to go into a classroom but who has to deviate around schools in the metropolitan area because the sight of a classroom and a playground puts stress on that person in her personal life, and consequently either restricts her travelling or makes it very difficult for her to go from A to B. Much of that is not recognised either by legislators or, in many cases, by the medical profession in relation to the problems we have with stress. I put on record in the second reading debate that constantly changing the criteria for the disability is constantly confusing people as to how to manage it.

The Hon. Mr Elliott says that they will now manage it by ignoring it basically because it will no longer be compensable or it will be very difficult to get compensation. That will probably be the case and I can say now with some certainty that if people who go to doctors and psychiatrists for support and assistance find it is not a compensable illness and that they have to take time off from their job without pay it will just add to their problems and will not add to their ability to be rehabilitated. The other point is that it is not just a question of domestic related stress being taken into the workplace. I think we would find that—and I would appeal to the commonsense of most people in this Chamber—nearly every one of us, on a personal level, has experienced the case of our partner or children coming home stressed from their day's work, bringing it home rather than taking it from home to the workplace. That is not recognised or separated out.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: I would be making a claim on a daily basis, both ways. I know the Hon. Mr Griffin, with the workload that he carries from time to time, would go home and, if the cat was not there to kick, some of the cases with the questions we are waiting on answers for may get a little tumbling. But, removing the levity from the contribution, I think the point is that stress works both ways: it goes from the workplace to home and it comes from the home into the workplace. We do not have a universal compensation scheme for stress and I suspect we are tackling it the wrong way, unless we get a national universal scheme that covers people who have a diagnosed problem, medically and psychiatrically a stress related disability. That is the way that we should be tackling it; it should be on a national level, with a universally recognised system of diagnosis, treatment and rehabilitation.

By dealing with it separately as States, we are dealing with it in a piecemeal way with each State trying to isolate the responsibility of stress away from the private insurer, which in our case is WorkCover, and putting it back on to the State. I do not think that is a fair way to go. The fair way to go is for the Government to look at the amendments to keep the stress related disability recognition as a way of managing stress and to impress this on management in both the private and public sectors, particularly in the public sector as that is the area where it is starting to emerge in its worst forms.

The shadow Minister recognises that there is a lot of accelerated change out there, not just in the public sector but also in the private sector, that people are having trouble dealing with. Just listening to the questions in Question Time today about the review of the State's economic circumstances, I believe that there will be far more cases of stress and of trying to manage in difficult economic times. I would urge the Government to consider the amendments, to consider the contributions which have been made by the Democrats and by the shadow Minister and to take a more humanitarian view in relation to this clause. Perhaps further discussions can continue so that we do not come away with something that none of us can live with and so that it is recognised as a problem of the twenty-first century, which is starting to emerge in the last stages of this millennia.

The Hon. K.T. GRIFFIN: I do not think anyone is suggesting that stress is not a serious issue. It is a serious issue. The question is partially who should carry the responsibility for it; whether it should be the employer or, in limited circumstances, particularly where that stress may not be substantially, or more particularly wholly or predominantly arising from—

The Hon. M.J. Elliott: 'Substantially' is a good word.

The Hon. K.T. GRIFFIN: I am saying that even on the Hon. Mr Elliott's amendments one has to ask: why should employers carry the cost and pass them on in a very limited sense, say, to consumers and why should the whole community not carry the cost through social security and other support systems? The Government is not suggesting there should not be a sensitivity to the issue of stress; it is a question of where the burden should fall.

When the Hon. Mr Elliott was making his point about new section 30A(c)(iv) I made the point by way of interjection that a reasonable act, decision or requirement does not relate to directions given by an employer but relates to acts, decisions or requirements under this Act affecting the worker. I did instance the requirement to go along and have a medical check or to take some other action, some physiotherapy or something else, which might prove to be stressful. In those circumstances, if it is reasonable to require someone to go to a medical practitioner for a further examination it seems to me that that is where the issue ought to rest.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: You introduced the concept of a reasonable action taken in a reasonable manner. You introduced a new element which opens up a further area of dispute. If it is reasonable to require someone to have another medical assessment why should it matter whether the request is by letter, by telephone or by some other way of communication? Why should that be relevant to the requirement to go and have another check? To some extent it introduces subjective elements; that you then take your worker as you find that worker. If the person is particularly sensitive,

paranoid, neurotic or whatever and receives a letter saying, 'You have yet another medical examination' it might be open to argument that the mere fact that the letter was sent rather than a personal call was not therefore a reasonable manner of communicating what is a reasonable act or requirement. So, that is the problem that I see that the qualification introduced by the Hon. Mr Elliott brings to this whole area. In respect of several other observations he has made about the lifting of the load—the back injury—the major area of distinction is that stress is almost impossible to measure, and the cause and effect—

The Hon. M.J. Elliott: It does not make it less real, though.

The Hon. K.T. GRIFFIN: It may not make it less real to the individual, but it is certainly not measurable, and because it is not measurable it is less likely that one can distinguish between whether it occurred at work or home, and then if you get into that situation you come back to the original observation I made in response to the Hon. Mr Roberts, that if there is stress which may be aggravated by pressure at work but it originated in the home or through some domestic disputation, why should the employer carry that cost? That is the point I make. So, you have the problem of identifying work related stress. You have the problem, of course, that employees have different personalities and different characteristics. Again, this amendment brings into the equation that the characteristics of the worker, even though peculiar to that worker, are ultimately going to be the responsibility of the employer when an act is taken which in most circumstances would not have any adverse impact on a worker, but in this case does. In those circumstances it seems to me that one places an unreal burden on employers in respect of that particular claim.

The only other observation I make—following the reference from the Hon. Mr Roberts—relates to the public sector. I suppose that the honourable member has seen all these figures, but in 1992-93, within the public sector, there was a total of 600 new claims, 748 ongoing claims, and the sum paid out on new and ongoing claims in the public sector during that year was nearly $16 million, the bulk of which—$8.3 million—was paid out through the education sector, $3.3 million through correctional services and then there were varying other amounts, including $921 000 to the police. So, substantial amounts are involved in stress claims. The Government's view is that we need to try to tighten it up without disadvantaging the really genuine claimants where the stress is measurable and wholly or predominantly arises from workplace activity.

The Hon. T.G. ROBERTS: I refer to measuring stress. In taking evidence during the select committee there was no medical supportive evidence that I could see to indicate the level of stress: there was no 'stressometer'. That was one of problems with it: it was not an easily diagnosable, treatable or 'rehabilitable' problem.

One of the problems that the Government finds itself with is that in many cases stress is not triggered by one single event. It is not a situation involving, say, a process worker who puts their hand in a press and there is one traumatic injury that is easily recognisable, measurable and compensable and able to be assessed by good GPs. We are talking about an illness that is very difficult to diagnose or recognise in terms of the formulation of the condition. Again, I guess it is just like the Hon. Mr Elliott's experience in a classroom: it is not one of those things that happens with one single incident. Heaven knows, I have put a lot of pressure on many teachers in my day. I think a few of us here would also—

The Hon. M.J. Elliott: Did any of them survive?

The Hon. T.G. ROBERTS: Some did, some didn't. But it was not the single event that caused those teachers or people in workplaces to suffer stress. It is the spiral in which they are caught that is the problem. It then gets very difficult to go back to the prescriptive detail on how one deals with it.

As the Attorney-General points out, different people have different immunity to discipline. Some people can accept discipline without too much stress. With other people you only have to say something to them in a gruff or mildly offensive manner and they take offence. That is all part of the management structures. If we shift the burden or onus and make it harder to diagnose and for responsibility to be accepted then we shift the ability to manage. I think that is the point that the shadow Minister and the Hon. Elliott and I are making. As soon as we get prescriptive and start describing the dos and don'ts about how people are supposed to act in certain circumstances, if we shift the burden away then the responsibility for managing in a day-to-day way to allow people in whatever work circumstances to work without stress diminishes. I use the example of an airline pilot who might be able to fly from Cummins to Darwin on a nice day, with a tail wind and with the prospect of a nice dinner at the end of it, without too much stress at all. However, given terrible weather conditions, four weighted passengers in the plane and everyone carrying very large suit cases and so on, it can turn into a very stressful journey. The circumstances in which people find themselves determine what stress they experience and good management can determine how to handle that.

I know that you, Mr President, would decide to turn back and go to Port Augusta if it was a windy, terrible day. But in terms of those people in workplaces who do not have alternatives and who have to stay at their workplace, that stress management becomes a day-to-day recognition factor for managers. If we do too much to alleviate the burden of recognition and apply too much description then we relieve the responsibility of those people closest to it to manage it and eliminate it.

The Hon. M.J. ELLIOTT: I do not want to take this much further, other than to observe that at one stage RSI was a great bogie in the compensation area. There was talk of blowouts and so on and that we really had to do something about it. The one thing that did not happen was any change in the legislation in relation to the handling of RSI. The change was, first, in diagnosis and, secondly, in management of people.

While this problem is larger, and no-one is denying that there is a significant problem, I think the answer is exactly the same: first, the diagnosis and the handling of things at that end—and it is handled very badly—and, secondly, in the management of people and the workplace. The Government will secretly acknowledge that there are still problems in the workplace and that it will have to fix them.

I will make some very quick political observations. Whilst the Government can make claims that various parts of this package of Bills was in its policy, stress was not mentioned. Interestingly, when one examines the Industry Commission report, one finds that stress, again, as far as I could find, did not score a guernsey either. There is an acknowledgment generally that stress is a disability and needs to be confronted, but not in the way in which the Government currently proposes.

The Hon. R.R. ROBERTS: It was not my intention to make this a long exercise either. The Attorney-General referred to stress and said that different people handle stress in different ways; it is very hard to quantify. He concluded by asking why the employers should bear the burden. That is what this is all about. It comes back to my opening point. It is starting to say, 'It is him versus me.' The reference to why the employer should bear the burden must relate to the cost of their levies.

I do not think it is our job here to rewrite the history of the WorkCover situation. What we accepted back in 1986-87 was that there would be stress and all sorts of injuries. There would be things like exacerbation and there was a fundamental belief that if you were put into a position where you suffered something and as a result you had the illness or injury that it would be accepted that it occurred.

If we are talking about the added cost of premiums where this occurs, we have to go back to what we had before we introduced this scheme: that is, an adversarial system where blame was laid. Then, as a consequence of that and the litigation that went with it, we had WorkCover insurance premiums of commonly 15 per cent and up to 30 per cent and 40 per cent of payroll. At that stage everyone accepted that the adversarial system was not in the best interests of us all. We reduced all the trauma of the litigation with a no-fault scheme. We are now trying to change the ethos of the scheme in an *ad hoc* way, clause by clause.

My preferred position in this exercise is that none of these changes are necessary. I understand the numbers in the House and I understand the Hon. Mr Elliott's position whereby he has given a commitment that he will not block the Government's program entirely but that he would look to amend and make it look more humane. Therefore, in the final analysis the Opposition will be supporting his amendment. I go back to the original point and the claim we made in the second reading debate, that none of this is necessary. The present system does what it was supposed to do in 1986 at a far reduced cost from what we started off with. I need to make the point here, otherwise I will have to make it later. That is the position with which we are faced and that is the reality. It is not a situation where the burden is carried by the boss. It is not the boss who suffers the effects of stress. He may suffer some effect down the track, but the point is that it is 3.5 per cent at the worst under WorkCover but it was 15 to 30 per cent under the old adversarial system which this Bill wants to go back to.

Amendment carried.

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

Page 7, lines 30 to 33—Leave out paragraph (b) and insert—

(b) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in reasonable quantity by the worker).

I note that the whole of paragraph (b) in many ways is unnecessary. It really was adequately covered by reference to serious and wilful misconduct. It appears that this is appeasing somebody who has jumped up and down and made a lot of noise. I would have thought that the abuse of alcohol or a drug voluntarily would have been serious and wilful misconduct. Since the Government has decided to put it in rather than oppose it I am seeking to amend it further. The effect of my amendment is to note that some drugs that are not prescribed but have the ability to affect you can be obtained over the counter at a pharmacy or in some supermarkets. They could have the ability to affect you; in other words, you could be under the influence of those drugs. I am seeking to say that, noting that there are some drugs that you can get over the counter and can use in a reasonable manner, you should not suffer the consequences of not having compensation available.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. I do not agree that it is covered by wilful or serious misconduct, and we do need to clarify what is involved. Under the Government's proposal, if a disability occurs wholly or predominantly being attributable to the influence of alcohol or a drug voluntarily consumed by the worker, there is no compensation. It provides the out if the drug has been lawfully obtained and consumed in accordance with the directions of a legally qualified medical practitioner, dentist or pharmacist. So, there is some criteria and some way we can identify it.

The Hon. M.J. Elliott: What about non-prescription stuff?

The Hon. K.T. GRIFFIN: It is not a prescription; it is in accordance with the directions of a legally qualified medical practitioner.

The Hon. M.J. Elliott: No, it's not. You can buy it over the counter. You have no direction from a qualified medical practitioner in those circumstances.

The Hon. K.T. GRIFFIN: You are talking about obtaining it lawfully and consuming it in reasonable quantities. With antihistamines, if you take two instead of one as directed on the packet and it makes you drowsy and you forget to press the button to stop the press coming down and you get your hand caught—

The Hon. M.J. Elliott: One tablet might do it.

The Hon. K.T. GRIFFIN: One might, but you have taken it in accordance with instructions. Let us go to the alcohol case, which is more significant. You are seeking to limit it to drugs and not to alcohol? If you consume any alcohol and it influences your judgment and a disability is wholly or predominantly attributed to that, that is fine and it is not compensable. Your amendment seeks to deal with the drug situation rather than with alcohol—is that correct? I have some difficulty understanding it. There are still some difficulties in your amendment.

The Hon. M.J. Elliott: There are difficulties with what you have there, too.

The Hon. K.T. GRIFFIN: It may well be. Does that suggest that the honourable member is prepared to discuss it in due course? There will be a lot of things to talk about in relation to this Bill. We have difficulties with the amendment because it is very open ended in relation to drugs. We are not going to support the amendment. If it is passed we would like to keep the door open and have further discussions with the Hon. Mr Elliott.

The Hon. R.R. ROBERTS: The Opposition supports the amendment.

Amendment carried.

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

Page 7, after line 33—Insert new subsection as follows:

(3) Subsection (2) does not apply in a case of death or serious and permanent disability.

The Government is removing compensation claims for people where there has been a death or serious or permanent disability, something available under the Act at present in relation to serious or wilful misconduct. I have a number of concerns relating to this. One is a matter of fairness in relation to these people. For a start there are few such claims and in many cases the person is not in any position to defend their actions and the people who will suffer at the end of the

day will be the family of those people. If the Government were sensible it would be an unrepresentative disability and as such would not be a penalty on a particular employer. I hope the Government gets sensible on the issue as this is unconscionable. I have a recollection (although I have not read this for a week and a half) that this was accepted by the Industry Commission. I may be wrong, but that is my vague recollection, that it should remain there. It is important that it should stay there. In terms of the overall scheme, it is peanuts, but in terms of implications for particular families it is quite profound. I find this sort of move quite distasteful.

The Hon. K.T. GRIFFIN: The only issue is one of logic. If subsection (2) applies to some disabilities, why should it not also apply to cases of death or serious and permanent disability? The principle is the same. In my view, it requires the sort of logic we were talking about earlier in relation to other issues, and this suggests that, apart from the fact that it involves death or serious and permanent disability, the argument should be logically the same. If the disability is wholly or predominantly attributable to serious and wilful misconduct on the part of the worker or the influence of alcohol or a drug voluntarily consumed in accordance with the amendment that has just been passed and if, rather than a passing disability, it is a serious and permanent disability or it results in death, why should it be treated differently? If it is good enough to say that you cannot recover compensation in one case, why is it not good enough in another?

The Hon. R.R. ROBERTS: The Opposition supports the Hon. Mr Elliott's amendment. We are talking about the changes that were made. I do not wish to canvass again the argument about no fault in the past. The amendment to the previous clause has been passed. I think it would be intolerable and certainly show no compassion whatsoever if we were to get more blood out of the victim of a serious injury. I draw the Committee's attention to the point made by the Hon. Mr Elliott when he spoke about wilful misconduct. The Audit Commission report states:

> The commission recommends that employers be held liable on a no fault basis for work related injury and illness. The commission nevertheless supports existing legislative provisions which withhold benefits in the case of serious and wilful misconduct on the part of the injured employee except in cases of death or serious injury.

The commission obviously adopts my view that we do not need to get every ounce of blood out of people that we can. It comes back to what we were talking about when we set up WorkCover in the first place. I refer specifically to the no fault basis of it.

Amendment carried; clause as amended passed.

Clause 7—'Evidentiary provision.'

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

Page 8, lines 4 and 5—Leave out subsection (1).

This Bill proposes to introduce stronger evidentiary provisions or the onus of proof upon workers who suffer diseases such as asbestosis, brucellosis, lead poisoning, etc., and other diseases common in certain occupations, and it should be opposed by this Committee. This amendment serves only to recreate litigation where previously this has been avoided by the reversal of the onus of proof.

The second schedule provides that, if a worker has worked in an industry and contracts a disease common to that industry, he or she will receive compensation and rehabilitation, etc., in accordance with the Act. In these circumstances, a worker should not be required to prove on the balance of probabilities that the disease came from the industry. The Opposition's amendment simply removes the onus of proof and the possibility of extensive and costly litigation in attempting to claim for a disability which, for all but blind Freddy, has obviously arisen out of the relevant industry. The same arguments that applied to the preceding two clauses apply to this clause.

The Hon. K.T. GRIFFIN: The amendment is opposed. New subsection (1) restates the common law test for the necessary standard of proof, which is the balance of probabilities. I do not see why that should not be specifically stated. I cannot see how it will create litigation. It just makes it clear that that is the position. The second schedule is already referred to in proposed subsection (2), and that is not excluded by subsection (1), which states the principle. Subsection (2) provides:

> However, if a worker suffers a disability of a kind referred to in the first column of the second schedule and has been employed in work of a type referred to in the second column of the second schedule opposite the disability, the worker's disability is presumed, in the absence of proof to the contrary, to have arisen from that employment.

In other words, it reverses the onus of proof. That is just a rephrasing of what is already in the principal Act. I would not have thought there could be any disagreement on principle with proposed subsection (1), particularly as it protects the interests to which the Hon. Mr Roberts refers.

The Hon. M.J. ELLIOTT: I wonder whether the Hon. Mr Roberts wants to respond further. I have listened carefully to the arguments so far and I am yet to be persuaded one way or another.

The Hon. K.T. GRIFFIN: The object of the Government's measure is to make clear on the face of it that the balance of probabilities is the burden of proof and that that relates to every matter that comes within the ambit of the Act. The whole purpose of the Act is to deal with establishing the fact that the disability arose from employment. It makes it clear, puts it beyond doubt and puts it on the record so that anyone who reads the Act can see from an evidentiary point of view that that is the burden of proof. It preserves the second schedule presumptions. So, I suggest it does not prejudice the rights of injured workers if they fall within the provisions of the second schedule. Subsection (2) is a rephrasing of subsection (1) of existing section 31. I would have thought that it was just a matter of drafting and stating clearly on the face of the legislation what the burden of proof is.

The Hon. R.R. ROBERTS: I have a problem, because subsection (2) provides 'in the absence of proof to the contrary'.

The Hon. K.T. GRIFFIN: That is already provided in subsection (1) of the principal Act.

The Hon. R.R. ROBERTS: Is the Attorney-General saying that the premise of the Act is always on the balance of probabilities?

The Hon. K.T. GRIFFIN: Yes.

The Hon. R.R. ROBERTS: Than why does it have to be written in again? If there is no problem with it, it could just as easily be omitted and we would not have an argument about it. It already says, 'However, if a worker suffers a disability'. The Opposition believes that subclause (1) can be omitted completely. That would do the job and relieve my concerns about any changes that may or may not be contemplated under this new provision.

The Hon. T.G. ROBERTS: One of the problems in diagnosis, treatment and rehabilitation is that you can have a disability without a medical cause therefor. It may seem

strange to us that that is the case. However, in many industries, particularly the chemical and related industries, people suffer from nausea, headaches and all sorts of disabilities that prevent them from carrying out their normal duties at work and, when they go to their physician, in a lot of cases they cannot diagnose the problem. Getting evidence to support either the patient's claim that it is worked related or the employer's claim that it is not work related in some cases in some industries is almost impossible. In most cases in those industries employers tend to take the responsibility themselves, because they do not want to set themselves up against the employee in trying to provide evidence of a medical nature to counter the claim. There is a lot of experience of that within the chemical industry, and they collect evidence mainly from overseas because in many cases the evidence is not available on the ground in Australia. Again, it is a matter of the burden of proof. I suspect it is a matter of the victim's having to get information that is very difficult to obtain. If that is not the intention of the clause, could the Attorney-General explain it?

The Hon. K.T. GRIFFIN: There is nothing sinister in the proposal in the Bill. It is a redraft to express more clearly what is already there, except that it does write in on the face of the statute that the disability is not compensable unless it is established on the balance of probabilities that it arises from employment.

The Hon. R.R. Roberts: It changes the onus of proof.

The Hon. K.T. GRIFFIN: No, it doesn't change the onus of proof.

The Hon. R.R. Roberts: At the moment, if you suffer the manifestation, it is accepted that you've got it.

The Hon. K.T. GRIFFIN: No. I will just take members through this slowly.

The Hon. T. Crothers: More money for the lawyers!

The Hon. K.T. GRIFFIN: No, it won't be more money for the lawyers. The problem is that you have lay review officers dealing with a whole range of issues under this Act. The Government felt merely that we ought to put it into the statute clearly, so they do not have to go back to their books and see what the common law or the practice is, that everything is to be determined not beyond reasonable doubt but on the balance of probabilities. I will just work through the existing section. Subsection (1) provides:

> Where a worker—
> (a) suffers a disability of a kind referred to in the first column of the second schedule;
> and
> (b) has been employed in work of a type referred to in the second column of that schedule opposite that disability,
> it shall be presumed, in the absence of proof to the contrary, that the disability arose from that employment.

The Hon. T.G. Roberts: Terrible drafting!

The Hon. K.T. GRIFFIN: But that is all enshrined in the new subsection (2). The new subsection does not remove anything or add to it; it merely expresses it in what we think is clearly language. It provides:

> . . . if a worker suffers a disability of a kind referred to in the first column of the second schedule and has been employed in work of a type referred to in the second column of the second schedule opposite the disability, the worker's disability is presumed, in the absence of proof to the contrary, to have arisen from that employment.

I would suggest that is a clearer draft of what is in existing subsection (1). Subsection (2) of the principal Act provides:

> The regulations may extend the operation of subsection (1) to disabilities and types of work prescribed in the regulations.

Subsection (3) provides:

> A regulation under subsection (2) must not be made except—
> (a) on the recommendation of the corporation;
> or
> (b) with the approval of the corporation.

If you look at proposed subsection (3), you will see that a regulation made on the recommendation or with the approval of the corporation or the advisory committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation. So, it really brings together existing subsections (2) and (3), and I would submit to the Committee that it does not remove anything, nor does it add anything. The only thing which is added is a new subsection (1), which puts it clearly on the face of the Act that a disability is not compensable unless it is established on the balance of probabilities that it arises from employment.

You could put it the other way around: a disability is compensable if it is established on the balance of probabilities that it arises from employment. That picks up what is the common law, the basis of the legislation at the moment. So, all I can suggest to members is that they accept that assurance. If they are still suspicious of it, let us keep open the option and revisit it. I would suggest—unless I am reading it incorrectly (and I do not believe I am)—that there is no hidden agenda: there is nothing sinister in this redrafting. As I said, if you can prove it to me that I am misreading it or misrepresenting the situation, I am happy to revisit it. With respect, it is clearer, and it aids the lay person, particularly review officers, but also other lay people—and remember we do not always have lawyers acting for injured workers—just to understand what the law is. I really cannot add to it any more than that.

The Hon. M.J. ELLIOTT: In one sense subclause (1) is redundant in that it does not have a necessary legal function, at least as argued by the Attorney-General, but it may have a clarifying function. During the industrial relations legislation, I certainly will move a number of amendments which will be about clarification, putting bits in places where the Government may argue it is not necessary. However, I feel it will clarify the reading of particular sections of that legislation. So, I have some sympathy for that argument. However, when the Minister says, 'Well, let's keep the argument alive,' in this case you keep alive the argument by knocking out the clause, and you have the capacity to reintroduce perhaps after a chance for some further discussion. At this stage, on the basis that it is apparently redundant and does not have any legal value, I will support its removal. I note that if, on taking further advice, there are no problems with it, I might accept its reinsertion later.

The Hon. K.T. GRIFFIN: I did not say it was redundant. I just want to make clear that I am not saying it is redundant. It aids clarification for those who pick up the legislation and read it through; it deals with evidentiary matters. It is quite straightforward, but I am happy that we revisit it on that basis. But it is not redundant: it helps to provide on the face of the Act information which, of course, merely reflects the common law position at the moment but which nevertheless is an aid to a better understanding of the way in which the evidentiary provisions of the legislation are applied.

The Hon. T.G. ROBERTS: From the explanation the honourable member gave to the hypothetical question I asked involving the difficulty of diagnosing symptoms of workers at a chemical plant and the medical profession not coming across a lot of those problems, I suspect that your answer to me is that a doctor would have to provide evidentiary proof

to the contrary that those headaches or aggravation of an asthmatic condition would have to exist.

The Hon. K.T. GRIFFIN: I believe it was contained in the second schedule. If you look at the second schedule, you will see that it is a reverse onus, that is, you have to disprove that it arose on the balance of probabilities from employment.

The Hon. T.G. ROBERTS: That is right, and that does not present too many problems to me, as long as—

The Hon. K.T. Griffin: That is what is in the Act already.

The Hon. T.G. ROBERTS: Yes, as long as the diagnosis is able to separate the two.

The Hon. K.T. Griffin: We have that problem now.

The Hon. T.G. ROBERTS: Yes, I know. In real life you have a problem in being able to separate out cause and effect and aggravation. In many industries there are people who have different levels of tolerance to different background problems, and we get into complex medical arguments about onus and burden of proof. In most cases employers, rather than getting duplicate certificates (unless a claim is put in) will live with their responsibility in trying to isolate the worker from the problem (or the problem from the worker, one of the two), but in other instances employers just do not care. They use the canary theory: where somebody goes in and gets knocked out, you just wheel in somebody else who can tolerate those different levels and standards. That is the problem that people have, and diagnosing treatment and rehabilitation now becomes a problem. But I accept the explanation. I suspect that the honourable member's solution, which is to revisit it, is probably a good idea.

