LEGISLATIVE COUNCIL

Friday 6 May 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 11 a.m. and read prayers.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate on second reading.
(Continued from 5 May. Page 799.)

The Hon. CAROLINE SCHAEFER: Just by way of revision for those in this Council, I would like to again read most of the objects in this Bill. They are as follows:

(a) to promote goodwill in industry;
(b) to contribute to an economic climate in which employment opportunities in South Australia are maximised and inflation is kept to a minimum;
(c) to facilitate industrial efficiency and flexibility, and improve the productiveness of South Australian industry; and
(d) to encourage enterprise agreements that are relevant, flexible and appropriate;
(e) to provide, where appropriate, for awards that are relevant, flexible and expressed in non-technical language; and
(f) to provide a framework for making enterprise agreements, awards and determinations affecting industrial matters that is fair and equitable to both employers and employees;
(g) to encourage prevention and settlement of industrial disputes by amicable agreement, and to provide a means of conciliation for that purpose;
(h) to provide a means of settling industrial disputes that cannot be resolved by amicable agreement as expeditiously as possible and with a minimum of legal formality. . .
(i) to ensure compliance with agreements and awards made for the prevention or settlement of industrial disputes; and
(j) to provide employees with an avenue for expressing employment related grievances and having them considered and remedied. . .
(k) to provide for absolute freedom of association and choice of industrial representation; and
(l) to encourage the democratic control of representative associations of employers or employees, and the full participation by members in their affairs.

Yet, I have sat here for a number of days listening to an absolute paranoia about what will happen to employees. It is clearly expressed in this Bill that there is no way that this Government wishes to rip off employees. We keep hearing that there is—

Members interjecting:

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order, please!

The Hon. CAROLINE SCHAEFER:—a massive resistance from the workers, but that is patently untrue. The workers know that this State is in economic crisis. They displayed that when they voted in droves for the Liberal Party at the last election. They know what the Labor Party seems unable to grasp, that we must become more efficient and more competitive, both intrastate and internationally, or they will have no jobs and this State will have no future.

Trevor Crothers spoke eloquently yesterday about the predatory nature of employers. He has the attitude that all employers are just waiting to rip off those working for them while all employees are poor, downtrodden, ignorant, hard-working and used. That may have been the case in the coal mines in Wales many years ago, but it is certainly not the case in South Australia now. Most employers know they cannot succeed without a happy and competent work force. Certainly I would always support the retention of unions for those who need them and want them. What I do not support is the almost total power that they now enjoy. Let us remember that there is only one group of people—

The Hon. Carolyn Pickles: So, this is about curbing union power, is it?

The Hon. CAROLINE SCHAEFER: No, it is not. I do not know whether or not you have read the Bill, but it is about freedom.

The ACTING PRESIDENT: Order! The Hon. Mrs Schaefer will resume her seat. There is so much background conversation it is difficult to hear the Hon. Mrs Schaefer properly. I ask members to pay attention to her.

The Hon. CAROLINE SCHAEFER: Let us remember that only one group of people create jobs—not employees, not Governments, but employers. For too many years small and medium business has desperately wanted and needed to do this, but are not able to. Let me give an example of a daughter of a neighbour of mine who is down here studying on Austudy. She desperately wanted to get extra money and she applied for a job at a delicatessen. She had the job until she mentioned that it was her eighteenth birthday the next day. The employer then had to tell her that he could no longer afford to employ her. She said that she was quite willing to work for the junior wage. He was happy with her work, but they could not negotiate between them because of the award system that we have now.

The Hon. R.R. Roberts interjecting:

The Hon. CAROLINE SCHAEFER: Yes, the law protected her despite herself: she now hasn't got a job. That's fantastic!

The Hon. T.G. Roberts interjecting:

The Hon. CAROLINE SCHAEFER: If they were going to work for less than the junior age they would have to be 12 years old and it is not legal for them to be working. Certainly people will abuse the system, just as there are people who abuse the system now. We have all heard of and know of people working for cash, who are working as well as getting Austudy and the dole. These people are outside the law. They will be outside the law when this Bill passes. Negotiation between employer and employee will not disadvantage women, as has been so patently put on the other side. In my opinion it will do quite the opposite. It will open the opportunity for flexibility within employment, for negotiating for things such as job sharing, leave for family illnesses and flexible hours, all of which most women have been crying out for a number of years. This Bill does not close doors, it opens them. It allows for freedom of choice and for flexibility. The people of this State are crying out for industrial and economic reform. This Bill goes some way to meeting their expectations and I urge its support.

The Hon. M.J. ELLIOTT: I rise to support the second reading of the Industrial Employee Relations Bill 1994. The Australian Democrats will support the essential ingredients of the IR package, just as we have supported the Government's workers compensation legislation in its essential ingredients. But, we will also ensure that the Government keeps to its industrial relations promises made prior to the 1993 election.

Contrary to the Premier's comments, the Democrats have so far supported the main elements of the Government's WorkCover and industrial legislation as promised in the Liberal Party policy at the last election. In fact, I would strongly suggest that some of the Liberals who have been so

keen to comment might take the time to read their policy. I think they would be surprised at how often they have broken policy in their legislation—and I will cite some examples—how often they broke it in the workers compensation legislation and how often some of my amendments have returned Bills closer to their own policy. I can assure members that I have read it, and I have read it very carefully.

The Democrats will support the Government's quest to introduce enterprise agreements, freedom of association and voluntary unionism, changes to unfair dismissal procedures and the setting of minimum standards for enterprise agreements—all key planks of its policy. We will certainly amend the legislation to remove sections of it which we consider to be unfair. Our most important amendments relate to areas where Liberal promises have been broken. Enterprise bargaining has the strong support of the Democrats, but it must be underpinned, as promised before the election, by the award system which should not be destroyed in the process. While the legislation will allow enterprise agreements, we will ensure that awards remain to provide the safety net, as promised in the Liberal Party's policy documents before the election.

The Liberals also seek a number of amendments which were not indicated in their policy and which will be treated with caution. These include: amendments which will erode award standards—that is, in fact, another broken promise, and I will explain why later; keep enterprise agreements confidential; limit the terms of commissioners; and give ministerial control to the supposedly independent employee ombudsman, among others.

While the stated aim of the Industrial Relations Act 1972, which this Bill replaces, is to consolidate and amend the law relating to industrial conciliation and arbitration, the focus of the Bill before us is on the relationship of employer and employee and identifies a fundamental shift in the structure of South Australia's industrial relations system. All awards will continue to apply with two qualifications: no preference to unions and union right of entry only to workplaces where it has members, and an interesting inverted use of what are called minimum standards. The role of enterprise agreements under the legislation is not only to complement existing State awards but eventually to have the effect of replacing the award system. The legislation has been structured to achieve that, but I think that in the process it has gone beyond what was indicated within the policy. Again, we will get a chance to debate that at more length during the Committee stage.

I believe that the objects of the Bill need to take into account the social as well as economic aspects of the legislation. The Liberal industrial relations policy complements this by calling for an industrial relations system which is not just more flexible for all parties involved but ensures greater fairness. The legislation's objects, however, focus on industrial efficiency and flexibility in improving the productivity of South Australian industry, which I do not criticise in itself. I will therefore move an amendment to ensure that, as one of its objects, the legislation 'contributes to the economic prosperity and welfare of South Australians to ensure that workers' rights are not overlooked in favour of economic considerations'. The Liberal Party policy states:

> The award system will continue to provide the basic safety net for employees.

That is a direct quote.

The Hon. A.J. Redford: That's part of the text?

The Hon. M.J. ELLIOTT: That's right. The legislation doesn't do that at present, but I am sure that it will. We will amend it so that your policy is upheld, which is a promise I make—

The Hon. A.J. Redford: We have no objection to that.

The Hon. M.J. ELLIOTT: That's good; I think we'll get on famously. The current Industrial Relations Act 1972 enforces minimum conditions in the award system, which must be adhered to except in very limited circumstances. Section 108a(2) of the current Act does not allow any industrial agreements to be approved if they contain conditions which are inferior to an applicable award.

This is not so in the legislation before us. The Industrial and Employee Relations Bill includes a schedule of minimum standards for annual, sick and parental leave entitlements. I point out that the Liberal Party promised minimum standards. If you take the time to read the clauses in relation to awards, you find something rather curious. I refer to clause 84(2)(c), which provides:

> The commission cannot provide for annual leave, sick leave or parental leave in an award except on terms that are not more favourable to employees than the scheduled standards.

I think anybody reading the Liberal Party policy would have thought that 'minimum standards' meant that you would get something more than the minimum, or at least the minimum. However, clause 84(2)(c) provides that that is the most you can get. My understanding is that the Liberal Party has set a maximum standard and called it a minimum standard. So, if we believe that the Liberal Party will adhere to the policy statements it made before the election, we have to believe that by adhering to its policy it has redefined the word 'minimum' to mean 'maximum'. I do not think there is any other explanation for it.

The Liberal Party has decided to redefine the word. It has redefined the word rather than break a promise. It is also interesting to look at the area of enterprise agreements. The agreement under the legislation must be considered as a whole and in the context of all relevant industrial, economic and commercial circumstances defending the enterprise, and does not substantially disadvantage the employees to whom it is to apply. 'Does not substantially disadvantage' implies that there can be a disadvantage, which means that you move again below the safety net, remembering that the awards were promised as a safety net—and, may I add, the awards are not mentioned in this clause.

So, you can go below the awards even though we are told the awards are the safety net. Do not forget that we are supposed to have minimum standards, and that the awards go below minimum standards—something of a double whammy. Enterprise agreements in future can be substantially below any existing awards and still be acceptable under this legislation—again, a clear breach of promise. While I am looking at enterprise agreements and people going below award, I do not know how many times I heard the Minister (Hon. Graham Ingerson) discuss the merits of the SPC case, and how wonderful it was that people went below award. He obviously does not know much about the SPC case.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Let me finish this one first. If we look at the SPC case, employees were asked to accept a list of off-sets, which was to have saved the company $2.5 million during the next fruit season. The final settlement involved only one amendment to the Food Preservers Union of Australia award, and that was to provide for the banking of wages by electronic funds transfer. The SPC case has often

been quoted as a wonderful example of people negotiating an agreement and going below the award, but that is simply not the case.

It is certainly true that there were negotiations in relation to above the award payments, and other matters, but they did not agree to go below the award in exchange for electronic funds transfer. It would appear that the SPC case largely fits into the category that the Government claimed clause 75(1) would cover, but at this stage that is not the case. In other words, that you negotiate an enterprise agreement whereby the award still remains a safety net in essence, and if there are any variations the net effect is that the workers will be no worse off.

The much lauded SPC case does fit under clause 75(1), or what we are led to believe the clause should mean, but in fact clause 75(1) as it stands allows you to go below the award. I shall be moving amendments which, in essence, will say that, while you may go below award on certain conditions, you may go above the award in others. The net effect is that you will not get less than the award. This is what true bargaining is about. If you are serious about the safety net and you do go below it, then there is compensation elsewhere where you go above, and it is done to the mutual benefit of the employer and employee. I can understand that there are cases where the award creates difficulties in particular work environments. For example, it may not be relevant to a particular workplace and productivity can be improved to the benefit of everybody. To go to an enterprise agreement is sensible with the safety net which the Government promised but which so far it has not adhered to.

Clause 75(2) masquerades as going below the safety net but, as I have already commented, clause 75(1) essentially does that. My concern is that you can go below the minimum standards and below whatever the safety net was supposed to be. Indeed, it seems possible that you can be below it indefinitely. If an enterprise agreement has no fixed term and can be indefinite, you can have an enterprise agreement to go below the award and it could virtually hold *ad infinitum*.

The Hon. R.I. Lucas: Only if it's in your interest.

The Hon. M.J. ELLIOTT: I am sorry, but that is not the case. The award can continue indefinitely. Even if you took the time to put an end to the life of the award, you could find yourself looking at clauses 78 and 79 under which, when you get to the end of the award period and there is no agreement, potentially it can continue. It is bizarre that employers—

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Let me finish. The enterprise agreement?

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I apologise. It is bizarre that you require the agreement of the employer and employee to set up an enterprise agreement but, when it comes time to renegotiate, if they are having trouble reaching agreement, it continues. Looking at cases under clause 75(2), employees may be persuaded that the factory will shut its doors unless they go below the award, so they agree to go below the award. Then, when the time for renegotiation comes, the company having recovered and they are still working with an agreement below award conditions, potentially they are trapped within the agreement. I find that quite peculiar.

I shall be moving amendments which require a periodic review of enterprise agreements and that they have a set life, which awards will have. The Government now wants the safety net to be reviewed on an annual basis. However, enterprise agreements can be of indefinite duration. Under an enterprise agreement you could have negotiated away your right to take industrial action and many other rights and gone below the award and be trapped in it because you cannot reach a new agreement. There is no way out. That is really bizarre. I should like to believe that the Liberal Party did not intend it, but I can understand some people being sceptical. Carelessness is the kindest explanation one could give for some of the things that have happened here.

Another bizarre aspect of enterprise agreements is that, when you go into the enterprise agreement for the first time, that is a consequence of negotiations between employer and employee with very little outside input. In fact, the legislation is drafted in such a way that every attempt is made to ensure that unions do not get involved.

The agreement is negotiated yet, when you get to the end of your agreement period and you come for renegotiation, the renegotiation all happens under the control of the commissioner. I would have thought that the more vital negotiation was the first one, the one that sets up the enterprise agreement, where people are going to give away certain rights, because that is what they will do. I am not arguing that they should not be able to do that if they feel that on average the net result is to the good of everybody. But why is it that the commissioner is not intimately involved in the negotiation process the first time the agreement is set up?

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: At the end of the process.

The Hon. R.I. Lucas: But that's not approval.

The Hon. M.J. ELLIOTT: No, but the point I'm making is that you can go to many workplaces where people don't even know what their awards are.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: It may or it may not. But the point I am making is that it is obviously illogical to have the commissioner not involved in the setting up of the agreement yet to have the commissioner intimately involved in the renegotiation, because that is clearly what happens under the legislation. I would have expected it to be almost the other way around, if at all. In fact, there has to be some activity when an agreement is first being set up. Workers should at least know what their rights are. Their rights, as promised by the Liberal Party, are a safety net; their rights are what is in the award. From that they then negotiate so that a better situation is achieved for all. However, if they do not know what their rights are, how do they know what they are giving away and, indeed, what they are gaining? Largely they are being disempowered in a number of ways. As I said, every attempt has been made to make sure that unions are kept out. The commissioner is not involved until the end of the process, and there is no guarantee of any information flow to the workers. That is a very disempowering thing to do.

The Hon. R.I. Lucas: The commission could say, 'No.'

The Hon. M.J. ELLIOTT: It could, but the point I am making is that it is a very disempowering thing. It would be reasonable to say that there would be many workers in environments who are not skilled negotiators; the majority of them will not be skilled. You might have unskilled negotiators who do not know their rights often being denied the right for anyone to represent them—somebody who does know their rights, someone who does know the way the negotiation process works. I just have to question the motivation behind all that.

Let me reiterate that the Democrats have no problems with the concept of enterprise agreements; they make a lot of sense. If you can negotiate agreements that are to everybody's

benefit, that is terrific. Only a fool would oppose such a notion. But also only a fool would believe that a negotiation between many employers and many workers will not be an equal negotiation. If the safety net is weakened, and if the other problems that I mentioned in enterprise agreements occur, what we really are doing is leading to a significant decline in what is being offered to employees. The concern I have is not that large numbers of employers will take advantage of the system (but it is certainly true that a number will, just as people complain from time to time that unions abuse their position—and they do) but that there are employers—

The Hon. R.R. Roberts: How could you say such a thing?

The Hon. M.J. ELLIOTT: Well, because it's true. I could name names, too, but I won't. Just as many unions have abused their position, many employers have as well. One of the dangers in an enterprise agreement system that is not fair to start off with is that, once one unscrupulous employer has done a deal which starts getting the cost of their product down, the scrupulous and honest employer who is trying to compete with them will be at a cost disadvantage.

They will be in exactly the same sorts of difficulties as we are now with workers compensation. Although in workers compensation there are tidying up things that we need to do and we can make it more efficient, I am afraid that we are getting into competition between the States, moving to the lowest common denominator, just for the sake of competition itself. I am not saying that competition itself is a bad thing, but we lose sight of what is fair and right. I just cannot see the scrupulous, honest employer who wants to do the right things by his employees being willing to go broke whilst watching somebody who has been unscrupulous undercutting him in his business. That is why the safety net promised by the Liberals is so important and why the legislation must have what it currently does not have.

It is also worth noting that the minimum conditions include the hourly rate of pay and no other form of over-award payment, leave loading, etc. Many people will say 'Why should there be a 17.5 per cent leave loading?' My response at this stage is that perhaps the 17.5 per cent is not logical in itself but it has been in South Australia for a long time, and awards at the end of the day deliver an annual wage package to a worker. What is happening is that a certain amount of it is being delivered by way of this leave loading. If you abolish the leave loading, clearly what will happen is that you will give something like a 1.5 per cent pay cut to the worker. That is what you are really doing.

I can understand people who say it is illogical to have a leave loading at holiday time but, as I said, it has been here a long time. At the end of the day, for no change in productivity you are actually reducing your annual wage bill. It might be a good thing that awards re-examine the question of leave loading.

The Hon. R.R. Roberts: Take the 17.5 per cent off and give us the 1.5 per cent. That's enterprise bargaining.

The Hon. M.J. ELLIOTT: What I am saying is that, first, you look within the award itself and say 'Let's be more logical about the way in which wages are delivered.' What is happening in relation to enterprise agreements is that they are dismissing many of the workers' pay entitlements, other than their base salary, and saying 'None of those will be taken into account if you go to an enterprise agreement.' That is going below the safety net again.

In relation to leave loading alone it is equivalent to 1.5 per cent. How many more per cent are caught up in some of these other penalties, etc. I do not know. Again, I am not critical of wanting enterprise agreements. I can understand why people working in the hospitality industry do not want leave loadings and would like to have enterprise agreements where they pay an hourly salary at the time when most of their people are in demand for work. But it should be happening within a logical enterprise agreement process.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes. In fact, a number of agreements already have been struck which have abolished most of these loadings but which recognised that a simple abolition in itself without any compensation is a significant cut in take home pay to the employee. When we look at people who go below the safety net, and consent to do so (which is what clause 75(2) is about), there is the question as to whether or not this is temporary. Is it a matter of trying to prop up an industry that is trying to make sandals like those made in India, by the same methodology, in which case you would have to go to very low wages and forever? Or is it a case of a company that is in temporary difficulty, perhaps because it needs to remechanise or retool; perhaps because there has been what is recognised as a temporary glitch in world markets but within two or three years it is seen that there will be a recovery and all we are asking of the workers is to say 'For a couple of years, if you go below award, this company eventually will be robust again and that is to our benefit and yours'?

Members interjecting:

The Hon. M.J. ELLIOTT: No, but SPC did not go below the award. Or are we going to ask people long term and indefinitely to go below the safety nets simply to prop up a business that is not capable of competing within an Australian environment—with them trying to operate a third world industry in a first world country? There are balances there, and I will be moving amendments to try to achieve some checks and balances in this. I have no problems with people going below the award, under carefully prescribed conditions.

Again with regard to awards, the current legislation really appears to have set about destroying awards rather than setting them up as a safety net. One of the Bill's objects is to encourage enterprise agreements, while awards are to be provided where appropriate. There is some concern that 'where appropriate' suggests that we may be getting rid of awards rather than most workers being under the enterprise agreement. I would argue that we can retain the award system with very few people receiving the benefits as prescribed in the award, because most of them have left the awards to go to enterprise agreements.

The next point is that enterprise agreements are to prevail over awards under the current legislation, and award provisions which are not specifically written into enterprise agreements are lost. This clearly means that awards take a secondary position to enterprise agreements. Thirdly, clause 84(2) provides that sick, annual or parental leave entitlements in an award cannot be higher than the minimum standards unless varied by the full commission under section 95(1). This does not apply to an enterprise agreement. So, why would a person want to stay in the award system as currently structured when a maximum standard, not a minimum standard, has been imposed and given that, with an annual review, we will see award conditions decline quite rapidly? Clearly, the award system is being debased, and an attempt

is being made to push people away from it rather than allowing them to move away, with their consent.

I have commented on an annual review of all awards being required, and that is not necessary with enterprise agreements. These seem to give a very hollow ring to the Liberal promise of providing choices for employers and employees in negotiating basic payments and conditions within the award system or enterprise agreements.

Clause 35 deals with the appointment of commissioners to oversee both awards and enterprise agreements. While previously commissioners were chosen alternately from employee and employer sides, the enterprise agreement commissioner will be chosen under no such stipulation. The introduction of a six year minimum term for the commissioner arguably puts the commission's independence at risk. That view has been held by a large number of people who have contacted me.

While I am referring to commissioners, I should say that these comments also apply to the members of the Industrial Court. I received a copy of a letter written to the Hon. Graham Ingerson by John Mansfield QC, who was writing on behalf of the Law Council of Australia. The letter states:

Dear Minister,

The attention of the Law Council has been drawn to the above Bill, and particularly to the provisions of clause 9 of schedule 1 thereof, which deals with members of the former court and of the former commission. With respect to a person who held judicial office in the former court, clause 9 gives the Governor power to determine that he or she will not hold the corresponding judicial office in the court provided for in the Bill.

It is true that, if such a determination is made, the member of the former court must be transferred to a judicial office of no lesser status, but the potential for the Government to remove from a position involving the exercise of an industrial jurisdiction a judicial officer whose decisions in that jurisdiction may have been unacceptable is apparent.

With respect to a member of the former commission, the Governor may determine that he or she not hold the corresponding position in the commission provided for in the Bill, and in such a case the member of the former commission will, apparently, go out of office absolutely.

The Law Council views both of the above positions with concern. Where an existing specialist court is being replaced by a new court of substantially similar jurisdiction, the appropriate procedure is for all members of the court to be appointed to corresponding positions on the new court. It is not, in the view of the Law Council, sufficient for such members to be guaranteed other judicial appointments of no lesser status, as this would have the same effect as an ability to remove a member of a specialist court, at any time, when his or her work in that jurisdiction proved unacceptable to the Executive Branch of the Government. If specialist courts are to be established, the principle of judicial independence requires that those who are called upon to exercise the specialist jurisdiction should be free of any threat that they may be deprived of that jurisdiction by Executive action.

Likewise in the case of commission members, while they may not be performing a role which is strictly judicial, the principle underpinning the establishment of an apparently independent tribunal to deal with particular matters is analogous to that of judicial independence. The abolition of one tribunal and its replacement with another should not be the occasion—either actually or potentially—for the removal of persons whose work may not have been acceptable to the Government of the day.

I would hope that the Government would see the wisdom of the Law Council's position in respect of these matters and make the appropriate amendments to the Bill.

Yours sincerely, John Mansfield.

That was a letter written on behalf of the Law Council of Australia. Similarly, letters have been written to the Hon. Mr Griffin by the Chief Justice in relation to the industrial relations Bill. A letter written by the Chief Justice to the Hon. Mr Griffin and dated 13 April states:

Re: Industrial Relations Bill.

