LEGISLATIVE COUNCIL

Tuesday 10 May 1994

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

ASSENT TO BILLS

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

Real Property (Miscellaneous) Amendment,

Retirement Villages (Miscellaneous) Amendment.

PUBLIC TRANSPORT BILL

At 2.16 p.m. the following recommendations of the conference were reported to the Council:

As to Amendments Nos 1, 2 and 3—That the House of Assembly do not further insist on its amendments.

As to Amendments No. 4—That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 7, page 6, lines 21 to 31, page 7, lines 1 and 2—Leave out subclauses (5) and (6) and substitute—

(5) If the Minister gives a direction under this section, the Board must cause a statement of the fact that the direction was given to be published in its next annual report.

and that the Legislative Council agree thereto.

As to Amendment No. 5—That the House of Assembly do not further insist on its amendment.

As to Amendments Nos 6 and 7—That the House of Assembly do not further insist on its amendments.

As to Amendments Nos 8 to 11—That the House of Assembly do not further insist on its amendments.

As to Amendments Nos 12 and 13—That the House of Assembly do not further insist on its amendments but makes the following amendment in lieu thereof:

Clause 21, page 15, lines 15 to 24—Leave out subclause (2).

and that the Legislative Council agree thereto.

As to Amendment No. 14—That the House of Assembly do not further insist on its amendment but makes the following amendments in lieu thereof:

Clause 22, page 17, line 10—After 'service contract' insert 'on a regular basis'.

Clause 22, page 17, after line 19—Insert—

(8) Subsection (7) is subject to the following qualifications:

(a) the 28 day period referred to in that subsection may be shortened in a particular case by agreement between the Board and the relevant authority; and

(b) the Board is not required to comply with that subsection in a case of emergency, or in any other case where the Board considers that it is reasonable to act without giving notice under that subsection, but, in such a case, the Board must provide a report on the matter to the relevant authority within a reasonable time.

and that the Legislative Council agree thereto.

As to Amendment No. 15—That the House of Assembly do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 25, page 18, lines 17 to 26—Leave out subclause (1) and substitute—

(1) The Board must establish—

(a) a Passenger Transport Industry Committee; and

(b) a Passenger Transport User Committee; and

(c) such other committees (including advisory committees or subcommittees) as the Minister may require.

Clause 25, page 18 lines 29 to 31, page 19, lines 1 to 21—Leave out subclauses (3), (4), (5) and (6) and substitute—

(3) The functions of a committee established under this section will include—

(a) in the case of the Passenger Transport Industry Committee—to provide an industry forum to assist the Board as appropriate in the performance of its functions;

(b) in the case of the Passenger Transport User Committee—to provide advice to the Board on matters of general relevance or importance to the users of passenger transport services;

(c) in the case of a committee established under subsection (1)(c)—to perform functions determined by the Minister,

and may include such other functions as the Board thinks fit.

(4) Subject to any direction of the Minister, the membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.

and that the Legislative Council agree thereto.

As to Amendments Nos 16, 17 and 18—That the House of Assembly do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 39, page 33, lines 16 to 22—Leave out subparagraph (ii) and substitute—

(ii) that, until 1 March 1997, TransAdelaide should be given a reasonable opportunity to provide, or to control the provision of (for example, by subcontracting), a level of services within Metropolitan Adelaide that, when considered on the basis of passenger journeys per annum, does not fall below 50 per cent of the total number of passenger journeys undertaken within Metropolitan Adelaide on regular passenger services provided by TransAdelaide in 1993 (and for the purposes of this subparagraph a calculation of passenger journeys may be undertaken in accordance with principles prescribed by the regulations); and

Schedule 4, clause 6, page 65, after line 10—Insert—

(1a) TransAdelaide may, until 1 March 1995, continue to operate a regular passenger service without the authority of a service contract under this Act and, until that date, tenders cannot be called for a contract to operate a regular passenger service provided by the State Transport Authority immediately before the commencement of this Act (unless the State Transport Authority (before the commencement of schedule 2) or TransAdelaide (after the commencement of schedule 2) relinquishes or discontinues the service between the commencement of this Act and that date).