The Hon. R.R. ROBERTS: What the Attorney-General is saying to me is that it only clarifies what is already written.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: The present Act provides that it shall be presumed, in the absence of proof to the contrary, that the disability arose from that employment, and subclause (2) basically says the same thing. Now what the Attorney is saying is that we have to put it in the reverse at the start of this clause: that disability is not compensable unless it is established on the balance of probabilities that it arises from employment. Then it says 'in the absence of proof to the contrary.' If the Attorney's submission were a valid one, there would be hundreds of cases of problems with interpreting this Act. I suggest to him that the practitioners who work with this Act know exactly what is required, that it has worked and there is really no need for this, unless it is some clandestine move.

I thank the Hon. Mr Elliott for his support on this occasion. I accept that he has made commitments to look at it again. However, I think the wording as proposed by the Opposition covers precisely what is required in this area. There has not been widespread misunderstanding of what is required under the Act. I suggest that the people in the review office and everyone who has looked at this are quite familiar with what it means, how it is supposed to operate, and there is absolutely no need to put a reverse bias on another clause into something which is already well understood and which has operated within the commission for some years.

The Hon. K.T. GRIFFIN: There really is no sinister motive in this at all. I think the Hon. Ron Roberts misunderstands this. He talks about a reverse onus. The reverse onus is already in subsection (1) of the principal Act in relation to the second schedule; that is, that you have a right to a claim unless someone can prove to the contrary.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I am just telling you that it is a redrafting, but the new subsection (1)—

The Hon. R.R. Roberts: If it doesn't do anything different, what do you want to change it for?

The Hon. K.T. GRIFFIN: Because on the face of the Act, for everyone to see, it is the balance of probabilities and, on that basis, if it arises from employment it is compensable. It really does not make any difference in drafting terms whether you say 'a disability is compensable if it is established on the balance of probabilities that it arises from employment', or 'a disability is not compensable unless it is established on the balance of probabilities that it arises from employment'. It is a question of the burden of proof, which I know is already in the law, but all that we were trying to do was to put it clearly in the Act. Review officers may well know what they have to do, but it is there just to ensure that there is no difficulty. I do not think we need to argue about it: the option is kept open. I just give an assurance to the Chamber that there is nothing sinister involved in it. I have just endeavoured to explain the common, simple English in which it is written.

Amendment carried.

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

Page 8, line 6—Leave out 'However, if' and insert 'Where'.

Amendment carried.

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

Page 8, lines 11 to 13—Leave out subsection (3) and insert—

(3) a regulation made on the recommendation of the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation.

What I am doing is deleting the words 'the corporation or'. I have an expectation that the corporation may from time to time make recommendations, but I am not sure whether the corporation is the body that should be giving approval as to whether or not a certain item should go on the second schedule. I believe the appropriate body is the Advisory Committee and the Advisory Committee alone and, on that basis, I move the amendment.

The Hon. K.T. GRIFFIN: Again, this is opposed. I submit to the Hon. Mr Elliott that he misunderstands the position. The present Act provides that a regulation to extend the operation of the second schedule must not be made except on the recommendation of the corporation or with the approval of the corporation. What we are saying in the Government's Bill is that a regulation made on the recommendation of or with the approval of the corporation or of the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation. I should have thought that it is quite proper for the corporation to be involved. After all, the corporation is administering the scheme. It may be that the corporation has had discussions with employers and employees and has been convinced that a newly discovered disability or a disability as a result of some new workplace process or a chemical or some other influence should be added to the schedule.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I do not think it is anything to do with stress, is it? But I stress that this is in relation to an extension: it is not to take away rights, it is an extension of the schedule, and in those circumstances I should have thought that the amendment is not acceptable and should not be regarded as acceptable, because it limits the power of the corporation, which has the responsibility for administering

this scheme and which ought, in my view (consistently with the present Act), to continue to have that responsibility.

The Hon. M.J. ELLIOTT: I understand the corporation does not at present, but I also note that the role of the corporation has changed and the Advisory Committee has now been established. The corporation now, with our support, is largely a commercially oriented board. The Advisory Committee, I believe, has picked up some of the functions (and in my view should pick up some of the functions) formerly held by what was a tripartite corporation.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: That is a load of nonsense. I believe it is a matter of recognising what the proper role of the corporation is and what the proper role of the Advisory Committee would be.

The Hon. R.R. ROBERTS: We are supporting this amendment, and I believe for fairly good reason.

The Hon. K.T. Griffin: You are the representative of the workers.

The Hon. R.R. ROBERTS: That is why I support it. If the Advisory Committee is to be legitimate and is to have the function to advise the corporation it ought not be an 'either/or' situation. You are saying that the corporation or the Advisory Committee ought to be able to do it. If the corporation wants to do something on its own initiative it ought to be able to convince the Advisory Committee that its proposal is fair and equitable and ought to be undertaken in the course of the operations of the corporation and of the Advisory Committee. If the Advisory Committee, which is set up to provide that expert advice to the corporation in particular areas, cannot be convinced by the corporation that what the corporation wants to do lacks political bias, is fair and equitable and only in the interests of WorkCover, it ought not to be able to pass. So, if the Advisory Committee is to provide all that expert information we should not have a situation where the corporation, despite the disagreement of the Advisory Committee—and this could well happen—can make regulations without the support of the Advisory Committee. So, we are supporting the amendment as proposed by the Hon. Mr Elliott, for those reasons.

The Hon. K.T. GRIFFIN: The Hon. Ron Roberts has argued in opposition to the amendment because if he looks carefully at the amendment he will see that it states:

> A regulation made on the recommendation of the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation.

The Hon. R.R. Roberts: It states 'corporation or the Advisory Committee'.

The Hon. K.T. GRIFFIN: Unless the amendment is different from the one I have. The amendment of the Hon. Mr Elliott is:

> Leave out subsection (3) and insert—
> (3) A regulation made on the recommendation of the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation.

The honourable member is supporting the amendment?

The Hon. R.R. Roberts: Yes.

The Hon. K.T. GRIFFIN: Why?

The Hon. R.R. Roberts: Because your proposition gives the corporation the right to take action without—

The Hon. K.T. GRIFFIN: I put to the Hon. Ron Roberts that the corporation will have no power if he accepts the Hon. Mr Elliott's amendment, because if he looks carefully at what is involved he will see that it is to extend the operation of the second schedule. It is a regulation made on the recommendation or with the approval of the corporation or the Advisory Committee.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You are only limiting it to the Advisory Committee, so the corporation is not going to have any power to make a recommendation or give approval to any extension of a regulation. I cannot believe that the Hon. Mr Roberts—

The Hon. R.R. Roberts: Why have you got the Advisory Committee?

The Hon. K.T. GRIFFIN: It is an alternative. I just do not understand why you are seeking to limit the power to extend. You are cutting off the rights of workers.

The Hon. R.R. Roberts: No, we're not.

The Hon. K.T. GRIFFIN: You are.

The Hon. R.R. Roberts: We are protecting the rights of workers.

The Hon. K.T. GRIFFIN: All right, you have it your way, but you wait until you see it up in lights.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—'Commutation of liability to make weekly payments.'

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

> Pages 8 and 9—Substitute clause 9 as follows:
> Substitution of s. 42
> 9. Section 42 of the principal Act is repealed and the following section is substituted:
> Commutation of liability to make weekly payments
> 42.(1) A liability to make weekly payments under this Division may, on application by the worker, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.
> (2) However, the liability may only be commuted if—
> (a) the incapacity is permanent; and
> (b) the actuarial equivalent of the weekly payments does not exceed the prescribed sum[1].
> (3) The Corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section, and the Corporation's decision to make or not to make the commutation is not reviewable (but a decision on the amount of a commutation is reviewable).
> (4) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.
> (5) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.
> Notes—
> 1. The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s.43(11).

There are a couple of issues covered within my amendment in relation to commutation of liability to make weekly payments. The first relates to the question of whether, when a lump sum is paid, non-economic loss should be taken off that lump sum. I find that notion unacceptable. For example, if a person loses a hand they will receive compensation first for the non-economic loss of the hand—and, by the way, common law rights have been given up so that a maims table might be set up to allow for such compensation—and then the person also receives compensation in terms of their capacity to work on an ongoing basis, and that is normally taken in the form of weekly payments.

The absurd situation we have is that, should the weekly payments be commuted to a lump sum, the non-economic loss is to be taken off that lump sum. We have lump sums for two quite different reasons. Certainly they relate to the one injury, but one relates to the non-economic loss and the other relates to one's capacity to work. It is wrong that the non-economic loss lump sum should be taken off the commutation

for weekly benefits as those are two separate forms of relief. It really is the exact opposite of something that the Government complains about. It complains about double dipping occurring in some cases, but this is a negative form of double dipping where one form of compensation is being taken off another form of compensation when they should always be kept separate. That is the first issue that is addressed by my amendment.

The second issue relates to my concern that the drafting, as its stands in the Government's legislation, has the effect that when the commutation occurs the Government may make an offer and it is not made clear as to how that offer is determined. My amendment will make it quite plain that they will be actuarially derived. It is not in any way an arbitrary decision as to what is going to be offered; that it must be properly and actuarially derived.

The third issue relates to the question of whether or not there should be an appeal in relation to a commutation. My view is that, in general, if a person is injured they should be receiving weekly payments and particularly if it is a severe injury and a life-long injury. I do not like the idea that a person is in a position where they are going to be offered Tattslotto now, which may be gone in a year or two, and then they will find themselves in the social security system for the rest of their lives. I find that unacceptable and I believe that, in general, we should not be encouraging appeals in relation to whether or not a lump sum is granted, particularly in relation to the larger lump sums, which relate to the more serious injuries of the sort where a person's capacity to work for the rest of their life is seriously impaired.

So, for that reason, where a person would receive more than the prescribed sum they will not be made an offer at all; they will only be made an offer in relation to something less than the prescribed sum and that will be actuarially derived and, in the circumstances, there would be a right of appeal against the actual sum itself in so far as there may have been an error in calculation. It could be an accidental error or it might occur in some other ways, and I have had discussions with people that suggest that there are ways of artificially trying to reduce that sum, but I believe that in my amendment that would still be reviewable, because it is the way in which the sum is calculated that is reviewable. Finally the amendment makes it quite plain that, if there is a commutation, the corporation's liability to weekly payments is then discharged. So, a number of issues are contained within that and I would urge members to support the amendment.

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

Pages 8 and 9—Insert the following clause:

Substitution of s. 42

9. Section 42 of the principal Act is repealed and the following section is substituted:

Commutation of liability to make weekly payments

42. (1) A liability to make weekly payments under this division may, on application by the worker, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(2) However, the liability may only be commuted if—

(a) the incapacity is permanent; and

(b) the actuarial equivalent of the weekly payments does not exceed the prescribed sum[1].

(3) The corporation has (subject to this section) a discretion whether to commute a liability under this section.

(4) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(5) A commutation discharges the corporation's liability to make weekly payments to which the commutation relates.

Notes—

[1] The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s. 43(11).

I point out the contrast to the Bill. The Bill in its current form seeks to give the corporation absolute discretion as to whether or not it allows commutation. It is made clear that on the application of a worker the corporation's liability to make weekly payments can be commuted to make a capital payment. The amendment will therefore make it clear that once the worker has made the application it is the corporation's decision as to whether the commutation occurs.

If the commutation occurs it will discharge all liability to make weekly payments to which the commutation relates. There will be no argument that the residual liability remains. The maximum amount for the lump sum payable under the scheme will remain (the prescribed sum at the year of injury).

The Government's amendment has been introduced to circumvent the recent Full Bench Supreme Court decisions that have indicated that the corporation must act judiciously in using the discretion. These court decisions have said that where an injured worker can demonstrate with certainty that the liability to make weekly payments as a defined rate for a defined period exists then the corporation must commute those payments. Any refusal by the corporation to commute is subject to a review. It is only unreasonable or baseless refusals that get overturned in accordance with the law.

The Government is giving the WorkCover Corporation an uneven weight in negotiations with injured workers regarding commutation. If the worker wants more, or indeed is entitled to more, WorkCover has the right to refuse a lump sum payment and the injured worker has no mechanism to challenge that entitlement. The Opposition therefore opposes the Government's amendment.

The Opposition's amendment contrasts somewhat to the Hon. Mr Elliott's amendment, which is a great improvement on the Government's effort. It removes the requirement to knock off the section 43 payment from any section 42 commutation payment. It gives workers the right to review the quantum of payment, and that is important due to the possibility of clerical or mathematical error. It has made it possible to commute only where the actuarial equivalent of weekly payments does not exceed the prescribed sum. This has the benefit of making it illegal for the corporation to commute for less than a worker's actuarial entitlements.

The Opposition's amendment is simply seeking to reintroduce a situation that the courts have found to be the intent of the Workers Rehabilitation and Compensation Act 1986 commutations. Where an injured worker can show that a liability exists (proven on the balance of probabilities) then a choice can be made between weekly payments or a capital payment. What could be fairer? The Opposition urges the Committee to support the amendment.

The Hon. K.T. GRIFFIN: The Government opposes both amendments. The Hon. Mr Ron Roberts' amendment in effect, as I understand it, makes the entire decision (both the decision of WorkCover to commute as well as the amount) fully reviewable. The whole thing is up for grabs and reviewable.

I point out that that is inconsistent with the present Act, which the previous Government technically supported when it was enacted. It identified in section 42a(9) that certain decisions were not reviewable, and one of those was the

decision of the corporation to make or not to make an assessment; there was a discretion in the commission. It is the Government's view that the discretion should remain.

The amendment we are proposing in the Bill is necessary because last year there was a Supreme Court decision which decided that when an injured worker had made a request for a commutation WorkCover had no discretion. We want to put it beyond doubt that there is a discretion and we believe that is consistent with the intention of Parliament when that provision was originally inserted into the principal Act. We want to ensure that the decision about whether or not to commute is a discretionary one. We believe that the amount should not be reviewable because the commutation is an actuarial calculation and results finally from an agreement between the corporation and the worker. So, once the corporation has decided to offer commutation, in those circumstances there are then negotiations between the corporation and the worker and the commutation is actuarially calculated. In those circumstances—

The Hon. R.R. Roberts: That is one of the problems: it is the actuarial calculation.

The Hon. K.T. GRIFFIN: If that is one of the problems I do not know how we will ever overcome that. Actuarially one can make a calculation—

The Hon. R.R. Roberts: We should make it 'actual'.

The Hon. K.T. GRIFFIN: I am not sure. If you talk about 'actual' that introduces some totally new concepts. The Hon. Mr Elliott's amendment seeks to allow commutation of the income stream and not to take into account the fact that there has been a lump sum payment made for non-economic loss. As I understand the situation at the present time, there may be a lump sum payment for non-economic loss. If that is made to the injured worker and subsequently a commutation of the income maintenance stream is offered and the calculation is made then the lump sum for non-economic loss is deducted. That has always been the intention of the Parliament, even under the previous Government because it recognised that there had to be some limits on the lump sum amounts paid. For those reasons the Government opposes both the amendments. We more strongly oppose the Hon. Mr Roberts' amendment, but take the view that the Hon. Mr Elliott's amendment is the lesser of two evils.

The Hon. M.J. ELLIOTT: The Minister put the view that there was a desire to put some sort of limit on the size of lump sum payments. That is why non-economic loss was removed from the commutation. First, I do not find that acceptable. Secondly, the corporation will always have the discretion, at least as I have my amendment phrased, simply not to grant the commutation. My expectation would be that in general terms the only things it will commute will be payments which relate to more minor injuries. In fact, it is as keen as the injured person to get off the books and get on with life.

I also think it is important to note that that non-economic loss, on my recollection, came about within this legislation as a trade-off to giving up the right of common law. We have given up a common law right. I am also within my amendment contemplating no appeal, at least in terms of whether the commutation actually occurs. A number of rights have been given up by workers and to suggest that the non-economic loss should be deducted from the commutation is a gross abuse of the position that we have put people in, having already taken away a number of their rights.

There is a question of balance in all this and there always has been in this legislation being set up in the first place. We have to watch that balance very carefully. I believe that taking non-economic loss off the lump sum, whether or not it has been happening in recent times, does not justify its continuing; it is wrong. If the Government wants to bring back common law rights in relation to non-economic loss I would perhaps quite happily bring that back. So, there is an offer if the Government wants that in its place.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: We could commute the lump sum and give back common law rights in relation to non-economic loss. There is a trade-off if the Government wants one. I will not be supporting the Labor Party's amendments, but I must say that what I am offering is also where I am drawing the line.

Progress reported; Committee to sit again.

[Sitting suspended from 5.56 to 7.45 p.m.]

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (ADMINISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 338.)

The Hon. T.G. ROBERTS: I support the amendments on file in the name of the shadow Minister on this Bill. I have referred already to changes proposed not only to occupational, safety and welfare legislation but also to other aspects of the WorkCover Corporation and WorkCover administration legislation. To some extent they are interrelated and they all have an impact to industrial relations, although not specifically. When the previous Government introduced changes to occupational health, safety and welfare, it was designed to put together a package of protective measures to allow both employees and employers the negotiated room to set up safety committees to put together preparation for gathering information about work specific areas and to try to come to terms with prevention of a whole range of industrial Acts that were leading to poor work safety and welfare and to try to keep a curb on some of the costs associated with the insurance scheme running and providing benefits for injured workers at that time.

The Act itself allowed for a certain amount of interaction between unions and employee representatives at a work site level to discuss the broad range of problems that faced people at a particular site and for employers to set up negotiated democratic processes that allowed for input from employees into some aspects of melding the management prerogatives with union initiatives. It was a new concept then. For those members active in industrial relations at the time, there was a confrontationalist approach to industrial relations and there were very few negotiations that did not end in acrimony, most being based on wages and claims around poor safety and welfare services that were not being provided in those times around a whole range of health and safety problems.

The legislation only provided the first step in putting together those necessary programs to break the ice for those new organisational structures to work. Within 12 or 18 months, when employers and unions alike worked out their responsibilities in relation to the Act, when safety committees were formed on most sites and safety officers elected, there was a warming to and meeting of minds around such issues. The employers who were able to seize the day were able to

put together packages that involved broader issues associated with good industrial relations through occupational health and safety.

Where employees on particular sites were able to see that the intentions of employers were honourable and that they had a genuine interest in reducing accidents and preventing them happening on their sites, a certain amount of respect was built up between such employees and employers around occupational health and safety. I would argue at this stage that some of the changes being put forward in relation to the Government's new Bill may not meet with the same feeling by elected shop representatives and the union movement generally, but that is now up to the employers to negotiate with their representatives and to put their minds at rest that the new Bill does not challenge any of the functions, powers and roles that have been put in place over that time.

In the 1970s when it was being discussed, we saw a whole move on industrial democracy, which is not a phrase we hear a lot about these days. That term used to arouse a lot of emotional resentment from some sections. 'Challenging employers' prerogatives to manage' was one of the phrases thrown at those who were opposed to the general direction in which occupational health and safety and changes to workers rehabilitation legislation were going. Over a two or three year period it was clear to everybody who was prepared to work within the guidelines being put forward for both the Bills and Acts at the time, that there was potential for industrial democracy to be a natural by-product of the fermenting of those Bills.

The Government is putting together a package, hoping that the changes to the Bill it has put forward now will maintain that role and function, but I suspect that in some sections the thrust of the Bill is not so much one that emphasises the industrial democracy elements of an industrial relations package, but to some extent is overly bureaucratic and perhaps somewhat patronising. Time will tell what the final package will mean when the amendments are negotiated through this place and at the conference. I hope for a meeting of ideas, particularly around occupational health and safety, and that the problems associated with changes to the workers rehabilitation and the administration legislation do not impact negatively on attitudes at a work place level that we need to have on side to get a meeting of those views and ideas that we must have for industrial democracy to work.

A number of initiatives are being taken away from the legislative processes through the WorkCover Corporation that deal with occupational health and safety, and a large degree of information being collected by the corporation has been used in a constructive way to eliminate much of the confrontation on site around industrial health and safety. The Government has been rushed to put together a package of changes that basically are a part of the claims of employer organisations that supported the Government through the election onto the Government benches. I suspect that they have acted in haste and too early. Information was being put together by the WorkCover Corporation in relation to prevention and those employers who had bad records in terms of workers safety. The penalty was in the higher levies. Unfortunately, in this day and age when economic rationalists are running almost all agendas, it was not until levies were raised to a point where they became a burden on many employers that they began to take occupational health and safety and rehabilitation seriously.

I think we have gone through that period. It is unfortunate that we now have a series of amendments with which to contend and a new industrial relations Bill that will come into this Council a little later to try to bring about a suitable climate in which to take advantage of what, in my view, has been evolving into a package of events of which this State could have taken advantage during the lead-up to what appears to be an economic recovery.

In the middle of this economic recovery, the manufacturing sector, in particular, which is the sector on which we rely to produce goods and services, will try to restructure, to put together training and education programs for its employees together with packages of negotiated programs for enterprise bargaining. It will have to deal with a whole range of occupational health and safety, workers rehabilitation and industrial relations packages which will be totally confusing to those employers who are trying to bring about productivity gains through education and cooperation.

It appears to me to be quite ludicrous to be putting together packages at this time during the lead-up to what appears to be a mild recovery. Who knows, it might even become a healthy recovery. In my view, it will make much harder the role of people at the coalface (both employers and employees) in putting together packages based on cooperation and not on patronisation and fear of legislative slants.

I referred earlier to some of the cooperative programs that are being put forward by employers and unions in relation to occupational health and safety and rehabilitation. I wish to read from a broadsheet that has been printed by a very progressive organisation, the Automotive, Foods, Metals and Engineering Union, which is generally one of the leaders in industrial reforms not just in this State but nationally. Its leadership generally has come to terms with change in workplace management and it has traditionally assisted employers to put together packages that maintain this State's focus together with that of the Eastern States. Background information is printed on the flier that accompanies the invitation to attend the seminar, which is to be held in June. This is a bit of a plug for that seminar. It will be held in conjunction with the Automotive, Foods, Metal and Engineering Union and the employers in the motor industry. They will put together a package of seminars to educate employers and unions about safety projects.

The Government has indicated that it will spend $2 million on prevention programs—I commend the Government for that—but I am not sure whether, according to the press statement in the *Advertiser* of Saturday 30 April, it is hoping to cut $25 million off the compo bill or whether the figures indicated are accurate. I suspect there is a lot of hidden hope in those figures. The article is headed 'Plan to cut $25 million off compo bill'. One cannot look at occupational health and safety and the workers rehabilitation and the administration of WorkCover Acts without looking at prevention. The article states:

> The State Government will announce a $2 million workers safety program today which it estimates will slash $25 million from the annual cost of workers compensation. Combined with planned legislative changes, the Government says it can wipe at least $45 million from the cost of workers compensation in South Australia.

That does not line up with the headline which states '$25 million'. I am not sure whether that is a euphemistic ambit or a misprint. The article continues:

> The Industrial Affairs Minister, Mr Ingerson, said yesterday the State Government had pledged an extra $2 million a year towards improving—

I am not sure whether that is an extra $2 million on top of the original $2 million—

occupational health and safety in South Australian workplaces. Included in the extra funding is a $1 million program to improve safety in small businesses—

I must say that would be a welcome goal as long as the money is put into programs that target small businesses which have a bad history in relation to occupational health and safety and which complain endlessly about the levy—

a sector responsible for 55 per cent of WorkCover's compensation liability in the private sector. Mr Ingerson said the $2 million package would be implemented progressively from mid-May. It aims to reduce the cost of workers compensation by lowering the number of accidents and claims.

These are aims and ideals that WorkCover has had since its inception. In fact, the whole program was set up in 1986 with prevention and rehabilitation in the mind of those who drafted the Bill at that time. The article continues:

Key features include: A new business package, safety matters, giving small business advice on compensation procedures and safety advice in their first year of operation; a safety resource centre for employers, safety representatives, and the community; major workers compensation training programs for employers—

those initiatives are to be applauded—

a State-wide awareness campaign to inform the community on workplace injury issues starting in May.

To some extent, those programs have already been in place in one form or another but perhaps they have not been highlighted by a specific allocation of funding. To some extent, they have been operating in both the private and public sector but the results have varied from place to place.

If there is a uniform pick-up in the attitude of small business and its ability to come to terms with its accident record, those initiatives can only be applauded. The article states further:

Mr Ingerson said the Making SA Safer Campaign would use television, radio and press advertising and was an initiative of WorkCover, the Commonwealth compensation scheme Comcare and the State Government.

One question I would like answered concerns how much will be taken up in advertising, because $2 million will not go a long way if the advertising costs are to be borne by the initial grant. The article continues:

'It aims to change attitudes to work injury by raising awareness of the serious effects of injury on business, employees and communities,' Mr Ingerson said. The Chief Executive Officer of WorkCover, Mr Lew Owens, said yesterday that over the next year WorkCover aimed to cut claim numbers by 6 per cent and reduce costs by 4 per cent. 'In the longer term we aim to reduce claim numbers by 25 per cent and costs by 15 per cent by 1998,' he said.

I would have to say that those initiatives taken by the Government are to be welcomed but, as I said, I hope the money that is allocated towards prevention and the advertising of those initiatives is well spent.

In the early days of the 1972 Act many organisations set themselves up around accident prevention. I suspect that the Hon. Ron Roberts and others would be aware of some of the programs that were run on sites, such as, I suspect, the BHAS site. Many of those programs were a waste of time, energy, effort and money because the sole message that emanated from those programs from some of the safety councils and other organisations that set themselves up during that time put the responsibility for safety back onto the individual. The emphasis was that it was the individual's responsibility for himself and for those around him to work safely. Nobody would deny that that is one of the messages that should come through any safety program, but it should not be the only one.

For those people on those occupational health and safety committees during that period, it was almost impossible to get companies involved in what would be recorded as adequate targeted spending in those areas on their premises where they obviously had design problems associated with either repetitive strain injuries or injuries associated with bad records. Where manual lifts and where processes were obviously outdated and dangerous, it was very difficult to get large sums of money expended through those safety committees on the basis that most of the messages coming through those programs were basically saying to individuals, 'Well, you lift your game, you work more safely and everybody benefits from it.' As I said, you cannot argue with that theme, but the budgets for investment in a whole range of safety equipment were never allocated.