I refer to my letter of 8 April concerning the Industrial Relations Bill which has now been introduced into the House of Assembly.

The Bill as introduced into the House of Assembly contains the objectionable provision.

The judges of the Supreme Court express the gravest concern about this provision. The independence of the judiciary from Executive Government is one of the cornerstones of our constitutional arrangements. It is designed to secure the impartiality of decisions of courts against the possibility of influence, whether intended or unintended, by Government. The judiciary must be kept free, so far as possible, of any perception that it might be influenced by considerations of Government favour or disfavour.

The security of the citizens and their confidence in being able to have their rights adjudicated upon by impartial courts depends upon the faithful observance of these principles.

It is totally incompatible with these principles that Government should have the power to decline to reappoint a judge to a court which is substantially the same court as that to which he was originally appointed.

The judges of the Supreme Court strongly urge that the words in clause 9(1) of schedule 1 underlined in my letter of 8 April to you be deleted and that the appropriate consequential amendment be made to clause 9(4).

The judges have resolved that if the Government persists with this provision, they will have no alternative but to communicate to all members of Parliament the gravity of the breach of judicial independence involved. I am most unwilling to implement this decision while there is any reasonable prospect that the Government will reconsider its position. I understand that the Bill may proceed through the House of Assembly today. I refer to our telephone conversation this morning in which you indicated that further consideration may be given to the matter. To allow more time for reconsideration I propose to withhold the course of action decided upon by the judges pending such reconsideration. I do this on your assurance that the Bill will not proceed in the Legislative Council without prior notification to me of the Government's decision.

A confrontation between the Executive Government and the judiciary is a matter of great seriousness in any society. The issue involved in the objectionable provision is, however, one of grave constitutional importance. I request that you make known to the Premier the contents of my letters to you and the seriousness with which the judges of the Supreme Court view the issue.

I overheard interjections about the Chief Justice and I want it noted that that letter was written not just by the Chief Justice on his own behalf but on behalf of all the Supreme Court justices. On behalf of the Law Society John Mansfield has put a similar view. I can give an assurance that I have had many other people—both in the legal profession and outside it—express the same sorts of reservations about this attack on judicial and quasi judicial positions. This was not mentioned in the policy, although I am not saying that I would have supported it even if it was mentioned, but the Liberals cannot even claim, as is their wont, that there is a mandate for this. There was no warning that this attack was going to happen on the judiciary or the commission.

As to questions of ministerial discretion, the Minister has a great deal of discretion in this legislation. One area that has caused me concern relates to the employee ombudsman. Under clause 59 he is subject to 'the general control and direction of the Minister'. In its policy the Liberal Party spoke of setting up an employee ombudsman. It is an excellent idea and people might have changed their vote because of that promise. Mandates being what they are, different people can be attracted by different things. Some people would have thought, 'An employee ombudsman, what a good idea.' The Liberal Party then spelt out what an employee ombudsman would do, but it is really what the Liberal Party did not say that would cause concern.

We have a State ombudsman and we have a general understanding of the way the ombudsman works. That ombudsman is independent and not answerable to a Minister

in any sense. If the Government is going to set up another ombudsman, one would assume that this ombudsman would be a reasonably free agent as well, but that is not the case. In fact, the employee ombudsman is not only subject to the general control and direction of the Minister but is also required to report to the Minister. If we read the Liberal policy we see that the employee ombudsman will report to Parliament at least annually and there is not a suggestion that the ombudsman will be reporting to the Minister.

In fact, the employee ombudsman had a number of other roles that did not find their way into the legislation. I will only cover those roles not included—and two have been left out—but the Liberal Party promised that the ombudsman would 'provide advice to individual home-based workers not covered by awards or enterprise agreements in negotiating individual contracts with employers. This service will be of special value to increasing numbers of women operating from home and to any employees of non-English speaking background.'

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: I am pleased to say that Liberal Party policy will be implemented, because I am moving amendments along those lines. The Liberal Party also promised an advisory service on the rights of employees in the workplace in relation to occupational health and safety issues. That is another very noble promise and I am glad to say that I can support and assist the Liberal Party in implementing that promise as well. As to the employee ombudsman, the Liberal Party appears to have broken two promises by omission. It broke another promise by doing the exact opposite and a clear implication of independence—which I would take to be a promise in the absence of anything to the contrary—has also been clearly breached.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: I do not know. Whoever wrote these policies will be in deep trouble. I will be quoting other parts of the policy quite extensively during the debate.

The Hon. Anne Levy: Perhaps that's why Greenhill Road is being moved to the Premier's Department, according to Alex Kennedy.

The Hon. M.J. ELLIOTT: I do not know. While I was reading Liberal policy I decided not only to read its workers compensation policy and industrial relations policy but I read through a swag of policies. I came to other sets of policies which were interesting. There are some good polices there, too. What I found—

Members interjecting:

The Hon. M.J. ELLIOTT: Yes. There are moderate policies that any reasonable person would have supported.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Moderate policies: as the Premier, when Leader of the Opposition, stated before the election, 'We are a moderate Government and we have moderate policies.' With such moderation promised, the policies they were bringing forward were looking moderately good. But I have been distracted; I must return to the issue. Reading through some of the Government's other policies, I see that it had a policy on the State Ombudsman. I am waiting for legislation relating to that policy. I presume that it will be introduced in the next session, or I may have to introduce it myself. The policy provides that the State Ombudsman should be appointed with the agreement of both Houses of Parliament. I think that is a brilliant policy. I think that it is so good that the employee ombudsman should be appointed in a similar way, given that it is a similar position. Although, we have had no precedents—

Members interjecting:

The Hon. M.J. ELLIOTT: No, I would quite happily acknowledge that this particular matter is not in the Government's policy. However, it seems to me that it is not against its policy. Its policy basically says that an ombudsman should be appointed after acceptance by both Houses of Parliament. I guess if you are willing to apply that to an ombudsman it can be applied also to an employee ombudsman, which is a similar albeit narrower position but one of great stature and importance that requires the occupant to carry out the duties involved in an impartial fashion. The Liberal Party, having set the precedent in its policy, should have no difficulties whatsoever in accepting this kind offering from the Democrats by way of amendment as well.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Yes. As far as I can tell, I think the Hon. Mr Ingerson—

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT:—has already done the rounds of the commissioners and judges telling them how things stand. He has probably told the people who are coming in. I guess the ombudsman has a fair idea of who he or she might be as well.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: It would have to be up to both Houses.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I personally would have no problems, no. But that is only one vote. We have two Houses, so let us be fair about this. I do not think I should be imposing my will in terms of the ombudsman upon everyone. I think it is really a parliamentary appointment.

Although I will have a lot more to say in Committee, I wish to conclude by raising the issue of this assumption that employers and employees have equal power. That appears to be the assumption which underpins the way in which the legislation has been drafted as distinct from the policy, which seemed to acknowledge that perhaps they were not equal and that is why safety nets, ombudsmen and other very reasonable and moderate things were needed.

While the legislation has many of the ingredients of the policy, which have sometimes been restated (and many ingredients of the legislation were not included in the policy), it has been constructed assuming that somehow or other employers and employees can go into something equally.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: That was not the case if you look back to the last century, and that was the reason why trade unions came about in the first place. They came about as a reaction to the fact that people were working in appalling conditions, and they still do. It is not that long ago that people were being exposed to asbestos despite the fact that medical evidence had been accumulating that it was dangerous

The Hon. T. Crothers: People told lies about it.

The Hon. M.J. ELLIOTT: That is right: people told lies about it. Employers said, 'It's fine; don't worry about it.' While in the ideal world we would like to see reasonable employers and reasonable employees sit down together and negotiate for the common good, there is an unequal power relationship. In a total absence of unions or any other protection we go back to the 1800s and the sort of attitudes that persisted then. I can understand that the Liberal Party is

concerned that there have been times more recently when unions—the organisation of employees—have sometimes generated power which they themselves have abused.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Yes, I do not think we ought to be too defensive, because there are rogues on both sides, and if you cannot be honest about that we are not really having an honest debate. However, in the absence of unions or of protections, you do have a very unequal relationship. It is why I think this legislation, while it is allowing voluntary unionism—which I am willing to support—and while it is being quite prescriptive in some aspects of the behaviour of unions, has gone over the top in a very reactionary sense, and unnecessarily so.

The Hon. T.G. Roberts: You acknowledge that both of them started off with fleas.

The Hon. M.J. ELLIOTT: That is right. Whether or not which dog started with the fleas is arguable. It does concern me that that assumption about the equality of power in the absence of any other intervention, be it union or legislative, is just not an accurate assumption.

The rights of employees to be represented throughout the enterprise agreement process is an issue that I will address in Committee. I believe that associations should be able to represent their members on the employee's request during any part of the process of negotiating such an agreement. If an employee says, 'I'm not good with words or numbers; I want somebody to act on my behalf', how could that be presented as anything but a reasonable request?

The Hon. T.G. Roberts: Natural justice.

The Hon. M.J. ELLIOTT: Of course it is; it is natural justice. To deny a person the right to have somebody else speak on their behalf is patently unfair and against all sorts of legislative trends where we have been creating advocates of various sorts. The Government is creating an employee ombudsman but I do not believe that we can expect the office to provide advocacy to all employees. If employees choose to have someone else act as their advocate, surely they should have a right. That is quite a different question from whether or not a union should be a party to the agreement. I can see that there are two different questions: one as to whether or not an employee has a right to be represented; the other as to whether or not a union can intervene and say, 'Even though we represent only 10 per cent of the workers we are going to be a party to this.' That is a different question which is asked and answered separately.

While we are setting about having enterprise agreements, enterprise agreements are structured such that the majority of workers agree to them. There are situations where there will be subsets of employees who could be significantly disadvantaged by an enterprise agreement. I suspect these days, and I may be wrong, that if you went to a place like the smelters in Port Pirie quite possibly the white collar workers outnumber the blue collar workers; if not in that enterprise they do in some others.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: That's right. In some enterprises shift workers, because of the fact they are on shift work, may be employed under a particular award with particular conditions, while others in the workplace may be employed under a different award with different conditions—and not surprisingly, in light of the differences in their work. We could find ourselves in a position where an enterprise agreement is struck where the majority of people on site agree to it but a subset within that group may be significantly disadvantaged.

The workers as a whole may not be, but a subset may be, and that may be a subset of people who are having quite different demands made upon them from those of the other workers. An enterprise agreement needs to at least acknowledge the potential for that and should take it into account. To ensure that employees do have a proper grasp of what is being offered, it is important that, before an enterprise agreement negotiation process gets under way, employees should be given access to relevant awards and given perhaps two weeks during which time they can get to know what their current entitlements and rights are, before going into the enterprise agreement under which they will trade some away. I think they should be given that information and, as I said before, if they wish to have somebody assist them in negotiation, that request should not be unreasonable, either.

The final matter is the question of unfair dismissal. We will look at a number of aspects during the Committee stage, but I will touch on just a couple of those. I can understand why the amendments have been structured to stop what people call 'forum shopping', where they lodge appeals under a number of different pieces of legislation, and potentially there are a number of negatives within that. However, the Government has either deliberately or negligently avoided the fact that people might go to more than one jurisdiction for other reasons. First, they may have gone to one jurisdiction honestly thinking that that was the proper one and then found a more appropriate one.

They could also have gone to different jurisdictions because they were seeking different remedies. For instance, a woman who has been dismissed may go to the Equal Opportunity Commission with respect to questions concerning penalty against the employer, seeking a remedy there, and might find herself under this commission's jurisdiction, perhaps wanting to be reinstated. They are seeking quite different remedies. They are not remedies where a greater benefit has accumulated in any sense but they are places where different remedies may be available. I may not have given the best example, but I think I have illustrated the point.

I am looking for legislation that recognises that by accident, mistake or for some other good purpose, there may be times when a person goes into more than one jurisdiction. It would then be appropriate to give instructions to the commission that they can choose whether or not to accept a case, and make sure there are conditions which describe those instructions, and they are a determination as to whether they are forum shopping or whether they are seeking different remedies, whether or not there has been the honest mistake or whatever. I think those are capable of being fixed by amendment without ignoring the fact that there is sometimes a real problem in terms of what the Liberal Party is trying to solve.

The Hon. R.R. Roberts: The Federal Act actually does what you are talking about.

The Hon. M.J. ELLIOTT: Right. The other two areas of concern which link in are with respect to people who have gone to a conference before a commissioner. As the legislation is now structured, they cannot appeal beyond that conference if the commissioner deems for a couple of reasons that they cannot. They can simply be cut off there and then. The right of appeal has been removed, and that has to be treated cautiously. There is a later clause relating to costs. I believe we should be giving some linkage between these two clauses. I believe that a commissioner in a conference can

essentially give some preliminary findings. The commissioner may say, for instance, 'I believe that the employer, or the employee, is being vexatious, frivolous and really there is nothing to answer here.'

However, the employer or employee may decide to take it further and go to appeal. If they choose to do so, they open themselves up to costs. That should still be at the discretion of the commission. If the commission in a full hearing says, 'You were given advice previously that this was frivolous and vexatious, and on the facts before us that was absolutely right but you have decided to proceed, you are now subject to costs'. I do not think that is unreasonable. Those two clauses, with some amendment, can work together and again achieve what the Liberals wanted to achieve but have not done in the fairest manner.

In summary, so often when giving a second reading speech you focus on the negatives, of which there are a number in the legislation (such that I have to produce about 10 pages of amendments, although that is only a quarter of what the Labor Party has produced and they are still going)—

The Hon. R.I. Lucas: You are supporting the essence of what we are doing.

The Hon. M.J. ELLIOTT: Yes, I am supporting increasing movement to enterprise agreements, supporting freedom of association, supporting changes to the unfair dismissal procedures and supporting the setting of minimum standards. The conflicts that will occur, if they do occur (there may be a lot of honest mistakes on behalf of the Government), will be where the Liberal Party has broken clear promises (I have referred to a number and there are a number more), or where it has introduced significant and sometimes draconian matters that simply were not hinted at within its legislative platform. With those comments, the Democrats support the second reading and look forward to a most constructive Committee.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I will make one or two brief comments in relation to the second reading of the legislation. I will address briefly one aspect of the legislation, a point that a number of speakers yesterday and again briefly today have referred to, namely, the notion of judicial independence. It is a wonderful notion. It is like motherhood: we all support it and certainly all support true judicial independence. I do not claim to have detailed knowledge of the local situation in relation to the make up of the commission and therefore do not want my comments this afternoon to be interpreted to be in any way as a commentary at this stage on the notion of judicial independence here in South Australia.

I refer briefly to some articles and commentary on the Commonwealth position to at least sound a cautionary note for some members in this Chamber in relation to making judgments about their notions of judicial independence—a notion which I am sure many in the Chamber have already stated publicly they want to support, continue to see supported and want to take some action in relation to amending the legislation to defend it. I refer to some speeches made in the House of Representatives in March of this year in debate on the Commonwealth Industrial Relations Commission. In a speech on 23 March, Federal MHR, Mr Vaile, stated:

> If anything, with the Industrial Relations Reform Act and the subsequent commission appointments, the Labor Government has turned the Industrial Relations Commission into a citadel for the ACTU.

Mr Vaile then went on to say:

> As the member for Bennelong (Mr Howard) alluded to in his address earlier on during the debate this evening, no less than five appointments of Vice Presidents of the Australian Industrial Relations Commission are straight out of the ACTU.

Mr Vaile quoted from *Hansard* a speech made the previous week by Senator Rod Kemp, a Liberal Senator from Victoria. Senator Kemp stated:

> . . . the presidential members of the commission have been stacked with ACTU operatives: Jan Marsh, Alan Boulton, Iain Watson and Jenny Acton are already presidential members; Iain Ross, as has been mentioned, has been appointed. All these individuals come directly from the office of Bill Kelty. If it is not so important whether these people have a union background or an employer's background, why are all these major appointments coming straight out of the ACTU?

Mr Vaile goes on to say:

> That is a question that the people of Australia must ask. Are we going to get biased or unbiased decisions coming out of the Australian Industrial Relations Commission when we have five out of that number of vice-presidents coming straight from the ACTU? Why? So the Australian Labor Party can pay back the ACTU for the favours it has done over the years. Ms Jenny Acton was going to be one of the contestants in a preselection in Hotham, but the pay back for her stepping out of that preselection to allow the current honourable member for Hotham (Mr Simon Crean) to win it is a seat on the Australian Industrial Relations Commission.

Mr Vaile then refers to the background of a number of the other appointments to the Industrial Relations Commission.

I wanted to place that on the public record because we all support the notion of judicial independence, but in the end I think we ought to be talking about true judicial independence. If you are going to have a judiciary and if you are going to talk about its independence—and in the Commonwealth arena one could argue about the independence of the judiciary or the Commonwealth commission when there are five Federal Labor Party appointments directly from the ACTU to that commission in relation to various deals that have been done with the ACTU—then one must question whether we are talking about genuine and true judicial independence regarding determinations and decisions that are to emanate from that body.

As I said, I do not want my comments to be construed at this stage in any way as direct comments about the background of the various persons involved in the South Australian situation—that may well be a subject for debate on another day. We live in the real world in relation to industrial relations and politics, and we need to accept that we have had a Labor Government in South Australia for some 20 years, and we also need to accept the political and industrial reality that the Labor Party and the UTLC in South Australia are inextricably intertwined and have been for that period. When we talk about this notion of genuine judicial independence, I sound that cautionary note, and I advise members, during further discussion and consideration of that notion during the Committee stage of the Bill, at least to bear in mind the comments by many others about the Commonwealth jurisdiction and to make their own judgment as to whether or not those warning signs ought to be applied and heeded when considering a similar notion in South Australia.

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

PETROLEUM (SUBMERGED LANDS) (MISCELLANEOUS) AMENDMENT BILL

In Committee.

The Hon. ANNE LEVY: Mr Acting Chair, I draw your attention to the state of the Committee.

A quorum having been formed:

Clauses 1 to 48 passed.

Clause 49—'Registration fees.'

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

Page 21, line 18—After 'giving effect to the' insert 'instrument or'.

This amendment is of a minor nature and corrects an error in the wording of paragraph (b) of new section 91(2). Paragraph (b) refers to the 'dealing' mentioned in paragraph (a), but paragraph (a) actually refers to 'an instrument or dealing'. The amendment corrects the paragraph to refer to both an 'instrument' and a 'dealing'.

Amendment carried; clause as amended passed.

New Clause 49A.

The Hon. SANDRA KANCK: I move:

Page 22, after line 2—Insert new clause as follows:

Insertion of ss.92a, 92b

49A. The following sections are inserted in Division VI of Part III of the principal Act before section 93:

Prohibition of acquisition of rights in respect of marine park or aquatic reserve

92a.(1) Notwithstanding this Act, the Fisheries Act 1982 or any other Act, a permit, lease, licence, pipeline licence, special prospecting authority, access authority, instrument of consent for construction work under section 59(2) or (3) or instrument of consent under section 122 cannot be granted or given pursuant to this Act in respect of land constituting a marine park or aquatic reserve.

(2) In this section—

'aquatic reserve' has the same meaning as in the Fisheries Act 1982;

'marine park' has the same meaning as in the Fisheries Act 1982.

Prohibition of seismic operations

92b. Notwithstanding any other provision of this Act, a person carrying on operations in the adjacent area under a permit, lease, licence, pipeline licence, special prospecting authority, access authority or Ministerial consent under this Act must not conduct a seismic operation (whether for exploration of the sea-bed or subsoil or otherwise) during the period 1 May to 30 September (inclusive) in any year.

Penalty: $10 000.

When I spoke during the second reading I said that the Department of Mines and Energy was providing me with some documents, and that when I had read those documents I would decide whether I would amend the legislation. Those documents were duly provided to me, and reading them did nothing to allay my concerns. The documents emanate from a report prepared for the Independent Scientific Review Committee on behalf of the Australian Petroleum Exploration Association. I would like to read some parts of the report, which was given to me in an attempt to placate my concerns, which show why I remain concerned and why I believe there should be no exploration or drilling in marine parks or aquatic reserves. Part 3, relating to drilling activities, states:

Waste water-based drilling fluid and drilled cuttings—

assuming that one is drilling for oil, there is a fair likelihood that there will be oil in the cuttings—

are generally discharged overboard, while oil-based fluids are generally retained on board and the treated cuttings discharged. The discharged fluids form a turbid plume which splits into a falling mass of large sediment particles and an upper plume containing roughly 5 per cent of the solids. This plume may be visible from the air for 10 kilometres or more though observations from Australian industry report that it is typically not more than l km.

It goes on to say:

Only a limited amount of work has been published in Australia to date on the fate of drilling discharges.

Referring to the drilling fluid, it states:

Many drilling fluid constituents or impurities are known to be toxic to marine organisms at very high concentrations. . . In the field such concentrations would only be found in the water column for short times after discharge and within a few tens of metres from point of discharge, and on the sea bed typically less than 100 metres from the discharge point for a single well and up to 400 metres from a multi-well platform.

It is bad luck for a marine organism underneath the stuff that is being dumped. Again it says:

Little toxicological work specifically related to drilling fluids has been carried out in Australia up to date. . .

If we are to allow this sort of activity in a marine park or aquatic reserve, we are basically saying that we do not know what the impact of that drilling or exploration is likely to be. In effect, we will be conducting a large-scale experiment. As we have so few protected areas in the marine environment in South Australia, it is not asking too much to give some protection from drilling and exploration in those areas.

The second amendment relates to the prohibition of seismic operations. I know that we are talking about only a small area of sea and this does not cover the whole area of concern for me, but it is a point from which we can start. My intention in proposed new section 92b is to give protection to whales during their breeding season. I again quote from another of these documents prepared for the Independent Scientific Review Committee, Part 2, on seismic surveys. I find it very worrying. It states:

The sound intensities required to produce pathological effects [on marine animals] are largely unknown. . . and what is known is based on a limited number of experiments of varying quality. Only animals which do not flee the approaching survey vessel because of behavioural or physical constraints will be at risk of pathological effects. Such animals include plankton—

which is a fairly important feed base for whales—

and some site attached fishes.

Those are animals which will not flee and are attached to a site. However, dolphins and whales, by their very nature, are curious and are likely to approach rather than move away from the vessel. It is not until the seismic effects start that they will flee.

The article talks about whales and indicates that they have a very wide hearing range. Of course, you must remember that whales, as do most animals in the sea, use sound as their method of communication. So, once you start interrupting that by seismic exploration, you actually interrupt the communication systems. The article mentions baleen whales, which includes humpbacks and southern right whales. The article states:

Because of their good low frequency hearing and swimming abilities they should never be exposed to seismic sound intensities at levels which can cause pathological damage. But behavioural changes are known to occur; baleen whales are known to alter their behaviour and to actively avoid survey vessels from several kilometres.

No doubt they would do so once the first lot of seismic testing occurred. In particular, the article mentions bowhead whales, as follows:

Subtle behavioural changes have been observed at 28 kilometres. . . and avoidance behaviour has been observed at 3 to 7½ kilometres away. . .