Schedule 4, clause 6, page 65, line 11—After "TransAdelaide may" insert ", from 1 March 1995,".

and that the Legislative Council agree thereto.

As to Amendment No. 19—That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 40, page 35, lines 6 to 8—Leave out subclause (8) and insert—

(8) If the Minister gives an approval under subsection (7), the Board must include a report on the matter in its next annual report.

and that the Legislative Council agree thereto.

As to Amendment No. 20—That the House of Assembly do not further insist on its amendment but makes the following amendments in lieu thereof:

Clause 47, page 39, line 22—Leave out paragraph (d).

Clause 47, page 39, lines 23 and 24—Leave out subclause (9).

and that the Legislative Council agree thereto.

As to Amendment No. 21—That the House of Assembly do not further insist on its amendment.

As to Amendment No. 22—That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 23—That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Schedule 2, clause 1, page 56, lines 12 to 23—Leave out subclauses (8) and (9) and substitute—

(8) If the Minister gives a direction under this clause, TransAdelaide must cause a statement of the fact that the direction was given to be published in its next annual report.

and that the Legislative Council agree thereto.

As to Amendment No. 24—That the House of Assembly do not further insist on its amendment but makes the following amendments in lieu thereof:

Schedule 3, clause 1, page 60, line 3—Leave out "Any" and substitute "If it is proposed to sell to a private sector body any".

Schedule 3, clause 1, page 60, lines 7 to 10—Leave out all words in these lines and substitute—

"then—

(c) the Minister must, at least two months before the proposed sale, give notice of the proposal in the *Gazette*, and in a newspaper circulating generally throughout the State; and

(d) if the sale proceeds it will be taken to be subject to the condition that the private sector body grant to the Minister an option to repurchase the property in the event of a proposed sale or other disposal of the property by the private sector body (being an option that prevails over any other option that may exist in relation to the property)."

Schedule 3, page 60, after line 10—Insert new clauses as follows:

1A. An option under clause 1 must provide as follows:

(a) if the private sector body proposes to sell or otherwise dispose of the property, the body will first give the Minister at least three months notice, in writing, of its proposal;

(b) the Minister will then have that three month period to decide whether or not to exercise the option;

(c) if the Minister decides to exercise the option, the value of the property will be taken to be the market value of the property assuming that the property will be used for passenger transport purposes;

(d) if the Minister decides not to exercise the option, the body may proceed to sell or otherwise dispose of the property on the open market,

(and an option may include such other matters as the parties think fit).

1B. However, clause 1 does not apply if the Minister has, by notice in the *Gazette*, declared that, in the Minister's opinion, the property is no longer reasonably required for passenger transport purposes (whether within the public sector or the private sector).

Schedule 3, clause 2, page 60, line 15—Leave out "works and facilities used, associated or connected with" and substitute "similar forms of works and facilities that are essential and integral to".

Schedule 3, clause 2, page 60, lines 18 and 19—Leave out "works and facilities used, associated or connected with" and substitute "similar forms of works and facilities that are essential and integral to".

Schedule 3, clause 2, page 60, lines 22 and 23—Leave out "works and facilities used, associated or connected with" and substitute "similar forms of works and facilities that are essential and integral to".

Schedule 3, clause 2, page 60, line 24—Leave out paragraph *(e)* and substitute—

(e) the *Operations Control Centre* situated on the northern side of North Terrace, Adelaide.

and that the Legislative Council agree thereto.

As to Amendments Nos 25 and 26—That the Legislative Council do not further insist on its disagreement thereto.

PAPERS TABLED

The following papers were laid on the table:

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

Regulation under the following Act—

Residential Tenancies—Exempted Items.

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

Racing Act 1976—Bookmakers Licensing Board Rules—Bookmakers' Board—Telephone and Minimum Bets.

QUESTION TIME

STUDENT RESULTS

The Hon. C.J. SUMNER: My questions are addressed to the Minister for Education and Children's Services as follows:

1. Will the Minister table the paper he presented to the recent Ministers conference to justify his much-publicised statements that male students are disadvantaged in our school system?