It was very frustrating, both for the employers who could not get their allocation from the board of directors or who were not able to get those decisions made at the right levels to have the funds allocated, to use engineering design methods to eliminate some of the areas of poor and bad design that were obviously the problem and not just the way an individual worked in those workplaces. I would hope that the targeted money from the funds that will be allocated to small business to educate them on how to keep their work programs safe are worked out and designed properly, that they have trainers and functionaries that are able to get across their messages, that they are not patronising, and that they are relevant to the industries and businesses that have bad safety records. I hope that it is not just the levy rates that motivate people to involve themselves in these programs, either. I hope that it is because of their care and concern for their employees that they put into place those programs.

I did refer to a seminar being run by the Automotive, Foods, Metals and Engineering Union in conjunction with the motor industry. I will read a bit of the background information that goes with the sheet so that it can be placed on the record. There are running now programs which have a fairly sound base and which are based on joint respect between employers and unions. There is a learning and an industrial relations process that goes with it, and out of that comes a mutual, lasting and residual respect between employers and unions which hopefully can be built upon. The background information says:

The manual and joint union management training programs were developed in order to reduce the direct costs of workplace accidents and injuries within the motor vehicle industry. Statistics indicate that in the two year period 1989-91 over 3 000 standard WorkCover claims (five days or more) were made, costing over $25 million and resulting in 132 000 production days lost. This compares to 1 251 days lost through industrial action. These statistics do not account for:

- under reportage of accidents and injuries—

to which I alluded in a second reading speech previously—

  which occur due to workers' fear for job security, lack of training or a lack of awareness of their rights
- indirect losses to the companies which may include loss of production, loss of skilled labour, additional administrative expenses
- human suffering and the disruption to families and the community generally.

They are some of the issues that would be canvassed. Further, it states:

The project has been jointly funded by WorkCover's Research and Education Grants Committee. The development of the Occupational Health and Safety Manual and training program is potentially

of benefit to component suppliers to the industry and other smaller metals manufacturing businesses.

So we can see that the principal industry has been able to rope in associated industries with it and that the cluster mentality around a particular industry has pulled together all aspects of the motor industry, including the employees. It is all based on a mutual respect, and hopefully there will be an exchange of views and ideas that will lead to a reduction in cost of that horrendous $25 million for those injured employees. The document continues:

The Regional Secretary of the AFMEU Vehicle Division, Paul Noack, said that feedback from elected health and safety representatives and employers in the industry was very positive and some of the employers involved in the project had improved their occupational health and safety management systems within a very short time. One company, in fact, was able to utilise the project to achieve recognition under WorkCover's Safety Achiever Bonus Scheme.

We would have to applaud that. It continues:

The AFMEU was able to trial joint training for managers, supervisors and elected health and safety representatives at GMH. The training had been developed by the union, GMH, TAFE and the Occupational Health and Safety Commission.

So, that is a good, sound happy story that has been in the planning for a long time. It came out of the culture that had developed within WorkCover and the unions prior to the changes that we are now discussing. The point I was making earlier, namely, that a lot of the changes we are now making are unnecessary and that the evolutionary programs that were starting to be developed out of WorkCover, based on the information that they had been putting together, was starting to work. The confusion now will come with a lot of the changes that are now imminent. The background information further states:

Mr Noack said that the training is based on an understanding of the law and the cost and cause of injuries, but goes further into how problem solving, continuous improvement and attention to the cost benefits of occupational health and safety can be mutually beneficial.

The AFMEU stresses the importance of information and training for employees, health and safety representatives and managers as part of improving workplace standards and is committed to maintaining occupational health and safety services to its members after the project is completed.

For information about the manual—

and this is the plug—

or occupational health and safety training, contact Nikkie Taylor or Chris Yiallouros at the AFMEU on 332 6155.

I think they have three or four lines, but do not ring after 9 o'clock tonight! It is an open seminar for those who want to go. The point that needs to be made is that there were and still are gains to be made in bringing together groups of employers and employees. I hope that the target of $2 million is well spent and that someone makes sure it actually gets to the source of the problem, that is, those small businesses with bad safety records and that it does not all end up in the pockets of the advertisers. The television industry and the print media can do very well out of other sections of the industry. I would also hope that the Government does listen to the amendments that the Opposition and the Democrats have on file, and that we can come away with a package of Bills (the three Bills that are before us, one of which we have dealt with, two we are dealing with now, plus the Industrial Relations Bill) with which we can set South Australia on a reasonably sound footing in relation to its advancement, particularly in the production of goods and services which is so valuably needed to advance the best interests of this State.

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

RACING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 340.)

The Hon. R.R. ROBERTS: The Government will be supporting this package of reforms to the racing legislation.

The Hon. Diana Laidlaw: The Government or the Opposition? The Government has moved them, actually.

The Hon. R.R. ROBERTS: Well, the proper Government: the legitimate Government in every sense of the word. I stand corrected: the Opposition will be supporting this package of reforms to the racing industry, and I profess at the outset that I have a vested interest in the racing and trotting industry, in particular, and some knowledge of the trials and tribulations experienced by the industry in the past three or four years. It is a topical subject, with the shenanigans going on in the press, with the Government trying to interfere with the proper administration of the three codes in this State, and I refer to the attempt to have people 'volunteer' to resign—and I say that with tongue in cheek. At a time when the industries are facing extreme hardship and competition from other forms of gambling, including the poker machines, these amendments will go some way toward making the lot of administrators and participants in these industries much better.

The first area that I want to touch on is that of the discretion by the President of the appeals tribunal in relation to hearings tribunals. The Opposition will support that. It provides only minimal savings of some $5 000 but seems highly desirable. The second area is that of the transfer of funds not exceeding $1 million from the Capital Fund of the TAB, and $6.74 million from the Racecourse Development Fund. This comes about because of what was perceived to be a shortfall in the TAB operations this year. I am happy to be able to report that the TAB's operations have picked up and it would seem that the shortfalls in those areas will not be of the same magnitude as first anticipated, so there is some potential for a reduction in those figures.

It is my submission that, having budgeted for those amounts at this stage, it would be criminal to reduce those amounts. I suggest that the Minister maintain his commitment to provide that $1 million and the $6.74 million, because those extra moneys will be happily received by the industries to be taken up in stake money. The Interdominion is coming to Adelaide next year, and I am certain that the allocations will be well received. The third area refers to changes in the distribution in the TAB. Those initiatives were, I might add, being provided by the Labor Government last year when the election intervened. I am happy to acknowledge that the then shadow Minister gave an undertaking during the election that he would honour those commitments that were given, and on behalf of the industry I am grateful for that.

The next change revolves around a change in the distribution of the TAB's profits. Now 55 per cent will be distributed to the racing industry and 45 per cent to the Government. This is an area of some joy to me. I have been lobbied for the past three or four years by many people within the racing industry for a greater distribution of those stake moneys for the industry. I am sad to say that I was not successful when we were in Government, but I welcome this initiative and am certain that it will be appreciated by the racing industry and,

in fact, will provide me with some relief from people like Mrs Judy Munford and her husband who, on every social occasion I attend, remind me of the need for this. I am certain that those two people in the breeding industry will welcome this, as I do.

The sports betting auditorium allows for punting at sporting events designated by regulation. I had some concern about this when first told about it. In the past I have not been a great supporter of betting auditoriums, simply because you find that, if people are provided with opportunities to punt off course in the luxurious surrounds of hotel and motel-type accommodation, they do not go along to the actual race meetings. I was advised at the briefing that these events will be controlled by regulation, and I am told that the main codes (that is, the racing, trotting and greyhounds) will not be part of that regulation. Therefore, we will also be supporting that move.

Bookmakers' percentages are to be reduced over the next two years, and I am happy to say that again I wholeheartedly support this move. This was something that the previous Government intended to do two or three years ago when we looked at the prospect of having fixed odds betting in the TAB. It was part of the package that we intended to introduce but, at the eleventh hour, the South Australian Jockey Club withdrew its support for fixed odds betting and the proposition fell over. However, coming from Port Pirie as I do, I have been lobbied fairly heavily by local bookmakers in respect of betting turnover percentages, and I am certain that that will be welcomed by them, as it is by me. It may give me some relief from that continual lobbying.

One other area this Bill seeks to look at is the transmission of information from racing tracks. This tidies up an anomaly that has existed, where it has been a legal force for betting information to be transferred from track to track although there was the anomaly where TAB information was able to be broadcast from the track. This brings that into line, and we will be supporting the amendment. There is on file an amendment from the Hon. Ms Laidlaw that talks about alterations to the TAB regulations to allow for the operations of the SuperTAB, which is the interstate operation. The regulations, as I understand them now, provide only that you go into another TAB of a similar nature to the one that we have in South Australia, with the deregulation of the TAB or the partial privatisation of TABs in Victoria.

As I understand it, the amendment provides that the SuperTAB can operate within that system and it has some bearing on the percentages that are paid out. If that is the nature of the amendment, the Opposition will be supporting those amendments also. We support the second reading.

The Hon. DIANA LAIDLAW (Minister for Transport): I would like to thank the Hon. Ron Roberts for his contribution to this debate and for his indication of support for the Bill. I acknowledge that he has fought hard for a number of the measures that are embraced by this Bill, and I am pleased that this Government has been able to accommodate him and make it easier for him to return to Port Pirie this weekend and in the future. For an industry as important in this State as the racing industry, it is excellent to see that there appears to be all Party support for this Bill. I know that that will be welcomed by the industry. It is correct that I have a further amendment to move and I will explain that in Committee.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

New clause 3a—'Amendment of s.5—Interpretation.'

The Hon. DIANA LAIDLAW: I move:

Page 1, after line 17—Insert new clause as follows:

3a. Section 5 of the principal Act is amended by striking out the definition of 'interstate TAB' from subsection (1) and substituting the following definition:

'interstate totalizator authority' means a body or person who is entitled under the law of another State or Territory of the Commonwealth to conduct totalizator betting in that State or Territory.

I would like to read an explanation not only for the benefit of the members of the Council but also for those who may have an interest in this Bill. I thank members for being prepared to consider this new matter. The current Racing Act legislation with respect to the amalgamation of our win and place totalizator pools with the Victorian TAB provides that our TAB must have an agreement with an 'interstate TAB' and that the statutory deduction on those types of bets is to be not less than 14 per cent and not more than 15 per cent. From recent media releases issued by the Victorian Premier we are aware that, in the process of privatising the Victorian TAB, there will be formed an unincorporated joint venture, which is 75 per cent owned by the new public company, TABCO, and 25 per cent owned by the racing industry, RACECO.

The current agreement between our TAB and the VICTAB for the purposes of pooling win and place bets will be transferred to this unincorporated joint venture. Immediately this will cause our current agreement to be invalid by reason of the provisions contained in our Racing Act. That is because the current legislation states that the SA Totalizator Agency Board must only deal with an authority corresponding to our TAB established under the law of another State or territory.

More importantly, we have been advised that the memorandum of agreement between the Government and the racing industry in Victoria provides for a statutory maximum amount that can be deducted from totalizator pools. This amount is 16 per cent of the aggregate turnover and 20 per cent in respect to an individual pool per event. This means that in any given financial year the new joint venture TAB and the racing industry must ensure that the statutory deductions or commissions from all bet types must in aggregate not exceed 16 per cent. In other words, the joint venturers could set win and place at say 13 per cent, daily doubles at 15 per cent, quinellas at 16 per cent, trifectas at 17 per cent and quadrellas at 20 per cent. No deduction is to be greater than 20 per cent.

Clearly, the Victorian legislation, which was introduced on 18 April 1994 will allow the racing industry joint venturers a deal of flexibility in setting statutory deduction rates. The new Victorian legislation will mean that our TAB is not able to continue to amalgamate win and place pools due to the restriction imposed by the current Racing Act provisions. These provisions provide that both our TAB and interstate TAB must have a statutory deduction on win and place bets between the range of 14 and 15 per cent.

The Hon. R.R. ROBERTS: We will support this new clause.

New clause inserted.

Clauses 4 to 6 passed.

New clause 6a—Deduction of percentage from totalizator money.'

The Hon. DIANA LAIDLAW: I move:

Page 2, after line 6—Insert new clause as follows:

6a. Section 68 of the principal Act is amended—

(a) by striking out from subsection (1)(ab)(i) 'interstate TAB' first occurring and substituting 'interstate totalizator authority, must';
(b) by striking out from subsection (1)(ab)(i) 'must, under the law of the State or Territory in which interstate TAB is established,' and substituting ',under the law of the State or Territory in which the interstate totalizator authority is entitled to conduct totalizator betting, must';
(c) by striking out from subsection (2) 'interstate TAB' and substituting 'interstate totalizator authority'.

This amendment is consequential.

New clause inserted.

Clause 7 passed.

New clause 7a—Agreement for pooling bets with interstate totalizator authority.'

The Hon. DIANA LAIDLAW: I move:

After line 18—Insert new clause as follows:

7a. Section 82a of the principal Act is amended—
(a) by striking out from subsection (1)'interstate TAB' firstly and secondly occurring and substituting, in both cases, 'interstate totalizator authority';
(b) by striking out from subsection (1) 'conducted under the law of the State or Territory in which the interstate TAB is established' and substituting 'conducted by the interstate totalizator authority under the law of another State or Territory';
(c) by striking out paragraph (a) from subsection (4) and substituting the following paragraph:
(a) the law for the time being of the State or Territory in which the interstate totalizator authority is entitled to conduct totalizator betting—
(i) includes a provision corresponding to section 68 under which a percentage (being a percentage within a range prescribed by regulation under this Act) of the amount of the bets accepted by the Totalizator Agency Board under the agreement must be deducted from those bets; and
(ii) does not prevent the execution or operation of the agreement in accordance with subsection (5);
(d) by striking out from subsection (4)(b) 'interstate TAB is established' and substituting 'interstate totalizator authority is entitled to conduct totalizator betting';
(e) by striking out from subsection (6)(a)'interstate TAB' and substituting 'interstate totalizator authority';
(f) by striking out from subsection (6)(b) 'interstate TAB is established' and substituting 'interstate totalizator authority is entitled to conduct totalizator betting'.

Again, this amendment is consequential.

New clause inserted.

Remaining clauses (8 to 17) and title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (MISCELLANEOUS) AMENDMENT BILL

Bill recommitted.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Persistent sexual abuse of a child.'

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

Page 4, after 10—Insert line new subsection as follows:

(8A) A prosecution on behalf of the Crown for persistent sexual abuse of a child cannot be commenced without the consent of the Director of Public Prosecutions.

When the Committee last considered this clause I moved that, in relation to the new offence of persistent sexual abuse of a child, it was appropriate that any prosecution should be launched only with the consent of the Director of Public Prosecutions. The Leader of the Opposition was at one part of the debate prepared to accommodate that to the extent that it should be limited to those prosecutions which were instituted on behalf of the Crown.

After the Hon. Ms Kanck entered the debate, and I thought that both I and the Leader of the Opposition had spoken on it, she indicated that she was not persuaded by either of us and therefore the proposed amendment was defeated. There has since been some further consideration of the issue and this amendment is to ensure that, where a prosecution is launched on behalf of the Crown, then it is to be with the consent of the Director of Public Prosecutions.

The Hon. C.J. SUMNER: This is acceptable to the Opposition. In fact, the amendment is now in the same form as that which I argued for the last time this matter was before the Committee. Since then I have had some informal discussions with the Hon. Sandra Kanck and I understand that she is now prepared to accept this also. I think this is a satisfactory resolution of the issue.

Amendment carried; clause as further amended passed.

Title passed.

Bill read a third time and passed.

PETROLEUM (SUBMERGED LANDS)(MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 April. Page 465.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contribution to the second reading debate on this Bill. Several issues require a response before we consider the matter in Committee. The Hon. Ron Roberts has sought an undertaking that before exploration in relation to the extraction of petroleum products takes place in sensitive areas within or outside the three-mile zone a full environmental impact statement be implemented. The Minister for Mines and Energy has advised that before any petroleum exploration operation takes place in State waters a declaration of environmental factors and a code of environmental practice of adequate standard must be provided. These documents are circulated to relevant departments for comment (including Fisheries, Marine and Harbors, Environment and Natural Resources) and any comments taken into account before approval is given. In the happy event of a discovery being made, no commercial production can occur before the issue of a production licence. The nature of facilities needed for off-shore petroleum production and the risks associated with these operations are such that a full environmental impact statement would be required before any licences are issued or any production could commence. Such facilities in State waters would require licensing under petroleum legislation as well as the Environment Protection Act.

The Hon Sandra Kanck has raised concerns regarding the protection of marine parks. These issues are adequately addressed in the Fisheries Act 1982 and are consistent with similar provisions applying onshore in South Australia. The Minister would also expect considerable resistance from the economically important mining and petroleum industries with whom the issue of their being locked out of marine parks has not yet been canvassed. These industries and the Government support a policy of multiple land use. Such a policy was also supported by the previous Government.

The Hon Ms Kanck has also raised a concern in relation to clause 51 in which the Minister has a discretion to require that the holder of a special prospecting authority (SPA) or access authority (AA) maintains appropriate insurance against

liabilities or expenses arising out of their operations. The Hon Ms Kanck has argued that there should be no discretion as applies in the case of permits, production licences and pipeline licences. The Minister has advised that in these latter cases there is a risk of a major accident which could result in very significant damage (for example, an oil blowout), and insurance as directed by the Minister was mandatory in such circumstances.

No drilling can be undertaken under special prospecting authorities or access authorities and the only type of activity is exploratory work such as seismic or aeromagnetic work. These activities are not considered to pose significant risks (any more than other marine and airborne activity such as fishing, coastal freighter traffic, etc.) and no special conditions relating to insurance need be mandatory. It should be kept in mind that this Bill brings South Australian legislation with respect to offshore petroleum matters into line with recent amendments to the Commonwealth legislation, in accordance with a long standing formal agreement between the States and the Commonwealth and which is embodied in the preamble to the Petroleum (Submerged Lands) Act 1982. Other States have passed or are in the process of preparing such legislation. Both APEA (the industry lobby group) and the two permittees in South Australia affected by this legislation have raised no objections. The only area affected by this legislation extends three miles seawards from the territorial sea baseline (which generally follows the high water mark, except across bays and gulfs).

I note that the Hon Ms Kanck has placed on file amendments to this Bill and I give notice that it is the Government's intention to oppose those amendments in Committee.

Bill read a second time.

WORKERS REHABILITATION AND COMPENSATION (ADMINISTRATION) AMENDMENT BILL

In Committee (resumed on motion).

(Continued from page 664.)

Clause 9—' Commutation of liability to make weekly payments.'

The Hon. R.R. ROBERTS: This clause on commutation is one that the Opposition takes very seriously and I want to endeavour to persuade Mr Elliott, in particular, to come a step towards us. The basic difference between his amendment and ours is that we provide that the corporation has (subject to this section) a discretion whether to commute a liability under this section. Mr Elliott's amendment refers to an absolute discretion. Problems have been experienced in this area over a long time. It is an area of some contention and from time to time there have been quite improper acts by the corporation in the area of commutation.

On the question of whether or not commutation ought to be discretionary, I will comment on some of the remarks made earlier. With respect to the first issue, the ALP does not oppose the provision which makes commutation a once and for all assessment. With respect to the second issue, the response by the Liberals has been to give the corporation an absolute discretion where the question of any quantum of commutation is to be settled by agreement between the corporation and the worker. There is no such thing as an absolute discretion. It is merely a power residing in the corporation to do something subject to certain criteria. This is quite inconsistent with the notion of section 42 being an entitlement.

The Democrats seek to reduce the unfairness of this approach by attempting to provide greater certainty in the process by quantifying the relevant prescribed sum. Whilst an improvement, this approach is capable of further criticism. It fails to recognise that pressure exists within the system for injured workers to seek to commute weekly payments. Nothing in this draft of amendments attempts to reduce such pressure and one could reliably expect it to continue. The present system provides not insignificant disincentives for the worker to commute. The maximum lump sum at present is an amount from which is deducted a section 43 payment. In many cases it grossly underestimates the capitalised value of the worker's ongoing entitlement to weekly payments. Notwithstanding this, workers still seek commutation.

From a practical viewpoint commutation invariably follows the following format. We would expect the corporation's approach to these matters not to change. First, the worker for any number of reasons seeks commutation. They either make application to the corporation or the corporation writes to them making them an offer. Whether initiated by the corporation or the worker, the offer made by the corporation is generally half what the worker would otherwise be entitled to. The way in which the offer is expressed by the corporation is to request that the worker consent that they can earn a certain amount of wages such that their weekly payments are artificially reduced. The artificially reduced weekly payments then equate on a capitalised basis to the offer the corporation is prepared to make. In this way the offer by the corporation is linked to the quantum of the commutation. The corporation will not commute weekly payments unless the worker writes back consenting to the reduction in weekly payments to a level which equates to the lump sum that they are prepared to offer. In fact, this means that they are asking them to make a false declaration.

The Democrat amendment seems to assume that the question of quantum of commutation is unrelated to the question of whether or not the corporation will commute. By this process we hope to show that they are inextricably linked. At present, while such offers are made, the corporation is prevented from this unfair bargain by the right of a review.

In this way, a worker can prevent the corporation from capriciously withdrawing its offer to commute when the worker does not accept the artificial reduction in weekly payments by reviewing the corporation's decision to fail to commute. The present proposal of the Democrats leaves out this safeguard. The middle ground proposed by the ALP is to give the corporation a clear discretion to commute. This is a change from the present state of affairs, but it ensures that this discretion must be exercised properly and not in a capricious or unfair manner. This ensures a balance between the corporation's policy objectives and the worker's rights to be treated fairly.

In an effort to persuade the Hon. Mr Elliott, in particular, I refer to a real life case. On 17 November 1992, a group of solicitors acting on behalf of a constituent requested the commission to provide them with a formal section 42 determination in the near future. They received a without prejudice response from the commission, which states:

> In regard to your claim, the following points have been noted. You are currently in receipt of weekly payments. You have received weekly payments for more than two years. You have received a lump

sum for permanent disability of $3 755, and this payment is less than 50 per cent of the prescribed sum.

That is fine. The letter continues:

Section 42 of the Workers Rehabilitation and Compensation Act 1986 provides the corporation with discretionary power to commute your weekly payments into a lump sum. You have a potential to receive the difference between your lump sum section 43 payment and the maximum scheduled amount of $75 100 in commutation. We are prepared to offer $20 000 as commutation. Your current average weekly earnings are $272.15—

then the catch comes in—

The lump sum for commutation of $20 000 equates to a weekly amount of $21.36. This leaves a difference of $250.79 per week for wages which you are entitled to. If you agree that you have a reasonable prospect of obtaining work to the value of $250.79 per week the WorkCover Corporation is prepared to offer you a $20 000 lump sum to satisfy the liability to provide you with weekly payments.

In other words, there is an entitlement of $75 000. In trying to entice the worker to say that he can earn $250.79 a week, the commission makes an actuarial proposal of $20 000. The letter continues:

If you agree to this, in order to process this offer the corporation will make a determination that payments will be reduced in accordance with section 35 to make a determination to commute $21.36 to the lump sum of $20 000, make a determination to discontinue payments of $21.60 under section 36(1)(e) as you will have already received your entitlement to this weekly rate in the form of a lump sum.

On legal advice, the assisting counsel asked for a review on the basis of the commission's having agreed that it would commute and then making an offer which was obviously inadequate. The reason for the application for a review was that the offer was inadequate. On 18 March, the following reply was received:

In answer to your formal request for a determination pursuant to section 42 on behalf of your client and our subsequent determination dated 30 December 1992, the corporation now withdraws that determination.

I am told that this is not an isolated event: it happens on a quite regular basis. So, I am saying to the Hon. Mr Elliott, in particular, not that the corporation does not have a right to commute but that, having made the decision to commute, it should act in an honest and fair way. I accept that the Hon. Mr Elliott is taking into consideration the section 43 payment, and I think that should be commended. However, I am appealing to Mr Elliott on this occasion, for the reasons I have outlined, to go that little bit further with the Labor Party and make the discretion referred to in subclause (3) a discretion as to whether to commute a liability under this section and delete the word 'absolute'.

The Hon. M.J. ELLIOTT: Regarding the example raised by the Hon. Ron Roberts, I would have thought my amendment covered that situation. I say that because what is reviewable is the decision on the amount of the commutation. A number of factors are involved in the amount of the commutation. It is not just the actuarial equivalent of weekly payments. There are also other questions regarding percentage of disability and potential earnings, etc., to which the honourable member has referred. All those matters have an impact on the final amount of the commutation. If the corporation acts in a capricious manner in trying artificially to lower the sum that is offered, that should be subject to a review. It is not just the actuarial determination itself but the amount of the commutation that is reviewable.

The Hon. K.T. GRIFFIN: One point which the Hon. Mr Elliott made before the dinner break needs to be addressed, and that relates to lump sum non-economic loss payments. I think he made the assertion that they were introduced as a trade-off for the deletion of common law claims. I think it needs to be recognised that that was not the case, that there has been a provision in the legislation for lump sum non-economic loss payments since 1987. It is correct to say that there was some limitation on common law at that point, but common law was not abolished until December 1992. So there was a parallel provision for lump sum non-economic loss payments and common law.

The Hon. M.J. Elliott: So they chucked common law right out.

The Hon. K.T. GRIFFIN: In December 1992, that is right. The other point I find interesting about the Hon. Mr Elliott's amendment concerns a change from the present provision which allows a limitation on the amount an injured worker may receive. Where that worker has received a lump sum for non-economic loss, there are provisions for commutation of weekly payments with the lump sum not to exceed the total of those two amounts, whereas by way of this amendment the Hon. Mr Elliott provides that the two are separate and distinct. So, there will actually be an increase in the amount which can be paid by the way of a lump sum, whether it be for non-economic loss or for commutation, because they will both be payable and separate and may aggregate in excess of the prescribed sum. The Hon. Mr Elliott might repeat the reason why he is taking that approach.