It also states:

Seismic surveys run in enclosed bays or immediately adjacent to selected portions of the southern coast during these months may interrupt calving activities by displacing animals.

So all this document, which was given to me to allay my concerns, has done is increase my concerns. I urge members to give favourable consideration to these amendments.

The Hon. K.T. GRIFFIN: I make a couple of observations. First, this legislation is part of an arranged package of relatively uniform legislation around Australia. That does not mean that this Parliament should be intimidated by that. I have always been a strong advocate for the Parliament's exercising its own responsibility in respect of arrangements between the States and the Commonwealth. But one does have to be careful about moving away from uniform arrangements across Australia between States, territories and Parliaments, but there are occasions when that may certainly occur. That is the first point. This is part of an agreed package of legislation across Australia.

The second point is that, because it is part of a uniform approach to these issues, if South Australia were to carry these amendments, it would put South Australia in a different position from that of both the Commonwealth and the adjoining States of Western Australia and Victoria. In the Government's view, that is not appropriate in relation to the coastal waters. The other point to observe is that the principal Act and now this Bill apply to the waters which are, in effect, coastal waters out to the three nautical mile limit beyond the base lines, and apply to the gulfs and enclosed bays.

So, it applies to an area close to shore, and if amendments as proposed were to be adopted by the State Parliament it would mean that one set of laws applies out to the three nautical mile limit and another set applies in waters under Commonwealth jurisdiction. That is likely to be a problem.

Dealing with the substance of the amendments, I draw attention to the fact that the Fisheries Act 1982 currently requires a joint proclamation prior to petroleum exploration and development activity in a marine park, and a regulation, permit or exemption of the Minister for petroleum exploration and development activity in an aquatic reserve. So, the Fisheries Act already provides for control over petroleum exploration and development in a marine park or aquatic reserve, and for that reason we oppose this amendment to insert a new section 92a.

I should say in passing that, prior to any activity under the Petroleum (Submerged Lands) Act 1982, a declaration of environmental factors is prepared and a code of environmental practice required. That ensures the proper management of the environment during petroleum exploration and development activities.

In relation to proposed section 92b, again the Government opposes this amendment, because what it does is place a blanket ban on seismic operations during five months of the year. During this same period special provisions exist to ensure that there is no significant impact on breeding and migration patterns of whales resulting from seismic operations. As I am informed, if we impose this absolute ban during the period referred to in the amendment it would effectively produce a different result at the border, the three nautical mile limit, between State and Federal laws, and that is not particularly helpful. So, for those reasons, the Government is opposing the addition of both these proposed sections.

The Hon. CAROLYN PICKLES: I have a question of the Attorney. Has he discussed this matter in some detail with his colleague in another place the Minister for the Environment and Natural Resources, and what is his response to the Hon. Ms Kanck's amendments?

The Hon. K.T. GRIFFIN: In respect of this Bill I am not aware of what consultation there has been, remembering that of course it is an agreement between the States and the Commonwealth at ministerial level. But I want to make two points about it. First, the Bill went to Cabinet and, in normal practice, all Ministers see all Bills, and my experience (and I am sure it was the experience of the Labor Government) has been that Ministers do raise issues about matters that may have some impact on their portfolios.

The Cabinet Office actually endeavours to vet all the Cabinet submissions, not with a view to pulling things out but to forward them to the agencies that need to be consulted. I presume that this process would have occurred here, but I am not in a position to say unequivocally that it did. Certainly, at Cabinet level the Minister was aware of the legislation.

The second point to make is that my advice is that the Department of Mines and Energy has an arrangement with the Department for the Environment and Natural Resources that, if there is activity, whether onshore or offshore, in relation to exploration or mining, there is a formal process of consultation between the two departments. If any activity was to occur offshore, whether under this Act and the amended arrangements or otherwise, I am advised that it would be the subject of notice to and consultation with the Department for the Environment and Natural Resources.

The Hon. CAROLYN PICKLES: I am not totally reassured by that answer. I just hope that the consultation process is somewhat better than the process that took place between those two departments in relation to Sellicks Hill cave and other matters. However, I am persuaded by the argument of the Attorney that this is complementary legislation and therefore I oppose the amendment.

The Hon. R.R. ROBERTS: I have listened to the concerns expressed by the Hon. Ms Kanck and, whilst I had concerns in these areas myself, I have taken up these matters with the Minister handling this Bill in another place. I have also had discussions with the Hon. Carolyn Pickles about these issues. I have received the answers from the Minister for Mines and Energy, and they cover the concerns I raised on another occasion with respect to diamond mining. He has assured me that those criteria will apply on these occasions with respect to invasive mining.

I take on board the Hon. Ms Kanck's concerns with respect to whaling. I have raised that matter also with my colleague in another place, who has taken it up, and we have been assured that the techniques are in place and that interference with whales will be minimal. Whilst we compliment the thoughts behind Ms Kanck's concerns, in the balance of the argument with my colleague we will not support these amendments. I say that because we are convinced on the evidence before us that they are fair and appropriate arrangements in these areas. We will monitor them in the future, but we will not support these amendments.

The Hon. SANDRA KANCK: I am disappointed with the responses I have heard. I know that this is part of a package that is being dealt with by assorted Governments at about the same time, but if one sees a way to improve legislation and it throws out the others then surely we go back to the starting point.

As regards the seismic operations and whaling, it is only a period between 1 May and 30 September: it is not all year. It means that seismic exploration could continue outside those times. If oil is there I am sure it will not run away; it will be available after 30 September and up to 1 May.

I acknowledged at the beginning that we were dealing with only a very small area of coastline, and I do not know just what sort of problems the Attorney-General would envisage as regards the two lots of Commonwealth and State legislation operating and whether they were different. Could the Attorney-General expand on that?

The Hon. K.T. GRIFFIN: One of the difficulties may well be that, if there are restrictions but not prohibitions beyond the three nautical mile limit, seismic survey activity may still occur but, if there is an absolute prohibition inside the three nautical mile limit, it will obviously not be of any benefit to the whale population, particularly in the light of the potential impact of seismic activity on whales, wherever it occurs, because the seismic activity will continue.

In terms of the actual code of practice which is in place it may be helpful and, I hope, reassuring to the Hon. Ms Kanck if I indicate what are some of the conditions imposed under the code of environmental practice. Under that code there is an overriding provision that the code is guided by the general principles described in the Australian Petroleum Exploration Association's Code of Environmental Practice (Offshore) 1990.

In relation to a particular exploration permit—and I do not think it is fair to name the person or body that was involved—there were a number of strategies to be adopted with the impact they aimed to avoid or mitigate. In relation to commercial fishing operations the permit holder was required to consult with the South Australian Fishing Industry Council and keep fishing industry representatives fully informed of the survey's progress. Further conditions were as follows:

> Operations will be planned so as to minimise any interference or disruption to commercial fishing activities. It is proposed to employ a scout vessel which will precede the survey vessel to check for obstructions in the water such as nets and craypots and to assist in liaison with local fishermen.

In relation to the procedures for protection of whales this particular code of environmental practice included the following passage:

> [the company] is mindful of its obligations to protect the environment and is confident that, with proper planning, petroleum exploration and development can take place with no significant impact on the marine environment. We therefore propose to adopt the procedures developed and implemented for the seismic acquisition—

and it goes on to refer to two other surveys. It continues:

> The aim in doing this is to provide protection for all great whales, including Southern Right whales, which may be migrating through the area during the survey.
>
> · the seismic contractor shall observe all provisions of the Whale Protection Act 1980.
> · the contractor shall maintain a continuous watch for whales from the bridge.
> · if whales are sighted, or if any scouting vessel advises that whales are present within five kilometres of the seismic vessel, recording shall cease immediately.
> · upon sighting any whale, the. . . .company representative on the seismic vessel shall record the following and advise the Department of Mines and Energy forthwith:
>
> (i) Time
> (ii) Vessel location and heading
> (iii) Number of whales present
> (iv) Bearing and estimate distance of whales from the vessel
> (v) Estimated heading and speed of whales
> (vi) Whale species if determinable
> (vii) Any particularly noteworthy activity of whales, for example whales broaching
>
> · recording may resume when the whales are reasonably believed to be more than 10 kilometres from the seismic vessel.
> · all shipboard wastes will be handled as required by IMCO and SOLAS international standards as stipulated by the Australian Navigation Act.
>
> 3. The Maritime Rescue Co-ordination Centre (Canberra) is to be kept informed of the vessel's movements.

Then there are certain requirements in relation to the survey data, which must be referred on a weekly basis to the Department of Mines and Energy. So, there is a code of practice that is applied by the department and I would hope that it provides some reassurance, if not significant reassurance, about the way this particular issue is addressed.

The Hon. R.R. ROBERTS: I thank the Attorney-General for putting that code of practice on the record, Mr Chairman, because the Labor Party and I, as shadow Minister, have taken a strong stand in relation to fisheries and State waters. I hope that the Hon. Ms Kanck is now reassured that most of her concerns with respect to these codes of practice have now been put on the record and that she can accept the decision of the Australian Labor Party not to support her amendments.

The Hon. SANDRA KANCK: I observe that it is simply a code of practice that does not seem to have the sort of effect that I am trying to get by having it in the actual legislation.

The Hon. K.T. GRIFFIN: What I should have made clear and what I did not is that the code of practice is part of the conditions of the exploration permit. A breach of the code is a breach of the permit and therefore makes it liable to forfeiture. There is a sanction and it is not just a cosy arrangement. It is part of the permit. A breach, if significant, can lead to forfeiture.

The Hon. SANDRA KANCK: In response, treating breaches after the event never makes up for the damage that has been done. Simply charging and fining them will not make up for the damage.

The Hon. CAROLYN PICKLES: I take up the points raised by the Hon. Ms Kanck. However, I am sure that these points were all explored when the legislation was passed at the Federal level. Were there the same kinds of objections by the Australian Democrats or Greens at the Federal level? Is the Attorney-General aware whether or not this matter was raised when the Federal legislation went through? The Attorney shakes his head, which means that he is not aware of it. It is difficult when it comes down to South Australia after every other State has supported this kind of legislation and we are to be the only State to opt out.

Certainly, the Attorney's comments on the code have reassured me, as long as he can also reassure me what kind of procedures are in place to monitor those codes of practice. Is there any kind of policing mechanism?

The Hon. K.T. GRIFFIN: I am advised that the principal legislation at Federal level has been progressively amended. The most recent amendment was in 1992 and all the States are in catch up phase at the moment and have either passed or are in the process of passing this catch up framework. As to what objections were raised at the Federal level, I am not able to advise the honourable member because I do not know, and my adviser similarly is unaware of what reaction there would have been at the Federal level. I put it to the Committee that there has been a long period of gestation of this legislation.

New clause negatived.

Clause 50 passed.

Clause 51—'Conditions relating to insurance.'

The Hon. SANDRA KANCK: I move:

Page 22, lines 7 to 20—Leave out all words in these lines and substitute:

96a. The holder of a permit, lease, licence, pipeline licence, special prospecting authority or access authority must maintain insurance, as specified by the Minister from time to time, against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of work, or the doing of any other thing, under the permit, lease, licence, pipeline licence or authority, including expenses of complying with directions with respect to the clean up or other remedying of the effects of the escape of petroleum.

New section 96a(2) provides that the special prospecting authority or access authority may include a condition that insurance be maintained. However, new section 96a(1) provides that the holder of a permit, lease, licence or pipeline licence must maintain that insurance. My amendment brings the special prospecting authority and access authorities into the 'must maintain' category. I do not see why those two particular categories need that exemption.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. No drilling can be undertaken under a special prospecting authority or access authority. The only type of activity allowed is exploratory work, such as seismic or aeromagnetic work. These activities are not considered to pose significant risks any more than any other marine and airborne activities such as fishing, coastal freighter traffic, and so on. It is our view that no special conditions about insurance should be included such that they are made mandatory: there ought to remain a discretion.

Amendment negatived; clause passed.

Clauses 52 to 56 passed.

Clause 57—'Orders for forfeiture in respect of certain offences.'

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

Page 24, lines 20 and 21—Leave out 'inserting in subsection (1) "or by the District Court" after "Supreme Court"' and substitute 'striking out from subsection (1) "by the Supreme Court"'.

This is a technical amendment designed to ensure that the exercise of power of forfeiture under section 133 of the Act is dependent solely on whether or not the defendant charged with an offence against certain sections of the Act elects under the Summary Procedure Act to be dealt with before a superior court. The current Bill would permit the forfeiture power to be exercised only by the Supreme Court or the District Court. However, the offences concerned are minor indictable and, as a result of the Summary Procedure Act, the defendant may chose to be dealt with before the Magistrates Court. Therefore, the amendment merely extends the power of forfeiture to the Magistrates Court in addition to the Supreme Court and the District Court.

Amendment carried; clause as amended passed.

Remaining clauses 58 to 63 and title passed.

Bill read a third time and passed.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

Adjourned debate on second reading.

(Continued from 20 April. Page 553.)

The Hon. DIANA LAIDLAW (Minister for Transport): I thank the Hon. Barbara Wiese and the Hon. Sandra Kanck for their contributions to this debate and for their positive response to this important initiative, which we intend will help to stimulate further development of our ports in the interests of the economic development of the State. There were a number of questions asked by both members, and I provide the following replies. First, in answer to the Hon. Barbara Wiese, one question related to the ports that would be subject to the Bill and the Ports Corporation. The ports subject to indenture agreements, including Port Stanvac, Port Bonython and Ardrossan, will not be included as ports under the Ports Corporation Authority. It is not simply a matter of private ports: it is those subject to indenture agreements.

The Hon. Barbara Wiese: Do you say they will be?

The Hon. DIANA LAIDLAW: No, they will not be included as ports under the Ports Corporation Authority.

The Hon. Barbara Wiese: Not even in the administration thereof?

The Hon. DIANA LAIDLAW: No, they are both private ports and administered under this indenture arrangement. I suspect that that indenture will be the Department of Transport.

The Hon. Barbara Wiese: What do they know about ports and the administration of agreements?

The Hon. DIANA LAIDLAW: They are private ports as managed now and rental payments are simply made. The department now is not involved in the management of those ports and there will be no change to the current arrangement. In respect of financial charter arrangements, the Ports Corporation will be one of the first Government business enterprises to come under the provisions of the Public Corporations Act. This legislation requires the corporation board, the responsible Minister and the Treasurer to establish a financial charter for the new corporation which will be consistent with its commercial focus. In establishing this charter the Government will be strongly influenced by the recommendations of the Commission for Audit which, in respect of the issue of dividend policy for Government businesses such as the ports, recommended in volume 1, page 374, as follows:

. . . to provide some financial certainty to Government businesses, dividend recommendations of boards should be based on a percentage of the profit of the business (after payment of tax equivalents), agreed with the Government over a rolling three year period.

That view presented by the Commission of Audit is consistent with the recommendations of the recent Industry Commission's report into port authority activities and services. The establishment of dividends on the basis of a fixed rate of return is inconsistent with the payment of dividends to reflect financial performance. I, like the honourable member and the Australian Chamber of Shipping, have considerable concern about the dividend policies adopted in other States. For instance, the Port of Melbourne had to borrow money last year to pay its dividend to the Victorian Government. If any organisation, even in my limited understanding of viable organisations, cannot make a profit and therefore cannot make a dividend, it should not go out borrowing money to do so. The requirement to pay that dividend did not take account of financial performance, and that is not the way we will be applying this policy in South Australia.

In respect of community service organisations, a key principle reflected in the proposed legislation is to separate responsibilities for commercial port activities from other maritime activities of Government, including regulatory responsibilities. However, in practice it is recognised that there may well be circumstances where the Department of Transport and the Ports Corporation provide services on the other's behalf to exploit economies of scale and to reduce costs. If the Ports Corporation undertakes non-commercial activities for the Government it will do so on an agreed contractual basis with the Government providing a transpar-

ent subsidy for any activities not commercially viable for the corporation. This will ensure that the costs of providing marine community service obligations are explicitly identified and in terms will exert a strong pressure to minimise the costs of these services. Mr President, I seek leave to conclude my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 1.1 to 2.15 p.m.]

QUESTION TIME

EDUCATION STAFF CUTS

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about education staff cuts and the Audit Commission.

Leave granted.

The Hon. C.J. SUMNER: The Audit Commission has recommended cuts of up to 2 921 teaching and non-teaching staff from the Education Department. This is made up by recommendations relating to student/teacher ratios where the recommendation relates to bringing South Australia into line with the Australian average in this area and also where it gives figures about the New South Wales student/teacher ratios. If you take the Australian average, 931 jobs are taken out of the system. If you take the New South Wales ratio, then 2 017 jobs are taken out of the system.

With respect to non-teaching staff, again savings that can be achieved according to the Audit Commission through applying the average Australian staff levels means a reduction in full-time equivalents of 821. There is also a recommendation relating to permanent teachers where 1 169 surplus permanent teachers are identified. The report says, 'This surplus consists of teachers who are not in permanent established positions.' As I said, the total was 1 169. It may be that the Government will argue that some of those permanent teacher positions may be backfilled by contract positions, but the point is that the Audit Commission has made it clear that, in its view:

> Putting average staffing ratios to one side, there is still a surplus of teachers in the South Australian system, mainly in the metropolitan area.

So, if the Audit Commission's recommendations are implemented, there is a threat to up to 2 921 teaching and non-teaching staff positions, on the arguments advanced by the Audit Commission.

Prior to the last election, the Liberal Party gave a commitment to teachers and public servants that there would be no compulsory retrenchments. In other words, the traditional permanency of public servants, including teachers, would be maintained. In another part of the Audit Commission report, it is recommended as follows:

> Procedures be established to allow exemptions from the no retrenchment policy where improvement would be hindered by its continued application.

My questions to the Minister are as follows:

1. Does the Minister for Education and Children's Services agree that the Liberal Party made commitments prior to the last election that the traditional Public Service policy of permanency and no compulsory retrenchments would be maintained by the Liberal Party in Government?

2. Will the Minister give the Council a guarantee that this commitment will be honoured in both the teaching service and the general Public Service, notwithstanding the report of the Audit Commission?

The Hon. R.I. LUCAS: What an unusual alliance for the former Attorney-General, now Leader of the Opposition, with the left-wing union leadership of the Institute of Teachers, particularly given the Leader's well-known views over recent years about the teaching service generally. One only has to ask both the Hon. Mr Sumner and some of his colleagues about his well-known attitudes towards the teaching service that he has expressed publicly on a number of occasions in recent years to realise that it is certainly an unusual allegiance to see the Shadow Minister for Education trotting into the Chamber now as the puppet of the left-wing leadership of the Institute of Teachers, trotting out the nonsense in relation to what is alleged to have been included in the Commission of Audit report.

The Hon. C.J. Sumner: I just quoted it.

The Hon. R.I. LUCAS: No, you did not quote it. You quoted the interpretation of the left wing leadership of the Institute of Teachers. You did not bother to read what the Commission of Audit actually said. You took Clare McCarty's press release from two or three days ago. It has taken the Leader two or three days to get the courage to get up and ask the question in this place.

An honourable member interjecting:

The Hon. R.I. LUCAS: Perhaps it took him that long to get up the courage to trot in here and do the bidding of the left wing leadership of the Institute of Teachers.

The Hon. C.J. Sumner: That won't get you anywhere.

The Hon. R.I. LUCAS: It is not getting you anywhere, either. The particular statement to which the Leader of the Opposition has referred was one put out by Clare McCarty on behalf of the Institute of Teachers in relation to its interpretation of the Commission of Audit report. It has nothing to do with what the Commission of Audit recommended. The Leader of the Opposition talks about recommendations. I refer to recommendation 12.19 of the Commission of Audit report at page 156, the only recommendation of the Commission of Audit on the size of the work force under the heading 'The teacher work force'. What does the Commission of Audit say? It is not what Clare McCarty has asked the Hon. Chris Sumner to come into the Chamber and ask today. It states:

> Student teacher ratios in South Australia should be increased towards Australian average levels. This should be reflected in the global budgeting resource allocation to the schools.

The Hon. Mr Sumner says that the Commission of Audit has recommended 2 921.

The Hon. C.J. Sumner: That's right.

The Hon. R.I. LUCAS: It's not right—I will read it to you again:

> Student teacher ratios. . . should be increased towards Australian average levels.

Even if one was to go all the way towards and actually arrive at the Australian average levels, one can get up to 900. You certainly cannot get it up to 2 921, which was the claim of the leadership of the Institute of Teachers and now the claim of the puppet of the left wing leadership of the Institute of Teachers that it will be 2 921—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Even if we take non-teaching, what is 900 and 700?

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: What is 900 and 800? Does that get to 2 900? If the Leader of the Opposition thinks that gets to 2 900—

The Hon. K.T. Griffin: You can understand why he was not a teacher.

The Hon. R.I. LUCAS: Yes, and we can understand why we have the problems we have today of the financial mismanagement of the former Labor Government and why we have a $10 billion black hole in the State's finances with that sort of mathematics.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Let us talk about that because again the Leader of the Opposition is low on the learning curve. The former Attorney has taken two or three days to get up the courage to come into this place and ask the question because the institute leadership has been out there trying to put out this nonsense for the past two days. Let us look at this question about—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Let us look at the question—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, let's look at it. Recommendation 12.22—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I don't need to read the institute's press releases. Let us look at the Audit Commission report. Recommendation 12.22 states:

> Work force surplus—The total number of permanent teaching staff should be reduced to a level that does not exceed the total number of establishment teaching positions.

That is the part to which the former Attorney refers, but he does not refer to the next recommendation, 12.23—a subject we have discussed in this Chamber on at least three or four occasions over the past month or so. Recommendation 12.23 states:

> The use of limited tenure contracts should be expanded to enhance work force flexibility.

Contract positions—that is exactly what we have been talking about for quite some time. The restrictive work practices that the former Labor Government with the Institute of Teachers locked into our school system, with 98 per cent of our work force having to be permanent teachers and only 2 per cent on contract, must be changed—a position we acknowledged in this Chamber at least two months ago in response to questions from the Leader of the Opposition about the flexibility of our work force, because the current situation at the moment locks in a permanent surplus of teachers. Every year 200 to 250 teachers come back to the city from the country, and we cannot find them positions. At the same time, we have to employ new teachers to go to country positions, because the permanent teaching work force will not go to the country under the sort of staffing policy that the Leader of the Opposition and his Labor Cabinet supported when they were in Government.

The Hon. C.J. Sumner: When are you going to answer the question?

The Hon. R.I. LUCAS: The answer to the question is quite obvious. What we are talking about in relation to those recommendations is not a reduction but a transfer in the mix from permanent teachers to limited contract teachers or to contract teaching positions. We have contract positions and we have permanent positions. In fact, at the moment we have 96 per cent permanent and 4 per cent contract. The agreement provides that we must have 98 per cent permanent positions and 2 per cent on contract. We are saying that that is a restrictive practice which, in effect, enforces a lower quality of education in many of the schools throughout South Australia, because we cannot staff our schools properly.