2. Does the Minister include or exclude non-government schools in his analysis and, if not, why not?

3. Will the Minister table the SSABSA statistics for each school in South Australia, Government and non-government, showing the number of students, distinguishing male and female students, who sat examinations in the following subjects for the past five years: Maths I PES, Maths II PES, Physics PES and Chemistry PES?

The Hon. R.I. LUCAS: The answer to the first question is 'No'.

The Hon. C.J. Sumner: Why not?

The Hon. R.I. LUCAS: Because I didn't table a document. I can't very well give you a document if I didn't table it.

The Hon. C.J. Sumner: You prepared one?

The Hon. R.I. LUCAS: No. So, the answer to that question is very simple: I will not table the document, because one was not prepared. If the Leader of the Opposition is interested in this topic, I refer him to a speech I gave on it in this Council a month or two ago. I recommend that he read that speech if there is—

The Hon. C.J. Sumner: Was the matter discussed at the Ministers conference?

The Hon. R.I. LUCAS: The Leader of the Opposition has asked a number of questions and I will endeavour to answer them. No document was tabled. The issue was discussed at the Ministers conference, and I am happy to provide him with a copy of the press statement which was released at the time and which indicated the decisions that were taken by the ministerial council in relation to this issue. I will also be pleased to collect a package of information for the Leader of the Opposition in relation to this issue of gender equity and provide him with a copy of that information.

My understanding in relation to SSABSA's results is that, if they have not already been released, SSABSA will release the 1992 results in the not too distant future. As the Leader of the Opposition will know, the Government and the Minister for Education and Children's Services have no power or authority over SSABSA in relation to this issue. He, together with his Government, through exempting SSABSA from the freedom of information legislation, prevented the Minister from having access to this sort of information.

The Hon. C.J. Sumner: Why don't you change the regulations?

The Hon. R.I. LUCAS: Are you prepared to give it support?

The Hon. C.J. Sumner: Tell us.

The Hon. R.I. LUCAS: Are you prepared to give it support?

The Hon. C.J. Sumner: Tell us.

The Hon. R.I. LUCAS: Are you prepared to support it?

The Hon. C.J. Sumner: You're the Government.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Mr President, the Leader of the Opposition is being very cute here. During the last Parliament, SSABSA was able to continue to be exempted from the freedom of information legislation only because when I moved a disallowance motion in relation to that regulation the Leader of the Opposition and the Labor Government, together with the Australian Democrats, voted to defeat it. Now the Leader of the Opposition is asking the Minister to provide this information according to each school in South Australia. However, during the last Parliament he indicated that he was prepared to support the Labor Government's move to place SSABSA beyond the purview of the freedom of information legislation.

The Hon. C.J. Sumner: You had some nice things to say about it.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Given that the Leader of the Opposition has now wandered down this particular garden path, is he prepared to change his mind, to change the position of the Labor Party in relation to this issue and change his stance as shadow Minister for Education and Children's Services and support a change in the relationship of SSABSA to the freedom of information legislation?

The Hon. C.J. Sumner: You are the Government now.

The Hon. R.I. LUCAS: Well, we are the Government, but we do not have the numbers in this Chamber. We need your support in relation to this matter.

The Hon. C.J. Sumner: Put it up and see what happens.

The PRESIDENT: Order! You have a chance to ask questions.

The Hon. R.I. LUCAS: As I said, the Leader of the Opposition wanders down the garden path and when the gate is opened and we ask whether he is prepared to change his position and that of his Party in relation to SSABSA, all of a sudden he gets very cute and decides that he will not be able to answer that question. The Leader of the Opposition has asked whether I can provide all this information for every school in the State. Under the current arrangements, as supported by the Labor Party and the Australian Democrats, I shall have to go cap in hand to SSABSA and ask whether that is possible. My understanding of the current situation is that that is not possible because of the position of the Labor Party and the Hon. Mr Sumner, together with the support of the Australian Democrats, in relation to the provision of information from particular schools.