The Hon. M.J. ELLIOTT: I explained this at some length previously. The non-economic loss payment is for a particular reason, such as pain and suffering. I gave the example of a person who loses a hand. The compensation comes in two parts: the non-economic loss in relation to the loss of the hand and weekly payments in relation to the loss of ability to work—a lump sum and a weekly payment.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes. The legislation as it now stands provides that if you commute your weekly payments—and that should be in an actuarial fashion so that you get an amount equivalent to how much it would have been worth to you if you had taken it over a longer term—and take it as a lump sum the other sum that you got for the same accident but for a different reason is taken off that lump sum.

As I said, that is almost an inverse form of double dipping by the compensation system. Those moneys are for two quite different reasons. I just cannot understand how you can justify doing that for any reason other than penny pinching.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I still say I cannot see any reasonable justification for doing so. On that basis, I oppose the amendment.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I do not accept that it will increase costs, because I suspect a number of other things will happen. Under some other amendments, anybody whose actuarial equivalent goes above the prescribed sum simply will not be paid out. My expectation is that a large number of compensation claims will not now be commuted. In fact, it was a worry for the Government for some time that too many of them were being commuted. I thought that was one of the reasons why we are addressing that issue right now, namely, that a large number of commutations were going through and that was causing concerning to the Government because it was costing a lot of money. There are substantial savings to be made within this clause, because the commutations will not happen to anywhere the same extent as they did

previously. In fact, the commutations now will happen only at the corporation's discretion, and I am accepting that. It does not have to commute a single one if it decides not to. Now the corporation will commute only when it is to its advantage; in particular, I expect it will be with the relatively minor injuries, where probably both the employee and WorkCover would be happiest just to see it out of the way.

Whenever you are talking about significant injuries where the big claims or payments are they are ones that I expect not to be commuted; in fact, I have made an attempt to try to stop the big claims from being commuted. I do not believe that the overall outcome of my amendment will be an increased cost. In fact, I am supporting something which has substantial savings in it, but at the same time addressing what I believe is a significant unfairness in the system.

The Hon. R.R. ROBERTS: In his amendment, the Hon. Mr Elliott says that a decision on the amount of commutation is reviewable. Through the process that I outlined, if we go back to his actuarial equivalent, if the worker who has an entitlement of $75 000 applies for his commutation, the corporation could then say, 'We will commute, but we won't give you $75 000, which is actually what you are entitled to. We will give you $20 000, but you sign an agreement to say that you have capacity to earn $250 per week.' The problem that is being experienced on a regular basis is that at that stage the claimant could then say, 'Well, hang on, that's wrong; I want to review that.' The offer to commute is then withdrawn. That is the problem that I face. I am trying to make the point that, once the corporation has said, 'Yes, we will commute,' it should have to commute the actual sum to which the claimant is entitled, not a castrated actuarial calculation.

The Hon. K.T. Griffin: What's the incentive to go back to work?

The Hon. R.R. ROBERTS: We are talking not about someone who is going back to work but about some of the long-term injured who are entitled to weekly payments. This encourages people to make arrangements that are improper. I would have thought that, given the number of contributions about this matter that the honourable member has made in this Council over many years, he would be quite incensed about it and would support the argument I am putting. In fact, I am reverse arguing this one. I believe that my amendment does all the things that the Hon. Mr Elliott's amendment does but, when we say a discretion rather than an absolute discretion, it does allow for this problem to be addressed; justice not only should be done but also it should be seen to be done properly. That is why I am making more effort than I have in the past to try to convince the Hon. Mr Elliott on this occasion.

The Hon. T.G. ROBERTS: One of the reasons the Act moved to a rehabilitation emphasis was to move away from lump sums under the old Act to a compensation rehabilitation emphasis. That was the effect of the 1986 changes. Then, basically due to changes in economic circumstances, a lot of workers found themselves with residual injuries. Those who thought that they might lose only 15 per cent in total injury for a back injury in fact had a 100 per cent chance of not getting a job anywhere else. In many cases, their employers had packed up, they had gone bankrupt, out of business or interstate or there had been some other reason why they could not be rehabilitated back into their own workplace, and this made it very difficult for that worker then to find further employment. They did not have many alternatives, so there was generally an agreement to commute the residual part of the disability to a lump sum payment.

With regard to lump sums, the Hon. Ron Roberts used the figure of $75 000, but in most cases we would be looking at best—and I know they varied from case to case—in the vicinity of $20 000 and, after costs have been deducted, that would come back to $15 000 or $12 000. As we all know here, that does not last a long time, and by the time those people use up their lump sum commutations they are in the position of going onto social security with no further prospects of finding employment. In other parts of the Act we have ways in which we work out the schedules for commuting combinations of injuries. It does not matter whether you have a 35 per cent disability in terms of a back, neck or leg injury: it is a 100 per cent chance that you will not get another job that matters. So, we must find a way to make official what is happening now unofficially—some would say improperly, whereas others would say for pure practicalism—that is, to commute payment so there is a fairness and equity about it that allows for injured workers to be properly compensated and paid proper damages from a schedule that gives some sort of semblance of fairness and equity. That is what we are trying to work towards here: an amendment that allows for, in one amendment, a review process if the commutation is rejected. In other cases the Government is saying that this should happen without any review process.

So, we will probably get back to it in some other form if we cannot get agreement now. It is a major problem and, as the economy starts to pick up, we will find that more people will be rehabilitated, hopefully, back into their place of employment, rather than the offers of commutation building up and becoming the norm. As the honourable member says, there will be a flood of offers for commutation rather than rehabilitation and further support and assistance being provided by WorkCover.

In many cases workers were preferring it, just to get out of the system. They had basically had enough. They had no further prospects of jobs; they were tired of being moved through the medical system, the health and rehabilitation system and through the WorkCover system; and they were grateful for making any sort of commutation that allowed them to get on with their lives.

The Hon. M.J. ELLIOTT: I have said that what I do not want to do is see the whole process opened up for review in every sense, which I believe the amendment of the Hon. Ron Roberts does. With no disrespect, it is an area where the lawyers have found a place to have their picnic again. I can understand the problem that the honourable member is outlining. As I said, quite clearly the actual amount is reviewable. The question as to whether or not the corporation plays ducks and drakes, makes an offer and then, when a person has his case reviewed, withdraws the offer, on the other hand, causes me some concern. I have just spoken briefly with Parliamentary Counsel to see if I can have an amendment to provide that once an offer has been made it cannot be withdrawn, even if it has been reviewed. That is what I am exploring at the moment, but in the meantime I suggest that we go past this clause and recommit it at the end of the Committee stage.

Clause negatived; new clause inserted.

Clause 10—'Compensation payable on death.'

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

Page 9, lines 21 to 34—Leave out subsections (14) to (18) and insert—

(14) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(15) However, the liability may only be commuted if the actuarial equivalent of the weekly payments does not exceed the prescribed sum[1].

(16) The corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section, and the corporation's decision to make or not to make commutation is not reviewable (but a decision on the amount of a commutation is reviewable).

(17) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(18) A commutation discharges the corporation's liability to make weekly payments to which the commutation relates.

Notes—

(1) The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s.43(11).

Clause 10 relates to compensation payable on death, and the concepts contained within this are similar to an amendment that we just debated in clause 9, so I will not go through those again.

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

Page 9, lines 21 to 34—Leave out subsections (14) to (18) and insert—

(14) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(15) However, the liability may only be commuted if the actuarial equivalent of the weekly payments does not exceed the prescribed sum[1].

(16) The corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section.

(17) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(18) A commutation discharges the corporation's liability to make weekly payments to which the commutation relates.

Notes—

(1) The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s.43(11).

The arguments are substantially the same as we have been through, so I assume that we will go through the same process again. This section deals with commutation for widows and dependants, and the protections we were looking for, for commutation for workers, ought to apply also for widows and their dependants.

The Hon. K.T. GRIFFIN: I indicate opposition for the same reasons. It is basically a revisiting of the debate on the previous issue, and I oppose it.

The Hon. M.J. Elliott's amendment carried;

Clause 11 passed.

New clause 11A—Determination of claim.'

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

Page 10, after line 2 insert new clause as follows:

11A. Section 53 of the principal Act is amended by inserting after subsection (7) the following subsection:

(7A) For the purposes of subsection (7), an appropriate case is one where—

(a) the redetermination is necessary to give effect to an agreement reached between the parties to an application for review or to reflect progress (short of an agreement) made by the parties to such an application in an attempt to resolve questions by agreement; or

(b) the claimant deliberately withheld information that should have been supplied to the Corporation and the original determination was, in consequence, based on inadequate information.

This is an amendment to section 53 in relation to determination of claims. Under subsection (7) at this stage the corporation has quite a wide discretion and this is seeking to describe exactly when that discretion may be applied.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The present provision in the Act states:

The Corporation may, in an appropriate case, by notice in writing to the worker, redetermine a claim.

I point out that, if the corporation does seek to redetermine a claim, that is always subject to review in any event. The sort of case I am told where this power to redetermine is likely to be exercised is where there may have been a medical examination, no fraud, but something which could not be detected at the time. Subsequently there is a re-examination by a medical practitioner and it is identified at that point that what was believed to be a work related injury in fact was not, and the conclusion which the subsequent examination reached could not have been made at the earlier time.

I am informed that, if that is one of the cases where a redetermination is made, then the limitations imposed by proposed clause 11A would exclude that from a redetermination. So, in a sense it is sudden death for the corporation in determining the claim. If information or evidence, which was not available at the time, subsequently becomes available then it is too bad. I do not think that is appropriate. It ought to be subject to redetermination in those sorts of circumstances, and it is certainly not able to be redetermined under the provisions of this amendment.

The amendment really limits it quite significantly to those circumstances where it is necessary to give effect to an agreement or to reflect between the parties for an application for review or in circumstances where the claimant deliberately withheld information. The example I have given is not one of those cases where information has been deliberately withheld, but I would have thought that in those circumstances it is quite fair and reasonable that the person who claimed to have been injured at work but who subsequently was discovered not to be so injured at work ought not to profit from the inaccurate diagnosis or assessment. I do not think the limitations help. The previous provision has been in there since 1993. I am not aware of any problem which it has created but if there are any problems of which the Hon. Mr Elliott is aware he might care to draw them to our attention.

The Hon. M.J. ELLIOTT: I am aware that there have been cases which have been before the courts where there has been a series of redeterminations and in fact there is nothing to stop this redetermination game going on *ad infinitum*. I am told this has happened in at least one case, and this amendment is seeking to stop that from happening. If there are attempts to go back, that is really what subclause (b) is about; you really should be showing that there has been a deliberate withholding of information which has had some effect on the claim.

The Hon. R.R. ROBERTS: We are supporting the amendment.

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott started off by saying there were cases in the courts and then he identified one. I would invite him to make available information about that one. If he has the name of the party we would be happy to have a look at it to see if in fact what he has been told accords with the facts. The name need not be on the public record. I am happy to look at it behind the scenes. If there is one case which is genuinely a concern and which has

not been misrepresented to the Hon. Mr Elliott, it is certainly something that we would be prepared to have a look at, but all the information that we have is that there is no case of that sort. In any event, the proposition is so difficult to work within I think that it effectively nullifies the rights to redetermine, and there are cases where quite legitimately the right to determine should be exercised, and they are outside the limitations imposed by this amendment.

The Hon. M.J. ELLIOTT: It is probably best at this stage that we simply put this one to the vote. This legislation will be back before us either late this week or early next week and we will have a chance to revisit this one. I take my advice to be sound; that in fact there has been concern in this area. I do not have that information here with me but I do trust the particular advice that I have.

The Hon. R.R. ROBERTS: I need to put some information on the record in relation to section 53(7). A number of constituents have spoken to me from time to time, and I would assume some have also lobbied the Hon. Mr Elliott, about their experiences in respect of this issue. In its current form this legislation gives insurers, including exempt employers, the right to stop payments whenever they feel it is appropriate. There is no continuation of the payments if the worker is dissatisfied with the decision. Provision is made for review of a decision made under section 53(7). Average waiting time for review is six months; that is, six months without payments to the injured worker. The employer may appeal a worker's favourable review determination by the WCAT and obtain a stay of payments. That will result in a further six months without payment.

Workers may win a review only to have the employer or the insurer issue another determination resulting in another cessation of payments. Experience has shown that an insurer will exploit these provisions. This section is so vague that it will become the subject of intense litigation. In our experience, and in the experience of trade unions, workers have suffered particularly under this section. It is claimed that this section cancels the progress that has been achieved under the Workers Rehabilitation and Compensation Act 1986. The Opposition supports this amendment.

New clause inserted.

Clauses 12 and 13 passed.

Clause 14—'Adjustment of levy in relation to individual employers.'

The Hon. M.J. ELLIOTT: My amendment to this is consequential. This has been tested again today and the Government and the Opposition appear to be rock solid on this one. So I will not pursue it further at this stage.

Clause passed.

Clauses 15 to 19 passed.

Clause 20—'Amendment of third schedule.'

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

Page 12, lines 5 to 8—Leave out paragraph (a).

This Bill seeks to introduce a 5 per cent disability threshold for the eligibility of compensation for loss of hearing. The introduction of threshold levels of eligibility cannot be claimed by this Government in any terms of its incessant mandate mantra.

In fact, the Minister in another place offered no valid explanation for such an amendment other than experience in another State. Such experience was based on the salesmanship of professionals who were able to entice workers to claim for minimal loss of hearing for their own professional gain. If the Government would avail itself of the understanding of the South Australian scheme rather than camouflage the debate under the guise of interstate competitiveness it would learn that, other than the compensation paid for disability, the only cost is the cost of testing, which I am advised ranges between $70 and $120.

Workers with a loss of hearing are able to initiate a test, claim and resolve or receive their entitlements without any professional assistance being required. Under the current South Australian scheme, irrespective of the extent of the loss, there is no incentive for any professional or body to capitalise from advertising or enticing claims for hearing loss. It therefore follows that the Government's fear of duplication of interstate experience is a nullity.

I am further advised by my colleagues with experience in the industry that claims for hearing disabilities below 5 per cent loss are a rare occurrence in comparison to all claims for loss of hearing. In fact, my colleagues in another place asserted that the total cost of such claims would be less than $1 million and, in fact, less than $800 000 since the inception of the WorkCover scheme in 1987. I am advised by my colleagues that such an assertion may be inaccurate to some degree in an inflationary sense. It would appear that the costings referred to in another place may also include claims for tinnitus suffered by workers, as well as a small loss of hearing. Should this be the case, the figures put forward in another place may be in reality considerably less than those that have been asserted.

Given the age of the scheme, the assertion equates to $123 000 per year average for such disabilities with deductions for tinnitus probably less. I would be surprised if write-offs of unpaid levies by employers would be quite so small. In fact, it might be invaluable information for this Committee to know what amount of unpaid levy is written off or remains outstanding on a year-on/year-off basis in comparison with the purported savings of such an amendment affecting disabled workers. The Opposition would challenge this Committee to provide us with both sets of figures. The Government lacks credibility in such an amendment and is denigrated for what it is: no more than an attack on South Australian workers for which the Government claims some mandate.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We are endeavouring to set a very low threshold which puts the issue beyond doubt that no claims for non-economic loss relating to minor hearing loss will be entertained for the reason that it is very difficult to identify the cause of minor hearing loss. Many of those who are not exposed to industrial noise will suffer degenerative hearing loss of a modest amount over the years. The whole issue is one of great difficulty in identifying the link between hearing loss and employment.

There is no lower limit in the legislation in relation to compensation for non-economic loss for noise-induced hearing loss. As the honourable member mentioned, I think at least in Victoria there has been a flood of claims experienced for minor hearing loss. WorkCover has been advised by the National Acoustic Laboratories, which I understand to be expert in this area, that 5 per cent or less would not be regarded as a disability and that a hearing aid would certainly not be prescribed for someone with a 5 per cent or lower level of hearing loss. Notwithstanding that, of course, one cannot be certain about whether or not a disability will be found to exist by the courts.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I am talking about a 5 per cent or less hearing loss. We are trying at least to put in that lower threshold. I gather that the ComCare workers compensation scheme has a threshold level of 20 per cent hearing loss before any compensation is payable. The Northern Territory workers compensation scheme has a threshold level of 5 per cent.

The Social Security Act assessment of permanent impairment tables has a threshold of 5 per cent. The National Acoustic Laboratories in New South Wales has indicated that hearing loss between .1 per cent and 9.9 per cent is slight, between 10 and 39.9 per cent is mild and at 20 per cent loss one sentence of normal speech levels in five will not be understood. At 10 per cent or less there is no significant deficit in hearing performance; in other words, normal speech and other sounds will be heard and understood virtually all the time. At 10 per cent of loss of hearing, only 50 per cent of people need hearing aids, according to the National Acoustic Laboratories, rising to 100 per cent at 20 per cent hearing loss. I suggest that that indicates that 5 per cent or less of hearing loss infers no real disability.

As I indicated, it is clear, putting aside industrial noise or noise arising from one's employment, there is generally some degeneration in hearing in many people as they advance in years and it varies from very slight to mild to more serious, without necessarily any impact of noise at the place of employment. One of the objects we have in mind is that you set the low percentage of threshold at 5 per cent. You do not unfairly discriminate but merely ensure that there will not be a flood of claims for which one cannot establish that the hearing loss, which is rather mild, is caused by work-related noise, by going to too many discos, sitting near a dance band at a dinner dance, mere traffic noise or in fact working at home without wearing ear protectors for grinding.

The Hon. T.G. Roberts: Are you the disco type or the dinner dance type?

The Hon. K.T. GRIFFIN: Unfortunately, I have to put up with both on occasions. I usually sit down near the loud speaker, regrettably, so you cannot hear anything—not even yourself.

The Hon. T.G. Roberts: That is why they sit you there.

The Hon. K.T. GRIFFIN: You are probably right: they do not want to hear me and I do not want to hear them. We are trying to put in place some reasonable low level to exclude minor claims about which it is difficult to determine the cause of loss. I therefore indicate opposition to the amendment.

The Hon. R.R. ROBERTS: During the debate on the last clause the Attorney-General invited the Hon. Mr Elliott to provide some evidence of where there has been a problem. I invite the Hon. Mr Griffin to produce some evidence of where there have been improper claims in those bi-aural hearing loss claims. The Hon. Mr Griffin makes some assumptions, which are often made (and I have a little experience in this area) when he talks about noise induced hearing loss. I point out to him that when all these claims are made these people are all sent to a couple of hearing specialists and, if the employer or WorkCover are not happy with the results of those bi-aural hearing losses, they can challenge them and go to the Commonwealth Acoustic Laboratories.

You have to remember here that the assessment for noise inducted hearing loss very seldom has anything to do with a hearing aid. A hearing aid will not help people with noise induced hearing loss, although from time to time where there is a component of degenerative hearing loss some people are affected. A 5 per cent bi-aural hearing loss means you could have 1 per cent loss in one ear and a higher loss in the other ear. You have to suffer major disability in one ear to get an average of 5 per cent loss in both ears. We are really messing around with pennies and pounds here. Any one of these claims being put forward can be reviewed and, if anybody thinks that somebody is getting away with something, having passed rigorous tests and having seen at least two specialists, including the Commonwealth Acoustic Laboratories to prove beyond doubt—

The Hon. K.T. Griffin: There is a reverse onus.

The Hon. R.R. ROBERTS: No, you are making the claim that there is something improper. I am saying that it is always part of the contemplation of the WorkCover system that these claims are in there. There is no widespread abuse of these matters.

The Hon. K.T. Griffin: You have no evidence.

The Hon. R.R. ROBERTS: I can tell you that the cost of the scheme since 1987 has been about $800 000. With the percentages and figures we are using here that is minuscule. I urge the Committee to support my amendment.

The Hon. M.J. ELLIOTT: The challenge has been made to the Minister to demonstrate where the problem lies. There does not appear to be a demonstrated problem. We do not seem to have a flood of claims in this area or suggestion that it is likely to happen in the South Australian context. I ask the Minister to justify it further.

The Hon. K.T. GRIFFIN: The Government believes that it can. It is a cautionary approach that we take. In one State a firm of advisers has been running around promoting—

The Hon. R.R. Roberts: Not here.

The Hon. K.T. GRIFFIN: No, but it could come. We are seeking to ensure that it does not happen and we have anticipated, having been warned from the experience interstate that consultants have been advising employers to put in their claims, there has been a rash of claims. We are endeavouring to anticipate that event if it occurs and to put the provision in place, particularly because under the second schedule there is in a sense a reverse onus. For anyone who has noise induced hearing loss or work exposed to noise there is a presumption that the loss is work related. We are seeking to ensure that a threshold exists and that it is not an unreasonably high threshold.

The Hon. M.J. ELLIOTT: I do not want to spend any more time on this than we have spent in debate tonight. I do not have a strong conviction at this stage either way. So I can take a closer look at the issue, I will support the amendment but I give no undertakings on what I might do when the Bill returns to us next time.

Amendment carried.

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

Page 12, after line 13—Insert—

(c) by striking out clause 5 and substituting the following clause:

5. If a worker is entitled to compensation for two or more disabilities—

(a) if none of the disabilities are specifically mentioned on the table that appears above—the worker's entitlement will be determined in accordance with principles prescribed or approved by regulation (but the total entitlement cannot exceed 100 per cent of the prescribed sum);

(b) in any other case—the worker's entitlement will be determined as follows:

(i) first ascertain the percentage for the most severe disability[1]; and

(ii) then add to that percentage one-half of the percentage applicable to the disability next in order of severity; and

(iii) then add to the aggregate percentage, one-third the percentage applicable to the disability next in order of severity,

and so on (but the total entitlement cannot exceed 100 per cent of the subscribed sum).

[1]The relative severity of disabilities is determined by reference to the percentage of the prescribed sum payable.

This amendment is rather late in the day, but I hope it can be passed because it involves an issue of some importance. It means that, if the matter is reviewed in another place and there is subsequent agreement to address it in a different way, it can be pursued.

The amendment relates to the third schedule of the Act to prescribe the manner in which compensation is to be determined for non-economic loss where the worker has two or more permanent disabilities. The current provisions allow for the compensation for each disability simply to be added together up to a maximum of 100 per cent of the prescribed sum. This has led to a situation where there is an incentive for workers or their representatives to identify as many separate disabilities as possible to increase the amount of compensation.

This amendment will reduce the incentive to identify many different disabilities by applying a reduced amount of compensation to second and subsequent disabilities. The principle of applying a reduced percentage for multiple disabilities is established in the American Medical Association Guides to the Evaluation of Permanent Impairment, which are the prescribed guidelines for assessing compensation for disabilities not specifically mentioned in the third schedule. This approach was proposed by regulation which is now subject to a motion for disallowance on the alleged basis that the AMA guides method of combining multiple disabilities does not operate fairly.

The system we currently have is a mixture of specific percentages for specific disabilities and a percentage loss of total bodily function according to the AMA guides for other disabilities. This amendment will provide for the use of the AMA guides method of combining the percentage loss for those disabilities not specified on the table as is the current practice. In addition, the amendment provides that a similar principle be used to combine percentage loss for those disabilities that are specified on the table and for cases with a mixture of both on-table and off-table disabilities.

This would mean that disabilities on the table and disabilities not on the table are subject to the same criteria. This method is a more favourable approach to workers than simply converting the disabilities to a percentage loss under the AMA guides which could result in a lower total payment for multiple disabilities than that applicable to one of the disabilities on the table. This method is also more favourable to workers than the mere application of the AMA guides which occurs in the Federal Government's Comcare scheme and some other State based schemes.

The Hon. M.J. ELLIOTT: I simply cannot support this amendment without even looking at the detail of it on the basis that it is a matter of some complexity which has effectively only just been placed before us. I have already in this place a motion to disallow a regulation which covers the issues that are now covered within the legislation. It is difficult to determine how much of it is a mess up and how much is deliberate. In fact, I believe it is a combination of the two: that where there were two or more disabilities the compensation to injured employees under the regulations was significantly affected.

One example that I cited when moving my disallowance motion in relation to the regulation was that of a person who lost a hand and then a thumb on the other hand. Under the legislation as it stood that person was entitled to a benefit, as I recall, of about $160 000, but under the new regulations that was reduced to $76 000. I believe it was marginally less than the compensation a person got for losing just one hand. As I said, I suspect that what happened was that, in introducing the AMA—

The Hon. R.R. Roberts: Two plus two equals less than four!

The Hon. M.J. ELLIOTT: Two plus two equals less than two; that was the problem. I understand that the Government did not look carefully at what it did. It intended to reduce benefits substantially, but I think it went even further than it intended and in its own way managed to embarrass itself. However, all that aside, this is a significant issue. I will put on the record that having disabilities being completely additive can be a nonsense. It creates the possibility that one does not make a single claim but looks at a whole lot of disabilities that are additive, and many of those disabilities may not be the obvious physical ones.

I can see that there can be a problem with hunting for the big money. There are many cases in which the effect on a person of the sum of two disabilities is not a simple additive; in other cases, it can be more than additive. For instance, the loss of sight in two eyes is far more severe than double the loss in one eye, but I think most of those sorts of things are handled fairly well within the schedules. In many other cases, I do not believe that disabilities are necessarily simply additive. However, the issues are complex. I think it is not acceptable for the Government to try to do it on the run because it needs a more thorough analysis than we have any chance of undertaking tonight. On that basis alone, without even trying to argue the merits of any section of this, I simply cannot support this amendment at this stage.

The Hon. K.T. GRIFFIN: I will put an alternative point of view to the Hon. Mr Elliott and hope he will reconsider. I recognise that it is a complex issue and that it has not been on the table for very long. It is an issue that the Government wishes to address, but the difficulty is that, as the Hon. Mr Elliott has indicated, the matter will be reconsidered in the House of Assembly and may be the subject of a resolution without the Bill having to go to a deadlocked conference.

If this is not one of those issues that is on the list of amendments that goes to the House of Assembly, there is no way, as I understand it, that it can be added by the House of Assembly as part of any arrangement, because there is nothing on this clause by way of other amendment. So, the object from the Government's point of view is at least to have this amendment passed to keep the issue alive.

I recognise that if the Hon. Mr Elliott supports this amendment he runs the risk of losing control of it. If he is prepared to give consideration to this amendment as a possibility on the basis that it will be the subject of further discussions, I will ask him to reconsider his indication not to support it, and I will give an undertaking that if agreement cannot be reached we will not agree to the amendment in the House of Assembly. The amendment will be pulled from the list of amendments so that he will not run the risk of its being accepted by the House of Assembly and thus lose control of the issue.