Most other States have about 90 per cent of their work force as permanent teaching positions and about 10 per cent on contract. What we have in South Australia is just over 1 000 teachers who, for varying reasons, currently are on leave without pay. When they come back—

An honourable member interjecting:

The Hon. R.I. LUCAS: This is my bible at the moment. When they come back they will create further additional pressures on teacher staffing policies within our schools.

The Hon. T.G. Roberts: But won't others go off?

The Hon. R.I. LUCAS: I could certainly accuse the Hon. Terry Roberts of being another puppet of the Institute of Teachers. However, that would be silly given his well known connections with the institute. Have you caught up with the latest instructions yet, or are the late night sittings still interrupting?

The Hon. T.G. Roberts: Tomorrow.

The Hon. R.I. LUCAS: Tomorrow you will catch up with instructions. Let me make quite clear, as I have today and on a number of previous occasions, that I do not attack in any way our teaching work force, but I do attack the misrepresentation of the Commission of Audit report by the union leadership of the Institute of Teachers.

I do not believe that the union leadership of the Institute of Teachers is fairly reflecting the views of the vast majority of teachers. Yes, they represent a good number of teachers, and I acknowledge that, but there is a significant and silent majority of teachers who do not want to have a bar of this sort of flagrant and blatant misrepresentation of what the Commission of Audit said in its report. We have ensured that the recommendations of the Commission of Audit have been circulated to all schools, so that they can see for themselves the exact recommendations of the Commission of Audit in this area and in a number of other areas as well. They do not have to rely on the liberal—if I can use that word advisedly—interpretations—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: I am sure Clare would be delighted at that—of the Commission of Audit recommendations that have been used by Clare McCarty and the leadership of the Institute of Teachers.

The Hon. G. Weatherill: What was the question?

The Hon. R.I. LUCAS: It was a most enjoyable question, whatever it was, from my viewpoint.

The Hon. Anne Levy: You never even listened.

The Hon. R.I. LUCAS: Loved every bit of it. Every month I sit down in convivial fashion with the leadership of the Institute of Teachers, over a cup of tea or coffee in my office. I have been doing that every month since I became Minister for Education, and I was doing it regularly as shadow Minister for Education—

The Hon. R.R. Roberts: No wonder they are frustrated; they never got an answer.

The Hon. R.I. LUCAS: I will enjoy talking to—and I was going to say 'the honourable'—Clare McCarty. She wanted to be honourable; she wanted to be a member of this illustrious Chamber but, sadly, with 2 per cent of the State wide vote and $150 000 of hard earned teachers' money being spent on the campaign, she was unable to join us in this Chamber for this Parliamentary term. Nevertheless, I look

forward to my normal monthly meeting this week to discuss this and a number of other issues in relation to the Commission of Audit report. I will be saying to Clare McCarty again—and we have enjoyable meetings, I must say—

The Hon. K.T. Griffin: Once a month?

The Hon. R.I. LUCAS: Yes, once a month—regular consultation. My door is always open to Clare McCarty, and my telephone—

The Hon. R.R. Roberts: Your trapdoor.

The Hon. R.I. LUCAS: No, not the trapdoor. My telephone is always answered if Clare is on the phone to discuss matters of importance.

The Hon. K.T. Griffin: Don't go overboard.

The Hon. R.I. LUCAS: No, I am not going overboard. We are always prepared to consult, and on a good many issues we have substantive agreement, but in relation to this issue there is not, and we certainly reject the interpretations of the Commission for Audit findings and recommendations that Clare McCarty and the leadership of the Institute of Teachers have been pushing about in the media and amongst teachers and parents generally.

The Hon. C.J. SUMNER: I have a supplementary question.

Members interjecting:

The Hon. C.J. SUMNER: I am quite happy to listen all day to the blather of the honourable member, but I can assure him he is not doing his cause any good by carrying on that way and trivialising what is an important issue. Even on the best interpretation from his point of view of the Audit Commission report, 1 751 teachers and non-teaching staff are under threat.

Members interjecting:

The Hon. C.J. SUMNER: The supplementary question is: in the light of the bluff and bluster which emanated from the Minister as an excuse for not answering the question, will he now direct his attention to the actual questions which, for the benefit of the honourable member, I will repeat—and I suggest he listens, answers the questions and does not indulge in the bluff and bluster performance and theatrics that he has just indulged in for the benefit of the Council and those who have the misfortune to have to listen to it? Will he direct his attention to the questions, as follows:

1. Does the Minister for Education and Children's Services agree that the Liberal Party made commitments prior to the last election that the traditional Public Service policy of permanency and no compulsory retrenchments would be maintained by the Liberal Party in Government? It is simple: yes or no.

2. Will the Minister give the Council a guarantee that this commitment, which we know was made, will be honoured both in regard to the teaching service and the general Public Service, notwithstanding the report of the Audit Commission? Two simple questions; two simple answers.

The Hon. R.I. LUCAS: My understanding of the commitments given by the Premier and the responsible Ministers at the time, and I will check the details—

The Hon. C.J. Sumner: That's you.

The Hon. R.I. LUCAS: Not in relation to industrial affairs generally; you were asking about the Public Service.

The Hon. C.J. Sumner: You gave the commitment—

The Hon. R.I. LUCAS: No commitment was given in the education policy at all in this particular area, if you would like to look at the education policy—

The Hon. C.J. Sumner: Come on.

The Hon. R.I. LUCAS: —but I will check with the Premier and the Minister. My understanding was that the form of words or something similar was that the *status quo* would remain. My understanding of the present situation is that the Government has made no decision yet to change that position.

The Hon. Anne Levy: But you will.

The Hon. R.I. LUCAS: No decision has been taken.

RECYCLING FEE

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about a vehicle recycling fee.

Leave granted.

The Hon. BARBARA WIESE: Following Clean Up Australia Day several weeks ago, when 300 rusting car wrecks were retrieved from reserves and national parks, the Clean Up Australia Day organiser and current Australian of the Year, Mr Ian Kiernan, proposed a way of dealing with this continuing pollution problem.

The Hon. M.J. Elliott: Put advertising signs on them.

The Hon. BARBARA WIESE: Yes, that's an excellent idea. We will probably have those. His proposal involved new car buyers paying a deposit of $200 to each State's road transport authority, that deposit remaining attached to the car's registration papers until the vehicle reached the end of its useful life. At that time, the final owner would deliver the vehicle and its papers to a metal recycler, who would return the $200 deposit to the owner, and the recycler in turn would receive reimbursement from the road transport authority. My questions are:

1. Can the Minister indicate whether the incidence of dumped and wrecked cars in South Australia is of significant magnitude to warrant the action proposed by Mr Kiernan?

2. If so, does she consider that this proposal is worthy of serious consideration as a remedy for the problem?

The Hon. DIANA LAIDLAW: The issue is of some concern. In fact, I spoke to Mr Kiernan about the matter before Clean Up Australia Day was launched. I have not had contact with him since either by correspondence or submission from him or his organisation. I will seek further information on the scheme.

WILPENA POUND

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about the Wilpena tourism development.

Leave granted.

The Hon. CAROLYN PICKLES: On 30 March I raised issues in connection with the Wilpena development and voiced my concern about the environmental issues associated with the redevelopment of the chalet. These issues include the impact of facilities located in the fragile environment, visitor education and control, water supply, disposal of sewage, control of fuel for vehicles, power generation, noise pollution, visual pollution and the regeneration of seriously degraded areas. I hope the Minister can eventually respond to my question—it has been there for quite some time—before the winter break, because these issues need to have a public airing. I have other concerns about the whole area of the proposed new lease arrangements between the Government

and Flinders Ranges Tourist Services Pty Ltd. My question to the Minister is: what is the role of the Reserves Advisory Committee in restructuring the Flinders Ranges National Park management plan to accommodate the new lease for Flinders Ranges Tourist Services Pty Ltd?

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

TAFE COURSES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister representing the Minister for Employment, Training and Further Education a question about the advertising of TAFE courses for women.

Leave granted.

The Hon. SANDRA KANCK: I have been contacted by a TAFE lecturer who says that within TAFE they are operating on a directive that TAFE courses cannot be advertised as being for women only or as being particularly suitable for women. My questions to the Minister are:

1. Has this directive been given in writing; if so, can the Minister table a copy in Parliament?

2. Why has this decision been made?

3. If no directive has been given, why have TAFE administrators and lecturers been operating under such a policy?

The Hon. R.I. LUCAS: I will be pleased to refer those questions to my colleague in another place and bring back a reply.

STUDENT SKILL TESTING

The Hon. A.J. REDFORD: I direct a question to the Leader of the Opposition. Given that the Commission of Audit has found that 'there are currently no effective processes to asses educational outcomes to review strategies or to allocate increasingly scarce educational resources', will the Leader indicate that he supports the Liberal Government's policy to introduce basic skills testing for students in schools?

The Hon. C.J. SUMNER: I am delighted that the honourable member is giving me a platform to answer questions relating to education policy. I was talking to one of my colleagues about the future of today's program, because I had assumed that the Government was keen to proceed with the parliamentary—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, Mr President, we just had 20 minutes of the honourable member's blustering and carrying on, failing to answer questions, when it was specific—

Members interjecting:

The Hon. C.J. SUMNER: I'm quite enjoying this; I thank the honourable member for the question. I have not had a question since November last year.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am absolutely delighted that the honourable member has given me a chance to do what I think I do best. The question of testing for educational outcomes is an issue that does need to be examined; I make no apology for that. We have not yet seen the Government's proposals in this area and, when this issue arose early in the new year, when parts of the education review report were released to the media, I made quite a detailed statement, which appears in the *Advertiser*, and I commend the honourable member to that article, in which he will see—not in great specifics at this stage, of course—in general what the Opposition's policy is in relation to education and where I come from as a shadow Minister for Education.

I am quite happy to say that I am very proud of the fact that I had the whole of my education at a State school, and it might be worth asking members opposite how many of them had education at State schools. They generally tend to go off to the eastern suburbs' toffy private schools and pay exorbitant moneys to get their privileged education. I am proud of the fact—

Members interjecting:

The Hon. C.J. SUMNER: I'm going to do exactly what he did: I have an absolutely superb precedent for it. And he had a really good teacher, too; there's no doubt about that. If the honourable member can ramble all over the place with respect to the question that I asked—

An honourable member interjecting:

The Hon. C.J. SUMNER: I'm not going to ramble: I'm going to tell you what the basic principles of policy are and where I come from. I am quite happy to put them on the record. First of all, I am a product of the State school system. My kids go to State schools.

The Hon. M.J. Elliott: Hear, hear!

The Hon. C.J. SUMNER: 'Hear, hear!' from the Hon. Mr Elliott. That is something that does not happen with honourable members opposite, because they send them to private schools in the great majority of cases. They send them to private schools and they are unashamed and unabashed in their support of the private system. Absolutely—

The Hon. J.C. Irwin: So what?

The Hon. C.J. SUMNER: Because you want to denigrate the State system. This Minister spent the past six or seven years running down, denigrating and knocking the State system. And that cannot be gainsaid, because I sat in here, a product of the State system, with my kids at State schools, and had to listen to this individual totally attacking and trying to destroy the State system in South Australia. Quite frankly, I got fed up with it, and I am glad the honourable member asked me this question, because I will continue on this theme.

So, Labor comes to this issue of education with an unequivocal, unashamed commitment to support for the State system. Equality of opportunity in this State and in this Australian community can be delivered only by a State system. We must therefore—

Members interjecting:

The Hon. C.J. SUMNER: You can have a non-government system; I am not arguing about that. But unless Governments and the community give support to a proper State system, which the Liberal Party in opposition did not do, then you cannot have a system of equality of opportunity in this country. And the notion of the privatisation of the State schools, some of the garbage in the Audit Commission report relating to the education system, should have been quashed on day one by the Government, but it was not. It was not quashed, because members opposite do not support the public system. They are interested in supporting their mates in the private and privileged schools of this State.

That is where we come from on this side of the Council: commitment to State schools, to start with. The outcomes in State schools have to be looked at as they do across the whole spectrum, but what the Hon. Mr Lucas wanted to do with respect to the Education Review Unit was just to have reviews of State schools. So, the only outcomes he looked at were those in State schools. He did not get into the private

schools, because that is where his mates are, where the privileged in this community are. That is where they send their kids to school, so they are not interested in having outcomes looked at. If we are going to look at outcomes, look at them across the whole spectrum of schools. We must have a means of assessing outcomes in schools and—

Members interjecting:

The Hon. C.J. SUMNER: I have no comment. Obviously, the outcome of a State system—and the private system—must be basic skills in numeracy, literacy, etc.

Members interjecting:

The Hon. C.J. SUMNER: Just a minute. You must have a system of assessing basic outcomes.

Members interjecting:

The Hon. C.J. SUMNER: I don't apologise for that. No problem at all.

Members interjecting:

The PRESIDENT: Order!

An honourable member: They're not listening.

The Hon. C.J. SUMNER: They don't like the answer.

Members interjecting:

The Hon. C.J. SUMNER: Well, I wasn't the Minister, mate. I would have been there if I had been—

Members interjecting:

The PRESIDENT: Order! The honourable member has the right to answer the question.

The Hon. C.J. SUMNER: Thank you, Mr President; absolutely dead right. I will continue.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: No; that was an aside. I come back to my point about State school system support: there has to be a system of assessing outcomes in the education system as a whole, and one of those outcomes has to be attention to basic skills such as literacy, and so on. I have no problem with any of that. The question, however, is how one gets to assessing those outcomes. All I am saying—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: It is in the *Advertiser* article of early January, if you want to look at it. If I had it here I would have read it out and sat down and not gone on for so long. It is in the article and we have to look at that. I said in the article that I await the Government's proposals in this area and that we will then examine them within that general philosophical context. While I am on the topic, Mr President, I am quite happy to tell you, the Parliament, the public, the union and anyone else who wants to listen that this Opposition and this shadow Minister will not be a captive of the teachers union or any other individual interest group that operates around this State in the education arena. We will make up our own mind about education issues, receiving submissions from—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I think that, as I said in the article in January (and you went off at it before), in my personal experience the State school system was excellent. That is what I said and you went crook about it. That is what happened.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: You did so. Yes you did; that is what happened. I am quite happy to go on the record from my experience. That does not mean that all teachers are good in either the private or the public system. The other thing I said in the article is that there has to be a system of getting rid of teachers who are not performing. There is no argument about that whatsoever.

The Hon. R.I. Lucas: Retrench them, retrench them. Is that what you're saying?

The Hon. C.J. SUMNER: There is peer review—

The Hon. R.I. Lucas: Well, he's on the record!

The Hon. C.J. SUMNER: There is peer review—

The Hon. R.I. Lucas: Thanks very much; you can sit down now.

The Hon. C.J. SUMNER: I didn't say that. You are a dumbo; you are a fool.

The PRESIDENT: Order! That sort of language is not necessary.

The Hon. C.J. SUMNER: I am trying to answer the question and I get all this yelling, just as used to happen when I was in government. That is what used to happen when we were there. The Chair offered no control to me then when I was answering questions, nor to the Hon. Ms Wiese or anyone else. Members opposite carried on like a gaggle of idiots, which is exactly what they are. There has to be a system of peer review of teachers as well, which means that there has to be a system of getting incompetent teachers out of it; and that does not conflict with a no-retrenchment policy.

The Hon. R.I. Lucas: How do you get rid of them?

The Hon. C.J. SUMNER: If they are incompetent and not up to their job then they can be dismissed for incompetence. The honourable member's notion that you cannot dismiss any employee who is incompetent is bizarre. There has to be a system of peer review of teachers. They are the major planks of Labor's platform that I am putting in place as the new shadow Minister for Education. I am delighted the honourable member asked me the question and to have been able to explain it to the Council and give it a wider audience than it got previously, and I welcome further questions of this kind from the honourable member or anyone else in the Opposition who wants to ask them.

SCHOOL COUNCILS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about school councils.

Leave granted.

The Hon. ANNE LEVY: Mr President, as part of my explanation I refer to recommendation 12.3 of the Audit Commission report which states:

> The Education Department should develop and implement a 'self-managing' school model with as much responsibility as possible devolved to schools or school clusters.

Many queries have arisen as to just what this self-management of schools will involve. It has been suggested that items such as maintenance programs, security systems, insurance coverage, occupational health requirements, control of all the school finances and so on may be made the responsibility of the school council. Legal requirements are attached to all these areas such as the controlling of finances; occupational health, which is obviously covered by legislation; insurance; maintenance and so on. So, many of the areas which may be devolved to school councils have legal requirements associated with them and the committee on education only last year heard that many school councils are very concerned that they do not have the experience or the knowledge necessary to take on these matters and their legal requirements.

Schools in Burnside may have an accountant on their council but many school councils would not have such a

member. There would be very few school councils with members who are expert in management, and one can well understand the fears experienced by many school councils as to the responsibilities they may be given without any training and without any knowledge of or experience in these matters. My questions to the Minister are:

1. What responsibilities and liabilities will be passed on to school councils following the recommendations of the Audit Commission to implement a self-managing school model?

2. Is the Minister aware that many school councils have expressed considerable concern that they are not properly equipped to undertake such a management role?

The Hon. R.I. LUCAS: I thank the honourable member for her question. I never like to cause embarrassment for the honourable member but on this occasion I must do so because I have to inform her that this question was asked two days ago by the Hon. Terry Roberts, and I would refer her to the answer I gave on Wednesday of this week in response to that question.

The Hon. Anne Levy: You don't listen to questions. His question was about hiring and firing: mine wasn't.

The Hon. R.I. LUCAS: The question from the Hon. Terry Roberts was exactly the same question in relation to what increased responsibilities might be devolved to schools in relation to these particular recommendations of the Commission of Audit. And what I said then, and what I say now, is that we are a much more moderate Government than the previous Labor Government. Some two years ago the previous Labor Government had recommendations before it, being driven by the Government Agency Review Group (GARG) process, which caused considerable concern among some parents and some school councils about the increased responsibilities that were to be devolved to local school communities.

There was considerable opposition to the policy the honourable member's Government and the Minister, the Hon. Greg Crafter and then the Hon. Susan Lenehan, tried to implement in schools. As I said, we are a much more moderate Government in this respect anyway than the previous Labor Government in relation to shared responsibility or devolution. What we said prior to the election was that we would move in an evolutionary fashion in relation to this, that there were some areas like minor works, maintenance and utility management where perhaps we could look at some sort of pilot program continuing with only voluntary involvement of schools, so that those schools that wished to participate could be involved and we could learn from that experience whether we could or should extend it to all schools.

As I said before, there are conflicting views amongst parents about this. The official body representing school councils in South Australia is a strong advocate of moving down the path of devolution. It would not accept the concerns conveyed to the honourable member and then conveyed to the Chamber. The parents believe that these concerns underrate the capacity of parents in all parts of South Australia to make sensible and commonsense decisions about the operations of their schools. It is not only the wealthy parents—as the Hon. Anne Levy and the Hon. Chris Sumner in the class warfare mentality that they seek to portray might exist in the eastern suburbs—who can make sensible and commonsense decisions.

I certainly have faith in parents in the northern and southern suburbs of Adelaide; in the Elizabeth, Salisburys, Christies Beaches and Hackhams of Adelaide: they have the commonsense and the good sense to make appropriate decisions in relation to the operations of schools. One of the interesting pilot programs conducted under the previous Government was undertaken in the Port Noarlunga cluster of schools where a good number of parents are strong advocates of these recommendations. I refer the honourable member to the more detailed response I gave two days ago to the Hon. Terry Roberts in relation to the same question, but that is a quick synopsis of the answer.

SCHOOL CARD

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Audit Commission's recommendation about eligibility for school card allowances.

Leave granted.

The Hon. T. CROTHERS: The report of the Audit Commission recommends:

> Criteria should be developed which will enable applicants to be approved without the need for the Education Department to apply its own means test.

This arrangement already applies for the majority of applicants, and automatic approval can already be given at school level if the parent or caregiver is the current holder of any of the following social security cards: the health benefit card, the health care card, the independent Austudy approval card and the pensioner health benefit card. The present scheme also allows for special consideration to be given where the parent, caregiver or adult student does not fit any of the categories that provide for automatic approval. It is this group that the report suggests should be deleted from the scheme to save, it is said, about $1.5 million per annum.

Does the Minister agree with the recommendations of the Audit Commission that the eligibility for school card allowances should be restricted to those students whose parents or caregivers hold a social security card? Does the Minister agree that such a change would disadvantage those families who are suffering hardship through unusual circumstances and who are now able to apply for assistance from the school card system in its current form?

The Hon. R.I. LUCAS: I think that members in this Chamber need to look at the background of the school card scheme. Over the past four or five years, the number of South Australian school card recipients has doubled from some 40 000 to 50 000 to about 100 000 students. Given that we have just over 200 000 students in South Australia, the notion that we have within our system just under 50 per cent of all our students being judged to be in such dire financial circumstances that they require the assistance of the school card is a subject that I think all members need to ponder.

The Hon. K.T. Griffin interjecting:

The Hon. R.I. LUCAS: I know that our economic circumstances—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: Yes—which have been created over the past 10 years have left us in a dire economic situation, but do members in this Chamber believe that just under 50 per cent of all families and children in South Australia are in such dire financial circumstances that the Education Department should be undertaking an income support system for all 100 000 children? That is a judgment that the Government will have to take, and we have taken no decision yet.

I also ask members to consider why the taxpayers of South Australia should support the Labor Government proposition that if a person of Aboriginal background, or claiming to be of Aboriginal background, is currently the chief executive officer of a Public Service department in South Australia and earning over $100 000 a year, that person is automatically entitled to a free school card and, therefore, as a corollary, free student transport without any testing at all for his or her children. Is that the notion of social justice? Is that the notion of equity that the honourable member and the former members of the Labor Government want Governments of South Australia to follow?

The Hon. T.G. Roberts: How many of them are there?

The Hon. R.I. LUCAS: That is just one example; there might not be many, but do you support it?

Members interjecting:

The Hon. R.I. LUCAS: Do you support it? Do you continue to support the policy—again, your policy, not ours (we still have it but will have to review it)—of social justice, which you introduced and which you refused to change, whereby wealthy business migrants who will be let into South Australia or Australia only if they have either $500 000 or $1 million—I am not sure of the figure—

An honourable member: It is $500 000.

The Hon. R.I. LUCAS:—with $500 000 to invest in Australia—that is the reason they are allowed to come in, together with other criteria—are automatically entitled to a receive school card within our Government school system, paid for by the hard-working taxpayers of South Australia, and that their children are also entitled to free student STA travel?

That is the notion of social justice or equity that exists within the current school card system as supported by the Leader of the Opposition and the former Ministers of the Labor Government. What I have said previously when in Opposition, and what I say now as Minister, is that the scheme has to be reviewed. I do not believe that just under 50 per cent of all children in South Australia are living in circumstances of dire financial poverty or disadvantage, so much so that the Education Department, which should be using its money to deliver quality education services to schools and to students, ought to be conducting an income support scheme for all those students.