I understand that SSABSA will be releasing, if it has not already, some system-wide information which will provide system wide figures on the number of students taking individual subjects across the State. It will break it down according to regions—I am not sure how many regions there are—but that is about as far as location specific SSABSA is prepared to go under the position supported by the Labor Party and the Australian Democrats in relation to this issue.

I am also told that in the next few months the 1993 round of results might be published in relation to this issue. I am further advised, and the preliminary material that I have seen in relation to 1992 shows what I have indicated publicly and at the Ministerial council meeting: that right across the broad spectrum of subjects at year 11 and also at year 12 the girls consistently, not in every subject, are out performing boys by a considerable margin.

The Hon. Anne Levy: Can we have the numbers on that?

The Hon. R.I. LUCAS: Yes, you can have the numbers, but not according to individual schools, because that is not your position as a Party: you will not allow that information. The figures will show that in some subject areas the number of girls as opposed to the number of boys is still fewer than 50 per cent, but in some subjects the number of girls is much more than the number of boys.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: The Hon. Anne Levy's grasp of matters of a mathematical nature and statistics is a little suspect if that is the sort of analysis she intends to use in relation to this matter.

The Hon. Anne Levy: I have the data.

The Hon. R.I. LUCAS: I have the data too, and it indicates right across the spectrum—not including the old literacy rich subjects that girls have traditionally performed better in than boys, for example, English, history and a range of other literacy rich subjects, but also in subjects like mathematics, science and technology—

The Hon. Anne Levy: You do not tell us the numbers on which it is based.

The Hon. R.I. LUCAS: I am happy to tell you the numbers—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I am happy to tell you the numbers—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order! The honourable member will have a chance to ask her question.

The Hon. R.I. LUCAS: In relation to those subjects at year 11, at stage one of the SACE, the measure of girls out-performing boys is of the order of 12 per cent across all subjects. In some subjects it is up to 18 per cent, and in some other subjects, such as the maths, science and technology subjects, girls are out-performing boys by about seven, 10 or 11 per cent, if you measure it in accordance with the number of students who are performing at a satisfactory level.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: We are happy to provide that sort of information. But, what I am saying to the honourable member is that that is true in some subjects, but it is also true in all the other subjects where girls and boys are in equal numbers, or where girls out-number boys, or where boys out-number girls. So, right across the spectrum—

The Hon. Anne Levy: Just give us the data.

The Hon. R.I. LUCAS: I am prepared to give you the data when SSABSA is prepared to give me the data. Because of the position you have adopted in relation to information being provided by SSABSA—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I can give you the 1991 and the 1992 data. The 1993 data is within the province of SSABSA; when it is released to me I will more than willingly share it with all members and the general community.

The Hon. C.J. SUMNER: I have a supplementary question. Is the Liberal Party's policy on the release of information by SSABSA the same as it was in Opposition, or has there been a review of its policy?

The Hon. R.I. LUCAS: We are happy to discuss all issues in relation to our policies. I had a discussion with SSABSA in the first month of coming into Government in relation to its attitude to the greater release of detailed information relating to performance in schools, and it indicated to me that its position was in effect to continue to support the position that the Labor Party, the Australian Democrats and SSABSA supported when Labor was in Government, and I am therefore not in a position to release information in relation to individual schools.

The Hon. C.J. Sumner: Has your policy changed?

The Hon. R.I. LUCAS: I put the proposition in accordance with the views that I had prior to the election to SSABSA in the first month of coming to Government, and it indicated that it was not prepared to release that information.

ISLAND SEAWAY

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

Leave granted.

The Hon. BARBARA WIESE: Under the previous Government considerable effort was devoted to reducing the cost of the *Island Seaway* to taxpayers. In real dollar terms an annual subsidy reduction of $1.3 million was achieved each year from 1989-90. In 1992 a performance based subsidy agreement was reached with the current operator, which expires in June 1994. In July of last year the then shadow Minister of Transport called for the then Government to consider axing the vessel and setting freight costs of its major competitor, the *Sealink*, to ensure a fair pricing policy. In other words, she was recommending that the *Island Seaway* be scrapped and that the *Sealink* take over all cargo traffic between the mainland and Kangaroo Island. She said the *Island Seaway* was no longer viable and the Government must consider alternative operations. Following the Minister's comments, there was an outcry of opposition from farmers and other people on Kangaroo Island who support the retention of the *Island Seaway*. My questions to the Minister are:

1. In view of the looming expiry of the *Island Seaway* operational agreement, has the Minister commenced a review of its performance of the past two years?