I have not spoken to the Minister responsible for the Bill in the other place, but I think I have sufficient confidence to be able to give that undertaking. This would mean that the issue was kept alive on the list of amendments to go to the House of Assembly and it would certainly be the subject of further consideration. If we cannot reach an arrangement it will come out. I do not think there can be any clearer indication than that. I hope the honourable member is prepared to consider it on that basis.

The Hon. M.J. ELLIOTT: There is another way of handling this. The fact is that it is something which is capable of being resolved by regulation. While in the normal course of events I like things to be handled by way of legislation—

The Hon. R.R. Roberts: There's a motion for disallowance on the Notice Paper for tomorrow.

The Hon. M.J. ELLIOTT: That's right. The point I am making is that this is a matter which is quite capable of being resolved one way or the other outside this legislation. Why it is getting tangled at this late stage in a piece of legislation which already is fairly complex and which needs sorting out, when we have the industrial relations legislation—and I do not know what else the Government hopes to get through in the next two weeks—and why it should put this extra layer of complexity into the debate is beyond my comprehension. I am not saying that the issue is not worth addressing, but why it is being addressed within the legislation now, I do not know. It has been lobbed with us today. The issues are not insignificant. They are issues which I have flagged I am willing to look at, but I do not think they need to have been tangled within this legislation.

The Hon. R.R. ROBERTS: I am appalled by this disgraceful conclusion. Those members opposite wonder why we do not trust them. We have had these pious calls for us to trust them and not be suspicious of their legislation, but what we have here is an amendment by the Attorney-General that tries to circumvent and put into this Act something on which the Hon. Mr Lawson, in his capacity as Chairman of the Legislative Review Committee, has a motion on the Notice Paper tomorrow which will knock this off in the Legislative Review Committee. There is also on the Notice Paper an amendment in my name supporting this, and now we have this back-door operation where these members opposite want to come in here, having seen it on the Notice Paper and obviously having agreed that this legislation ought to be disallowed tomorrow, slip it into the Act at the eleventh hour, and take away in some obscure evaluation the right of injured workers who have multiple injuries. This will involve 90 per cent of the cases; they will not get more than 100 per cent. In most cases where multiple serious injuries have been sustained, they will not even get to 50 per cent.

We have done a couple of calculations tonight on this exercise, and it means not only that they will not break the 100 per cent but also that they will get nowhere near it. This late amendment is a back-door, dishonest way of circumventing the problems that members opposite have found in the regulations. I appeal to the Hon. Mr Elliott not to consider looking at this at a later stage.

This amendment should be rejected outright, and I call on the honourable member to do that. If the Government cannot come up with a regulation which is fair and equitable, which does not disfranchise by some mathematical dispossession and which is not fair and equitable to the workers in this State, it does not deserve to be changed, and I ask Mr Elliott to support us on this occasion and reject this amendment outright.

The Hon. M.J. ELLIOTT: I want to make quite plain that the impassioned appeal was not really necessary. I was already making the point that I believe it was unnecessary for it to be handled in this way—in fact, it was wrong. I made that point. Some issues need to be addressed, and quite plainly either tomorrow or next Wednesday the regulation will be knocked out. The Government is in a position to bring in a further regulation, and my advice to it is that it consult very widely and get something in there which is reasonable. As I said, I do not believe we should be complicating this legislation at this stage when we have enough issues to work our way through.

The Hon. K.T. GRIFFIN: I take some exception to the Hon. Mr Roberts' reference to the fact that this is a basis for not trusting the Government. I have made quite clear that I regretted—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Just hang on a tick—that it was brought in at short notice. I indicated that I was prepared to give an undertaking that if it was not agreed by the Hon. Mr Elliott I would ensure that it did not become part of the legislation, because I am genuinely concerned to ensure that there is a proper opportunity to consider this issue.

I must confess I was not aware that the issue was one which was to be subject of debate tomorrow on a disallowance motion, but what I do understand is that the amendment is a new approach to the issue which is being addressed by the regulation. If it is a matter that can be dealt with by regulation, it is then perhaps not unreasonable to endeavour to reach an accommodation with the Hon. Mr Elliott in one way or another on this issue, and if he would prefer, in the light of the fact that it has just been dropped, to deal with it in that way, although I think the legislation is a preferable way of dealing with the issue, then quite obviously I will not get all uptight about that proposition.

The issue is a difficult one to address, and I want to ensure that both the Opposition and the Hon. Mr Elliott have an opportunity to consider this issue, particularly in the context of the disallowance motion which is likely to be considered tomorrow.

Amendment negatived; clause as amended passed.

Clause 21 passed.

Clause 22—'Application of amendments.'

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

Page 12, lines 26 to 30—Leave out subclause (2).

The Bill provides for retrospective effect of certain of its provisions. Clause 22(2) rides totally against the claimed mandate raised by the Government in this place and the other place. Prior to and on 11 December, the Minister, in a derogatory way to the previous Minister of Labor, stated publicly, 'There will be no more retrospective legislation.' Yet what do we see in this very first amendment Bill to be tabled in this Parliament by the same Minister: clauses that operate prospectively and retrospectively. Will the Minister or his representative in this place advise us which part of his mandate so claimed justifies retrospective legislation in the area of workers compensation or alternatively apologise to the previous Minister of Labour and to the public to which he made his non-retrospective statements?

Let us look at the reasons for retrospectivity in clauses 8, 9 and 10 of the Bill. These clauses are all linked. Clause 8 is consequential on clauses 9 and 10, and clauses 9 and 10 deal with commutation. What the Government has attempted to do is give the corporation undisputed rights to relieve the

system of injured workers by paying them inadequate lump sum payments. The introduction of such lump sums in place of weekly payment strikes at the very heart of the reason for the introduction of the scheme in 1987.

It was introduced to minimise the legal costs that in many claims far exceeded the benefits eventually put in the hand of the injured worker, and also to cease the dumping of workers onto the social scrap heap by way of inadequate lump sum payments. It is also an attempt to circumvent the courts by arriving at decisions that were fair and equitable to the workers. What do these decisions say? They say that, where a worker can show that the corporation has an ongoing liability for the period of years, then they should be paid an actuarial amount that represents their loss of earnings by way of lump sum. The corporation and this Government seem to think this is inequitable. They therefore seek to give an unfettered right to the WorkCover Corporation, largely to be controlled by this Minister, to commute or not to commute, to have absolute power over the manner in which the workers receive their compensation, their legal entitlement.

They also seek to do this to the widows, widowers and dependants of those workers unfortunate enough to be killed at the workplace; to hold them on a line, a constant reminder of their loved ones, by having to deal with a corporation that refuses to pay them an amount and let them get on with their lives, should that be the wish of the widow, the widower or the dependants. The retrospectivity proposed further ensures that no injured worker, spouse or dependants can escape the wishes of the corporation or of the Government, as outlined previously. It is reprehensible legislation based on the dislike of the umpire's decision and, for those reasons, the Opposition opposes this retrospective legislation. Clause 22(2)(b) is opposed consequential on our amendment and the contribution made to clause 20 previously, which also attempts retrospectivity to a degree.

The Hon. M.J. ELLIOTT: In relation to clauses 8, 9 and 10, I supported the general thrust of what the Government is attempting to do but have amended clauses 9 and 10 in some ways to make them fairer. Certainly, I would expect those changes to work prospectively. I am asking the Minister to justify on what unusual grounds he is taking a position he does not normally take in terms of supporting retrospectivity. He is aware that I have supported retrospectivity in some cases and he knows the grounds upon which I have supported it, but I would like him to explain why I should be supporting retrospectivity and why in this case he appears to be, which is, to say the least, unusual. I am asking the Minister to justify why sections 8, 9 and 10 of the Act should apply retrospectively (I have no problems with the prospective application in those clauses as amended), particularly recognising his own stand on retrospectivity more generally.

The Hon. K.T. GRIFFIN: I suppose one could ask the Hon. Mr Elliott the same question in relation to his own amendment, which seeks to make some provisions retrospective to 24 February 1994, even though that will have the effect of overriding some decisions that have already been taken in relation to claims. I am informed that the intention is to ensure that there is always a discretion in the corporation in relation to commutation and whether or not commutation will be permitted, both in respect of prospective claims and claims already made. My advice is that, if one were to make it only prospectively, the discretion would apply only to new claims and not to those presently in the system. So, it applies the discretionary power to commutation to all claims that are in the pipeline and gives that flexibility to WorkCover. Quite obviously, there is some area for debate at all times in relation to issues of retrospectivity as there will be when we get to the Hon. Mr Elliott's amendment.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It goes back to all claims in the pipeline, not to all claims that have been satisfied. It just deals with claims that are still on foot.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It may do, but it relates to those claims, as I understand it. Certainly, it does go back a long way, but I am informed that it is basically to deal with claims that are in the pipeline, even though they may have arisen from events that occurred some time ago.

The Hon. R.R. ROBERTS: I am intrigued by the debate. However, I have in front of me a copy of the Liberal Party industrial relations policy, page 2, and one of the objectives of the policy was 'to guarantee that, unlike recent Labor Government amendments, accrued benefits and rights of individuals injured at work will not be jeopardised by retrospective legislation in the Parliament'. So, it was clearly a mandate that the Government not do this. I can remember in this place about 18 months ago, when we talked about journeys, there was a proposition that no retrospective claims would be entertained. Having taken in our own Caucus a contrary point of view, I was most impressed by a contribution made by the Hon. Julian Stefani, when he spoke eloquently about the rights of injured workers to claim and to be protected under the legislation. So, in fact—

The Hon. K.T. Griffin: It does not remove rights to compensation.

The Hon. R.R. ROBERTS: But you are retrospectively changing benefits that are available, or the application of the Act is. Quite clearly it is retrospective on entitlements which are available to workers under the Act or which can be affected by the conditions under this Act.

The Hon. M.J. ELLIOTT: Unlike the Minister I do not necessarily have as many problems with retrospectivity. In this case the Minister is actually showing his flexibility, having taken many strong stands against it, whereas I have often supported retrospectivity on the basis of the intent of the law and the like. This retrospectivity will actually cut both ways. In fact, some benefits will be increased under my amendments because of the retrospectivity. For instance, taking the non-economic loss off the lump sum will now have retrospective application. So, there will be some beneficiaries if my other amendments stand up. We are talking about the real effects of this and whether it will affect the value of claims. In some cases, as I have said, as the Bill is now amended it will actually increase at least lump sum commutations. I do not believe it will actually reduce the amounts that will be received. The only thing it will do is to deny in some cases the right to appeal commutation, and I believe that was always the intent of this Parliament, which did not see commutation as a pathway that was to be encouraged. In those circumstances I do not have the problems with retrospectivity. It is not a matter of being flexible about retrospectivity. It is just a matter of my being consistent.

Amendment negatived.

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

Page 12, after line 30—Insert—

and

(c) the amendment made by section 11A applies as from 24 February 1994.

This amendment is consequential on an earlier amendment.

The Hon. K.T. GRIFFIN: Can I ask the Hon. Mr Elliott what happens where there has been a redetermination made up to the present time and either benefits have or have not been paid? Does the Hon. Mr Elliott then intend that all that goes back to the original position? What happens to collections, payments and other issues that might arise as a result of a redetermination? I gather some have been made.

The Hon. M.J. ELLIOTT: Your question is much better than the answer I can give right at the moment. This is a matter that we might have to pursue later on. It is a matter we have already said we will pursue further. It is necessary as a consequential amendment to my amendment to insert the new clause 11A, and I cannot answer that sort of detailed question here and now.

Amendment carried; clause as amended passed.

Title passed.

Bill recommitted.

New clause 9—'Substitution of s.42'—reconsidered.

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

Insert after new section 42(3) the following subsection:

(3a) If the Corporation decides to make a commutation and makes an offer to the worker, the Corporation cannot, without the agreement of the worker, subsequently revoke its decision to make the commutation.

I indicated when we were debating new clause 9 before that I was going to have an amendment drafted to address the issue raised by the Hon. Ron Roberts and that is what this amendment seeks to do, that when the corporation decides to make a commutation and makes an offer to a worker the corporation cannot, without the agreement of the worker, subsequently revoke its decision to make the commutation. So, if they have made an offer, there has been a review on the sum and the corporation says, 'Look, we do not want to make this offer any more' it cannot pull back from the offer, so to some extent it reduces the potential for game playing, which the Hon. Ron Roberts indicated has happened in the past.

The Hon. R.R. ROBERTS: We will be supporting the amendment.

The Hon. K.T. GRIFFIN: I indicate that the Government does not support this. There may be new facts which come to light which suggest that the offer of commutation was based on information which subsequently proved to be incorrect. I can understand what the Hon. Mr Elliott is moving towards; the revocation of the offer of commutation in circumstances where one might objectively judge it to be improper to do so. I have no difficulty with that concept, but I do have difficulty and the Government has difficulty in accepting that, without any flexibility, the corporation, having made an offer of commutation, is then locked into it regardless of what new information may become available. So, I indicate we will be opposing both the amendments.

The Hon. M.J. ELLIOTT: I will not extend this other than to note that I think the more important point at this stage of the night is that the principle is on the table and it is one that I think is worth addressing even if there is some difficulty with the wording and whether or not it may have some other unintended consequences beyond the issues that I have sought to address.

Amendment carried; new clause as amended passed.

Clause 10—'Compensation payable on death'—reconsidered.

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

Insert after new subsection (16) the following subsection:

(16a) If the corporation decides to make a commutation and makes an offer under this section, the corporation cannot, without the agreement of the applicant, subsequently revoke its decision to make the commutation.

This amendment is similar.

The Hon. K.T. GRIFFIN: It is opposed for the same reason.

The Hon. R.R. ROBERTS: This is supported for same reason.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

ADELAIDE FESTIVAL CENTRE TRUST (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

MEAT HYGIENE BILL

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

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

Introduction

The Government is pleased to introduce the *Meat Hygiene Bill 1994.* The Bill results from twelve months of intensive negotiation and consultation with industry and governments at State, Federal and local levels. It follows several formal reviews examining aspects of meat processing (culminating in the 1992 McKinsey Organisational Development Review of the Department of Agriculture and a report on meat hygiene regulation by the Business Regulation Review Office) and sustained pressure from rural communities and industry groups for review of slaughterhouse trading rights.

The Bill reflects improvements in industry practices since the formation of the South Australian Meat Hygiene Authority in 1980 and recognises the maturity of the meat processing industry in this State. It does so by establishing the role of industry in regulatory policy, in the introduction of best practice in industry/Government co-regulation of meat quality and in facilitating trade in South Australian meat products under mutual recognition.

In adopting this approach to regulation of meat hygiene the Government is keeping pace with developments in other States, particularly Queensland, Victoria and Tasmania, where there is a determined move towards quality assurance and flexible controls at plant level, together with a greater role for industry in administration of regulations at State level.

With the introduction of mutual recognition, new legislation is necessary to clarify the conditions for unrestricted trade in wholesome meat within South Australia, and so facilitate trade across State and Territory borders, that is free of cumbersome and unnecessary paperwork. Material deficiencies in the current legislation, notably the lack of provisions covering processing of game meat (e.g. kangaroo) and other secondary meat processing operations also require correction.

Objectives

The *Meat Hygiene Bill 1994* repeals and replaces the *Meat Hygiene Act 1980* and the *Poultry Meat Hygiene Act 1986* to provide a framework for the hygienic processing of livestock, poultry and game meat in South Australia.

The principal objective of the legislation is to ensure that all meat and meat products processed in South Australia for consumption by the public or by domestic pets is wholesome. In this sense, wholesome means free of any condition which might compromise the physical health or the well-being of a consumer of meat or a meat product and in which the concentration of any residue present does not exceed the Maximum Residue Level ("MRL") prescribed for that substance.

A new industry body (the South Australian Meat Hygiene Advisory Council) will be created to advise the Minister directly on policy and administration of the Act, functions formerly conducted

by the Meat Hygiene Authority. This represents a significant shift of role and responsibility of industry, which has no representation on the existing Authority.

The new legislation is designed to allow all major sections of the domestic meat industry to operate within a framework of quality assurance, with flexible levels of control directly related to product safety standards and company-run quality assurance systems.

That is, although regulatory controls based on independent (Government) inspection on-plant will remain as an option, the legislation also provides for more flexible arrangements with those operators who are willing and able to introduce approved safeguards into the production process and agree to regular audits of company quality assurance programs. The principle is established that, subject to consistent compliance with nationally accepted hygiene standards within externally audited quality assurance programs, competent operators at any level of domestic production can process meat without imposition of external (government) full-time meat inspection.

Meat processing in a wider range of facilities will be allowed, providing prescribed standards of hygiene and wholesomeness are met. In effect, operators will be able to seek accreditation based on the standard and capacity of their facilities and processes and on their level of training and competency. Those with higher capacity and competence will be able to become accredited for larger and more sophisticated programs of production and enjoy greater market mobility.

Existing controls on pet food will be retained. Under quality assurance programs, the potential exists for substantial improvement in standards of pet food production, providing more confidence in safety of pet food and further reduction in risk of entry of substituted meat into both export and domestic markets through the pet food route.

All activities provided for in the legislation will be funded by major stakeholders according to a formula which includes a commitment from the State Government, reflecting its community service obligation to public safety.

The legislation is designed to complement the provisions of the Food Act by taking up control of all meat processing occurring before retail sale and excluding processing operations directly associated with retail operations. Continued close liaison with the Health Commission on Food Act implementation policy (at operational level as well as through the Meat Hygiene Advisory Council) will ensure programs are complementary and no duplication of service occurs.

In order to meet the objectives, the legislation will—

- incorporate or operate by reference to various national Codes of Practice and other relevant standards as the basis for accreditation and quality assurance programs;
- provide for appointment of meat hygiene officers in Primary Industries (SA) and the contracting of external specialist agencies or persons as necessary for audit and inspection work;
- enable the raising of funds by way of fees and charges to ensure both effective and efficient administration of the regulations and an equitable balance of contributions by key stakeholders;
- provide for the imposition of appropriate penalties for non-compliance;
- allow a property owner or occupier to slaughter his or her own stock on a home property for use by those residing on the property.

Explanation of Key Provisions

Administration

There will be a new regulatory administrative structure, comprising—

- The South Australian Meat Hygiene Advisory Council, which will advise the Minister directly on meat hygiene policy and the administration of the legislation. The Council will be representative of all major industry and public bodies with a stake in the safety and wholesomeness of meat products, and will have an independent chairperson.

  Although the full Meat Hygiene Advisory Council is a large body, the legislation provides for the Council to "determine its own procedures", that is, a core working group nominated by the Council would obtain inputs from specific Council representatives on relevant issues, co-opt inputs from non-Council sources and appoint sub-committees (from within or outside the Council) to formulate advice on specific issues.
- A core management group within the Primary Industries Department to administer the regulations, with power to engage field enforcement staff, on a contract basis if necessary, to ensure cost-effectiveness of inspection, audit and training services.

Accreditation

The cornerstone of this Act is certification or "accreditation" of operators, on quality assurance or external inspection programs, to replace licensing of premises. It is proposed that meat processing operators be accredited to engage in specified activities, notably the slaughtering of animals and the secondary processing of meat, including smallgoods production and the processing of game meat. Those activities would be conducted in accordance with approved quality assurance programs to be developed, implemented and audited under the supervision of the Minister.

To operate legally, all meat processors must be accredited.

Accreditation requirements will include—

- adherence to an approved quality assurance ("QA") program, which will include internal (that is, company-employed) product inspection and process audits; or
- full-time inspection by an external agency approved by the Minister; or
- a program of regular inspection (by an external agency) of premises and process, together with compliance with a routine partial QA (or product monitoring) program.

The legislation will allow for operation under full-time or periodic inspection in lieu of QA in the following instances—

- from the introduction of the legislation until such times as approved quality assurance programs are implemented at the various premises;
- where processors choose to operate under full-time or periodic inspection at their own cost rather than implement or adhere to approved quality assurance programs;
- in the event of non-compliance with a QA program approved by the Minister;
- in other circumstances which, in the opinion of the Minister, warrant these strategies.

Under this legislation, the Minister will grant accreditation to the operator, not the premises or the product, on the basis of—

- presentation by the operator of relevant information about the proposed processing program, including
  - * the types and classes of meat involved, the manner in which the meat is to be processed, the maximum daily throughput of stock and product and the premises, vehicles, plant and equipment to be used;
  - * details of any quality assurance program proposed, or inspection service required.
- assessment of the operator's proposal by the auditing agency.

Accreditation will be granted if the Minister is satisfied that—

- the operator is a suitable person to hold the accreditation;
- the processing program complies with relevant standards and codes.
- that either the proposed QA program is appropriate or satisfactory inspection arrangements are made to ensure wholesomeness of the products.

The legislation provides for variation, transfer, suspension or revocation of accreditation under appropriate circumstances, including appeal provisions.

Audit and Inspection

The legislation provides for engagement, on contract, of approved agencies or persons to provide independent audit and inspection services on the Minister's behalf.

In addition, the State (through meat hygiene officers of the South Australian Department of Primary Industries) will provide specialist audit, inspection and compliance expertise for referral and backup to contracted agencies as required.

Processing companies themselves will be encouraged (and where necessary for full compliance with standards, compelled) to employ staff qualified in meat inspection, public health and quality assurance management, to carry out required inspectorial and QA functions on-plant. Such company staff would be approved (as QA managers) by the Minister.

In all meat processing plants independent, consistent audit or inspection will be applied to ensure compliance with the conditions of accreditation.

Quality assurance is already informally practised by the majority of small "owner-operators", who are totally responsible for the product and the process from slaughter to sale. These are considered "low-risk" and the majority have no wish or need to expand. For this

reason a class of processors with restricted trade access (related to throughput and specified outlets) will be retained. A form of quality assurance or product monitoring program will also be made available for these operators, to enable those prepared to enter such a program to reduce inspection costs.

All operators seeking unrestricted trade of meat or meat products (that is, anywhere in the State and under mutual recognition, interstate) will be required to reach nationally accepted standards of production. These standards will normally be approved National Codes of Practice.

This legislation recognises the increase in risk to public safety when meat is subject to wholesale. More formal systems of quality control will be required in all wholesale operations to minimise risk of compromising product wholesomeness.

Powers of Meat Hygiene Officers

The Minister will appoint meat hygiene officers who will oversee the inspection and enforcement functions. The powers the legislation grants to a meat hygiene officer will be similar in thrust to the powers under the current Act and will be all, and only, those adequate for the purposes of the Act in ensuring wholesomeness of meat products.

Inspection and enforcement staff employed by a contracted agency or meat processing company will conduct routine QA audit activities with specific reference to the compliance agreement with the operator. A meat hygiene officer will become actively involved in field activities where specific statutory enforcement powers are required.

Funding

The system will be part-funded by the State, recognising a community benefit of this legislation; the remaining funding will be obtained from—

- fees for initial accreditation (including inspections/audits required) and for amendment of accreditation;
- an annual service fee for operators, including a minimum number of audits or inspections;
- additional charge (at full cost recovery) for additional inspections and audits;
- fees for approved inspection or audit agencies;
- fees for approved quality assurance managers.

Initial accreditation fees, amendment fees and annual servicing fees will vary with the size of the operation, the range to be set by regulation. In addition, the Minister will be empowered to set from time to time charges or fees in respect of the inspection of premises, animals, product etc. and the audit of approved QA programs.

Transitional Arrangements

After initial passage of the legislation, a "changeover day" will be determined, when the Act will be proclaimed. The period between passage and proclamation is likely to be about five months, during which the Advisory Council will be appointed, regulations will be prepared, product monitoring and quality assurance codes of practice will be produced, fees and charges will be determined and tenders for external services let and filled.

From changeover day, existing operators of meat processing plants will have "temporary accreditation" pending development of a processing program for approval and granting of full accreditation. The operators will be required to apply for full accreditation within three months.

Consultation

Informal consultation with industry has been ongoing since the late 1980's, as a result of sustained concern and political action from sections of the meat industry and rural communities. There has been particular concern over the administration by the Meat Hygiene Authority of country meat trading rights, lack of opportunity for industry to participate in policy decisions of the Authority and more recently the rising costs of inspection in abattoirs.

Following reports by McKinsey and Company (Organisational Development Review, December 1992) and the Business Regulation Review Office (August 1993), the Department of Primary Industries launched a formal consultation process with key industry and government groups, including the Government Adviser on Deregulation, aimed at producing a joint strategy for legislative change.

Following a combined industry-government workshop in November 1993, convened to identify the key issues and confirm industry's commitment, an industry working group was convened by the South Australian Farmers Federation to formulate a position. The industry position paper was considered by the Government and subsequently released, with comment, for wider industry and community consideration. The consultation process was then consolidated with an expanded Meat Hygiene Consultative Committee.

A Government Position Paper was released for discussion in March 1994 outlining the regulatory and structural aspects of the proposed meat hygiene legislation including detailed discussion of the intended content. Reaction from industry and community groups has been generally supportive. Concerns are mainly over operational plans and procedures and these are to be finalised in the period between passage of the Bill and the changeover day.

Summary

In summary, this Bill reflects improvements in industry practices since the formation of the South Australian Meat Hygiene Authority in 1980. It recognises the maturity of the meat processing industry in this State by establishing its formal role in working with the Government to determine regulatory policy. While clearly establishing nationally accepted codes of practice as the standards for public safety through meat hygiene in South Australia, it provides greater flexibility for industry to move to best practice in cost-effective controls through adoption of total quality management systems in all sectors of the industry.

The Bill provides for effective industry/Government co-regulation of meat quality and a framework for facilitation of trade in South Australian meat products both within the State and interstate under mutual recognition.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

The definition of "meat" sets the scope of the Bill.

The Bill applies to meat intended for human consumption or consumption by pets.

The Bill covers processed products such as smallgoods where the nature of the meat is altered or the meat is mixed with another substance, but it does not cover processed products where the meat is cooked.

The Bill does not cover fish or anything excluded from the definition of "meat" by regulation.

Clause 4: Meaning of meat processing

The definition of "meat processing" sets the scope of the accreditation requirements included in the Bill.

"Meat processing" is broadly defined and includes each of the steps of killing animals or birds, preparing meat and producing meat products (other than by cooking). It also includes packing, storing or transporting meat.