So, in summary, the answer to the question is, yes, there will be changes. The scheme is being reviewed even prior to the Commission of Audit, so it really has nothing to do with the Commission of Audit's recommendations. The scheme was one of the first schemes that I asked to be reviewed on coming to Government. There will be changes, irrespective of the Government's consideration of the Commission of Audit, in relation to the school card scheme for implementation in 1995.

AUDIT COMMISSION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking a question of the Minister for Education and Children's Services in relation to the Audit Commission report.

Leave granted.

The Hon. M.J. ELLIOTT: Before the last election the present Government made a number of promises in relation to education which essentially implied that there would be no cutbacks. The Audit Commission, which I note has no expertise in the area of primary or secondary schooling, has made recommendations in relation to teacher numbers, school size—matters on which it does not have the expertise to make recommendations. One would assume that these recommendations were based on submissions received. I ask the Government: are submissions made to the commission publicly available? If not, will the Minister make available all submissions made by the Government and departments in relation to education?

The Hon. R.I. LUCAS: I will give a general initial response but I will need to check with the Premier and the Treasurer, because a similar question was asked in another place by the Leader of the Opposition in relation to not only that area but consultants' reports and others. It will not be possible to provide all submissions made by Government employees, departments and agencies because I am aware—

The Hon. T.G. Roberts: They flew away.

The Hon. R.I. LUCAS: No. I am aware that a number of Government employees—and, in the case of the Department for Education and Children's Services, some relatively senior officers—made submissions on the basis of absolute confidentiality and that their names would not be revealed. They were accepted on that basis.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Hold on, you said, 'whether all'; I am answering your question, and the answer is 'No'. These particular officers had some concern that their views in particular areas might become known to other senior officers within their respective departments and agencies and therefore were not prepared to make submissions unless their confidentiality could be protected and assured. The answer to the honourable member's question, which was whether all would be tabled, is 'No'. They cannot be because of confidentiality in relation to some. In relation to the other submissions I will need to consult with the Premier and the Treasurer because I do not have the documentation. I have not seen the documentation, so I will refer the honourable member's question to the appropriate person, whether it be the Premier or the Treasurer, and provide him with a response.

The Hon. M.J. ELLIOTT: I have a supplementary question. How can the public know how reliable the recommendations of the Audit Commission are if they do not see the information which was supplied to it upon which it based its recommendations?

The Hon. R.I. LUCAS: The public does not have to know in the end in relation to the Commission for Audit's—

The Hon. Anne Levy: Accountability.

The Hon. R.I. LUCAS: No, listen to the answer.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: What I am saying is that the public really does not have to know in the end the background to the decisions the Commission for Audit made because it is only advice to Government. What the public needs to know is the background and the justification for any decision the Government makes, whether it be in education, health or whatever else.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No. It then has to be up to the Government, in my case the Education Minister, to argue the arguments for or against any decision we take. The advice is provided to the Government by people well versed in accountancy or well versed in economics, but they are not experts in education or health; they are not meant to be. What the Hon. Mr Elliott is trying to say is that accountants and economists have no role in this world; they cannot look at the

financial situation of the books and provide advice to Government.

That is all they are required to recommend. It is then up to the Ministers and to the Government to make decisions, and it is up to the Ministers and the Government to defend the decisions that we take in relation to education, health or the police. It is not up to the accountants or economists of the Audit Commission. They have done their job and they have done it well. We will now consider their recommendations. As the Premier has said, we will not accept all their recommendations. Some will be rejected; some will be supported. Those that are supported will have to be defended. The reasons for supporting those recommendations will have to be provided, not by the Commission of Audit but by the Government and its representatives, the Ministers.

SOUTH AUSTRALIAN PORTS CORPORATION BILL

Adjourned debate on second reading; (resumed on motion).

(Continued from 6 May. Page 813.)

The Hon. DIANA LAIDLAW (Minister for Transport): Before lunch I was responding to questions asked by the Hon. Barbara Wiese with respect to the South Australian Ports Corporation Bill. I will now continue my reply with respect to a number of questions raised by the unions—

Members interjecting:

The PRESIDENT: Order! There is far too much background noise. It is hard enough for *Hansard* as it is. I know it is a Friday, but that is no excuse for members to carry on as usual. Please observe the decorum of the Chamber.

The Hon. DIANA LAIDLAW: The Hon. Ms Wiese asked a number of questions that had been raised with her by the trade union movement. In terms of retrenchment policy, I would highlight that it is the Government's policy that there be no retrenchments and the union movement is aware of that, and so are members opposite. I note that in the Audit Commission report, recommendation 7.15 states:

> The 'no retrenchment' policy should be urgently reviewed as should the notion of permanent tenure. Flexible and timely procedures should be established to allow exemptions from the 'no retrenchment' policy where agencies' performance improvement strategies would be hindered by its continued application. Agencies should separately cost and account for surplus staff.

No decision has been taken by the Government in respect of that matter, and certainly I have not participated in discussions at Cabinet level or amongst my colleagues. We are waiting for the three weeks response time which we have indicated to the unions and others is desirable before we consider responses. I am able to answer in the affirmative that, at this time, the Government's policy is no retrenchment. If that were to be changed and we followed the recommendations of the Audit Commission, there would be very defined grounds for retrenchment. That is as much as I can advise the honourable member at the present time. The same advice, I understand, has been provided to the trade union movement when it made inquiries at my office on this matter. Because of the Commission of Audit, I am unable to be more specific than that at this stage.

In terms of the right to the State superannuation scheme, again a reply has been provided to the trade union movement, and I am able to advise that that is a matter for negotiation with the board as part of the consultative process already in train in the marine and harbors agency to establish the terms and conditions of Port Corporation employees, including Marine and Harbors employees transferring to the corporation. The Government policy has not been determined following the Commission of Audit, but it is very clear from legislation introduced in this place in recent days that we are not looking at benefits that apply currently to members in superannuation schemes. The only legislation that we have needed to introduce now is in terms of people in superannuation schemes who seek to enter the Public Service in future.

The Hon. Barbara Wiese: Existing rights are not tampered with.

The Hon. DIANA LAIDLAW: That is as I understand it, yes. For new employees, that is a different matter with respect to superannuation provisions. That is subject to the terms and conditions of the corporation employees. The recommendation of the Audit Commission with regard to new employees (which is the point I was trying to emphasise earlier) is that new entrants to the Government sector should be provided with membership of the existing superannuation guarantee accumulation schemes under which the minimum benefits required under Commonwealth law are provided. That recommendation was contained on page 134 of volume 1. The board of the corporation is able to consider additional schemes available to it as part of the process of establishing the terms and conditions of new employees.

With respect to union representation on the board, I have been advised that in no State around the country is there a declared policy in statute or a general policy that would bind the Government with respect to having employee representation on the board. While there has been a lot of reform in ports and marine and harbors activities in recent years, not one piece of legislation in any other State has sought to insist that there be union representation on the board.

The Hon. Barbara Wiese: But many have been appointed, haven't they?

The Hon. DIANA LAIDLAW: That's right. I will highlight that now. I do not preclude that happening in this State at all. In New South Wales the Maritime Services Board has a person from a union background as a board member. The same applies to the Hunter and Illawarra ports, but not to the Sydney port. In Victoria neither the Port of Melbourne Authority nor the Port of Portland Authority has union representation on the board. The Port of Geelong has one, but that is a flow-over from earlier traditional practices, apparently, and that practice is now under review.

In Western Australia, a representative sits on the board of the Fremantle Port Authority, but there is nothing in the legislation to insist that that is so. Queensland has a union representative on the board of the Brisbane Port Authority but no other Queensland port; and Tasmania has no union representatives at any of its port authorities. I repeat: in each instance the appointment has been made on the basis of the contribution that the person can make to the board, and the union representation or union background is really incidental to the qualities required for board membership. The fact that a person may have a union background may be seen as a bonus for some ports in some areas, but not in others.

I indicated in my second reading explanation—and it is emphasised in the Bill—that I will consider any person for board membership who complies with the requirements of the position. This can include a person nominated by the unions with coverage of Ports Corporation employees. However, the requirement for board membership relates to a person's attributes and not their affiliations. So, I have given no guarantee—nor does the Government wish to give a guarantee—that at least one position on the board will be offered to the trade union with coverage of members who will be employed by the Ports Corporation.

The proposed legislation provides that the key attributes of people appointed to the board will include knowledge, experience and skills appropriate to the functions of the Ports Corporation. In addition, the directors of the Ports Corporation will be required to operate under the provisions of the Public Corporations Act 1993, which specifically defines their duties and liabilities. These provisions are considered by many to be more onerous than the equivalent provisions for directors under the Companies Code. This position has also been explained to the many other port users and representatives of various interest groups who are also seeking representation on the board.

Because of the limited number of positions on the board the Government could have found, if it had responded not only to the unions but to port users and other sectional interests, that every board appointment was simply a representative of every sectional interest or affiliation. Rather, this State needs to look at the qualities and attributes of people who will be making a contribution to the board. I suspect that people with a union background— at least one, maybe more—will sit on the board.

A number of questions were asked by the Hon. Sandra Kanck. In terms of the transfer of the South Australian Cooperative Bulk Handling silos to the Ports Corporation, it is true that the Minister for Transport controls the land under which the SACBH silos are located in most but not all ports. This land is leased to South Australian Cooperative Bulk Handling, which has constructed and is the owner of the silos built on the land. The Minister for Transport, who will be the Minister responsible for the Ports Corporation Act, has no control over the silos. The transfer of the silos to the Ports Corporation is not proposed, nor can it occur under the provisions of the Ports Corporation Bill.

The silos are controlled in that sense and would be subject to the Bulk Handling of Grain Act, which established the South Australian Cooperative Bulk Handling company. I can advise, however, that the Government is considering the sale of the land under the silos of SACBH, just as it is considering the sale of the bulk loading facilities. No decision has been made on either matter while the assets of the corporation are being assessed.

I have had many discussions with shippers, the Employers Chamber of Commerce and Industry, SA Cooperative Bulk Handling and the major grain bodies in this State and it appears that there are mixed feelings about the sale of these bulk handling facilities. I emphasise that the Government's policy is for the sale of the bulk handling facilities, but any decision has been deferred pending the assessment of assets. The SA Farmers Federation has argued very strongly that, unless the asset is sold to that organisation, it does not wish it to be sold to anybody else and that it should remain in the Government's hands. There is divided opinion on this matter at the moment. However, I am not prepared to hand over State assets to any organisation, no matter how passionately it may feel and present its arguments, and certainly the SA Farmers Federation has presented its arguments with some passion.

As regards the user pays system for grain handling, I can advise the Council that SA Cooperative Bulk Handling, as user of the grain handling facilities, already pays for the use of those facilities through an annual belt charge. In addition, ships loading grain and other bulk commodities at these facilities pay the appropriate Marine and Harbors charge for port services. A task force set up to oversee the establishment of the Ports Corporation is reviewing the financial performance of Marine and Harbors assets, including the grain handling facilities, prior to making recommendations regarding their future.

The last question related to land acquisition. References to compulsory land acquisition in the Bill are a continuation of provisions in existing legislation. Those provisions have not been used since 1945 in relation to ports. I am not sure whether the end of the Second World War had any relationship to the compulsory acquisition of land. Whatever the reason, since that year the compulsory land acquisition measures in relation to ports have not been used. They have been included to provide a mechanism rather than an indication of policy. In any case, the Minister, whether it be me or any future Minister, will retain control and direction of the Ports Corporation. I should emphasise that I do not have any specific examples in mind or proposed. It is simply a mechanism if it is required. I suspect that, as in the past, we probably will not see another instance of compulsory acquisition for another 40 years.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. BARBARA WIESE: When will the Bill be proclaimed?

The Hon. DIANA LAIDLAW: I am hoping that it will be proclaimed as soon as possible. Certainly, the corporation will be in operation by 1 July. I know I am asking a lot of everybody involved if that deadline is to be met, but I am also most conscious that, when one is reviewing an organisation and proposing changes such as are outlined in this Bill, it causes a great deal of uncertainty within that organisation. As the Department of Marine and Harbors is so important, as the honourable member would know, to the economic development of the State, I do not want to distract people from their main job for long. It is a distraction at present. So, the sooner we can organise the new corporation and announce the new arrangements, including the new CEO, the better for business in South Australia. My preference is that it be up and running by 1 July, although that will require a lot of work from many people in a short time. However, because of those issues of morale and reorganisation, I thank all members in this place, and hopefully those in the other place, for being prepared at very short notice to consider this Bill and facilitate its passage.

Clause passed.

Clauses 3 to 22 passed.

Clause 23—'Liability for council rates.'

The CHAIRMAN: I point out to the Committee that clause 23, being a money clause, is in erased type. Standing Order 298 provides that no questions shall be put to the Committee on any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary for the Bill.

Clause passed.

Remaining clauses (24 to 36) and title passed.

Bill read a third time and passed.

HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 May. Page 785.)

The Hon. DIANA LAIDLAW (Minister for Transport): I thank members for their contribution to this debate and also for being prepared to consider the Bill so expeditiously. I have an answer to a question asked by the Hon. Ms Kanck on clause 17 as follows. Under the regulations, it is proposed that a pilotage exemption will be granted only to the master of a vessel which is registered in Australia or New Zealand and which generally trades between ports in Australia or New Zealand. There is a small number of vessels, mainly fishing vessels, dredgers and oil rig tenders which are registered in countries other than Australia and New Zealand and which on occasions regularly use a South Australian port. It would not be practical to expect the vessel to use a pilot if it were continually entering and leaving a port in some cases five or six times a day.

Generally, these vessels are under 60 metres in length, and the master would be subjected to the same conditions for exemption on a master applying for a pilotage exemption. Presently there is a need for applicants to pass an approved medical, to complete four voyages with a Marine and Harbors agency pilot and to show adequate knowledge of the port. These are similar to the conditions that are expected to be contained in the regulations under the new Act, so there is no difference in that sense between what is proposed and what applies now. Presently, pilotage exemption certificates are available for masters of Australian and New Zealand vessels up to 185 metres in length.

Exemption is granted on the basis that: (1) an approved medical is passed; (2) for qualifying, a voyage is undertaken with a pilot; (3) adequate knowledge of the port is proven; and (4) the appropriate fee has been paid. The vessel is exempt because under section 35 the vessel is required to be either under the control or direction of a licensed pilot or the master to hold a pilotage exemption. It is the vessel that is exempted under the amendment. However, the master would be required to comply with the same conditions as an applicant for a pilotage exemption. In past years, only a small number of vessels have been granted consideration similar to the exemption proposed: in 1993-94, nil; 1992-93, two, for an oil rig tender at Port Lincoln; and in 1991-92, nil.

It is understood from advice that I received from the Director of Marine Safety this morning that these really low exemption figures are similar for years prior to 1991-92. As I indicated, it is not seen that in the new Bill there will be much or indeed any change at all to that which applies now. I thank the honourable member for the opportunity to clarify that matter.

Bill read a second time.

In Committee.

Clauses 1 to 15 passed.

Clause 16—'Pilotage exemption certificate.'

The Hon. BARBARA WIESE: I received some correspondence very late in the day and I therefore did not address this issue during my second reading contribution. Will the Minister provide me with a response to the issue that was raised in correspondence from the South Australian State committee of the Australian Chamber of Shipping with respect to the amendment of section 34, 'Pilotage exemption certificate'? The letter states:

> Our members do not believe these amendments go far enough. The amendments to the harbors and navigation regulations 1993 have still not been passed by Parliament. There are certain amendments proposed for pilotage exemption certificates which are urgently required to be passed. For example, it is critical to some of our members to have the exemptions extended for vessels up to 215 metres in length. Another important fault in the existing regulations is that to obtain exemption the applicant must have undertaken qualifying voyages to both the inner and outer harbors of the Port of Adelaide. Container vessels, roll-on-roll-off vessels, car carriers, etc., only use the outer harbor and thus our understanding is that the masters cannot obtain exemptions. This puts the Port of Adelaide at a distinct commercial disadvantage for some of our members and we strongly request these regulations be urgently reviewed in conjunction with this amendment Act 1994.

I acknowledge that the question I am raising relates to regulations that would pertain to this legislation and that the Chamber of Shipping is raising a problem which to some extent has been brought about by the fact that the Harbors and Navigation Act which was passed last year was not proclaimed, pending the drafting of the legislation that we have been dealing with today. Has this matter raised by the Chamber of Shipping been taken into account by the Government, and is it intended that action be taken to solve the problems it has raised?

The Hon. DIANA LAIDLAW: The same issue has been raised with the Government. The Government has advised the South Australian committee of the Australian Chamber of Shipping that we will be reviewing the regulations and taking its concerns into account. Work is being done with the Australian Chamber on this matter; if not right at this moment it will be from next week. Certainly, we will be working hard to accommodate the concerns of the chamber.

Clause passed.

Remaining clauses (17 to 26) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (COURTS) BILL

In Committee.

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

A quorum having been formed:

Clauses 1 to 3 passed.

New Part 1A—'Amendment of Courts Administration Act 1993.'

The Hon. C.J. SUMNER: I move:

Page 1, after line 19—Insert new Part as follows:

PART 1A

AMENDMENT OF COURTS ADMINISTRATION ACT 1993

Insertion of Part 2A

3A. The following Part is inserted after section 14 of the principal Act:

PART 2A

ACCESSIBILITY OF JUSTICE

Governor's Directions

14A. (1) The Governor may, by notice in the *Gazette*, give directions the Governor considers necessary and appropriate to ensure that the participating courts are properly accessible to the people of the State.

(2) A direction may, for example—

(a) require that a registry of a particular court, or particular courts, be maintained at a particular place; or

(b) require that members of the judiciary of a particular court, or particular courts, be resident in specified parts of the State; or

(c) require that sittings of a particular court or courts be held with a specified frequency in specified parts of the State.

Obligation to comply with direction

14B. (1) The Council must take action required on its part to ensure that a direction under this Part is complied with.

(2) The administrative head of a participating court must, so far as a direction under this Part affects that court, take the steps necessary to ensure that the direction is complied with.

Although feeling in fine fettle I do not know that I want to delay the Committee too long this afternoon. My amendment deals with the issue that was put by me yesterday relating to giving the power to the Government to ensure that the country magistrates remain resident in the major rural centres of Whyalla, Port Augusta and Mount Gambier.

Obviously, if the Government has a different view as to how this can be done that is fine, but this amendment does achieve the objective provided that the Government has the will to do it. If it does not have the will let it come out and say it. If it has the will this amendment enables it to give the necessary directions to achieve the objective of maintaining the resident country magistrates.

As I said, the matter was debated yesterday and I will not rehearse all that. However, I notice that the Hon. Mr Irwin and the Hon. Carolyn Schaefer are in the Chamber. The Hon. Mr Irwin takes a particular interest in matters connected with the South-East and, of course, one of the major areas where concern has been expressed about this reduction in country services is Mount Gambier and other surrounding localities.

The honourable member has hardly made a speech of a general nature that has not mentioned the need for the Government to provide support to country areas, to rural areas and provincial cities. I have no doubt that he came back after the last election with great hopes that the Liberal Government would try to do some of the things that he suggested should be done. I can only imagine that he is sadly disappointed, but I am giving him the opportunity to put his vote where his concerns are in this matter by enabling him in at least this very small way to support the retention of some country services.

The Hon. Mrs Schaefer is in the same boat. She comes from the West Coast, and one of the residencies is in Whyalla and another is in Port Augusta, which is not too far away either. Under the Chief Justice's proposal both those residential magistracies would go and of course there is the diminution in service and the need for local services in those provincial and important rural cities. In her Address in Reply speech when she came into the Parliament last year the Hon. Mrs Schaefer had a number of things to say about the rural sector as we would expect, and quite properly so, because she comes from a rural background and has lived in Kimba all her life. One would expect her to have concern for services in country areas. Amongst other things she said:

Of great concern is the population drain from country areas.

I can tell the Hon. Mrs Schaefer, the Hon. Mr Irwin and others concerned that, if you are not going to maintain facilities in rural and provincial cities, you are not going to stop the population drain from country areas, because those major cities provide infrastructure for the surrounding areas. In my view the members who represent rural constituencies and who have been so outspoken on issues of country services in the past should stand up and make their views known on this topic so that their constituents know what their position is.

There is no point in doing it in the secrecy of the Party room and telling your constituents, 'I tried in the Party room but could not make it stick,' because one does not know what goes on in the Party room. However, out here, members have an opportunity in the public arena with the media to put on the record their position on this Bill. I would hope that they do it, because unless they start taking a stand now it will be the thin end of the wedge.

This Government will be breaking other commitments, obviously, and it looks as though it will end up breaking commitments about services to rural areas. I mentioned a couple yesterday; this is perhaps a small but nevertheless important example of that. I also mentioned the issue of prisons, but I will not reiterate that. This amendment should go into this Bill. We should give the Government the power to fix up this situation quickly.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. Yesterday I spoke extensively on the proposition and indicated the Government's position in relation to country magistrates, and also on the broader issue of this particular provision, which I suggest does not really fix the problem.

The Hon. C.J. Sumner: Amend it.

The Hon. K.T. GRIFFIN: I don't intend to amend it.

The Hon. C.J. Sumner: You can.

The Hon. K.T. GRIFFIN: I don't intend to amend it, because I have indicated the Government's position. The Hon. Mr Blevins' private member's Bill in the House of Assembly will be referred to the Legislative Review Committee for it to review it as a matter of urgency. We will also request that both the Chief Justice and the Acting Chief Justice reinstate the country residencies until the Legislative Review Committee has reported.

The Hon. C.J. Sumner: What happens if he refuses?

The Hon. K.T. GRIFFIN: That is for another day. As I indicated earlier, the issue is that the Courts Administration Authority Act, which the Leader of the Opposition is seeking to amend, is in fact related to administration. Whilst it purports to deal with members of the judiciary or a particular court or particular courts being resident in specified parts of the State, there is a conflict there immediately with the Magistrates Act, because that Act provides that the Chief Magistrate is responsible for the administration of the magistracy. Of course, the Courts Administration Authority Act provides that the chief judicial officers of the three levels of the judiciary—Supreme Court, District Court and Magistrates Court—will have their responsibility to manage their affairs unimpeded by the decision of the Judicial Council of the Courts Administration Authority. That is where I think there is some difficulty.

In any event, what I have indicated is that, because of the difficulties in establishing the proper relationship between the Executive arm of Government and the Courts Administration Authority—and they were matters on which the Leader of the Opposition when he was Attorney-General said that he would have some difficulties also—I intend having the matter reviewed. It may well be that in the whole context of this there is in the next session some amending legislation dealing with the Courts Administration Act. However, I cannot guarantee that that will happen. What I can guarantee is that the whole issue of who has responsibility for what in respect of decisions affecting the courts and its administra-

tion—where they sit and how they expend their budget—will be the subject of review in the light of the fact that we are going through the first-year budget process for the Courts Administration Authority and it is throwing up some areas of concern.

The Hon. C.J. Sumner: Do you think the committee will examine it if this is referred to it?