2. Has she consulted with interested parties on Kangaroo Island about its future?

3. Does she intend to axe the vessel and hand over business to the *K.I. Sealink* as she recommended last year?

The Hon. DIANA LAIDLAW: The honourable member is mistaken in terms of the comments that I was reported to have made last year in relation to the *Island Seaway*. Certainly I can confirm that there was an article alleging that I recommended scrapping the *Island Seaway* and turning all business over to its competitor. The paper that ran that article at the time, the *Islander*, printed my letter of explanation and the apology was noted, because it was one of a series of options that I recommended that the Government at the time should consider. The people on the island would also know that we believed, as we stated at the time, that the Government should also be looking at ensuring that the island was not subject to the mercies of a monopoly, and that was taken into consideration by the Government of the day. So, at no time have I recommended that the *Island Seaway* be scrapped, and I am certainly not recommending—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Well, the *Advertiser* based its story on the *Islander* story.

The Hon. Barbara Wiese: It used direct quotes.

The Hon. DIANA LAIDLAW: Well, the *Islander* selectively quoted, and then printed my letter of explanation and accepted in editorial comment my letter of explanation after it had printed that misleading article.

The Hon. Barbara Wiese: So it was an option you were considering?

The Hon. DIANA LAIDLAW: It was one of the options I called on the Government of the day to consider, based on discussions that I had had with people on the island. As the honourable member would be aware, there is a variety of views about what should have happened at that time and should happen now with respect to access to Kangaroo Island. A couple of months ago I asked the Road Transport Agency and Marine and Harbors Agency to prepare a brief for expressions of interest from a consultant. A consultant was appointed a couple of weeks ago to work with people on the island—local councillors, transport operators, and the like. It has the job of looking at a whole range of options for the future of the link to Kangaroo Island. I thought I may have had the terms of reference here that I could have read or provided to the honourable member. I will ensure that she has them before the dinner break this evening.

MINISTERIAL OFFICERS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services in his capacity as Leader of the Government in the Council a question about ministerial officers.

Leave granted.

The Hon. CAROLYN PICKLES: On 15 February this year I placed on notice the following questions to each Minister of the Government:

1. What are the names of all officers currently working in the Office of the Minister for Education and Children's Services?

2. What are the names of all ministerial assistants employed in this Minister's office and which officers have tenure and have been appointed under the Government Management and Employment Act?

3. What are the salary and any other remuneration details relative to each officer?

I am still awaiting an answer to those questions. However, in the *Messenger* of last week there was a very interesting article by Alex Kennedy. I don't always agree with Ms—

The Hon. Barbara Wiese: She has very good links in the Liberal Party.

The Hon. CAROLYN PICKLES: Well, she obviously has because she seems to know a few things that I have been trying to get the answers to. So it seems that Ms Kennedy can get answers where I cannot. She started her article by saying:

> Should taxpayers be expected to pay for a percentage of the staff of a political Party's State machine? Should some workings of a political Party be run from a Premier's office? Obviously not.
>
> For that reason, there are a number of uncomfortable Government MPs wondering about any public ramifications over what has started to happen to the Premier's staff list. The worry is if the public perception to arise from new and planned additions to the Premier's staff is that some of Liberal machinery's work is moving on to the public payroll, then the Liberal Government's honeymoon would be well and truly over.

And after last Saturday it seems that it is. She goes on to say:

> It's a strange and confusing tale that goes back well over a year. Then there were leaks within the Liberal Party claiming that Dean Brown considered the way to have more control over the Party machinery was to move many of its operations into Premier's Department under his wing.

My understanding is that the protocol is that one can have a couple of political appointments, a press secretary and a person on the ministerial staff. However, I have been trying to get answers to these questions since 15 February and I think it is reasonable to expect answers now that we are in

May. In the light of this article and allegations that the Premier is increasing his staff for political purposes, will the Leader ask his ministerial colleagues—and may be his ministerial colleagues in this place will answer them today or tomorrow—to answer my questions asked on 15 February about staffing allocation to Ministers?