Clause 5: Meaning of wholesome

The definition of "wholesome" is used both in relation to the activities of meat processors and sellers of meat. Meat is not wholesome if—

- the animal or bird from which it comes is diseased or residue affected or died otherwise than by slaughter; or
- it does not meet regulatory standards; or
- it is not fit for human consumption or consumption by pets as intended.

Only diseases specified by the Minister by notice in the *Gazette* are relevant.

Clause 6: Meaning of marked as fit for human consumption

This definition is relevant to the offence of using a non-official mark to indicate that meat is fit for human consumption (see clause 24). The Minister can determine official marks by notice in the *Gazette*.

PART 2

MEAT HYGIENE ADVISORY COUNCIL

Clause 7: Establishment of Advisory Council

Clause 8: Functions of Advisory Council

The Council is to advise the Minister on the operation of the Act and on issues directly related to meat hygiene in this State.

Clause 9: Composition of Advisory Council

The Advisory Council contains broad representation from industry and from those involved in administration.

Clause 10: Terms and conditions of membership of Advisory Council

Membership is for a maximum of 3 years at a time. Grounds for removal are set out.

Clause 11: Procedures of Advisory Council

The Council is required to meet at least once every six months and at other times directed by the Minister. The Council may determine its own procedures but must keep minutes. The Minister must make

the minutes and any reports of the Council to the Minister available for public inspection.

PART 3
ACCREDITATION OF MEAT PROCESSORS

Clause 12: Obligation to hold accreditation

A person who processes meat must be accredited and must process the meat in accordance with the conditions of accreditation.

The following exceptions are set out in the clause:

- a person killing their own animals or birds and processing the meat for their own consumption;
- a person killing wild game and processing the meat for their own consumption;
- a person obtaining meat from an accredited source and processing it only—
  - in the course of the retail sale of meat;
  - in the course of a restaurant type business;
  - in the course of a food or pet food production business where the meat is cooked;
  - in a domestic situation.

Clause 13: Application for accreditation

This clause governs the manner in which an application is made, the information that must be provided and the carrying out of inspections for the purposes of determining the application. It provides that an applicant must prepare a proposed processing program setting out the classes and quantity of meat to be processed and how the meat is to be processed. The program is to cover preparations, processing and clean-up as well as maintenance of premises, equipment and plant. It enables an applicant to propose to follow a quality assurance program—an inhouse program of checks and records for the purposes of ensuring compliance with the processing program and other requirements of the Bill.

Clause 14: Temporary accreditation

The Minister may grant temporary accreditation for a period up to 6 months while considering an application for accreditation.

Clause 15: Grant of accreditation

The Minister is required to grant accreditation if satisfied that the applicant is a suitable person, that the proposed processing program is satisfactory and that the proposed quality assurance program or inspection arrangements are satisfactory.

Clause 16: Conditions of accreditation

Accreditation is subject to conditions set out in the clause and to any further conditions imposed by the Minister. The conditions set out in the clause are generally aimed at ensuring that the processing program is followed and that a quality assurance program, full-time inspection or program of periodic inspections is in place. If a processor elects to have a quality assurance program, the records resulting from that program are to be audited from time to time. The conditions may require that the quality assurance program be managed by a person approved by the Minister. If significant problems are found on an audit or, in the case of an accreditation subject to periodic inspections, during a program of inspection, further audits or inspections are to be carried out, generally at the cost of the holder of the accreditation. The inspections or audits may be carried out by an approved inspection or audit service.

Clause 17: Annual return and fee

The holder of an accreditation is required to provide the Minister with an annual return and to pay an annual fee. Accreditation is of unlimited duration.

If the holder of an accreditation fails to comply with these requirements, the accreditation may be suspended and ultimately cancelled.

Clause 18: Variation of accreditation

The Minister may impose further conditions, vary or revoke conditions, vary an approved processing or quality assurance program or revoke an approval of a quality assurance program or a quality assurance manager. A variation is not to take effect for 6 months unless the holder of the accreditation agrees otherwise.

Clause 19: Application for variation of accreditation

This clause governs the manner in which an application is made, the information that must be provided and the carrying out of inspections for the purposes of determining the application.

Clause 20: Transfer of accreditation

An accreditation is transferable (unless the conditions of accreditation provide otherwise) to a suitable person who has capacity, or has made arrangements, for ensuring compliance with the conditions of accreditation.

Clause 21: Suspension or revocation of accreditation

The circumstances in which the Minister may suspend or revoke an accreditation are set out and include breach of conditions or commission of an offence against the Act or regulations. The holder of an accreditation must be given 14 days to respond to a proposed suspension or revocation.

Clause 22: Surrender of accreditation

The holder of an accreditation may surrender it to the Minister.

PART 4
SALE AND MARKING OF MEAT

Clause 23: Sale of meat for human consumption

It is an offence to sell meat for human consumption that has not come from an accredited source or that is not wholesome.

Clause 24: Marking of meat for human consumption

It is an offence to use an official mark indicating that meat is fit for human consumption except in accordance with the conditions of an accreditation or the regulations.

Clause 25: Sale of meat for consumption by pets

It is an offence to sell meat for consumption by pets that has not come from an accredited source or that is not wholesome.

PART 5
ENFORCEMENT
DIVISION 1—INSPECTION AND AUDIT

Clause 26: Approved inspection or audit services

The Minister may approve a person or body to be an approved inspection or audit service and enter into an agreement relating to the provision of services by that person or body for the purposes of the Act. The services would relate to inspections or audits required to be carried out by conditions of accreditation.

Clause 27: Appointment of meat hygiene officers

The Minister may appoint meat hygiene officers or enter into an arrangement with the Commonwealth or a local government authority for the provision of meat hygiene officers.

Clause 28: Identification of meat hygiene officers

Meat hygiene officers are required to carry identification and produce it for inspection on request.

Clause 29: General powers of meat hygiene officers

Meat hygiene officers are given general powers to enable them to administer and enforce the Act and regulations. They may not break into residential premises without a warrant.

Clause 30: Provisions relating to seizure

This clause details how a meat hygiene officer is to deal with meat, animals or birds or anything else seized by the officer.

Clause 31: Offence to hinder, etc., meat hygiene officers

The maximum penalty for hindering or disobeying a meat hygiene officer is a division 6 fine ($4 000) and for assaulting a meat hygiene officer, a division 5 fine ($8 000) or division 5 imprisonment (2 years) or both.

Clause 32: Offences by meat hygiene officers, etc.

The maximum penalty for abuse by a meat hygiene officer is a division 6 fine ($4 000).

DIVISION 2—COMPLIANCE ORDERS

Clause 33: Power to require compliance with conditions of accreditation

A meat hygiene officer may issue the holder of an accreditation with a notice requiring the holder to take specified action to rectify a contravention of conditions of accreditation or to ensure compliance with those conditions or prohibiting the holder using premises, vehicles, plant or equipment until those conditions are complied with. The notice can be varied.

Clause 34: Offence of contravening compliance order

The maximum penalty for disobeying such a notice is a division 4 fine ($15 000).

PART 6
APPEALS

Clause 35: Appeal to Administrative Appeals Court

A right of appeal to the Administrative Appeals Division of the District Court is provided in relation to—

- a refusal to grant accreditation;
- a decision relating to conditions of accreditation or to an approved processing or quality assurance program;
- a revocation of approval of a quality assurance program or quality assurance manager;
- a suspension or revocation of accreditation;
- a compliance order issued by a meat hygiene officer.

PART 7
MISCELLANEOUS

Clause 36: Exemptions

The Minister is given power to issue exemptions, individually or by class, by notice in the *Gazette*.

Clause 37: Delegation

The Minister is given power to delegate functions or powers to a public servant.

Clause 38: Immunity from personal liability

Immunity is provided to meat hygiene officers or other persons engaged in the administration of the Act.

Clause 39: False or misleading statements

The maximum penalty for knowingly making a false or misleading statement is a division 5 fine ($8 000) or division 5 imprisonment (2 years).

Clause 40: Statutory declaration

The Minister may require information to be verified by statutory declaration.

Clause 41: Confidentiality

Information relating to trade processes or financial information obtained in the administration of the Act is not to be divulged.

Clause 42: Giving of notice

This clause provides for methods of serving notices under the Act.

Clause 43: Evidence

This clause provides evidentiary assistance for the prosecution of offences.

Clause 44: General defence

A defence to a charge of any offence against the Act is provided of taking reasonable care to avoid the commission of the offence.

Clause 45: Offences by bodies corporate

Each member of the governing body and the manager of a body corporate are guilty of an offence if the body corporate is guilty of an offence.

Clause 46: Continuing offences

A penalty of one-fifth of the maximum penalty for an offence is payable for each day that the offence continues.

Clause 47: Regulations

The regulations may incorporate standards or codes as in force from time to time.

SCHEDULE 1

Repeal and Transitional Provisions

The *Meat Hygiene Act 1980* and the *Poultry Meat Hygiene Act 1986* are repealed.

Previous licence holders are to be given temporary accreditation on the commencement of the Act. They then have 3 months within which to apply for accreditation and provide the relevant details.

SCHEDULE 2

Consequential Amendments

Amendment of Local Government Act 1934 and Prevention of Cruelty to Animals Act 1985

Reference to premises licensed under the *Meat Hygiene Act 1980* are updated.

The Hon. BARBARA WIESE secured the adjournment of the debate.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

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

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

This Bill seeks to make amendments to the *Superannuation Act 1988*.

While most of the amendments are of a technical nature, there are several new provisions which are proposed to be introduced into the State Superannuation Scheme which provides superannuation benefits for government employees.

In respect to the technical amendments, if approved by the Parliament they will provide clarification to certain provisions, and improve the operation of the scheme. The more major technical amendments are in the area of investment activities and through the adoption of simpler early retirement formulas for certain groups of contributors. The amendments will also remove some minor inconsistencies, overcome some technical deficiencies, and make some modifications in order to comply with Commonwealth requirements.

The Bill also seeks to streamline the invalidity provisions by providing benefits for contributors who are not totally and permanently incapacitated for all employment. These are persons who are only partially disabled but medically unable to continue with their employment within the public sector.

New provisions are also introduced in respect of contributors who take extended leave without pay. It is also proposed to introduce new provisions that will provide for the Governor to appoint a person to fill a casual vacancy in an elected position on the Superannuation Board or the Investment Trust.

Overall the proposed amendments will improve the operations of the main State Superannuation Scheme.

I now wish to refer to some of the more specific changes proposed in the Bill.

An amendment is proposed to the provisions in the *Superannuation Act* in order to provide clarification in the situation where a contributor has his or her employment terminated on the ground of incompetence. In such circumstances, the proposed new clause will specify that such a person will be deemed to have resigned. Other minor amendments are included in the Bill to make it clear that where a person leaves the scheme for any reason (other than invalidity, retrenchment or death) and the member is over the age of 55 years, the normal early retirement benefits are payable. The person under the age of 55 years who has his or her services terminated because of incompetence will be able to preserve the accrued benefits.

The Bill also contains proposed amendments that deal with the investment of the fund by the South Australian Superannuation Fund Investment Trust. The existing wording of section 19 of the *Superannuation Act* is to be amended. In respect of investment in property outside Australia and in real property outside the State, it is proposed that the Minister be able to approve of a class of investment in addition to specific investments. This amendment will enable much quicker and more efficient investment switching to occur within approved parameters.

The Bill also includes a proposed general provision that will limit the level of pensions payable under the State Scheme at seventy five per cent of final salary. As some existing formulas in the Act will in future years, and in certain circumstances, enable a benefit to exceed this level, it is proposed to include a general limiting clause in the scheme's provisions. The Commonwealth's superannuation standards also set a maximum limit of seventy five per cent of salary for pensions.

An amendment is also proposed to the interest factor that is applied to the compulsorily preserved Superannuation Guarantee benefit that is determined under the Act in circumstances where a contributor resigns and elects to take an immediate refund of his or her own contributions (plus interest) paid to the scheme. In order to comply with recently issued Commonwealth standards in relation to the Superannuation Guarantee benefit, it is proposed to pay interest on these accrued benefits at an average of the South Australian Financing Authority 10 year bond rate. This rate of interest will then also be consistent with the rate of interest applying in the Superannuation (Benefit Scheme) Act.

The Bill also introduces a revised formula for calculating the benefits payable to State Scheme contributors who resigned before 1 July 1992, and elected to preserve their accrued benefit. In order to calculate benefits for this group of contributors, reference is currently required to be made to the early retirement formula that existed before the Act was amended under the *Superannuation (Scheme Revision) Amendment Act 1992*. The administration of the scheme will accordingly be enhanced by incorporating back into the provisions of the existing Act, a simplified formula that is based on the benefit structure that applied before the restructuring occurred for persons who were contributors on 1 July 1992. The benefit structure is based on a maximum pension of 45.5% of final salary being payable at age 55 years. The lower level of maximum pension is because these contributors are entitled to or have received a separate productivity benefit which was not retained for scheme enhancements.

Due to a technical error in the application of the existing section 39(7), a minor amendment is proposed to the way in which this provision is applied to the retirement benefits payable after age 55 and invalidity benefits. The technical error occurred as a result of the amalgamation of the productivity benefit under the *Superannuation (Scheme Revision) Amendment Act 1992*. Without this amendment contributors would receive unintended higher levels of benefits.

An amendment is also proposed to be made to subsection (9) of Section 39 of the *Superannuation Act*, which currently excludes

employees of Australian National Railways Commission from the option to preserve their accrued pension on resignation. The modification proposed will enable an employee of Australian National who resigns to take up employment with the new National Rail Corporation, to elect to preserve the accrued benefit. This will overcome potential difficulties created where, in particular, freight locomotive driver operations are effectively being moved from Australian National to the National Rail Corporation. In most cases the locomotive drivers are only resigning to apply for what is seen as their own job but with a new employer. In order to ensure that this provision covers all contributors who have already transferred to the National Rail Corporation, it is proposed to have this provision operate with effect from 5 June 1992 which is the date upon which the Corporation commenced operations. This proposed amendment also fulfils a commitment given to AN employees by the previous Government.

Clause 20 of the Bill deals with a technical deficiency in the existing formula under Clause 6 of Schedule 1 of the *Superannuation Act*. The amendment seeks to incorporate the productivity benefit enhancement into the existing formula as has already occurred with other formulas under the Act. The Bill also brings back into the provisions of the Act, the early retirement formula which is to apply to the small group of contributors who are still active members of the scheme but are not entitled to receive the benefits under the enhanced early retirement formula introduced under the *Superannuation (Scheme Revision) Amendment Act 1992*. The group referred to are the employees of the Australian National Railways Commission who are still contributing to the State Scheme. The formula being inserted into the Act is a simplified version of the old formula that applies to this group of employees.

The Bill also seeks to amend the *Superannuation Act* and a similar provision in the *Superannuation (Benefit Scheme) Act* to clarify the position that since both these Acts deal with the incorporated productivity superannuation benefit, no employer covered by these Acts can be bound by any award provision dealing with award superannuation.

A casual vacancy on the Superannuation Board or the Investment Trust can occur for example where a member dies or is forced to retire due to ill health. Where the person is an elected member, there is currently no option to fill the casual vacancy other than to have an election. Obviously the calling of an addition election is quite expensive and accordingly the Government believes it would be more appropriate to appoint a person to fill the vacancy until the next election is due. The Bill therefore proposes a facility for the Governor to appoint a contributor's representative where a casual vacancy occurs in an elected position where an election is due to be held within 12 months.

I now turn to the new provisions proposed in this Bill.

The Bill introduces a new lump sum benefit which is payable to contributors who, for medical reasons cannot continue with their current public sector job, but are medically assessed as having an incapacity for all kinds of work of less than 60 per cent of total incapacity or their incapacity is unlikely to be permanent. In other words it is proposed to introduce a partial disablement benefits provision into both the lump sum scheme and the pension scheme. Most schemes in the private sector have benefits for persons partially disabled and the Police Superannuation Scheme introduced partial disablement benefits in 1990. The benefit that will be paid under these new provisions will be a lump sum based on the contributor's accrued benefit calculated to the date of cessation of service. The new benefit structure will ensure that the insurance benefit based on future service until retirement age is not paid to a contributor who has been medically assessed as being able to work in other occupations or fields of employment.

The leave without pay provisions under the Act are being modified under this Bill to prevent some individuals from receiving unintended benefits. For example, under the present legislation some individuals are receiving a very high level of insurance cover for death and invalidity without making actual employee contributions to the scheme. This situation occurs in some instances notwithstanding the fact that the contributor had made a commitment to make such contributions when seeking approval for leave without pay. It is also proposed to tighten the provisions so that persons who take leave in excess of 12 months can only continue to contribute during the extended period of leave without pay where the costs of the full accruing liability are paid to the Treasurer. Such an amendment will prevent contributors from "double dipping" in employer benefits when working for another employer during the period of leave, and also increasing the liability on the State's taxpayers when not being actively engaged in employment by the State.

In order to comply with Commonwealth standards, the Act is also proposed to be amended to make it quite clear that a contributor or beneficiary who believes he or she has been unfairly dealt with by a Board decision, can appeal to the Board for a review of that decision.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides that the Act (except for clause 14*(i)*) will come into operation on proclamation. The effect of clause 14*(i)* is to enable a former employee of the Australian National Railways Commission who resigns to take up employment with the National Rail Corporation to preserve his or her benefits. The provision will come into operation retrospectively from the date on which the National Rail Corporation commenced operations.

Clause 3: Amendment of s. 4—Interpretation

Paragraph *(a)* amends section 6(4) of the principal Act to make it clear that a contributor whose employment terminates because of incompetence will be entitled to benefits applicable on retirement or resignation. Subsections (8), (9) and (10) inserted by paragraph *(b)* deal with the problem that arises when a contributor who is on leave without pay fails to pay his or her contributions. This problem does not arise in relation to contributors in receipt of a salary because contributions are deducted before the salary is paid. The penalty for failure to pay on time is that the contributor will be regarded as a non-active contributor and as a consequence will lose the insurance component of benefits under the Act until his or her contributions are brought up to date.

Clause 4: The Board's Membership

Clause 5: The Trust's Membership

Clauses 4 and 5 amend sections 8 and 13 respectively to enable a casual vacancy in the office of an elected member of the Board or the Trust to be filled by a person appointed by the Governor. Subsection (5) of both sections provides that the appointment can only be for the balance of the original term.

Clause 6: Amendment of s. 19—Investment of the Fund

Clause 6 replaces section 19(3) of the *Superannuation Act 1988* with two new subsections. These subsections will enable the Minister to authorise a class of investments by the South Australian Superannuation Fund Investment Trust and to vary or revoke such an authorisation.

Clause 7: Amendment of s. 23—Contribution rates

Clause 7 makes two amendments to the provisions of section 23 allowing contributors on leave without pay to contribute to the Scheme. The first is a requirement that the Minister be satisfied with arrangements for reimbursement to the Government of the cost of benefits in respect of the period of leave without pay and the second (subsection (6a)) is designed to prevent circumvention on the restrictions limiting contribution while on leave without pay by people who take leave without pay for a series of periods of 12 months or less connected by periods of paid leave.

Clause 8: Amendment of s. 28—Resignation and preservation of benefits

Clause 8 amends section 28 to provide that the amount payable under subsection (1d) attracts interest instead of being adjusted to reflect changes in the Consumer Price Index.

Clause 9: Amendment of s. 31—Termination of employment on invalidity

Clause 9 amends section 31 of the principal Act by reducing the invalidity benefit for a contributor whose employment is terminated on the ground of invalidity but whose incapacity for work is assessed by the Board as being less than 60 per cent of total incapacity.

Clause 10: Amendment of s. 34—Retirement

Clause 10 amends section 34 of the principal Act. Paragraph *(a)* amends the definition of "B" in subsection (2) to make it clear that "B" does not include a period when the contributor was not an active contributor. New subsection (5) added by paragraph *(b)* limits the amount of retirement pensions to 75 per cent of final salary. Subsection (6) sets out the circumstances in which an old scheme contributor will be taken to have retired.

Clause 11: Amendment of s. 35—Retrenchment

Clause 11 amends section 35 of the principal Act. A contributor to the pension scheme who is retrenched but who is under 45 years of age or has been a contributor for less than five years is entitled to a reduced benefit which may be less than the benefit to which he or

she would have been entitled to on resignation. This amendment enables such a contributor to elect to receive benefits as though he or she had resigned in these circumstances.

Clause 12: Amendment of s. 37—Invalidity

Clause 12 amends section 37 of the principal Act to reduce the benefit payable in the pension scheme to a contributor whose employment is terminated on account of invalidity and whose incapacity for work is assessed at less than 60 per cent of total incapacity. The reduced benefit may be less than the benefit that the contributor would have received if he or she had resigned. The Bill inserts new subsection (3c) into section 37 to give the contributor the option of electing benefits on resignation in these circumstances.

Clause 13: Amendment of s. 38—Death of contributor

Clause 13 amends section 38 of the principal Act. At the moment benefits for the spouse and children of a contributor whose employment is terminated by death and who has not reached the age of retirement are based on full contribution points credited to the contributor up to the age of retirement. This is not appropriate if the contributor has been employed part time during part or all of his or her period of employment. The new provision inserted by this clause reduces the number of contribution points to be credited in respect of future years of service where the contributor had been employed on a part time basis in a way that mirrors the basis on which contribution points are extrapolated under section 24(4).

Clause 14: Amendment of s. 39—Resignation and preservation of benefits

Clause 14 amends section 39 of the principal Act. Paragraph *(a)* makes it clear that the voluntary termination of employment by a contributor before 55 is to be regarded as resignation. This ties in with earlier amendments that provide that voluntary termination of employment after 55 is to be regarded as retirement. Paragraph *(b)* limits the value of "M" in the formula in subsection (1d)*(a)* to the number of months of the contribution period occurring before 1 July 1992. Paragraphs *(c)* and *(d)* provide for interest to be paid on the amount referred to in subsection (1d)*(b)* instead of that amount being adjusted to reflect changes in the Consumer Price Index. Paragraph *(e)* rectifies an error in subsection (4). Paragraph *(f)* makes the technical adjustment in relation to subsection (7) already referred to. Paragraph *(g)* is consequential. Paragraph *(h)* makes subsection (8c) subject to other provisions of the Act—in particular clause 15 of schedule 1 and clause 15a of that schedule to be inserted by clause 20 of the Bill. Paragraph *(i)—see the notes to clause 2*.

Clause 15: Amendment of s. 39a—Resignation or retirement pursuant to a voluntary separation package

Clause 15 amends section 39a of the principal Act. This section was originally inserted on the basis that a contributor was able to resign from employment up to the age of retirement. Earlier amendments made by the Bill make it clear that voluntary termination of employment by a contributor after 55 is to be regarded as retirement. The amendments to section 39a are consequential on this change.

Clause 16: Amendment of s. 43a—Percentage of pension, etc., to be charged against contribution account

Clause 16 adds a subsection to section 43a to remove any doubt that different proportions of a pension can be charged against a contributor's contribution account in respect of different periods during which the pension is payable.

Clause 17: Amendment of s. 43b—Exclusion of benefits under awards, etc.

Clause 17 amends section 43b of the principal Act by inserting a new subsection (2) which prevents an award operating retrospectively to provide additional benefits to those included from 1 July 1992 by the *Superannuation (Scheme Revision) Amendment Act 1992*.

Clause 18: Amendment of s. 44—Review of the Board's decision

Clause 18 amends section 44 of the principal Act to allow a person who is dissatisfied with a decision of the Board to apply to the Board for a review of the decision.

Clause 19: Amendment of s. 45—Effect of workers compensation, etc., on pensions

Clause 19 is consequential on an amendment to the regulations under the principal Act which will allow a retrenchment pensioner to commute part of the pension on attaining the age of 55 years instead of having to wait until 60. Section 45 provides for reduction of pensions where workers compensation or other income is received before the age of 60. Section 45(1)*(d)* compares the aggregate of the pension and other income with the contributor's notional pension and it is important that the amount of the pension before commutation is used in this comparison.

Clause 20: Amendment of schedule 1—Transitional provisions

Clause 20 amends schedule 1 of the principal Act. Paragraphs *(a)*, *(b)* and *(c)* insert a new formula and definitions in clause 6 of the schedule. Paragraph *(d)* is consequential. Clause 15(3) inserted by paragraph *(e)* underlines the fact that when benefits under the PSESS scheme are paid into an account in the name of the contributor under section 28 of the *Superannuation (Benefit Scheme) Act 1992*, the contributor will have received those benefits. Paragraph *(f)* inserts a new early retirement formula for contributors who resigned and preserved their benefits before 1 July 1992 and for contributors referred to in clause 15(1) who are old scheme contributors and who retire early.

Clause 21: Amendment of Superannuation (Benefit Scheme) Act 1992

Clause 21 amends section 19 of the *Superannuation (Benefit Scheme) Act 1992* for the same reasons as clause 17 amends section 43b of the *Superannuation Act 1988*.

The Hon. BARBARA WIESE secured the adjournment of the debate.

CROWN LANDS (LIABILITY OF THE CROWN) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The purpose of this Bill is to limit the liability of the Crown in relation to unoccupied Crown land.

Land in South Australia falls into three broad categories: land alienated from the Crown in fee simple, land subject to Crown leases (perpetual, pastoral, irrigation and miscellaneous) and unalienated Crown land. Unalienated land is made up largely of land for which Western culture has little use. It forms a very large proportion of the land mass of South Australia and it is mostly unoccupied. Because of its size and the fact that it is unoccupied it is not possible for anyone, including the Government, to know of the dangers waiting to trap the unwary visitor. Even when the dangers are known there is no effective way of protecting people in remote areas. Employing staff to patrol danger spots is prohibitively expensive. Fencing is also too expensive and impractical for other reasons. Many of the dangers in remote areas are caused by the use that people make of the land. Trail bike riding is a good example. If an area of bike trails is fenced off trail bike riders are likely to look for another area. The other weakness of fencing is that it is easily destroyed by bolt or wire cutters or by other means. Warning signs are also of little use because of a minority who are prepared to remove or deface them.

The Bill before the House limits the liability of the Crown in respect of injury, damage or loss occurring on or emanating from unoccupied Crown land. The effect of the Bill is that the Crown is not liable in respect of a naturally occurring danger or a dangerous situation created by someone else. The Crown will remain liable however for any danger created or contributed to by the Crown.