The Hon. K.T. GRIFFIN: It will not have to but I would hope it does. The Bill, which is in a similar form, down in the House of Assembly raises these issues. It raises issues about the proper relationship between the courts and their administration and the executive arm of Government. The very breadth of the power which the Leader of the Opposition is seeking to have included in this Bill suggests that that very issue does have to be addressed by the committee. I have had some preliminary discussions with the Chairman of the committee, the Hon. Robert Lawson, and have in general terms received an intimation that this will be dealt with as a matter of priority.

The Hon. C.J. Sumner: We can both give evidence to the committee?

The Hon. K.T. GRIFFIN: You can give evidence this time if you wish, and I can give evidence; I do not mind. The concerns I raised last time were all firmly on the record. The Leader of the Opposition, when he was Attorney-General, was a fairly strong advocate for the Courts Administration Authority model. In fact, I went to the launch of it and he was very fulsome in his commendation of it. The Chief Justice was very fulsome in his praise of the then Attorney about the way this would operate. However, quite obviously there are problems in the relationship. I have a concern about this, as I told the committee. The proposal in the House of Assembly, which will be resolved next week, is to refer a Bill which is in a similar form to these amendments—

The Hon. C.J. Sumner: Is that an undertaking to do it next week?

The Hon. K.T. GRIFFIN: Yes, it will be done next week. If you look at the Notice Paper it is addressed, and it will be done next week. As the Leader of the Opposition may know, I am on the public record. I have put out a press release about what I am doing and about what the Government is doing. It is all there on the public record.

The Hon. T.G. Roberts: Will there be a *Sunday Mail* article with a photograph?

The Hon. K.T. GRIFFIN: I am not sure that I am so lucky as to get a photograph and an article in the *Sunday Mail* this week, but we will see.

The Hon. C.J. Sumner: I haven't had one in there for years.

The Hon. K.T. GRIFFIN: Well, a new broom! All that I plead with the Committee is to give consideration to the way in which I believe the matter ought to be handled, because the issues raised by the amendment are much broader than just an issue of resident country magistrates and go to the heart of the relationship between this new authority, the courts, the executive arm of Government and the Parliament. I would like to see it dealt with properly and comprehensively rather than taking this precipitate action.

I will make one other comment on a matter on which the Leader of the Opposition has made some observations and that is that the removal of country magistrates is in some way to be described as a weakening of any commitment to provide services in country areas. One can argue about whether resident magistrates provide a better service than circuit magistrates. On what the Acting Chief Magistrate has put there are very persuasive arguments in favour of a much broader range of experienced magistrates being available and actually visiting, on circuit, country locations. Remember we are talking about three: Mount Gambier in the South-East, Port Augusta and Whyalla in the north. I made the point yesterday that there is only one magistrate at Port Augusta/Whyalla and that magistrate travels to Adelaide for weekends.

So, that magistrate is not there on a permanent basis. With respect to the South-East, it is correct to say that there is no resident magistrate there. One was to be appointed, but that magistrate subsequently withdrew on the grounds of stress.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I do not want to be flippant about it. I am merely trying to put on the record the facts of the matter. One has to remember that there are other areas of the State, maybe the Riverland, which might have more claim than Port Augusta and Whyalla to a resident magistrate, because of the level of business. The Riverland has a visiting magistrate, and no concern has been expressed about that. No concern has been expressed in Port Lincoln, Murray Bridge or other areas of the State. There are issues that do have to be addressed.

In respect of Port Augusta and Whyalla, as I indicated yesterday, the clerks of the councils have actually written to say that they accept the decision which the Acting Chief Magistrate has made. I would strongly oppose the amendment and plead with the Committee not to be precipitate in accepting this amendment.

The Hon. M.J. ELLIOTT: When this issue was raised in this Chamber not that long ago, I supported the honourable Leader of the Opposition. Today the Attorney-General has talked about the relationship between the Parliament, the Executive and the Judiciary. I must say I find it rather novel that—

The Hon. K.T. Griffin: You supported the Leader of the Opposition on what?

The Hon. M.J. ELLIOTT: This issue was raised previously and I supported him.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I did not say the amendment had been. I said the issue had been raised; I did not say just in this place, either. The question of the relationship between the Parliament, Executive and Judiciary was raised, and I must say I find that rather novel because this amendment simply provides that directions may be given as to where particular courts may be located; yet in other pieces of legislation the Government is willing to go to the very heart of judicial independence and is being criticised roundly by both the Law Council of Australia and the Supreme Court for that interference with the judicial independence. The fact that the Government is willing to go to that sort of extreme with judicial independence, yet simply asking (for what is largely an administrative matter) that courts be located in particular locations, and saying, 'We don't want to interfere with the courts' is an incredible contradiction. I do not believe that what is being asked for here is unreasonable. I do not see that it needs a great committee of inquiry. I just find it interesting that—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Of course it is administrative. It is not an interference in the way the actual court procedures take place or the way judgments are made or the like. I do not see it as an interference in the judicial process. It is not unusual for legislation to look at the mechanics of the way

courts operate. We have legislated in terms of what even happens inside the courtroom. In any case, let us be honest: what we really have here is the situation that magistrates do not want to go to live in country areas, unlike many other people, whether it be teachers, police or any number of other public servant categories, all of whom are required to go to the country.

In fact, I recall some comments made by the Minister for Education and Children's Services earlier on that subject, and now, because we are dealing with magistrates, suddenly the Government does not see the same principle applying. I just do not find that acceptable, and I support the amendment.

The Hon. K.T. GRIFFIN: I am disappointed about that, but we will sort it out on another occasion. It is not just a matter of administration. It is all very well for the Hon. Mr Elliott to make some reference to the Industrial Relations Bill and letters from the Chief Justice, but—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: There are already differing points of view. You would have had a letter from the Chief Justice about this very provision and in response to the Hon. Mr Blevins' Bill in the House of Assembly expressing grave concerns about not only the matter of country magistrates but the way in which this was framed. The Chief Justice has now taken to writing letters on numerous issues affecting the courts and he is entitled to do it. This is not just an administrative matter and, whilst the honourable member may wish to compare it with it, it is not a similar issue to that which relates to the Industrial Relations Bill, about which I will make some more comments later.

The Hon. C.J. SUMNER: I thank the Hon. Mr Elliott for his support. I am disappointed that apparently there will be no contributions to the debate from honourable members opposite who represent rural constituencies. It looks as though they will duck the issue.

The Hon. K.T. Griffin: They represent the whole State.

The Hon. C.J. SUMNER: Well, they represent the State but they have spoken very much about services to country areas.

The Hon. M.J. Elliott: They have spoken eloquently and on many occasions.

The Hon. C.J. SUMNER: Yes, the Hon. Mr Elliott interjects and says that they have spoken eloquently and on many occasions, and in that he is quite right. It seems that they do not want to contribute to this debate in an area in which I would have thought there was a clear example of the interests of the rural constituencies being affected. That is a choice that they are entitled to make and, no doubt, something that they will have to answer to their own constituents for. But it is disappointing that, in particular, the Hons Mrs Schaefer and Mr Irwin have not contributed to this debate although they have been here. I put to them, in a last ditch effort to get them to change their mind and make some contribution, so that we know what their view is: do they support the Government or don't they? That is what we need to know.

Members interjecting:

The Hon. C.J. SUMNER: We will, good, that's terrific—support the Government. Okay, well, that's up to them.

The Hon. A.J. Redford: It is a matter of means, isn't it?

The Hon. C.J. SUMNER: Well, whatever it is. I can't understand; they usually—

Members interjecting:

The Hon. C.J. SUMNER: No, he doesn't. He has refused to express a point of view on the topic. I have just re-read the *Hansard* of the question. I asked him whether he supported the decision and he refused to say whether or not he supported it. So we have not actually heard from the Attorney-General as to whether he supports the decision taken by the Courts Administration Authority. We have not heard—

The Hon. K.T. Griffin: It is not my decision.

The Hon. C.J. SUMNER: It may not be your decision, but you are entitled to a view. I am sure that you have expressed views previously where it has not been your direct responsibility, as you say. You cannot wash your hands of it like that. I am interested in hearing the views of country members. They cannot have it both ways. They come in and make great eloquent speeches and Address in Reply speeches telling the Labor Government how terrible it was and how the rural area is the heart and soul of the State but we then find, when a practical issue comes up, that for some reason they are not prepared to discuss it in public. They may be making some comments about it in the Party room, but who knows about those? But I put the following point to honourable members: this proposal was put to the former Government. It was put to the Labor Government and I scotched it. I said, 'No, under no circumstances is this going to happen. It costs more—

The Hon. A.J. Redford: It needs proper review, the whole thing.

The Hon. C.J. SUMNER: Review or not, when it came up, and we instituted the proposal—the Hons Mrs Schaefer and Mr Irwin can note that—in the late 1970s to have resident magistrates in those three rural centres. The Chief Justice has been critical of it for years, unjustifiably in my view and based on arguments that I consider to be spurious. A proposition was put forward some years ago that the country residencies be done away with. I opposed it and it was not proceeded with. That is what happened under us. This is not just something—

The Hon. A.J. Redford interjecting:

The Hon. C.J. SUMNER: Shut up! We have a lot of business to do. This is not something that I have just dreamed up overnight. This is a policy that Labor Governments have had in place, and supported by the Liberal Government through 1979 to 1982, by the Hon. Attorney-General during that period.

The Hon. A.J. Redford: You can't fix your big blunder up in one sweep, just like that.

The Hon. C.J. SUMNER: The Hon. Mr Redford refers to the Courts Administration Authority as a 'big blunder'.

The Hon. A.J. Redford: Absolutely.

The Hon. C.J. SUMNER: That is the honourable member's view, and no doubt he will have a chance to further debate the matter when the report of the Legislative Review Committee comes down, if it gets that far. I am trying to make the point to the country members that this is not something that I have dreamed up out of the blue that is inconsistent with previous policy. What we are trying to do is reinstate the policy that the Labor Government had from the late 1970s through to the present time. I make the point that when the proposal came up before I clearly made my view known. The courts did not proceed with the withdrawal of this service but this Government, apparently to date at least, is not prepared to make that view strongly known to the courts. I believe that if the Attorney-General made that view strongly known to the courts they would not proceed with the decision. It is disappointing that the country members are not prepared to debate the matter at all.

The Committee divided on the new Part:

AYES (9)

Crothers, T.	Elliott, M. J.
Kanck, S. M.	Levy, J. A. W.
Pickles, C. A.	Roberts, T. G.
Sumner, C. J. (teller)	Weatherill, G.
Wiese, B. J.	

NOES (8)

Griffin, K .T. (teller)	Irwin, J. C.
Laidlaw, D. V.	Lucas, R. I.
Pfitzner, B. S. L.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

PAIRS

Feleppa, M. S.	Davis, L.H.
Roberts, R. R.	Lawson, R. D.

Majority of 1 for the Ayes.

New Part thus inserted.

Remaining clauses (5 to 23) passed.

Long title.

The Hon. C.J. SUMNER: I move:

Page 1, line 6—After 'amend' insert 'the Courts Administration Act 1993,'.

This is consequential.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

DOMESTIC VIOLENCE BILL

Adjourned debate on second reading.

(Continued from 5 May. Page 780.)

The Hon. A.J. REDFORD: I support the Bill. I congratulate the Attorney-General and the Government on their initiative in this area. I hope it is the beginning of this Government's avowed attempt to stamp out domestic violence and change the community attitude of many in particular towards family or domestic violence. This year, 1994, has been targeted as the year of the family, and it is my view, as I said in my maiden speech, that all people have a fundamental right to a safe, secure and supportive home. As the Hon. Ms Levy correctly pointed out, it is one's home that is often the most unsafe place in which to be.

It is important to note the enormous contribution of the ACT Law Reform Commission on this topic. Some of its more salient observations are:

- 3 000 out of 100 000 adult women in Canberra contact the Domestic Violence Unit at least year once a year—

in other words, 3 per cent—

- 30 per cent of police calls relate to domestic disputes.
- over 40 per cent of homicides occur within family groups.
- the current use of protection orders is making little impact in the area of violence against women.
- a significant portion of the community believe 'domestic violence' is a domestic matter and 20 per cent of people believe it is acceptable. . .
- special groups such as Aboriginal and ethnic women are particularly vulnerable.

The recommendations made by the Law Reform Commission are many and varied, but they include: improved training of police; the encouragement of arrest of perpetrators for assault; better training; provision of confidence in the police that harsher sanctions in relation to bail, breaches of protection orders and criminal offences will be applied; and certainly better training to understand the unique position of victims.

Indeed, it recommends better training for prosecutors and judicial officers in the area of understanding victims, penalties and changing community attitudes, and it recommends avoiding gender bias. It also recommends improved procedures in relation to protection orders, particularly when they are breached, and also greater sentencing powers and, indeed, that there be better strategies in establishing uniform standards regarding the police, the courts and the like, the monitoring of those standards, and a consistent and uniform means of advocacy. I will return to some of those recommendations later in this address.

In that context, I would like to comment on the worthwhile contributions made to this debate by the Hon. Chris Sumner and the Hon. Anne Levy. I certainly agree with the comments of the Leader of the Opposition that violence should be treated for what it is, that is, as a crime. The real difficulty in these areas is that the approach of the police and the authorities until recent times—and, indeed, I believe that that is the continuing approach—is that they believe that, unless the victim cooperates and gives evidence, there is no point in proceeding with the matter. There is a lack of support for the victim and there is a lack of encouragement for the victim, and perhaps I will make some suggestions on this topic that we may consider at some stage in the future. I also agree with the Hon. Mr Sumner's view that we can fix up the problem concerning the difference between domestic and ordinary restraining orders. I understand that the Attorney-General has looked into that and has some amendments which should cover that.

I refer to the Hon. Mr Sumner's comment that there is a very high proportion of remand prisoners in this State compared to that of other States, and I certainly do not dispute that. I invite him to consider whether we are comparing apples with apples. Certainly, from my anecdotal experience, a number of those so-called remand prisoners are really in effect serving their sentence pending either the entering of a plea of guilty or alternatively being sentenced. I am not too sure whether in the gathering of the crime statistics any distinction or differentiation has been made between the two. The Opposition Leader looks puzzled, but what I am saying—

The Hon. C.J. Sumner interjecting:

The Hon. A.J. REDFORD: Yes. I also agree with the Hon. Anne Levy's comment, and certainly I would hope that we can look at the New Zealand issue and see whether there can be some form of recognition of its protection orders as, indeed, it could recognise ours. I agree with the honourable member's comments about the National Committee on Violence Against Women, although I must say it is my view that very little impact has been made by that committee in terms of what is happening in the community.

As I understand it, the Commonwealth initiatives are fourfold: they have recommended changes to the Family Law Act, gender bias training for the judiciary, better data collection and law reform in relation to sexual assault. Quite frankly, it is my view that most of the recommendations will not achieve great change and, in fact, the changes that will occur will occur at State level. I also agree with the Hon. Anne Levy's comments about three special police domestic violence units. As I said in my maiden speech, that is inadequate. I have always thought they were inadequate and, when one has regard to the fact that 30 per cent of all calls to police are as a result of domestic violence, one wonders how three special domestic violence units can cover the problem. I hope that this Government can address that problem,

because it is my view that every police officer should be a specialist in domestic violence. Also, I hope that the problems addressed by the Hon. Anne Levy in regard to data and peer group pressure can be addressed.

In relation to the contribution of the Hon. Sandra Kanck, I make the following comments. First, she queried why women stay. I will not go into the detail of how the cycle of violence and battered women's syndrome works, but basically there is a cycle of violence involving huge amounts of violence, followed by kindness, followed by a building up of tension, coupled with a loss of self-esteem on the part of the victim, leading to a victim's inability to escape from the violent lifestyle to which she is subjected.

The honourable member suggested that we could have parties heard separately. I have some misgivings about that. I think everyone is entitled in any criminal context to face his or her accusers and other options are available. I agree with her suggestion that there should be priority in courts, and I also endorse her comments about those women who do have the courage to say that they have been subjected to violence, and encouraging people to deal with it. I believe that we need to go much further, and I hope that over the next two to three years this Government will look at a number of other initiatives in the context of reducing domestic violence. Perhaps the Government might consider some of the following suggestions in dealing with this issue.

It is my view that domestic violence is a very complex area. It involves an intermeshing of both criminal and family matters, and involves very complex relationships and issues. If a crime is designated as violent, it should be given immediate priority in the courts. I cannot see any reason why, from apprehension to conviction, the process could not be speeded up to take as little as four weeks. I do not have the time to pursue that today, but I can make suggestions about that. My view is that, if they are dealt with quickly, the festering issues that arise between husbands and wives and de facto relationships do not hang in the air for such a long time—that you have the criminal response dealt with quickly, which enables people to get on with their lives.

I also believe that it should be dealt with in the District Court, and that would enable this issue to be given the very high priority we all believe it should be given. I believe that the prosecution of domestic violence crimes should be the responsibility of the Director of Public Prosecutions as opposed to police prosecutors, and I know this brings in issues of resources and what is available. Too often it is too easy for police officers to say that the victim is not cooperative in this situation, therefore the victim is not properly supported, the police do not bring charges and the very criminal conduct that the public would seek to sanction cannot be sanctioned because there is simply no prosecution occurring.

I also believe that the victim of the crime of domestic violence should be given legal aid or representation by an experienced lawyer, in both the family and the criminal law, for the period leading up to the time that the Director of Public Prosecutions initiates prosecution. At that stage they would be given the opportunity to make submissions as to whether or not a prosecution should proceed. They should also be given representation during the sentencing process following the conviction of the offender. That would again take up resources and, given the stretched budgets of the legal aid authorities, it is something that the Federal Government might look at. Certainly it could better spend its money on that sort of thing than on the innumerable conferences and discussions and things of that nature that seem to have come out of Canberra over the past 10 years.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: I don't know, but every time I go to Canberra I am on a plane full of public servants, and all they do is talk around in circles and say there is a great need for public education. I could save them a lot of money. They could ring me up at home and I could tell them there is a great need for public education. That is all that seems to come out of this huge, monstrous bureaucracy in Canberra. Occasionally they might fly a few locals in who sit there and say, 'Look, there's a huge need for public education', and everyone sits around and says, 'Yes that doesn't sound a bad idea.' We do not get any resources or encouragement to do it, and the best thing they can do is stick a sign on the back of a bus saying, 'Don't hit your wife.' I have grave doubts whether that will convince the average male: 30 per cent of men think it is okay to hit women. We need to bring the States behind it to say that this is not good enough and that it is a crime. I have doubts as to whether ads on the backs of buses will change much at all, but it makes our bureaucrats in Canberra feel very good when they see their program up in lights on the back of a bus.

I also believe that the judicial officer should be given the widest possible sentencing powers; that may include deferring sentencing to enable the relationship to settle or better counselling support. I know there are huge difficulties with this because of our Federal system, but I also believe that, if it is a family situation, the Family Court ought to be brought in and involved in the sentencing process in some way or, alternatively, perhaps consideration could be given to the sentencing process being transferred to the Family Court. It is a complex issue. Nobody knows whether the relationship is likely to continue; if that is what the parties strongly desire, they should be given the support to ensure that it can continue without a repetition of the violence. I also believe that the Family Court has much more experience than some of the judiciary in other courts in relation to these areas, and something may need to be considered in relation to that without spending huge amounts of money in Canberra on the innumerable conferences that we have already had on this topic over the past 10 years.

Having made those comments, I congratulate the Attorney-General and this Government on their initiatives. This measure goes some way towards solving the problem, but I do not see it having an enormous impact in changing community attitudes. My view is that we will change community attitudes only when we establish a proper prosecutorial process. I will finish with an anecdote about a case in which I was involved.

The Hon. Diana Laidlaw: As a lawyer.

The Hon. A.J. REDFORD: As a lawyer, yes. In this case my client was beaten to within an inch of her life and her de facto husband was not charged with any offence arising from that assault, which resulted in her spending six weeks in hospital, having her spleen removed, part of her lung cut out and a metal plate being put in her skull. She also had a broken leg and a broken arm. During the course of cross-examination of the police officer involved, I asked why he did not prosecute the proponent of that assault, and his answer to me was that the victim would not cooperate. I then put to him that the victim might not have cooperated simply because she was too afraid to cooperate and he said, 'Well, that may be the case.' I asked, 'If she had died would you have prosecuted?' to which he replied, 'Certainly, I would have.'

So, we have almost an active encouragement on the part of our authorities to ignore violence until it gets to the point where someone dies. When one sees that 40 per cent of homicides in this country arise from domestic violence one wonders what has happened over the years in relation to police training. The police have a very important role to play, and it is my view that one of the first things this Government must do is change quite dramatically and quite aggressively the culture of the police. When the police attend a scene involving domestic violence they must assume that the victim—and this is quite well documented—is at least able to take control of the situation and they must treat the investigation as though the victim is not going to cooperate.

So that it is on record and so that the police can understand, I point out that it is very straightforward: when you turn up to a scene you say to the offender, 'Did you hit the woman?' and in 98 per cent of cases they will admit that they hit her and in 97 per cent of cases they will then attempt to justify it. That is okay, because you simply then have the evidence that there was an assault: you have the admission. That coupled with a medical examination of the victim is sufficient to found a prosecution and indeed a conviction.

Why we continually seek to rely upon the victim in our prosecutorial process to found a conviction when that victim is the person least able to withstand pressure from the perpetrator amazes me. We are able to get convictions in this State for murders when we have the victim in the coffin, dead and buried, but we do not seem to be able to do it or have the desire or intent to do it when the victim is alive and well. It seems to me that a more aggressive prosecution policy on the part of the police would make a big difference.

I do not comment on what has happened over the past couple of years, but certainly the grave indifference shown by a substantial number of police officers when they are confronted with a domestic violence situation hinders that course of action, and I make no apology for saying so.

It is pleasing to see that we have three units, but when 30 per cent of police calls relate to domestic violence quite frankly three units are not good enough. Every single police officer should be an expert in domestic violence, and the prosecutorial discretion ought to be taken out of the hands of the police officers and put in the charge of the Director of Public Prosecutions, where we have properly trained prosecutors who are able to deal with difficult prosecutions in the absence of cooperation from the victim. I commend this Bill.

The Hon. DIANA LAIDLAW (Minister for the Status of Women): I wish to say a few words in relation to this Bill as Minister for the Status of Women. I congratulate the Attorney-General on introducing this Bill and I commend the Hon. Angus Redford for a speech based on his experiences as a lawyer who prosecuted many—

The Hon. A.J. Redford: I have done both—defended and prosecuted.

The Hon. DIANA LAIDLAW: You have done both: you have acted for the defence and represented women victims in such cases. It has been fantastic within the Liberal Party to see the strong interest and support there has been for the Attorney in the preparation and introduction of this Bill by the new Government in the first session of the new Parliament. In this the International Year of the Family the Government recognises that the family is the fundamental unit of our society. But where the family does not look after its members, where one member of the family abuses the trust of more vulnerable members, this Government will not allow the notion of a family to remain as a cloak for the concealment of such wrongdoing.