The Hon. R.I. LUCAS: We have taken a leaf out of the previous Labor Government's book in relation to answers to questions on notice about Ministers' officers. We will provide them, and I understand that they will be provided by the end of this week, before the end of this session. So the honourable member can rest assured she will get some sort of response by the end of the week. In relation to the claims by Alex Kennedy in her article, there was no evidence provided in that article and I am unaware of to what she might be referring in relation to Ministers' officers. If she wants to make specific evidence, allegations or claims available to the Premier, I am sure that he would be interested and prepared to respond. I have to say that in this area the Hon. Carolyn Pickles has either a huge cheek or a very short memory, because just in the minute or so that I had listening to the question I went through some names such as Ron Slee, David Abfalter—

The Hon. Carolyn Pickles: Who are they?

The Hon. R.I. LUCAS: Well, let's talk about them in a minute—Mike Duigan, Michael Wright, Phil Tyler and Derek Robertson. The Hon. Carolyn Pickles will know a number of those names very well because they are factional heavies within the left Caucus of the Labor Party, together with the centre left.

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

The Hon. R.I. LUCAS: Derek Robertson, and within the centre left Ron Slee and David Abfalter.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Carolyn Pickles asked the question and, as I said, she has either a huge cheek or a very short memory because, given some time, I would be prepared to do some research for the Hon. Carolyn Pickles and produce a list as long as your arm in relation to Labor Party heavies, Labor Party lackies, who work within the Labor Party and who were parked conveniently not just within the Premier's office but within every Minister's office, not only to do their task within the Minister's office but to run the factions out of the Minister's offices and out of the members' offices.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The Hon. Chris Sumner says that is not true. He should have a look at some of the statements made by Terry Groom and Martyn Evans over the past few years in relation to the way the Labor Party parked its various officers within Ministers' offices and electorate offices and ran the Labor Party and election campaigns in the factions from their offices. As I said, there are only half a dozen names that I was able to quickly reel off. At various stages Ron Slee worked with the Minister of Education and the Premier's office.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Well, he has not got a job with us in a Minister's office, I can assure you.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: And he won't be getting a job in my office, either, I can assure you. David Abfalter was conveniently parked with the Hon. Mr Klunder, and Mike Duigan at various times was parked in various positions over the years. Michael Wright ran a campaign for the marginal seat of Mawson whilst at the same time being parked with the Premier's office in the past few years. Phil Tyler and Derek Robertson and a whole variety of other people were also involved. So, it is a huge cheek by the Hon. Carolyn Pickles to be wanting to raise this sort of question.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Are you saying that you were not a Minister and therefore you were not to blame? So, you agree that what they were doing was wrong; is that what you are saying?

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No, we will not get a response to that. As I said, the Hon. Carolyn Pickles obviously has a short memory about these sorts of issues.

PAY TELEVISION

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made in another place today by the Hon. John Olsen about pay television, which will add value to South Australian industry.

Leave granted.

TELEPHONE INTERCEPTS

In reply to **Hon. C.J. SUMNER** (10 March).

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

1. Yes.
2. Yes.
3. The Government believes it is not inappropriate for police to tape telephone conversations where permitted by law.

There will be circumstances in which courtesy requires the police officer to inform the other party to the conversation, that it is being taped. In other circumstances, to do so would defeat the purpose of the taping. It is not possible to say that in all circumstances it is inappropriate to tape a conversation with a Member of Parliament without his or her knowledge. However, it is acknowledged that it was inappropriate to tape the telephone conversation of the Hon G L Bruce without his knowledge or consent. The President's permission should have been sought. In the case involving the Hon. Mr Bruce, the police officer regrets that he did not ask his permission.