The limitation of liability provided by the Bill only applies in respect of unoccupied Crown land which the Bill defines to be land that is not used by the Crown for any purpose. The Crown will continue to be liable for failure to take reasonable care to protect people from dangers on land that it uses. For example the Crown will be under the normal duty of care to warn members of the public of a slippery floor in a toilet block in a national park or to lay out walking trails in safe areas or with adequate safety measures.

The Bill recognises that although technically the Crown has control of unalienated Crown land simply because the land has not been alienated to anyone the Crown does not have control of that land in a practical sense because of its size and remoteness. Under the new provision to be inserted into the *Crown Lands Act 1929* by the Bill members of the public who venture onto unalienated Crown land are responsible for their own safety and cannot expect the Government to have been there before them to identify and protect them against every danger.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Insertion of s. 271f—Liability of Crown in relation to Crown lands

Clause 2 inserts new section 271f into the principal Act. Subsection (1) limits the liability of the Crown on unoccupied Crown land to injury, damage or loss caused by the Crown or by an agent or instrumentality of the Crown or by an officer or employee of the Crown (see the definition of "the Crown" in subsection (2)). The definition of "Crown land" excludes alienated land from the definition (see paragraphs *(a)*, *(b)* and *(c)*) but includes reserves under the *National Parks and Wildlife Act 1972* and wilderness protection areas and zones under the *Wilderness Protection Act 1992* (paragraph *(b)*). The reason is that although reserves, areas and zones are constituted principally of unalienated land they may include land alienated to a Minister, body or other person. The effect of the definition of "unoccupied Crown land" is that land will be taken to be occupied if it is being used by the Crown for any purpose. Subsection (3) prevents an argument being raised that the Crown is using land simply because it has leased, or granted a licence or easement over, the land or has dedicated the land for a particular purpose or constituted it as a reserve, area or zone referred to in subsection (3)*(d)*.

The Hon. BARBARA WIESE secured the adjournment of the debate.

AGRICULTURAL AND VETERINARY CHEMICALS (SOUTH AUSTRALIA) BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Government is pleased to be supporting the *Agricultural and Veterinary Chemicals (South Australia) Bill 1994*. This Bill embodies three years of work and negotiation by State and Commonwealth officers throughout Australia, and is the culmination of a vision held by industry and Government alike. That vision is of a single, national system for evaluating and registering agricultural and veterinary chemicals before they are sold for use in any State or Territory of Australia.

The National Registration Scheme, as it is known, will replace the separate schemes for evaluating and registering chemicals existing in each individual State. These State schemes emerged during the late 1930's to mid-1950's. The purpose in those days was primarily to protect farmers from those unscrupulous enough to try to sell ineffective products by claiming them to be remedies for any number of infestations or diseases.

The need to ensure that the public is not deceived about the chemicals available on the market has not changed. However, the technology, use and role of agricultural and veterinary chemicals is vastly different from those early days. Agricultural and veterinary chemicals such as pesticides and herbicides, are used in homes and home gardens, as well as in commercial primary production. The technology going into the development and manufacture of chemical products is increasingly sophisticated and costly. And we now have a greater understanding of the way chemicals work and their potential impact on human beings, animals, plants and the environment. For all these reasons, the whole community has an interest in the chemicals available for use around homes and in the production of food and fibre. And the community, quite rightly, demand a high level of scrutiny before chemicals products are released onto the market.

That level of scrutiny is realistically beyond the resources and expertise of any one organisation and, for all practical purposes, possession of the necessary resources and expertise is beyond the means of any one State. Departments of Primary Industries, who have generally been responsible for administering each State's registration scheme for agricultural and veterinary chemicals, have been co-operating with other State and Commonwealth agencies for over 20 years in order to share resources and/or gain access to expertise. Furthermore, the development and marketing of chemical products by the chemical industry has little to do with State boundaries, or even national boundaries. All this goes to making a national system for the evaluation of agricultural and veterinary chemicals a logical and practical step to take.

The Bill before us is almost identical to the Bills that will be considered by the Parliaments and Legislatures of each State and the Northern Territory. The National Registration Scheme will be created by a complementary adoptive system of State and Commonwealth laws. The Commonwealth has agreed to legislate to create the Agricultural and Veterinary Chemicals Code, known as the Agvet Code, which contains the detailed provision for the evaluation, registration and sale of agricultural and veterinary chemicals. Each State and the Northern Territory must legislate to adopt the Agvet Code, and so make the scheme a national one. The Commonwealth Government have created an independent statutory authority, known as the National Registration Authority or NRA, to administer the National Registration Scheme. The Commonwealth Parliament has already considered and passed the *Agricultural and Veterinary Chemicals Code Act 1994* containing the Agvet Code. The purpose of the Bill is to adopt the Agvet Code and so make South Australia a party to the National Registration Scheme.

It is not appropriate to list all the details of the National Registration Scheme, however, the important features of the Scheme should be noted. The National Registration Scheme will evaluate, register and control the sale of agricultural and veterinary chemical products, and the active constituents that go into formulating those products. In so doing, the National Registration Scheme maintains the controls that already exist in South Australia at the same time as it contains several significant new features. As far as evaluating chemicals is concerned, the Agvet Code explicitly specifies that regard must be had to human health, animal and plant health, the efficacy of the product, impact on the environment, and implications for international trade. The Scheme will incorporate a formal program for reviewing old chemicals to ensure they meet contemporary safety and performance standards, and will be able to de-register those products which do not meet those standards. In fairness to the research and development costs associated with providing the data for product reviews, the National Registration Scheme contains a mechanism for enabling the original provider of data to be compensated by other manufacturers who wish to use that data to support their own products. The NRA will have the ability to issue notices recalling stocks of unregistered products, products which are improperly formulated, improperly labelled, or contaminated, and any product which has been found to be too dangerous to public health or a risk to international trade. Under certain circumstances, the NRA will also be able to issue permits for the use of chemical products in ways which would normally be an offence. The sorts of permits envisaged are, for example, those allowing persons to conduct research trials using products which are unregistered, or allowing the use of a product in a way which is not on the product label.

It only remains to be said of the National Registration Scheme that our intention is that no one will be disadvantaged by the changeover from the State registration scheme to the new National Registration Scheme. Companies with chemical products registered under the current State laws will have their products transferred to the National Registration Scheme with full registration status. Primary producers and householders can expect the products they rely on to continue to be available.

In addition, South Australia (and all other States and Territories) will continue to be involved with the NRA and the National Registration Scheme. The use of chemicals after they are sold will be a matter for State law, and several mechanisms will exist to maintain communication between States and the NRA. The most important of these, in terms of day-to-day operations, are the officers in each State and Territory who have been designated as Chemicals Co-ordinators, and the network that these Co-ordinators will form for advising the NRA on the practical aspects of the Scheme's operation.

Before moving on to describe specific aspects of the Bill, it is worth pointing out the high degree of support that exists for the National Registration Scheme. Firstly, it is acknowledged that much of the work in developing the National Registration Scheme took place under the previous Government. The previous Government, like the new Liberal Government, recognised the benefits to this State of participating in a national scheme for evaluating and registering agricultural and veterinary chemicals. Secondly, the chemical industry is fully supportive of the National Registration Scheme. This is an important point, since it is the chemical industry

that will be subject to the regulation contained in the Agvet Code and who will, within 5 years, be fully funding the cost of running the National Registration Scheme. Thirdly, the Scheme is fully supported by the primary production sector, who are the major users of agricultural and veterinary chemicals. Environmental and public advocacy groups did express some criticisms that the Agvet Code did not go far enough in some areas. However, the Commonwealth Senate Standing Committee on Rural and Regional Affairs, to which these criticisms were presented concluded that the Bills did not need amendment. A harmonised scheme of this significance is an achievement in itself; it already embodies the most up-to-date knowledge on the management of agricultural and veterinary chemicals, compared to the schemes of some States. Nevertheless, all parties to the National Registration Scheme recognise that adjustment and fine-tuning may need to take place after the Scheme has been running for a while. In fact, the NRA has already undertaken to review the Scheme's operations in about 18 months time, with particular regard to public access to information, cost recovery, third party appeals, and control of use after sale. Finally, the National Registration Scheme obviously has the support of all the State and Commonwealth agencies involved in its conception and development, evidenced by the fact that all States will be legislating to adopt the Scheme. It should also be noted that the *Agricultural and Veterinary Chemicals Code Act 1994* passed through both Houses of the Commonwealth Parliament without amendment.

Turning to the provisions of the Bill, it is worth reiterating that the Bill is in most part a model Bill which will be used by all States and Territories for implementing the National Registration Scheme, and that it follows a complementary adoptive format. Clauses 5 and 6 of the Bill adopt the Agvet Code and its associated Agvet Regulations, as established by the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994*, as laws of South Australia. Much of the rest of the Bill is designed to ensure that, although each State and the Northern Territory has separately legislated to adopt the Agvet Code into its own laws, the Code nevertheless operates as though it were a single national Code administered by the NRA.

This will be accomplished, firstly, by interpreting the Agvet Code and Regulations of South Australia (and every other State and Territory) using the Commonwealth *Acts Interpretation Act 1901* so that a uniform interpretation applies across all States, and by providing for the review of decisions and for public access to information to be governed by Commonwealth administrative laws such as the *Administrative Appeals Tribunal Act 1975* and the *Freedom of Information Act 1982*, so that these matters are also dealt with uniformly across the nation. These are the matters dealt with in clauses 7 and 8, and in Parts 3 and 5 of the Bill.

Secondly, administration of the Agvet Code is delegated to the NRA. In other words, although the Agvet Code has become a law of South Australia, the NRA will administer those laws along with the Agvet Code adopted under the laws of each other State and Territory. This is accomplished in Part 7 of the Bill. It is also logical that, with a Commonwealth body administering the Code, and a need to ensure the Code operates uniformly across all States, that Part 10 of the Bill gives the Commonwealth Director of Public Prosecutions the ability to carry out any prosecutions under the Code. Similarly, administration of the Agvet Code as a single national scheme will be enhanced by ensuring that civil or criminal matters arising out of the Agvet Code can be heard by the court best placed to deal with the matter. Accordingly Part 6 of the Bill ensures that the jurisdiction of State courts, and cross-vesting arrangements that already exist, are not diminished, and that the Federal Court is empowered to deal with civil matters.

Although the administration of the National Registration Scheme is in the hands of the NRA, it is still the case that State officers may be best placed to deal with certain aspects of the Scheme's operations. Clause 28 enables State officers to become inspectors for this purpose.

Chemical products currently registered in South Australia under either the *Stock Medicines Act 1939* or *Agricultural Chemicals Act 1955* will transfer to the National Registration Scheme, and the National Registration Scheme will then be responsible for the registration of those chemicals. Clause 30 of the Bill enables the Department of Primary Industries, where necessary, to release to the NRA documents or samples which have been received and held by the Department in connection with registering chemical products in South Australia.

As previously mentioned, the National Registration Scheme includes a mechanism for issuing permits relating to the use of chemical products. The use of chemicals is a matter for State law. However, there are obvious benefits in having the body which registers chemical products, and therefore possesses considerable information on those products, also able to consider permits for using those chemicals. The purpose of section 33 of the Bill is to enable certain State laws to be designated as 'eligible laws' and so allow the NRA to issue permits where appropriate.

A particularly noteworthy aspect of the Bill is the arrangements for the safeguarding of the State's existing health and safety laws from inconsistency with, or any other unintended interference by, the Agvet Code or Regulations. Acts such as the *Controlled Substances Act 1984*, *Dangerous Substances Act 1979* and *Occupational Safety, Health and Welfare Act 1986* contain provisions relating to the possession, use, handling and storage of various drugs, poisons and chemicals, and at some time in the future there may arise a point of overlap with the Agvet Code. This is the purpose of clause 36 of the Bill. This clause allows for regulations to be made, where necessary, which prevent provisions of the Agvet Code from over-riding or otherwise disrupting the laws of this State. There may also arise emergency situations where the use of a chemical is a necessary part of managing the emergency and where a rapid local response is required. For example, last year's mouse plague necessitated the use of strychnine baits, under strictly controlled conditions, to prevent huge damage to crops and agricultural lands. The State must be able to respond quickly to these situations as they arise.

The fact is also that the Agvet Code and Regulations are contained in Commonwealth law and administered by a Commonwealth body. Whilst various mechanisms will exist to ensure that all parties to the National Registration Scheme are involved in policy and decision making on issues of importance, clause 36 also enables South Australia to take action if the Agvet Code or Regulations were ever considered to prejudice the policies of this State, as contained in the laws of this Parliament. I emphasise that all these situations are contingencies; we do not expect them to occur and, especially in the case of emergencies, we hope they do not occur. However, it would be irresponsible to set up a situation in which the State could not act.

Finally, the Schedule to the Bill contains consequential amendments to the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Each of these Acts is to be amended to make it clear that, where the evaluation, registration and supply of an agricultural or veterinary chemical product is dealt with by the National Registration Scheme, the sale of that product is exempt from further regulation under the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Nevertheless, where a chemical product is not covered by the National Registration Scheme, for example in relation to its use, the provisions of the existing laws will apply.

The *Agricultural Chemicals Act* is also to be amended to allow the registration period which would normally end on 30 June 1994 to be extended if necessary. The purpose of this clause is to prevent the need to renew the registration of agricultural chemicals in South Australia should the National Registration Scheme not commence exactly on 1 July 1994 as planned. Obviously, the exercise of renewing the registration of agricultural chemicals when the national scheme is imminent would be an unwarranted inconvenience to all concerned. However, in the unlikely event that the commencement of the National Registration Scheme was going to be delayed for some time, we may need to renew registrations. In that case, the Government would review fees payable and, if appropriate, vary the relevant fee regulations. The registration of stock medicines under the *Stock Medicines Act* do not expire until June 1995. No extension is considered necessary since the National Registration Scheme should have commenced by then.

In summary, it is expected that this measure will lead to advantages for all interested parties—for the chemical industry through the introduction of an National Registration Scheme; for the primary production sector through greater scrutiny and information on chemical products; for the environmental protection sector through greater emphasis on proper assessment of chemical products; and for the public sector through a more efficient and rational administration system.

The Government is pleased to support and promote this Bill.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the citation of the proposed Act.

Clause 2: Commencement

This clause provides for the proposed Act to commence on a proclaimed day (or days).

Clause 3: Definitions

This clause contains definitions of expressions used in the Bill.

Clause 4: Jervis Bay Territory

This clause provides that the Jervis Bay Territory is to be taken to be part of the Australian Capital Territory for the purposes of the Agvet scheme.

Clause 5: Application of Agvet Code in this jurisdiction

This clause applies the Agricultural and Veterinary Chemicals Code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth, as in force for the time being, as a law of the State. The Code, as applying, will be cited as the Agvet Code of South Australia.

Clause 6: Application of Agvet Regulations in this jurisdiction

This clause applies the regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth as regulations in force for the purposes of the Agvet Code of South Australia.

Clause 7: Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

This clause provides that the *Acts Interpretation Act 1901* of the Commonwealth will apply as a law of the State for the purposes of the Agvet Code and Agvet Regulations. The State *Acts Interpretation Act 1915* will not apply. This approach will assist in the uniform interpretation of the Code throughout Australia.

Clause 8: Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

This clause applies certain Commonwealth laws with respect to offences against the Agvet Code or Agvet Regulations.

Clause 9: References to Agvet Codes and Agvet Regulations of other jurisdictions

This clause recognises references to the Agvet Code and Regulations of other jurisdictions.

Clause 10: References to Agvet Codes and Agvet Regulations

The object of this clause is to help to ensure that the Agvet Code and Regulations of this State, together with those of other jurisdictions, operate, so far as possible, as if they constituted a single national law applying throughout Australia. The Agvet laws of the other jurisdictions will have the same provision. The interlocking of these provisions will enable (in most instances) persons and companies to rely on a uniform scheme applying across Australia.

Clause 11: Agvet Code of this jurisdiction

The Agvet laws are to bind the Crown in all capacities.

Clause 12: Agvet Code of other jurisdictions

The Crown in right of South Australia will be bound by the Agvet Code of the other jurisdictions.

Clause 13: Crown not liable to prosecution

This clause provides that nothing in these laws renders the Crown in any capacity liable to be prosecuted for an offence.

Clause 14: This Part overrides the prerogative

This clause makes it clear that where the Agvet laws of another jurisdiction bind the Crown in right of this State by virtue of these provisions, those laws override any prerogative right or privilege of the Crown.

Clause 15: Object

It is intended that the Agvet laws of each jurisdiction will be administered on a uniform basis.

Clause 16: Application of Commonwealth administrative laws in relation to applicable provisions

This clause applies the Commonwealth administrative laws as laws of this State in relation to anything arising in respect of an applicable provision of this State (as defined). For the purposes of the law of this State, anything arising under an applicable provision of this State is taken to arise under Commonwealth law, except as prescribed by the regulations.

Clause 17: Functions and powers conferred on Commonwealth officers and authorities

This clause confers the appropriate functions and powers on Commonwealth officers or authorities in connection with the application of Commonwealth administrative laws.

Clause 18: Reference in Commonwealth administrative law to a provision of another law

This is a technical provision that deals with how references in the applied Commonwealth laws to laws of the Commonwealth are to be construed.

Clause 19: Jurisdiction of Federal Court

The Federal Court is to have jurisdiction with respect to all civil matters arising under the applicable provisions. However, this vesting of jurisdiction will not affect the jurisdiction of State courts.

Clause 20: Exercise of jurisdiction under cross-vesting provisions

The cross-vesting laws will still apply.

Clause 21: Conferral of functions and powers on NRA

This clause formally confers on the NRA the powers conferred on it under the Agvet Code. Necessary or convenient incidental powers are also expressly conferred by this clause.

Clause 22: Agreements and arrangements

The State Minister will be empowered to enter into agreements or arrangements with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State.

Clause 23: Conferral of other functions and powers for purposes of law in this jurisdiction

The NRA is also to be expressly conferred with the power to do acts in this State in the exercise of functions conferred by the Agvet laws of other jurisdictions.

Clause 24: Commonwealth Minister may give directions in exceptional circumstances

The Commonwealth Minister will be able to give directions to the NRA in relation to functions and powers conferred on it under this national scheme.

Clause 25: Orders

Various orders are to apply in this State as if they were regulations of this jurisdiction.

Clause 26: Manufacturing principles

Various manufacturing principles under the Commonwealth legislation are to apply for the purposes of the Code.

Clause 27: Delegation

The Commonwealth Minister's power of delegation under Commonwealth law is expressed to extend to the delegation of powers conferred on the Minister under these laws.

Clause 28: Conferral of powers on State officers

This clause will allow the conferral of the powers and functions of an inspector on a State officer.

Clause 29: Application of fees and taxes

Fees, taxes and other money payable under the scheme must be paid to the Commonwealth.

Clause 30: Documents or substances held by previous registering authority may be given to NRA

This clause will facilitate the transfer of documents and substances from State authorities to the NRA on the commencement of the uniform scheme.

Clause 31: Exemptions from liability for damages

It is important to protect State authorities and agencies from potential liabilities arising in relation to the administration and operation of the scheme.

Clause 32: Regulations

The Governor will be able to make regulations for the purposes of this measure.

Clause 33: Eligible laws

This is a technical provision relating to the permit system under the Code.

Clause 34: Fees (including taxes)

This clause imposes the fees prescribed by the regulations.

Clause 35: Conferral of functions on Commonwealth Director of Public Prosecutions

The Commonwealth Director of Public Prosecutions will be empowered to initiate and conduct prosecutions for the purposes of the scheme.

Clause 36: Relationship with other State laws

This clause will ensure that action can be taken to give any State law precedence over the Code, or to modify the effect of the Code if necessary.

Schedule

The schedule makes various consequential amendments to the *Agricultural Chemicals Act 1955*, the *Stock Foods Act 1941* and the *Stock Medicines Act 1939*.

The Hon. BARBARA WIESE secured the adjournment of the debate.

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

A quorum having been formed:

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (ADMINISTRATION) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 667.)

The Hon. M.J. ELLIOTT: I will speak briefly to this piece of legislation because when I spoke to the WorkCover Corporation Bill I spoke to all three Bills at that time. This Bill is consequential upon the establishment of the WorkCover Corporation to take over the administration of the principal Act and the renaming of the Department for Industrial Affairs. As I said in my second reading contribution on the WorkCover Corporation Bill, I believe prevention should be the paramount focus in this legislative package, this Bill being an integral part of that.

The Occupational Health and Safety Commission plays an important role in this process under current legislation and its work so far has laid the groundwork for advancement in employer and employee education. The Government has shown its support by giving an additional $2 million for occupational health and safety to be spent by the WorkCover Corporation on education programs, and I must say I welcome that. I note that the Employers' Chamber has given strong support to this Bill. I support the fact that the Bill retains the separation of occupational health and safety standards development and enforcement from the WorkCover administration, and that is something that the Employers' Chamber and the unions are both very keen to see.

I note that the Liberal Party policy pledged to put the inspectorate functions of the Department of Labour under the control of the WorkCover Corporation. That is one broken election promise but it is one that most people would appear to support. In fact, the Liberal Party policy had no support at all from any sector to which I spoke in this regard, and so the Department for Industrial Affairs, having an inspectorate role, appears now to have widespread support.

I am keen to ensure that the advisory committee has the capacity to comment publicly on matters within its jurisdiction. I will be moving amendments to aid this process. I want to ensure that the advisory committee under this legislation, as with the advisory committee under the workers compensation and rehabilitation legislation, is not a token committee but has a real and worthwhile role to play. I support the Government's plan to bring the occupational health and safety committee under WorkCover, in line with its pre-election policy, and note again that when the original legislation went through the Parliament in 1986 I said that I believed that the two pieces of legislation should have been together under the one umbrella—it should have been one piece of legislation. The difference we have now is that, while we have brought them together, with two pieces of legislation we have created three rather than bringing the two together and having one piece of legislation.

I am also aware that, despite the fact that I support that and have believed it to be the case for a long time, a number of people are very concerned about the ramifications of it. Certainly the UTLC has raised concerns, as have many other people. The UTLC has expressed concern about the fact that the occupational health and safety considerations may be subsumed by other workers compensation considerations. I am hopeful that people are now starting to realise, rather belatedly, that the one way of getting workers compensation costs down is to reduce the accident rate. I gave a number of examples during my second reading contribution on the corporation Bill but the classic example appears to be in the State of Oregon. During the second reading debate I talked about the reduction in the accident rate in Oregon which, over a three to four year period, went down by 37 per cent and the death rate by about 30 per cent.

Subsequent to my contribution I received more recent information from Oregon, and it is worth noting that the workers compensation costs in that State over the past two years have dropped by 30 per cent. The primary responsibility for that is being sheeted home to occupational health and safety. It underlines again that we are having all sorts of vigorous debates about various aspects of workers compensation, but at the end of the day, if we are talking about real savings, they will occur in the area of safety. Slowly but surely that is being acknowledged by the Government and by some employer circles, but by nowhere near enough. I am sure that that will change if we have a true commitment to education programs, penalties and the like for those who do not do the right thing.

I certainly received a significant number of responses from occupational health and safety representatives who were greatly concerned about the ramifications of the change, but I believe that, as long as we get the legislation right, their concerns may prove to be ill-founded. I am certainly allowing the legislation to proceed on that basis. Some of my attempts to alleviate those concerns relate to amendments I have put in relating to the independence of the advisory committee and the way it works, by ensuring that the committee is tripartite (as promised within Liberal Party policy but not delivered in the legislation) and a general increase in the independence of the Minister.

I also propose to add subsections to provide guidance to the committee on carrying out its functions. The Democrats support the second reading of this legislation. We have a number of amendments, many of which are similar to amendments moved during debate on the Workers Rehabilitation and Compensation (Administration) Bill. There are similar provisions, particularly in relation to advisory committees and the way they function, and a few others. However, I will leave discussion of those to the Committee stage.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their contributions. As the Hon. Mr Elliott said, a number of amendments are to be considered. If matters need further elaboration, I think it is better to address those issues in Committee.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, lines 15 to 18—Strike out the clause and insert the following:

Commencement of this Act.

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the WorkCover Corporation Act 1994 and the Workers Rehabilitation and Compensation (Administration) Amendment Act 1994; and

(b) all provisions of this Act (except section 24(d)) must be brought into operation simultaneously; and
(c) section 24(d) will come into operation independently of proclamation on 1 July 1994.

This amendment is similar to amendments that I moved in the two companion Bills, so I will not argue it further.

The Hon. K.T. GRIFFIN: The amendment is consistent with the other two Bills, and we raised no objection to those. Again, we raise no objection to this amendment.

Clause negatived; new clause inserted.

Clause 3 passed.

Clause 4—'Interpretation.'

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

Page 2, lines 6 and 7—Leave out paragraph (c) and insert—
(c) in any other case—a public service employee authorised by the Minister to exercise the powers of the designated person under this Act;.

I seek to ensure that the people who exercise the powers are public servants. In particular, I expect them to be employees of the Department of Industrial Affairs. We do not want this role to be carried out by employees of WorkCover, and this amendment makes that plain. I would not like to believe that the powers might be designated to any sort of private operator, in some sense, certainly not without such a matter coming before the Parliament first.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. I am not convinced by the Hon. Mr Elliott that WorkCover employees should not be included in the definition. I see no reason why that should not occur in some instances. Because the description 'public servant' is limited and certainly would not include employees of WorkCover, it seems to me that the amendment places unnecessary restrictions on the ability of the Minister to appoint a designated person.

Amendment carried.

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

Page 2, line 8—Leave out paragraph (e) and insert—
(e) by striking out paragraph (b) of the definition of 'director' in subsection (1) (and the word 'or' immediately preceding that paragraph);.

The Liberals propose to delete the definition of 'director' and to amend section 53 as proposed in clause 15. This would provide scope for the politicisation of the administration of our health and safety laws as well as the privatisation of enforcement activities. The ALP is opposed to this and believes that the administration of the legislation should continue to be the responsibility of the relevant Government agencies rather than at the whim of the Minister. This amendment complements those proposed by the Democrats in relation to the definitions of 'designated person' and 'inspector'. Arising from this amendment will be a number of consequential amendments to clauses 12, 15, 26 and 27.

The Hon. K.T. GRIFFIN: This rather puzzles me, because what we have already debated in the previous Bill is that WorkCover will be responsible for the administration of occupational health and safety. The whole thing will be administered by the WorkCover Corporation, so the definition of 'director' is not needed. How the leaving in of paragraph (a) of the definition of 'director' will or will not cause the administration of occupational health and safety to be politicised, I cannot understand.