With that in mind the Liberal Party released a comprehensive domestic violence policy prior to the last election. Certainly it addresses these legislative measures outlined in the Bill, but a strong focus of our policy initiatives and practice over the next few years will be in the areas of prevention, assistance for victims, education, shelters and counselling in addition to the matters of the law and the administration of the law. The recent Law Reform Commission report 'Equality Before the Law' states:

> The legal system's tolerance of violence against women underwrites women's inequality before the law. Women cannot be equal until the legal system responds effectively to violence and, until women are treated as equals, violence against them will not be reduced.

I agree with those sentiments. It is of great regret that we still need to have strong public condemnation of domestic violence. It is of greater regret that in the past the problem of domestic violence has not been seen as an issue requiring community attention or sufficient community attention but one that should be left to families to solve. I would have hoped that the efforts of many over the past few decades had more effect. Attitudes are changing but still far too many women and their children are threatened, assaulted, injured or killed by their partners.

Legislation alone cannot prevent domestic violence but it can provide a framework where we as a community can say the following things with resolve: that we understand the problem, we regard it as serious, we will do what we can to prevent it and we will assist the victims. The Government believes that there can be no greater betrayal of trust within a relationship than when one family member inflicts violence upon partners and children. If you are not safe in your home, then women and children are entitled to ask: 'Where are we safe?'

The notion of 'quality of life' is nonsense when people live in fear of the person whom they should ordinarily be entitled to look to for comfort and protection. Criminal proceedings are the strongest message we can send about the unacceptability of domestic violence. It is for that reason that the Government has introduced this Domestic Violence Bill plus amendments to other legislation which aim to strengthen sanctions against the perpetrators of domestic violence and to offer more certain protection for the victims.

The amendments to the Criminal Law Consolidation Act will establish a new offence of domestic violence assault. This new initiative will increase from imprisonment for two years to imprisonment for three years the maximum penalty for common assault arising out of domestic situations.

These amendments will send a clear message to the community that this Government believes that the fact that violence is domestic in origin does not trivialise it—rather it makes it a more serious offence. The Domestic Violence Bill, in clause 4(2), will define a wide range of conduct that may cause fear and apprehension to a family member to ensure that there is no confusion as to the grounds for granting a domestic violence restraining order.

The prohibited conduct reflects what we know about the various ways in which offenders attempt to control and threaten other family members. Clause 4(2), which contains this new material, also makes specific reference to domestic violence. It provides:

For the purposes of this Act, a defendant commits domestic violence—

(a) if the defendant causes personal injury to a member of the defendant's family; or

(b) if the defendant causes damage to property of a member of the defendant's family; or

(c) if on two or more separate occasions—

(i) the defendant follows a family member; or

(ii) the defendant loiters outside the place of residence of a family member or some other place frequented by the family member; or

(iii) the defendant enters or interferes with property occupied by or in the possession of a family member; or

(iv) the defendant gives offensive material to a family member or leaves offensive material where it will be found by, given to or brought to the attention of the family member; or

(v) the defendant keeps a family under surveillance; or

(vi) the defendant engages in other conduct,

so as to reasonably arouse a family member's apprehension of fear.

The Hon. C.J. Sumner: Why are you reading that out? It is in the Bill.

The Hon. DIANA LAIDLAW: I read that out for good reason. It is the first time that we have in the statutes such a comprehensive reference to domestic violence. That is important in terms of the new provision for domestic violence assault. The Criminal Law Consolidation Act will also be amended to enable a court to issue a restraining order when sentencing a defendant found guilty of an offence. This will offer quicker protection for victims if a restraining order is ignored, because the police will be able to arrest immediately on suspicion of a breach.

The Bail Act will be amended requiring a bail authority to give primary consideration to the protection of victims of domestic violence when assessing whether to release a defendant on bail. When considering the granting and terms of a restraining order, the Bill requires the court to give a high priority to the need to ensure that family members, particularly children, are protected from the defendant's conduct.

These measures are being introduced to bring home the seriousness with which the Government and the Parliament—and I add 'and the Parliament', because there has been resounding support for this measure in this place—view domestic violence. It is evidence that both the Government and the Parliament have listened to the victims, predominantly women and children, and those who support them.

I alert members to the fact that we should be most concerned about the children. I was alerted to an obvious point when I met with representatives of women's shelters a few weeks ago. They reminded me that for every woman who enters a shelter, on average, that woman is accompanied by two or three children. Those two or three children in each instance have clearly witnessed, and possibly experienced, violence in the home. There is no doubt that in terms of this whole issue it is acquired and observed behaviour that sees this form of violence perpetuated.

While we are looking at the figures of about 30 per cent of women being subjected to domestic violence, we have to remember that for each of those women there are, on average, two children. Until we address this problem and focus on the impact on children, on their school work and behaviour in schools, as well as at home, we will not be properly addressing this issue and we will not make the inroads we wish to in stemming domestic violence in the future.

Finally, I am thrilled to see this Bill before this Chamber. I believe very strongly, both in the Year of the Family and in the Centenary of Women's Suffrage, that this is an important piece of legislation and it is excellent that it has the united support of all members of Parliament.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the Bill. I also thank them for the observations they have made, several of which have prompted amendments. I am also pleased that this does have the support of all Parties in this Chamber. There are several issues that need to be responded to as a result of the contributions members have made. The Leader of the Opposition makes several points. He raises the philosophical point about whether a distinction should be made between domestic violence and other sorts of violence. I know that not only in Australia but internationally there is this issue about whether the focus should be on domestic violence as a distinct crime or should be part of the general law approach. Views differ and the Liberal Government has taken the view that there is a symbolic advantage in having a separate piece of legislation dealing with domestic violence restraining orders.

Workers in the field and those affected by domestic violence will have a piece of legislation to which they can readily refer. It was obvious in the wide range of discussions we had in developing the domestic violence policy of the Government prior to the election that there was a ready understanding among women, in particular, of domestic violence and a desire to see domestic violence so described specifically addressed rather than even broadening it to something like family violence, which is very much the concept being debated in some of the provinces of Canada and distinct from the general criminal law.

The Leader of the Opposition has noted that there are some differences between this Bill and the amendments to the Summary Procedure Act. A court may make an order under this Bill if a person commits domestic violence as defined in clause 4(2). The Government believes that this is bringing home to perpetrators precisely what it is that they are doing. They are committing domestic violence. They are not merely behaving in a way that must be restrained. Clause 5 spells out in some detail the type of order that a court can make. The list is not exclusive but it gives the court guidance as to the sorts of things it should be thinking about when it is framing its order. There is no similar provision in the summary procedure amendments.

The Government considered that the types of orders most commonly needed in domestic violence situations should be spelt out in the legislation. This will guide not only the courts but also people reading and working with the legislation. The summary procedure amendments, like the existing summary procedure provisions, leave the terms of the order at large. We thought that there was some advantage in the domestic violence context, for the purpose of providing guidance as to the wider range of orders that were available, to therefore have them spelt out. Clause 6 spells out the factors to be considered by the court when making a domestic violence restraining order. These differ from the factors the court must consider when making an order under the Summary Procedure Act. Where parties are or have been sharing their lives, different considerations need to be taken into account by the court in making an order. These are spelt out for the benefit of the court and the people using the Act.

The Leader of the Opposition makes the point that demarcation disputes may arise when you have two pieces of legislation basically covering the same behaviour. Prosecu-

tors will have to decide whether to take action under the Domestic Violence Act or the Summary Procedure Act. This may lead to jurisdictional disputes and actions failing because they have been brought under the wrong Act. This question has been given quite a considerable amount of thought. There has been a variation in views. We have fluctuated between leaving it out to putting something in. Finally we came to the position of leaving out any specific provision that dealt with that. Obviously the Government wishes to avoid the situation where applications for restraining orders fail because they are brought under the wrong piece of legislation.

As the legislation is drafted, if it appears that the proceedings have been instituted under the wrong Act, the solution is to withdraw the complaint and lay another. That is cumbersome and leaves the matter in some measure to the determination of the court and is not satisfactory if one is on the doorstep of the court or even in proceedings for there and then to issue a fresh complaint under the alternative piece of legislation. On reflection, the Government believes that it is better to avoid argument at the outset which may lead to delay in the proceedings and to provide that the complaint will not be bad if laid under the wrong Act. I will be moving an amendment to this effect.

The Leader of the Opposition observes that the definition of 'family' does not include elderly members of the family. As I said in my second reading explanation, opinions will differ on who should be included in an Act called the Domestic Violence Act. The Government has chosen to define members of the family quite narrowly to encompass those who are the major groups affected by domestic violence. The Government realises that spouses, de facto spouses and children are of course not the only people subject to domestic violence. Some other States and Territories in Australia have domestic violence legislation in which 'family' is very widely defined. However, except in the case of the Australian Capital Territory, those jurisdictions do not have anything resembling the Summary Procedure Act provisions and it is sensible to give wide coverage in the legislation that they do have. This is not true of South Australia where those not covered by the domestic violence legislation are covered by the Summary Procedure Act.

The honourable Leader of the Opposition notes that the amendment to the Bail Act to require bail authorities to give primary consideration to the need that the victim may have or perceive to have for physical protection may increase the number of persons remanded in custody and further exacerbate the very high rate of remand prisoners in South Australia. The Government is concerned at the high rate of remand prisoners in South Australia and is currently looking at the reasons for this and what, if anything, can be done to reduce the numbers of people held on remand. Whilst it may be that the amendment to the Bail Act in the circumstances of domestic violence may, as I say, exacerbate that rate of remand prisoners, we do not believe that that ought to be a reason for not putting in something which gives some primary focus to the need for the victims of domestic violence to be given protection.

Just by way of digression, I should make the observation that, because there is concern about what appears to be a significantly higher rate of remand prisoners in South Australia than in other States, the definition of a remand prisoner and the circumstances of remand are being examined because there may be some question of definition or description which affects the counting of figures. There may be, for example, a higher rate of prisoners remanded in custody for sentence who ultimately end up being sentenced to imprisonment, so there are issues there that do need to be addressed, and they are being addressed by the Government. The final point made by the honourable Leader of the Opposition is that telephone applications can be made only by police. As I interjected at the time, it is largely a matter of identification.

The Hon. C.J. Sumner: Others could do it.

The Hon. K.T. GRIFFIN: Others could do it.

The Hon. C.J. Sumner: Lawyers.

The Hon. K.T. GRIFFIN: It could be lawyers. It is a question, though, because of the significance of the order, of identifying the person at the other end of the telephone, and police officers can give their name, number and rank. One can hardly expect that of lawyers—

The Hon. C.J. Sumner: They can give their name.

The Hon. K.T. GRIFFIN: They could give their name, that is so. It is an issue that I am happy to look at, but in the context of the consideration of this Bill it is not something that I would want to move quickly on in order to broaden the range of persons who may make those applications. There is of course the further consideration that in reality it is the police who will be at the scene of domestic violence from which the application for the order is most likely to be made by telephone. The police are also given powers to require the alleged offender to remain at a particular place while the application is being made and to arrest and detain the person in custody if he or she fails to comply. It would not be appropriate to give these powers to persons other than the police.

The Hon. Ms Levy points out that we have not recognised restraining orders made in New Zealand and I indicate that that is a good point. We should amend the Bill so that New Zealand orders can be registered and recognised here and there is an amendment to that effect on file. It is something that all States and Territories should consider. I will take it up at the next meeting of the Attorneys-General Standing Committee in July. I am not sure whether the New Zealand Minister will be at that meeting, but the question of reciprocal recognition should be discussed with New Zealanders and I will do so at the next meeting or by letter.

The Hon. Anne Levy: The New Zealand Women's Minister is all in favour, but I do not know about the Attorney-General.

The Hon. K.T. GRIFFIN: I would expect there to be no difficulty. There is a good level of cooperation across the Tasman. Provided there is comparability in the orders made, I cannot see any reason why reciprocal arrangements could not be put in place. I have taken the view that we ought to put it in our Bill: it is, after all, recognition by regulation and protects against dissimilar orders being called restraining orders and therefore creating some problems. I doubt whether there will be problems.

The Hon. Sandra Kanck has made several points. First, she raised the question of whether the cost of laying a complaint personally rather than have the police do it will put the cost beyond the reach of the victim. The cost of laying a complaint is $66. The court can remit this fee if proper grounds exist. Accordingly, I would not expect that in practical terms there would be a problem in a person laying a complaint because there are adequate grounds for the court remitting the fee. The Hon. Sandra Kanck raised the point about a restraining order being served personally on the defendant. Generally that is true. It must be remembered that disobedience of a restraining order is a criminal offence and it would be contrary to the principles of justice for a person to be guilty of an offence for

doing something that he or she did not know would result in being charged with a criminal offence.

Unless the person knows the terms of the order, he or she will not know what behaviour is criminal. However, section 48a of the Magistrates Court Act will provide that, if it is not practicable for court orders to be served personally, the court may make any other provision that may be necessary or desirable for service. This allows the court to take account of the fact that a defendant may be deliberately avoiding service and to order service to be made in some other way. The court will always be aware of the considerations I have just mentioned when making an order for some other method of service.

The Hon. Sandra Kanck queries whether it would be possible for the court to hear parties separately. I am not sure what she has in mind in that proposition. *Ex parte* applications can be made and, by their very definition, the defendant is not present. However, a defendant must have the opportunity to challenge an *ex parte* application and that will usually mean that the defendant and alleged victims give evidence. It is a tenet of our system of justice that a person should be present to hear the case against him or her and I do not believe that that tenet should be abrogated in this case. In some cases the complaint can be made out on police evidence, but it really is a matter of ensuring that the victim is given adequate protection and support in court.

I point out that we now have a situation where screens or other aids for separating the victim from the defendant can be put in place for vulnerable witnesses, although, I must confess, I do not have information about the extent to which they may be available in the magistrates courts. I know that a substantial number of moveable screens have been ordered, and I think they are probably now in various court locations.

The Hon. Anne Levy: I don't think they are being used.

The Hon. K.T. GRIFFIN: We have had only three cases, and only one of those has gone to a decision. I have not heard of any more at this stage.

The Hon. Anne Levy: In the other two they withdrew the application when it was obvious that it wasn't going to be granted.

The Hon. K.T. GRIFFIN: I do not think anyone can make that judgment. I have certainly not had that drawn to my attention. Clause 14 does not require the parties to have the opportunity to put their case for good reasons. That is another area from which the Hon. Sandra Kanck has raised a question. A person who has fled interstate may want the order varied because, for example, it requires the defendant to keep away from an area in South Australia. This will need to be varied if the victim is in another State. This is simply adapting the order to meet the new situation of the victim, otherwise the parties have the same rights to be heard.

The honourable member also asked about whether the legislation will be monitored. I can give her an assurance that a monitoring mechanism will be put in place to ascertain how this whole process works. There are two other matters: one raised by the Leader of the Opposition, and one by the Hon. Anne Levy. As I indicated earlier, the Leader of the Opposition asked for some identification of the differences between this Bill and the summary procedure amendments. I can indicate that there is one other area, and that is clause 18, which requires the courts to deal with proceedings for domestic violence restraining orders as a matter of priority.

There is no similar provision in the summary procedure amendments. As has already been acknowledged, domestic violence is the most frequent threat to the safety of women in South Australia. It needs to be dealt with as a matter of urgency, and this provision is intended to enforce this point. The Hon. Ms Levy asked some questions about the meaning of de facto. She points out, quite rightly, that it is not defined in the Bill. The words, and I quote, 'a person of the opposite sex who is cohabiting with the defendant as the husband or wife de facto of the defendant' in the definition of 'spouse' describe a concept or a general notion. The meaning of the words will depend on the context in which they are used. The same words may have different meanings for different purposes.

The Hon. C.J. Sumner: It doesn't matter now that you have put in the other clause.

The Hon. K.T. GRIFFIN: For example, the same words are used in the Family Relationships Act, but the provision goes on to require that the parties have cohabited for a certain period or have had a child. It is appropriate to include these limiting factors when the question is whether the person has, for example, an obligation to make proper provision for a person in a will. However, the limitations are not relevant when it is a question of a person being protected from violence. The choice lies between defining de facto or leaving it to be interpreted according to the context. If it is defined, there is the possibility that the definition will have undesirable or unexpected consequences. I believe it is preferable not to define the concept in this area but to leave it to good sense to decide whether or not the parties are in a de facto relationship. As the Leader of the Opposition has interjected, the concern about that has, to a very significant extent, now been addressed by the clauses relating to interchangeability between the two Bills. I again thank members for their indications of support on this Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 1, lines 25 to 27—Leave out the definition of 'interstate domestic violence restraining order' and insert:

> 'foreign domestic violence restraining order' means an order made under a law of another State or a Territory of the Commonwealth or New Zealand declared by regulation to be a law corresponding to this Act;

This amendment is to the definitions clause. It is redrafted in this form to accommodate the intention which I have expressed to allow for the recognition of restraining orders made in New Zealand.

The Hon. ANNE LEVY: I am glad to see that the Attorney is moving this amendment. I understand that whether a New Zealand restraining order can be registered in South Australia will depend on regulation, and that the Attorney will need to investigate whether that can be done holus bolus. I presume that it is intended that regulations recognising orders made in all other States and Territories of Australia will be promulgated at the time the Bill is proclaimed.

The Hon. K.T. GRIFFIN: I hope we can deal with this fairly quickly. The present Bill refers to interstate and Territory orders. It is the law that is to be declared by regulation. So, it would not be a particular segment of the law but a particular law which would be identified by name and be declared by regulation as a law which corresponds to this legislation and as a result of which we can recognise the orders. I would expect orders in relation to New Zealand to

be done not necessarily at the same time as the others, but I would not expect there to be an inordinate delay.

The Hon. ANNE LEVY: The point of my query is that, as I understand it, restraining orders in other States of Australia are already recognised under our existing law, so that one can presume that those from other States and Territories of the Commonwealth will be proclaimed by regulation as soon as this legislation comes into operation. I appreciate that New Zealand may take a little longer.

The Hon. K.T. GRIFFIN: I misunderstood the question. Yes, that is the case.

Amendment carried; clause as amended passed.

Clauses 4 to 13 passed.

Clause 14—'Registration of foreign domestic violence restraining orders.'

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

Page 9, lines 9 to 29—

Leave out 'registered interstate domestic violence restraining order' wherever occurring and insert, in each case, 'registered foreign domestic violence restraining order'.

Leave out 'an interstate domestic violence restraining order' wherever occurring and insert, in each case, 'a foreign domestic violence restraining order'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 15—'Offence to contravene or fail to comply with domestic violence restraining order.'

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

Page 10, line 3—Leave out 'interstate' and insert 'foreign'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 16 to 18 passed.

Clause 19—'Summary Procedure Act applies.'

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

Page 10, lines 26 to 28—Leave out this clause and insert:

Relation to Summary Procedure Act

19. (1) Subject to this Act and the rules, the Summary Procedure Act 1921 applies to a complaint and proceedings under this Act.

(2) A complaint made under this Act that should have been made under division 7 part 4 of the Summary Procedure Act may be dealt with as if it had been made under that division.

This amendment is designed to ensure that, if there is a complaint which is subsequently found to have been a complaint that should have been laid under the Summary Procedure Act, it will be deemed to have been so made. It overcomes the problem that we talked about earlier. We will have a corresponding provision put into the Summary Procedure Act if the Committee agrees.

Clause negatived; new clause inserted.

Schedule and title passed.

Bill read a third time and passed.

SUMMARY PROCEDURE (RESTRAINING ORDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 May. Page 780.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions on this Bill. The Leader of the Opposition asked about the differences between this Bill and the Domestic Violence Bill. I have already given an explanation in relation to the Domestic Violence Bill, so I hope I do not have to repeat it.

The Leader of the Opposition also referred to a situation where both parties in a neighbourhood dispute want restraining orders and the police take one party's side. The police have to make a judgment. I have had people contact me criticising the police for having taken a decision about which complainant's point of view they should adopt. I confess that at this stage I do not how that can be resolved. In the context of this Bill I can take it no further than to say that this issue has caused concern. It does not affect the substance of the law: it is a question of how the police sort out so-called neighbourhood disputes and make a judgment about which of two is the complaint that they are most likely to support. I suppose there is an argument for saying that in such situations the police should not prosecute or lay complaints against either one, but then we need alternative mechanisms in place, perhaps through the Legal Services Commission if the protagonists are indigent, to deal with that sort of issue. Beyond making those observations, I indicate that I am considering the matter, but I cannot take it any further than that at this stage.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 1, line 20—Leave out 'definition' and insert 'definitions'.

This amendment is consequential upon a later amendment, which puts in a definition of 'foreign restraining order' and that is for the purpose of ensuring that we do have the capacity to recognise New Zealand orders and to allow for their registration in South Australia. It is a concept similar to that which we have now included in the Domestic Violence Bill.

Amendment carried.

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

Page 1, after line 22—Insert:

'foreign restraining order' means an order made under a law of another State or a Territory of the Commonwealth or New Zealand declared by regulation to be a law corresponding to division 7 of part 4;

Amendment carried.

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

Page 1, lines 25 to 28—Leave out all words in these lines after 'interstate summary protection order'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 4—'Substitution of part 4 division 7.'

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

Page 7, line 33 to page 8, line 21—Leave out 'registered interstate restraining order' wherever occurring and insert, in each case, 'registered foreign restraining order' and 'an interstate restraining order' wherever occurring and insert, in each case, 'a foreign restraining order'.

Amendment carried.

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

Page 9, after line 11—Insert:

Relation to Domestic Violence Act

99L.A complaint made under this Division that could have been made under the Domestic Violence Act 1994 may be dealt with as if it had been made under that Act.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

POLICE (SURRENDER OF PROPERTY ON SUSPENSION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 744.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill. It was debated in another place and some questions were asked there that were not answered very satisfactorily by the Minister (Hon. Wayne Matthew), and I would like the Attorney-General to give attention to those questions again. The Police Force seems to have functioned quite satisfactorily for more than 100 years without having this power to force surrender of property, and I wonder what cases gave rise to this. The Hon. Mr Matthew was not inclined to provide that information and said that he did not want to identify the officers. I do not see why they should not be identified but, if that is a problem, surely the circumstances as to why this is necessary can be provided to the House.

The other point which was made in the other place and which I think is a reasonable one is how it will be administered. Obviously, if it is a serious offence or a serious breach of regulations that has caused suspension, one could imagine where a return of the property immediately might be necessary. However, there might be other cases where suspension has occurred but the matter is in dispute. It may not be so serious, and to have the situation where police officers are having their badge, uniform, etc., or whatever else is involved, taken from them when they may be reinstated may be a bit of an overreaction. That really rests with the administration. They are the only two questions I have and, subject to better answers than were provided in another place, the Opposition supports the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for his indication of support for the Bill. The only information which I have on the papers that I have with me is that there has been a concern that there is power in the Police Commissioner to require a member of the Police Force or a police cadet to deliver up to the Commissioner or to a person appointed by the Commissioner all property which belongs to the Crown and which was supplied to the person for official purposes. Obviously, that is restricted to situations when a member or a cadet ceases to be a member of the Police Force or a police cadet and there has been concern that, if someone is suspended from office, equipment such as the identification badge, a revolver or even a vehicle may not be delivered up by the suspended officer and that there is no power to compel that to occur. That is all the information that I have. If the Leader of the Opposition would like more information—

The Hon. C.J. Sumner: I would like some information on the examples here.