4. Again, it is not possible to say in all cases there is or is not a breach of Parliamentary Privilege. However, Crown Law advice in the case involving the Hon G. L. Bruce is that there was no breach.
5. No.
6. (a) Officers of the South Australian Police Department only tape conversations in strict accordance with the Listening Devices Act. Where they are a party to the conversation and the other party is not advised that the conversation is being recorded, they only act in accordance with Section 7 of the above Act.
   (b) There is no requirement under Section 7 of the Listening Devices Act to record the number of instances that conversations are taped. It is therefore impossible to determine how many such instances have occurred in the last twelve months.
7. While there is a Circular which deals with the use of listening devices, it is directed at circumstances which require police to obtain warrants. It restates the effect of Section 7 but otherwise gives no instructions. There are no orders covering the issues raised by this question.

The Commissioner of Police usually gives orders to prescribe and regulate the way in which police will implement legislation. For the main part, orders place procedural requirements upon police officers so that legislation is implemented and enforced in a consistent and orderly way.

Where the law is simple and straightforward (which the Commissioner believes to be the case here), it is not necessary to set out procedures in orders. The conduct of police officers is regulated by

the law itself and by the general disciplinary provisions of the Police Regulations, 1982.

The Commissioner does not consider a general instruction on courtesy whilst operating under Section 7 of the Listening Devices Act is needed.

8. With regard to advising the other party that the conversation is being taped, it is neither possible nor appropriate to dictate the exact procedure each time Section 7 of the mentioned Act is used. Each circumstance is different and it may jeopardise an investigation to advise the other party. From a general courtesy point of view, if the disclosure does not impact on the outcome of the conversation, the other party should be advised although there is no legal requirement to do so.

The South Australian Police Department is bound by the requirements of Section 7 of the mentioned Act and acts accordingly.

9. No.

PARLIAMENTARY SECRETARY

In reply to **Hon. C.J. SUMNER** (10 February).

The Hon. K.T. GRIFFIN: The Premier has now made a Ministerial Statement on this matter on 21 April (see *Hansard* page 907) which was also tabled in this House on the same day. I refer the honourable member to that statement for the reply to his question.

INTENSIVE SPEECH AND LANGUAGE DISORDER UNIT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Intensive Speech and Language Disorder Unit.

Leave granted.

The Hon. M.J. ELLIOTT: The Intensive Speech and Language Disorder Unit is an important Government service which caters for both language and speech disordered children. The program currently provides a speech pathology and educational service for preschool children between 3½ and five years of age with an emphasis on early intervention. I have been told that the program, which currently has three campuses at Regency Park, Valley View and Warradale, has about 18 children in it, and, I am told, a minimum of 30 children on the waiting list.

Children have an opportunity to enter the program for around 12 months. If they fail to make it into the program by the age of four or 4½, it is often too late for early intervention to be effective. Once this happens the child enters school without having received optimum services, and many function below their potential throughout their school life. Members of the unit's support group have told my office that plans are afoot to decentralise the program and attach units to more kindergartens throughout the metropolitan area.

An assurance by the former Education Minister, Susan Lenehan, that there would be no change to the original centre at Regency Park for current students is due to expire at the end of the school term in July this year. However, I am told there are concerns that up to today the Government has made no funding decisions about the move, so the unit cannot plan infrastructure or staffing needs for the changes. This is causing great uncertainty for parents.

Parents say that kindergarten sessions have also been cut to comply with guidelines with other preschoolers. These parents argue that these children with special needs require access to more educational sessions to ensure equity of outcome. However, ensuring greater flexibility for students with special needs would require a ministerial direction to the Children's Services Office. My questions to the Minister are:

1. Will the Minister carry out a review of the situation currently facing the unit and ensure that a proper coordinating body is in place to manage the decentralisation?

2. Will the Minister ensure that funding decisions are made as soon as possible to allow proper planning for any changes to the unit and proper long-term funding security?

3. Will the Minister consider offering a ministerial direction to ensure greater access to kindergarten sessions for children on the program, to ensure equity of outcome?

The Hon. R.I. LUCAS: I thank the honourable member for his question. I am afraid that his information is just a little dated. It is incorrect to say that a decision has not been taken. The Government, or I as Minister, has taken funding decisions about the Intensive Speech and Language Disorder Unit to meet the sort of requests that the honourable member has had raised with him obviously by that particularly interest group.