Perhaps I am missing something. The fact of the matter is that there is always the potential for the chief executive officer of a department to be a political appointment, but that person is generally appointed under specific provisions of the Government Management and Employment Act in the executive service. The person has no responsibility in relation to the administration of this Act, because it will all be with WorkCover.

The Hon. M.J. ELLIOTT: I believe the Hon. Ron Roberts needs to give a further explanation, recognising that this is really only the first of a series of amendments and that this is consequential on later amendments. He needs to give a more detailed argument on what he is seeking to achieve overall by the amendments in relation to the director so that I can decide whether or not to support him.

The Hon. K.T. GRIFFIN: While the Hon. Ron Roberts is considering his position, I make the additional point that certainly the inspectorate will remain with the department, but there is no reason specifically to mention the director in the Act in respect of that limited responsibility of the department. The definition of 'director' which is included in the principal Act and which we are seeking to remove has other connotations in respect of the involvement of the department in occupational health and safety matters. But, apart from the inspectorate, the Occupational Health and Safety Act will be administered by WorkCover Corporation, and that is the body that has the responsibility. So, with respect to the Hon. Mr Roberts, I cannot see why he needs to retain the director of the department in this piece of legislation, because the inspectorate is dealt with already and there is no role or function for the director of the department in the administration of occupational health and safety, apart from the inspectorate, for which this reference is not required.

The Hon. R.R. ROBERTS: As I understand it, my advice is that the definition of 'director' is to remain and that we delete 'or any other person directed by the Minister to exercise the power of the director under this Act'. The view that we are taking is that the powers of the director should not be undermined by giving those powers to somebody else. I think I am getting a thread of what the Minister is saying. However—

The Hon. K.T. Griffin: You do not need 'director' in there in any event.

The Hon. M.J. ELLIOTT: From what I can see from the amendments on file of the Hon. Ron Roberts, the only place where the Director has been given a role is under clause 12, which relates back to section 38 of the principal Act and which concerns powers of entry and inspection. That appears to be the only role that the Director is to carry out. The arguments that the Hon. Ron Roberts will be constructing obviously will be around that. What I want to know is exactly what will be achieved by bringing in the Director for this one role? I do not believe that the Director has been given any other role under the legislation.

The Hon. R.R. ROBERTS: I am advised that the Director has a role in a number of areas: under section 38, as mentioned by the Hon. Mr Elliott; under section 53, delegations; and under section 69, the making of regulations. It is our assertion that he has a role, that he will be mentioned in legislation and that the reason for keeping the Director in the legislation clearly defines who we are talking about in respect of the Director. I commend our amendment to the Committee.

The Hon. K.T. GRIFFIN: The honourable member needs to catch up with the fact that the present Director of the department is a woman. The whole flavour of the Government's Bill is to accommodate the fact that the WorkCover Corporation will be administering: no longer will the department be involved, except in the exercise of responsi-

bilities in relation to the inspectorate. So far as the inspectorate is concerned, there are changes in respect of the appointment of authorised persons from the Director to the Minister, and that is a change which in other areas of the law is quite common. The Minister appoints the authorised person or inspectors, and it is expected that, if the inspectorate should eventually go over to WorkCover, the Minister would be likely to delegate that responsibility to the WorkCover Corporation.

Then there are other statutory powers that are presently exercised by the director, which in some instances will be exercised by WorkCover but in other instances we propose should be exercised by the Minister. There is no problem with that, I submit, because we are in a transitional phase. We are moving away from the original provision of the old chief inspector making particular appointments and having certain statutory responsibilities to the WorkCover Corporation and some of the functions being exercised through the department by the Minister. The Government sees that the scheme of this legislation ought not to be controversial and that it accommodates that transition as well as the differing responsibilities for statutory functions, appointments of inspectors and administration of the occupational health and safety scheme.

The Hon. R.R. ROBERTS: The Attorney-General has just pointed out that, even if this Bill were to pass at the moment, the inspectorate will still be run by the department under the director, and he suggested in his contribution that it may go over at some later date into WorkCover. Our amendment seeks to not give the power to the Minister which, in our submission, allows the Minister to interfere in what are the legitimate functions of an inspectorate. I am anxious to maintain the independence and integrity of the inspectorate and protect it from ministerial interference. It is important that you have the administration and the policy making in one area, but I do believe that the inspectorate ought to be separate.

Whilst the Attorney has just suggested that eventually there will be a transition from the present system of the inspectorate coming under the department possibly to administration under WorkCover, that is something that ought to be dealt with on that occasion. The actual situation today, as I understand it, is that the inspectorate has always maintained an independence from occupational health and safety and from WorkCover, and maintains an independent role. I suggest that the Government's proposition tends to take that independence away and give that control to the Minister.

We have suggested in a number of submissions on this range of Bills our concerns where the Minister comes in and usurps the role of dedicated people. I believe that, because the director obviously still plays a part, sections 38, 53 and 69 need to be there, and I am still anxious to take out paragraph (b)—that is, remove the word 'or' and paragraph (b)—for the reasons outlined about my concerns of political interference by the Minister in the inspectorate.

The Hon. M.J. ELLIOTT: I believe that for as long as the inspectorate remains within the department it seems correct that the director should be holding the role the director currently does. In fact, from all submissions I have had so far I do not think there would be any likelihood of a move or any significant support for a move of the inspectorate out of the department, certainly not into WorkCover, in anything like the foreseeable future. I think it is appropriate that the director does retain that role and we will be supporting this amendment and the consequential amendments.

The Hon. K.T. GRIFFIN: All I can say is that I am disappointed to hear that. I hope that later we will be able to persuade the Hon. Mr Elliott that it is an inappropriate change. In other legislation it is not necessarily directors who appoint authorised persons, and I hope that I will be able to point him to specific legislation which deals with the appointment of inspectors or authorised persons by Ministers rather than by the director of a department. But in the light of his intimation I expect that we will revisit it.

Amendment carried.

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

Page 2, lines 11 and 12—Leave out paragraph (d) and insert—

(d) in any other case—a public service employee authorised by the Minister to exercise the powers of an inspector under this Act;.

It is similar to one that has already been passed.

The Hon. K.T. GRIFFIN: I indicate opposition to it, for the same reasons.

Amendment carried; clause as amended passed.

Clause 5—'Substitution of Part II.'

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

Page 2, lines 29 to 31—Omit subsection (2) and insert—

(2) The Advisory Committee consists of 10 members appointed by the Governor of whom—

(a) one (the presiding member) will be appointed on the Minister's nomination after consultation with associations representing employers and the UTLC; and

(b) three (who must include at least one suitable representative of registered employers and at least one suitable representative of exempt employers under the Workers Rehabilitation and Compensation Act 1986) will be appointed on the Minister's nomination after consultation with associations representing employers; and

(c) three will be appointed on the Minister's nomination after consultation with the UTLC; and

(d) one will be an expert in occupational health and safety appointed on the Minister's nomination after consultation with associations representing employers and the UTLC; and

(e) one will be a representative of the Corporation and, if the Corporation is not responsible for the enforcement of this Act, one will be a representative of the authority responsible for the enforcement of this Act.

This amendment is very similar to an amendment I moved in relation to the advisory committee in the rehabilitation and compensation Bill and, on that basis, I will not prolong the debate now.

The Hon. K.T. GRIFFIN: I indicate opposition to this, as I did on the previous Bill. It is inflexible. It begins to establish a rigidity which is inappropriate to the advisory committee which is, after all, an advisory committee on policy to the Minister and nothing more than that. It has no administrative functions.

Amendment carried.

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

Page 2, lines 32 and 33—Leave out proposed section 7(3).

This amendment is consequential.

Amendment carried.

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

Page 3, lines 12 to 14—Leave out paragraph (c) and insert—

(c) to recommend to the Minister regulations and codes of practice relating to occupational health, safety or welfare, to keep the regulations and codes of practice under review and, where appropriate, make recommendations for their revision.

This amendment is not quite as dramatic as it appears. In fact, the only change is the insertion of the words 'regulations and' before the word 'codes'.

The Hon. K.T. GRIFFIN: The Government agrees to this amendment.

Amendment carried.

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

After line 18—Insert paragraphs as follows:

(da) to keep the administration and enforcement of legislation relevant to occupational health, safety and welfare under review;

(db) to review the role of health and safety representatives;

(dc) to review the provision of services relevant to occupational health, safety and welfare;

(dd) to consult and cooperate with national authorities and the authorities of other States and Territories responsible for the administration of legislation relevant to occupational health, safety and welfare on matters of common interest or concern and promote uniform national standards;

(de) to approve appropriate courses of training in occupational health, safety and welfare.

There are a number of further functions which I believe are the proper role of the advisory committee and I will not debate them further unless there is any particular section that other members want to take further.

The Hon. K.T. GRIFFIN: I indicate opposition to the amendment. There are some aspects that one can live with but I think it confuses the functions of the advisory committee, which is an advisory rather than an operational committee. If one looks at some of the proposals one sees that this committee is 'to consult and cooperate with national authorities'; it is 'to approve appropriate courses' and to cooperate with educational institutions in the provision of approved courses. I would have no difficulty with paragraphs (da), (db) and maybe (dc) if we were pressed, but certainly paragraphs (dd) and (de) are not within the concept of the work that we believe ought to be undertaken by advisory committees which, as I say, are advisory to the Minister on policy issues and are not operational or administrative committees.

The Hon. R.R. ROBERTS: We support this amendment.

Amendment carried.

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

Lines 32 to 34—Leave out paragraph (b).

Basically we believe that the industry impact statements take some time to go through; most of them have been done by the National Occupational Health and Safety Commission, and if we are to have any of these statements they ought to apply only where they are not covered in the Federal legislation.

The Hon. K.T. GRIFFIN: I oppose the amendment. I would have thought that it was quite proper for an advisory committee, which is making a recommendation about a regulation, a code of practice or a standard to at least assess the impact upon industry of the proposed regulation, code of practice or standard. After all, they are making it available for public comment.

There is a consultative process there. Why should not the public and those likely to be affected by it have some idea of what the impact of the regulation, code of practice or standard may be? After all, the regulation, code of practice or the standard may be very detailed and prescriptive. It may deal with things such as hazardous substances, noise and plant—a whole range of issues can be encompassed by that. I would have thought by the nature of the proposal being recommended and the fact that it is out for public comment that it will not be a significantly greater work load for the advisory committee to look at the impact on industry which obviously includes workers and employers of that particular regulation, code of practice or standard. I oppose the amendment.

The Hon. M.J. ELLIOTT: I make a couple of observations. First, an industry impact statement may have been prepared already at a national level. Even if one is prepared, there is the question who should prepare it. I note that the Government is indicating at this stage that it will oppose certain of the functions which I had moved to have inserted and did so on the basis that it was questioning whether this was purely an advisory committee or more than that. I am not quite sure whether it can have it both ways, and when an industry impact statement is deemed necessary whether or not it is the role of the advisory committee or somebody else.

While there is some uncertainty, with the Government having raised it in one context, as to the final role the advisory committee may play, that uncertainty impacts upon this clause and also upon subclause (5) to which I will be moving an amendment later. In fact, I think it is the next amendment coming up. Until this Committee has actually resolved precisely what role the advisory committee is to have, then this question must remain up in the air, and for that reason alone I support the amendment at this stage and will move an amendment to subclause (5).

The Hon. K.T. GRIFFIN: I draw the Hon. Mr Elliott's attention to the fact that it does not say the advisory committee must do all the work but, in its capacity as an adviser, if it is going to make a recommendation for the making of a regulation, code of practice or standard, paragraph (b) provides that it should make the industry impact statement available for public comment. So, it may well have been made at a national level or State level by the bureaucracy. The important thing is to put the whole thing into a context. If it is to make recommendations about regulations, as this Bill envisages it should, it ought to know and be prepared to make available information about the impact on industry.

The Hon. M.J. ELLIOTT: In the absence of a national industry impact statement being available, it then begs the question. The implication at least on my reading of this is that the advisory committee would have the responsibility. There is no indication that the bureaucracy in any other way will produce it. So it appears to me that the implication is quite clearly that it would fall upon the advisory committee to produce one and, as I said, there seems to be some question as to what the role of the advisory committee is. The questions have been raised by the Minister, and this appears to me at least to be going almost outside the ambit of the areas which the Minister was suggesting in an earlier amendment should be covered by the advisory committee. On that basis, as I said before, I do not support the amendment.

I am not saying there should not be industry impact statements but, if they are to exist, I am saying there should be a question as to who takes responsibility for them, and I am not persuaded that they should be the responsibility of the advisory committee and particularly would not be if the committee is to be narrowed down in other areas as much as the Minister suggests it should be.

The Hon. R.R. ROBERTS: Impact statements with respect to regulations which concern the health and safety of the work force should be made on the basis of merit, on whether in fact they provide safe and wholesome working conditions, and not necessarily on a cost benefit. Labor does not support the Government's proposal that industry impact statements be conducted prior to adopting regulations, codes of practice or other standards. What the Government is proposing is that the protection of workers' health and safety be based on cost benefit considerations. In other words, new regulations and codes will be introduced by this Government

where the cost to employers is acceptable. This we find abhorrent.

What it means is that the right of every South Australian worker to safety at work will be subordinated by the economic dictates of business. Just as employers have attacked the payment of fair and proper compensation to workers that they have injured on the grounds that it cannot be afforded, now, unless the Labor amendment is supported, the very same employers will be clamouring and shouting that new regulations and codes of practice should not be made because they cannot be afforded by business. We believe that this is disgraceful—in fact, loathsome—and that this approach to the regulation of occupational health and safety is yet another example of the Liberal Government seeking to lead South Australia back to the nineteenth century.

The Hon. K.T. GRIFFIN: Absolute rubbish, Mr Chairman. I do not think the honourable member even believes what he his reading.

The Hon. R.R. Roberts: Yes, I do.

The Hon. K.T. GRIFFIN: If he does, he is really misguided. The fact is that you can aim for absolute perfection. You can cocoon everybody to such an extraordinary extent that nothing is ever done. You have to be able to assess the consequences of what one is doing—both the benefits and the disadvantages—and make a judgment about it. It is not a question of profits before workers' safety; it is a question of getting some sense of perspective into the regulatory process.

The Hon. R.R. ROBERTS: What do you mean by 'assessing impact'? What is your definition of the impact of it, if it is not cost? If it provides safer working conditions and it is necessary to protect the occupational health and safety of workers, surely it ought to be done on the basis of its merit as it stands with respect to occupational health and safety. If you are talking about impact beyond that, you are talking about the cost of the considerations. If it is perhaps too costly to put in machinery what do we say, that the impact is too great and do not do it?

The Hon. K.T. GRIFFIN: It may be that you do not have jobs for a start, and it is a question of balance. As I am saying, you can put in such a regulatory framework that no-one does anything and you do not achieve anything. We can debate it until the dogs come home, if they ever come home.

Members interjecting:

The Hon. K.T. GRIFFIN: No, the dogs come home. The cows always know where to come home; the dogs do not necessarily do it. There is some significance in what I am saying. The fact is that you have to have some regard for whether the code of practice, the standard, the regulation, is so all-embracing and burdensome that nothing is ever done.

The Hon. R.R. ROBERTS: This is taking the argument to an extreme level. We are not talking about a regulation that has just been plucked out of the sky. This is a regulation made by people we have appointed because of their expertise, their knowledge of occupational health and safety, and they have to be able to provide that sort of advice. We are not talking about a zealot from the trade union movement who said that we ought to do this because it is a good idea. We have set up a committee to perform the functions of advising appropriate regulation in the area of occupational health and safety. If it proposes a regulation one would have expected that, having appointed these people and in fact paying them because of the expertise they are supposed to have, they ought to be able to make an assessment of what is a fair and proper regulation, and if it needs to be done it ought to be done and it ought not go through a six to 12 month trial period and impact statement to find out what costs it will bring to bear on an employer.

The fundamental question and overriding principle of any regulation in respect of occupational health and safety must be whether it is good for occupational health and safety. If it maintains some costs then that is part and parcel of a safe working environment, because in many instances the cost of providing the protections under those regulations will far outweigh the costs in monetary terms of savings in workers compensation payments and probably will not, in some instances, override the cost in human terms of suffering and the consequences to the families of injured workers. This is not an airy fairy thing. We are talking about regulations being proposed by experts. We are appointing them and we are appointing them, by and large, in a manner that the Attorney has proposed.

The Hon. M.J. ELLIOTT: I have not entered the debate as to whether or not there should be industry impact statements. I have simply raised the question of, if they should be done, who should be responsible for them, and at this stage I support the amendment. However, without wanting to extend the debate, there are times when a requirement for an industry impact statement could be deemed to be unreasonable. Apparently no choice is actually offered here. What happens if on the rare occasion you find that there is a substance in the workplace where exposure has been shown by medical evidence to be dangerous beyond any question? It could be something equivalent to asbestos. There can be some chemicals where a single exposure may be demonstrated to be dangerous. One would hope that in these circumstances with the promulgation of the regulation you will not spend time going through an industry impact statement when indeed there is no question that the substance is dangerous and there is a real and significant threat in the workplace. I do not want to extend the argument further at this stage. The Minister knows what the numbers are and what time it is.

The Hon. K.T. GRIFFIN: If one reads proposed subsection (4), one sees that it provides:

> Before the advisory committee recommends the making of a regulation, code, practice or standard—

so it will make a recommendation—

> the advisory committee should [not 'must'] make the proposed regulations available for public comment.

The question that the Hon. Mr Elliott raised really is equally pertinent to the publication for public comment. It may be that it is essential to enact it immediately, in which case the advisory committee would say that; it would not be put out for public comment. Presumably all that would be said is that it has been demonstrated as being necessary on medical or other grounds and the impact is X, Y and Z. You can do that fairly quickly, I would have thought.

We can embark on a very extensive debate on this. I know where the numbers are; I have put my views on the table, as did the Hon. Mr Elliott and the Hon. Mr Roberts. I suggest we vote on it and pass it before midnight.

The Hon. T. CROTHERS: I want to briefly place something on the record. I notice that the Attorney has, almost as a set piece in most of the debate that has ensued around this Bill and other associated and related industrial Bills, used the argument of a reduction in costs to the employer, thereby attracting or creating more jobs in the State of South Australia. He utilised it again in this argument. I want to place one thing on record: it is not my belief that the

statement that costs will be reduced is correct. It has been shown time and again that good housekeeping properly embarked upon by employers is a cost saving in respect of occupational health and safety.

If workers in that area or indeed in the workers compensation area are denied access—which they currently enjoy under that legislation—they will certainly look to take unused sick leave, for which they would be entitled, to compensate for their time off due to injuries. I refer to matters pertinent to occupational health and safety and matters pertinent to the other Bills we have been discussing in this place—they are all inter-related; they are all industrial Bills. I believe the Attorney is absolutely wrong in respect of the cost saving factor he constantly introduces when developing arguments around that relative to different Bills and to different clauses of different Bills.

I can cite the example of sick leave, which in many instances may never be used and may well expire at the time of the retirement of the employee, or the employee leaving the company, or the employee's death, or whatever. It will indeed be more greatly used than is the case. You might have the case in respect of the rehabilitation of employees perhaps being lengthened out because of what the Government sees as its priority in altering the present arrangements under this legislation. The up-shot of it is that the injured employee has to be replaced by someone who perhaps has a lack of local knowledge, resulting in a reduction in the output in that area of employment.

You have the position, of course, that the employer will have to carry a couple of lots of superannuation, etc. The problem the Attorney faces is that he is trying to be as forthright as possible but, as a practising lawyer prior to coming into this place, he has had little or no experience in a hands-on position amongst the blue collar work force of this State. I do not think for one moment that the Victorians, who have been silent almost *ad nauseam* and who are described as paragons of virtue that the people of this State should look to, are that virtuous. The number of stoppages that have occurred since Premier Kennett took the reigns of Government are appalling in respect of future industrial prospects in Victoria.

When you have a head-on confrontationist approach—and fortunately we have not had that in this State for many a long day, and that has rendered us significant benefits in respect of attracting industry to South Australia—as a consequence of the draconian amendments moved by the Liberal Government in Victoria, and more subtly but no less disastrously by the Liberal Government of Premier Court in Western Australia, then I do not see that that augers well in respect of costs.

I caution the Attorney-General again, and I want to place on record that that which he and his Government are endeavouring to achieve—the reduction of costs to make employment a more attractive proposition—certainly runs contrary, as I said previously, to what the Leader said in this place with respect to attracting Motorola to this State and the prospect of employing 400 people. The Leader said that the reason why South Australia held such an attraction to that company was that we were more advantageously placed than the other mainland States in respect of cost competitiveness.

I again place on record that I believe that the Attorney is wrong in his assertion that all of these changes will mean a reduction in employment costs in this State. What I think will happen is that the transfer as to who bears the cost will certainly be shifted, and it will be laid on the shoulders of the taxpayers of this State, which in turn must surely mean that the Government will then have to look at other ways and means of raising revenue.

I say that against a backdrop of the parlous nature of the State's economy, of which we were informed today by the Leader of the Government in this House, the Hon. Mr Lucas, in the industry statement released today. The other point that must be borne in mind by this Government is that the Federal Government will not cop costs being passed from this State to Federal instrumentalities. That can be done, for example, by way of the compensation Bill where people who are currently entitled to compensation may have to go on sickness or unemployment benefits, and that will be paid for by the Commonwealth Government rather than by us. We may long rue the day when Paul Keating, who is known for having a penchant for having a go at the States with respect to revenues, says, 'Because of the changes your Government has effected to these work related laws, you have now put a cost burden of some millions of dollars onto the Federal Government and we are not going to cop that. When your Premier (Hon. Dean Brown) comes over to the Premiers Conference we intend to further reduce our commitment to bolstering the revenue of the State'.

I place on record that it is a burden which no doubt will simply be passed to other areas of the community. It may enhance the profitability of some people who are in favour with the Liberal Party but, in the long and short long-term, those costs alluded to repeatedly by the Attorney in this place are fallacious, and members will find that we save not one jot, that we become not one jot more attractive relative to bringing employment into this State than currently is the case. In fact, in Victoria unemployment, as I understand the latest statistics, is much higher than here. I may be wrong, but that is as I recall the latest statistics. That is in spite of the hacking and cutting and cost reduction exercises in which the Premier and his Government have been involved.

I plead with the Attorney to ensure that any statements he makes on cost reduction do not have the impact of raising expectations amongst employers, only to find to South Australia's great detriment that we fall flat on our face and are unable to deliver. I am certain in my mind that ultimately we will not deliver with respect to cost infrastructure.

The Hon. R.R. ROBERTS: I am as conscious anyone of the time. However, I wish to make one point. The Attorney made a point about the code of practice standard being available for public comment. The Opposition has a great desire for public comment. In fact, one of the hallmarks of occupational health and safety has been the wide consultation. The Hon. Mr Elliott's next amendment deals with the trialing of regulations, and I make the point that this is in the same category with respect to the soaking up of time. I ask the Committee to support my amendment.

The Hon. T. CROTHERS: When we get to the third reading, is it at all possible for the Attorney to find out whether the Public Service has done cost reduction evaluations with respect to the impact of this Bill and the other two related Bills and, if it is the case, is it possible for the Attorney to table a cost benefit analysis?

Amendment carried.

The Hon. K.T. GRIFFIN: I will take the question on notice.

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

Page 4, lines 1 to 3—Leave out proposed section 8(5).

Before too many members complain about how far into the session we are handling this, I note that a couple of weeks ago the WorkCover Corporation Bill and the Workers Rehabilitation and Compensation (Administration) Amendment Bill, which we were prepared to handle, were not handled because the Government decided to send us all home early.

The CHAIRMAN: Order! Has this anything to do with the amendment?

The Hon. K.T. Griffin interjecting:

The CHAIRMAN: Order! I ask the Hon. Mr Elliott to keep to the clause.

The Hon. M.J. ELLIOTT: Some members cared to interject about the time, so I was responding to interjections, including interjections from the Chair. I do not intend to speak to this amendment at any length because I raised it when I discussed the Hon. Ron Roberts's amendment. I am moving it for similar reasons. In my view, there is some question as to the role of the advisory committee. The Minister has put a very narrow definition on its role. In those circumstances, the running of trials is well outside the scope of what I would expect an advisory committee to be doing according to the Minister's definition.

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

Amendment carried.

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

Page 4, lines 8 to 32 and page 5, lines 1 to 9—Leave out proposed new sections 9 to 11 and substitute:

Terms and conditions of office

9. (1) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove a member from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) mental or physical incapacity to carry out duties of office satisfactorily; or

(c) neglect of duty; or

(d) dishonourable conduct.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is found guilty of an indictable offence; or

(e) is found guilty of an offence against subsection (5) (Disclosure of Interest); or

(f) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—

(a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Committee; and

(b) must not take part in a deliberation or decision of the Committee on the matter and must not be present at a meeting of the Committee when the matter is under consideration.

Penalty: Division 5 fine or imprisonment for two years.

(6) The court by which a person is convicted of an offence against subsection (5) may, on the application of an interested person, make an order avoiding a contract to which the non-disclosure relates and for restitution of property passing under the contract.

Allowances and expenses

10. (1) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund under the Workers Rehabilitation and Compensation Act 1986.

Proceedings, etc., of the Advisory Committee

11. (1) Meetings of the Advisory Committee must be held at times and places appointed by the Committee, but there must be at least 11 meetings in every year.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision by the Committee, and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The proceedings of the Advisory Committee must be open to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

Confidentiality

12. A member of the Advisory Committee who, as a member of the Committee, acquires information matter of a commercially sensitive nature, or of a private confidential nature, must not divulge the information without the approval of the Committee.

Penalty: Division 6 fine.

Immunity of members of Advisory Committee

13. (1) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or functions under this Act.

(2) A liability that would but for subsection (2), lie against a member lies instead against the Crown.

A number of matters are covered by this amendment, but we discussed them in relation to the Workers Rehabilitation and Compensation (Administration) Amendment Bill, so there is no need to cover them again now. The same arguments apply here.

The Hon. K.T. GRIFFIN: We have had the debate on this concept in another Bill. We argue that it makes the advisory committee much too inflexible. For that reason, the Government opposes the amendment.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12.6 a.m. the Council adjourned until Wednesday 4 May at 2.15 p.m.