The Hon. K.T. GRIFFIN: If we pass the second reading, the Committee stage can be done next week, and I undertake to bring back some answers to the questions before we finally dispose of the Bill.

Bill read a second time.

STATUTES AMENDMENT (CONSTITUTION AND MEMBERS REGISTER OF INTERESTS) BILL

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

No.1. Long title, page 1, lines 6 and 7—Leave out 'and the Members of Parliament (Register of Interests) Act 1983'.

No.2. Heading to Part 1, page 1, lines 10 and 11—Leave out all words in these lines.

No.3. Clause 1, page 1, lines 13 and 14—Leave out 'Statutes Amendment (Constitution and Members Register of Interests) Act 1994' and insert 'Constitution (Members of Parliament Disqualification) Amendment Act 1994'.

No.4. Heading to Part 2, page 1, lines 20 and 21—Leave out all words in these lines.

No.5. Part 3, page 2, lines 12 to 21—Leave the heading and clause 7.

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

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

The amendments received from the House of Assembly seek to remove from the Bill those provisions inserted by the Council relating to the members of Parliament (register of interests) provision, which sought to insert a further heading under which contracts with the Crown should be disclosed by a member as an alternative to what is presently in the Constitution Act. The Government has indicated that it is not convinced of the merit of that because of the unworkability of the proposition, and therefore it would seem to us that the appropriate thing to do is to agree to the amendments.

The Hon. C.J. SUMNER: The Opposition strongly opposes that proposition. We believe that this is an integral part of the of the Bill and we would not wish to see the accountability procedures enshrined in the amendments removed.

The Hon. M.J. ELLIOTT: I do not believe that we should accept the amendments.

Motion negatived.

The following reason for disagreement was adopted:

Because the amendments remove a measure of accountability.

CROWN LANDS (LIABILITY OF THE CROWN) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 686.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition supports this Bill. The only question that I have really is why the Bill is necessary. This Bill was conceived when the Willmott case was before the courts and that involved the question of liability of the Crown for an accident that occurred on Crown land. The matter was resolved by the courts in favour of the Crown: first by the Full Court here and then the High Court refused leave to appeal. In the light of the Willmott case, why is this legislation necessary given that that case has basically determined the common law in a way favourable to the Crown in the sorts of circumstances that are outlined in the Bill? So, the question is: why has it not been left to the common law as expressed in Willmott's case?

Related to that question is: will the exemption to the Crown that is sought to be provided in this Bill be more extensive than that which would have pertained had the common law as expressed in Willmott's case remained the law, that is, if this legislation does not become law. Subject to an answer to those queries I support the Bill.

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

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate on second reading (resumed on motion).

(Continued from Page 808.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions on the Bill even though there are a number of them with which I disagree. However, I appreciate that the Bill will at least pass the second reading and the marathon task of reviewing a significant number of amendments, some of which have just been put on file—there are 40 pages there—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No, they are the Hon. Ron Roberts' amendments, and the Government has some and the Hon. Mr Elliott has some, so we look forward to a fun week next week.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I think that it is appropriate to make some observations on the contributions of various members and I will try to do that as briefly as possible. If I am not provoked by interjections it may mean that we will get through it more quickly than otherwise. I am sure that interjections are not on the mind of most members at 5.50 p.m. on a Friday.

The Hon. Carolyn Pickles made a number of observations but focused on what she claimed to be the Bill's adverse effect on women. She of course made a number of other contributions and I will be dealing with those, but certainly the assertion that the Bill will have an adverse effect on women must be refuted and refuted vigorously.

Quite to the contrary. In fact, working women require a flexible industrial relations system which enables them to integrate work needs with parental and social demands. Working women will gain many new rights and these include the following: For the first time working women in both unionised and non-unionised businesses will be able to negotiate enterprise agreements. For the first time working women will be able to negotiate flexible employment contracts as well as new options for part-time work, fixed term contracts and flexible work rosters. For the first time working women will be guaranteed by a State Act of Parliament equal pay for work of equal value in all awards or enterprise agreements.

Working women will have guaranteed legal rights to annual leave, sick leave, maternity leave and adoption leave. For the first time all working women will have access to an employee ombudsman. For the first time women who are outworkers, working from home, will be able to use the employee ombudsman to investigate their conditions of employment and advise them of their legal rights. For the first time the South Australian law will recognise the rights for enterprise agreements to extend sick leave, to allow working women to care for ill children, spouses, parents or grandparents.

The Hon. Carolyn Pickles: Aren't men going to care for their children, spouses and so on as well?

The Hon. K.T. GRIFFIN: Yes, they are. I have a very open mind on this. The responsibility is on both husband and wife, male and female, spouses and putative spouses.

The Hon. Carolyn Pickles: But the burden now is on women.

The Hon. K.T. GRIFFIN: That is what I am addressing. I am not making these observations—

The Hon. Carolyn Pickles: Then why take their sick leave away?

The Hon. K.T. GRIFFIN: I am not taking their sick leave away. For the first time South Australian law will recognise the right for enterprise agreements to extend sick leave to allow working women to care for ill children, spouses, parents or grandparents. Working women will have access to fairer and faster justice in unfair dismissal claims and, for the first time, will be able to rely upon new legislated rules governing the termination of employment and guaranteeing employees fair treatment in dismissal matters.

Working women who choose not to enter into enterprise agreements will be guaranteed the continuation of their existing awards as a safety net. The Hon. Ms Pickles says the award system is undermined, and that of course is the theme of many speakers on the other side of the Council, but it is wrong. All existing awards continue in existence; all existing award wages continue in existence; and all existing conditions of employment, other than preference to unionists and the union's right of entry in non-union enterprises, continue in existence.

This means that all existing award conditions operate as the bargaining framework for enterprise agreements. The misleading scare campaign by the Labor Party and some trade union officials on this issue is grossly irresponsible. It is also the height of hypocrisy in a week when the Federal Labor Government has announced a below-award training wage. The Government will move decisively here to cut across this irresponsible scare campaign by an amendment which reiterates the Government's policy intention that the Bill is a safety net for enterprise bargaining.

The Hon. Carolyn Pickles says that the Bill rejects the concepts of minimum standards. Again, she is wrong. The Bill enshrines minimum standards in legislation to a greater extent than has ever previously been provided for in the State's law. The Bill provides for a guaranteed legislative minimum standard on award rates, annual leave, sick leave, parental leave and equal remuneration for men and women for work of equal value. It also includes for the first time, as I have already indicated, legislated guaranteed minimum notice of termination provisions and minimum procedural rights for employees in relation to dismissals.

The Hon. Carolyn Pickles asserts that the enterprise agreement commissioner is not required to act proactively. Again, she is wrong. The commissioner has a full discretion to assess whether or not the requirements of the Act concerning enterprise agreements have been met. In exercising these powers the commissioner can use all powers of the commission, which include powers to require evidence, submissions, documents or other information in order to exercise a discretion to reject or approve an agreement.

The Hon. Carolyn Pickles asserts that the annual leave minimum standard does not include the 17½ per cent loading. I suggest that this misunderstands the nature of the scheme of the Act concerning minimum standards. All existing awards continue in existence. This means that all awards providing for 17½ per cent annual leave loading continue in existence. No employees lose their annual leave loading. The minimum standard does not include the 17½ per cent because the Government believes that this loading should be capable of being negotiated away through higher base wages and enterprise agreements or in return for other conditions where employees agree on that course of action.

The Hon. Carolyn Pickles also says that sick leave is lessened. Again, in this respect she is wrong. All existing sick

leave award provisions continue in existence. The sick leave minimum standard contains the State standard 10 days sick leave per annum. The Government has extended the concept of sick leave to include leave to care for sick family members through enterprise agreements. Rather than limiting sick leave, the Government is extending the concept in a balanced fashion. The Hon. Carolyn Pickles says that the Bill limits workers' rights over unfair dismissal. Again she is wrong: the Bill retains the right to sue for unfair dismissal. The Bill makes a number of amendments to this jurisdiction which provide more balance in the commission's procedures. The Bill continues to provide adequate remedies for unfairly dismissed employees. It does however prevent double dipping and forum shopping by litigants. This should not be seen as a denial of rights but rather responsible balance in the law.

The Bill actually gives employees and employers important new rights in this jurisdiction. These include: the right to have their dismissal assessed according to standards of the International Labour Organisation's termination of employment conventions; the right to have decisions made within three months of hearing; and the right to have recommendations made on their claim at conciliation conferences. The Hon. Trevor Crothers made a number of assertions. First, he said that the award safety net is being removed. As I have already indicated, that is wrong. He has also said that there is no appeal mechanism to enterprise bargaining.

The Hon. T. Crothers: I queried it.

The Hon. K.T. GRIFFIN: Yes, he queried whether there is an appeal mechanism to enterprise bargaining. I suggest to the honourable member that for an appeal mechanism to be provided in an enterprise agreement jurisdiction is inconsistent with the concept of the jurisdiction, because the commission is approving or rejecting agreements. If the commission approves an agreement there is not justification for an appeal. If the commission rejects an agreement, the parties can go away and renegotiate a new agreement to overcome the commission's objection. Because it is an agreement between the parties, the essence of the commission's responsibility is, first, to determine whether there has been any undue pressure, then to ensure that it meets the minimum standards and that the parties in fact agree to it. I think the Hon. Mr Crothers also implied that employers are likely to force employees to sign agreements.

The Hon. T. Crothers: I said that some employers would do that, and they will.

The Hon. K.T. GRIFFIN: I don't believe that that is correct. I think it is part of the Labor Party's scare campaign.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The fact of the matter is that if one reads the Bill one will see that the enterprise agreement cannot be approved if there is coercion of employees. In fact, the Bill makes it a criminal offence for an employer to coerce an employee into an enterprise agreement and the maximum penalty is $15 000 per offence. So the mechanisms are there to provide protection.

The Hon. T.G. Roberts: Will you amend it if it is abused?

The Hon. K.T. GRIFFIN: We will certainly monitor it if it is abused. If it is abused we will make a judgment at the time, when we see the context. Abuse implies that there is malpractice.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, coercion is abuse—all I can say in relation to that is that the enterprise agreement commissioner and certainly the commission is going to be sensitive to those, particularly because of the safeguards we have in the Bill. The Hon. Mr Crothers made the point, and a quite proper point, that the State's industrial relations record has been harmonious. I suggest that while that has been the case there is no reason why the Bill should not continue this record. The Government believes that the Bill will foster closer working relationships between employers and employees at the enterprise level and that this cooperation will lessen the potential for industrial disputes.

The whole framework within which enterprise bargaining occurs and in which enterprise agreements are made is one for agreement between employers and employees. That is done on the basis of management taking a much stronger interest in the interests of its best resource: its employees. In those circumstances what happens, and this is what happens in New Zealand and in other jurisdictions where you have enterprise agreements, is that you find management is explaining more to the employees. Employees have more information made available to them. It is not just financial information. It is the aspirations of the firm and the way in which employees can benefit from increased productivity and changes in circumstances.

The Hon. T. Crothers: There have been enterprise agreements in this State for 100 years continuously which are still in existence—the Brewing Company, ICI and Adelaide Brighton Cement to name just a few. But it is the type of enterprise agreement, the way you have opened it up.

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I talk to a lot of small business people. They might have half a dozen, 10, or 15 employees and they all take the view that they are quite capable of negotiating with their employees. In fact their employees want to do certain things, and but for the award they can do them, but the employer—

The Hon. T. Crothers: That is why employers engage the Chamber of Commerce and the Employers' Federation, because even they cannot negotiate for themselves.

The Hon. K.T. GRIFFIN: They ought to be entitled to negotiate for themselves if they want to. Frequently these are small businesses which want the flexibility. I think it is important to be able to give them that flexibility. The Hon. Mr Crothers makes reference to the Bill undermining the independence of the Industrial Court and Commission. The Chief Justice and judges of the Supreme Court have entered the fray with some letters today and the Leader of the Opposition made some observations on it during his contribution at the second reading stage. I dispute that this Bill undermines the independence of the Judiciary. What it does is provide protection for judges in that they will remain judges. The offensive aspect of any legislation is when you sack judges. There is no sacking of judges in this Bill.

The Hon. T. Crothers: They could be removed by a back door method.

The Hon. K.T. GRIFFIN: But they are not removed from the Judiciary: they still remain judges. The Industrial Relations Court has an area of jurisdiction which is identical with the jurisdiction which the Industrial Court presently has. It also has a body of jurisdiction which is different from the jurisdiction that it presently has. It is in those circumstances that, if the Parliament decides, and ultimately it is the Parliament that decides, that one court will be abolished and a new one established and that the judges remain judges, whether it is of that court or some other jurisdiction, then that does not undermine the principle of independence of the Judiciary.

The Hon. T. Crothers: I have no problems with that. Both Houses of Parliament can remove judges now, but your Bill does not do that. Your Bill takes that right away from the Parliament.

The Hon. K.T. GRIFFIN: No. The Bill does not. I am saying that the Bill retains the status of the judges. They are not dismissed.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: But they cannot be removed as judges. They remain judges, and that is an important issue. The Bill protects their status as judges. What can be any worse than that? It protects the status of the judges. My point about the Parliament is that if Parliament passes an Act of Parliament establishing a new court, providing a mechanism for appointment of judges to that court, then Parliament is entitled to do it. I know that you can remove judges under the Constitution by a resolution of both Houses. No-one is talking about removing any judges.

We are merely providing for a new court and the abolition of the old court, with the retention of judges and magistrates and their status as judges and magistrates. That maintains the integrity of the system and respect for judicial independence, and it must ultimately be the Parliament that makes that decision—not the Government. We do not control the numbers in this place, and we have to wait and see what happens with it. We certainly control the numbers in the Lower House. Ultimately it is the Parliament that makes the decision.

The Hon. Carolyn Pickles: Parliament comprises two Houses.

The Hon. K.T. GRIFFIN: That is what I am saying. The safeguard is that the Government does not control this House. Whatever comes out of this Bill, maybe after a deadlock conference—and, looking at the amendments, I am sure we will have one of those—will be the will of the Parliament. That is the position in any democratic system. If the will of the Parliament is to restructure the court in a way that ultimately still protects the status of the judges as judges and does not dismiss them, that is a proper resolution of the problem. That is the issue that has to be addressed, and it does not in my view and in the view of the Government impinge upon the issue of judicial independence.

The Hon. Terry Roberts makes the observation that this Bill will not solve unemployment. The Bill is not intended to solve unemployment. There are a whole range of other issues, a lot of them dependent upon the Federal Government's economic and other policies, as much as what happens in this Bill. However, the Bill will lead to greater workplace flexibility and productivity, and thereby enhance employment opportunities. It must be seen in the context of the rigid existing system which I would suggest is very largely responsible for the scandalous 11 per cent unemployment rate and 40 per cent youth unemployment rate in this State. It is time we had a change to free up the system.

The Hon. Terry Roberts says that the Bill changes the power balance between employers and employees. One can only say that a fairly cosy club has been operating for a long time, and it is about time that the club was broken. The Bill gives employees more than 50 new industrial rights when compared with the Labor Party's existing Act. The Bill empowers employers and employees at the enterprise level. The Bill retains the recognition of unions and their full capacity to represent the industrial interests of their members. It maintains legitimate union rights and adds new employee rights, but that cannot be seen as weakening the position of employees. What it does is provide for those employees who are presently not members of unions and do not want to be members of unions to exercise some power for themselves and to enter into negotiations and conclude enterprise agreements.

The Hon. Terry Roberts asserts that there is no social justice in the Bill. Again, he is wrong. The objects of the Bill recognise the need for equitable industrial relations outcomes, but the industrial relations system cannot be divorced from other policy objectives such as economic growth and development; and an industrial relations system cannot be simply about so-called social justice because that limits the parameters of that terminology. Social justice comes when people have jobs rather than being unemployed. People who are unemployed want work. People who are unemployed may have social justice in the sense that they have handouts, but that is not much social justice when they would prefer to have a job and there are opportunities for them to have jobs.

The Hon. Terry Roberts says that the Liberal Government wants awards to go. Again, he is plainly wrong on that because the Bill clearly retains all existing awards and existing award powers of the Industrial Commission. There are enforcement powers for breaches of awards which remain. In addition to that, we propose to appoint an employee ombudsman who will have responsibility for the protection of employees. He also says that the Government's desire for the competitive edge is not laudable but laughable. All I can say to that is that it is a remarkable assertion with no merit. I suppose that one should not even deign to respond to it because it is in itself so remarkable and outrageous. The Government does have a responsibility to lead, to ensure that its key policy settings, including industrial relations policy, are tailored to provide for a competitive industry. We have a responsibility to get the balance right between promoting economic welfare and industrial well-being.

The Leader of the Opposition makes reference to judicial independence, and I believe that I have more than adequately advanced that. The Hon. Anne Levy refers to the disadvantage that she asserts women will suffer. Again, I have comprehensively debunked that assertion. She made the point that the Minister has the power to approve enterprise agreements, but I suggest that that is a misreading of the Bill. The only party authorised to approve enterprise agreements is the enterprise agreement commissioner, who exercises a completely independent discretion.

The Hon. Ron Roberts asserts that the Bill is contrary to Liberal Party policy and, like so many statements that have been made by the Opposition, that is completely wrong. It gives effect—to the fullest possible extent—to the policy that was released in July 1993. He also asserts that the employee ombudsman is not independent. Again I refute that because in the Bill the employee ombudsman has a specific statutory role, namely, to operate independently from Government. On administrative matters certainly there is some measure of accountability, but that does not impinge upon the statutory role. He continues the criticism that other members of the Opposition have made that the award seeks to undermine unionism. I refute that, as I have done earlier.

I make the point about trade unions: some of them recognise that they will survive in a competitive environment when they provide their members with the services that they require. There are trade unions that provide those services, but there are others that have not yet woken up to the fact that they cannot coerce people to belong to a union and give it its

full support. They have to persuade, and they have to provide services.

I have no problems with trade unions seeking to provide the services which their members require and which will encourage non-members to join the union and benefit from its services. As I say, a number of trade unions have woken up to the fact that we are now very much in a competitive environment and that the old days have long since passed. Liberal members have also made a number of points, all of which have been supportive of the Government position, which probably will not surprise the Council, but at least I am very pleased to see that they have been prepared to join this debate and indicate their very strong support for the Liberal Government's measures.

The Hon. Michael Elliott has made a number of points, and it is important in just a few minutes for me to address those as I have addressed the points made by other members. He indicates that he supports the essential ingredients of this Bill, including enterprise agreements, freedom of association and minimum standards. I applaud the Hon. Mr Elliott for that indication of his general support. It is appropriate and responsible. However, one has to measure that support against the amendments and vice versa and to test them to see whether they do in fact reflect that general expression of support. He acknowledges that all awards will continue in existence.

He does, however, make a number of criticisms about the award safety net and minimum standards, but they fail to take into account the fact that all awards together with their conditions, both those equal to and in excess of the minimum standards, continue to apply. He makes the point that the objects of the Bill should take into account social and economic justice, and I can indicate that in our view the Government's Bill does provide a balance in this respect. He criticises clause 84(2)(c) and claims that it prevents awards being upgraded. I suggest that is a fundamental misunderstanding of clause 84(2)(c) as it sits in the overall scheme of the Bill.

The paragraph must be read in the context of two specific provisions in the Bill: first, the fact that all existing awards and their conditions continue to apply, and this means that existing annual leave, sick leave and parental leave entitlements in excess of the scheduled minimum standards continue to exist as award conditions in industrial awards of the State Commission and, as such, provide guaranteed enforceable rights for employees; and, secondly, the fact that clauses 68(3), 69(3) and 70(3) specifically provide for the increase in these scheduled minimum standards by order of the Full Commission. This means that the award standards can be increased but that it must occur on a test case basis. This is not in a practical sense very different from the existing practice of the commission in which the wage guidelines require test cases on conditions of employment to be dealt with by the Full Commission. There is no breach of the Liberal Party's election promise in this provision.

The Hon. Mr Elliott claims that the clause relating to substantial disadvantage breaches award safety net provisions. He is wrong. The enterprise agreement commissioner, in assessing whether substantial disadvantage exists, will be comparing the enterprise agreement conditions with the existing conditions, which are, by virtue of their continuation of awards, award provisions. This means the award operates as a safety net. The word 'substantial' is intended to mean that immaterial or inconsequential effects on employees do not prevent the agreement being disapproved. It is also worth noting, given the criticism of the phrase 'substantial disadvantage' in the Government's Bill that a similar phrase, 'seriously disadvantages', already exists in the current Act in relation to industrial agreements, and I draw attention to section 113.

The Hon. Mr Elliott criticises clause 75(2) and, again, I would suggest that he misunderstands the effect of the clause. It does contain a higher approval test for the very few circumstances where it may be in the employees' interests for a reduction or trade-off involving the legislated minimum standards. This clause does not breach the award safety net for provisions previously explained. He makes the criticism that the legislated minimum standard for annual leave does not prescribe the 17½ per cent loading, and I have already dealt with that in response to a member of the Opposition. There is criticism of the employee ombudsman's requirement to report to the Minister. The honourable member suggests that this is a breach of an election promise. I refute that. Whilst the employee ombudsman will be required to report to the Minister, the Bill makes clear that the Minister is required annually to table the report before the Parliament. Accordingly, the policy commitment that the employee ombudsman will report to the Parliament is met.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That is the same with the ombudsman. The Hon. Mr Elliott says that associations should not be denied their rights to represent employees. I think that is a significant misunderstanding of what is in the Bill, because the Bill does not deny that right. It makes clear that those rights should apply only with respect to the association's membership and not to employees at large who have chosen not to be members of the association. So there is a freedom of choice. Why should the interests of non-members seek to be represented by an association in any way at all? He makes the same observation about independence of the judiciary and the commission being undermined. I hope he will consider the matters I raised earlier in my second reading reply, because I do not accept the criticism of the Chief Justice and I will seek to address that issue.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: The Chief Justice and the judges.

The Hon. R.R. Roberts: And the Catholic Church.

The Hon. K.T. GRIFFIN: The church is no longer an established church, whether it be Roman Catholic or Church of England. So church and State are separate. They are equally entitled to make criticisms or commendation if they so wish.

In relation to the comments of the Chief Justice, I have had some discussions with him about the issue. I do not accept that our Bill undermines the concept of judicial independence. As I said earlier, Parliament will make the final decision on that issue. I have indicated publicly, and I indicate again here that, whilst we have that view, during Committee I will endeavour to address that issue, if necessary by amendments which will put the question of independence beyond any doubt. I do not believe it is in doubt at the present time but, if it is necessary to allay concerns, we will give consideration to amendments to achieve that objective. I thank members for their consideration. I hope that the consideration of the Bill during Committee will be efficient, effective and certainly expeditious.

Bill read a second time.

ADJOURNMENT

At 6.25 p.m. the Council adjourned until Tuesday 10 May at 2.15 p.m.