The honourable member was correct to say that the previous Minister had put in a six months stay of execution clause to the end of June but with no ongoing commitment in relation to that area. We have now approved, by finding additional funding from other areas of the Department for Education and Children's Services' budget, the establishment now of a total of six such centres. From memory, instead of catering for 18 students, we hope to cater for perhaps 30 or 36 students. I will be able to get the detail of the decision we have taken on that issue.

So, the simply answer is that there is no need for a review because we have taken a decision. There is no need for a ministerial direction because we have done it, and I will provide the detail for the honourable member so that he is aware of the decisions that have been taken in relation to this very important area.

The Hon. M.J. ELLIOTT: I desire to ask a supplementary question. When did the Minister release that information?

The Hon. R.I. LUCAS: Not everything I do is done by way of press release. It is just a decision we took. The responsible departmental officers from the Children's Services Office have advised the local officers who are responsibility for the Intensive Speech and Language Disorder Unit program. I suspect that the parents who have spoken to the honourable member's office are just a little out of date about the information and perhaps have not caught up with the decisions that have been taken.

PORT AUGUSTA HOSPITAL

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about Port Augusta Hospital.

Leave granted.

The Hon. R.R. ROBERTS: The Council would be aware that there is strong community expectation that the $23 million Port Augusta Hospital redevelopment would commence this financial year. It had been laid out as part of the previous Labor Government's program and the community had no reason to doubt that the incoming Liberal Government would not proceed immediately with the project. Last year some controversy surrounded the development of a private hospital in Port Augusta, but the preference was for this facility to be collocated on the Port Augusta Hospital campus. I understand that this position has the full support of the Port Augusta Hospital board.

However, since the election grave concerns have been expressed that the new Government may not fulfil the community's expectation about hospital facilities at Port Augusta. Concerns have been expressed to us that any new facility may be built on a green fields site and could be dependent on private sector capital availability.

In early March the Minister for Health, Dr Armitage, visited Port Augusta, including the Port Augusta Hospital. However, I am informed that when pressed about the Port Augusta Hospital funding issue he said that he had left his briefing notes back in Adelaide and therefore could not discuss the issue. Therefore, my questions are:

1. Will the Minister give a guarantee to the Council and the Port Augusta community that he will ensure that the $23 million that the Port Augusta community is expecting to be spent on health services will be provided?

2. Will he reassure the community that any new facilities will be collocated within the existing hospital?

3. Will he rule out any move to make the development dependent upon the availability of private sector capital?

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

ADELAIDE LENDING LIBRARY

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the City of Adelaide Lending Library.

Leave granted.

The Hon. ANNE LEVY: It is now more than 12 months since the Middleton report on the City of Adelaide Lending Library was presented both to the LGA and to the Government. Since then, the City of Adelaide itself has commissioned a report on the City of Adelaide Lending Library which contained four or five possible options for the city council to adopt regarding the library. I am sure the Minister recalls that the City of Adelaide Lending Library was set up as a joint venture between the State and the Adelaide City Council, that there is a separate agreement regarding this library and that the funding arrangements are not the same as those which apply to all other council libraries in the State. It was a strict 50-50 funding arrangement between the State Government and the City of Adelaide, indexed with the guarantee of indexing written into the agreement.

These various reports have shown that the use made of the City of Adelaide Lending Library has far exceeded what was anticipated when it was set up using all possible data, and that in consequence it is under-resourced, understaffed and lacks considerably in materials to make it a satisfactory library. The lending ratio is very different from that which applies in any other public library in this State.

Various options were presented as to what should happen with the City of Adelaide Lending Library, some of which involve amalgamation with the North Adelaide Public Library, which is another City Council run library, although its funding is on the same basis as that of all the other public libraries. While I quite appreciate that the relationship between the City of Adelaide Lending Library and the North Adelaide Public Library is properly a matter for the Adelaide City Council to consider, all the options mentioned involve considerably increased funding for the City of Adelaide Lending Library which would involve an increase not only from the Adelaide City Council but also from the State Government.I understand that figures as high as an extra $200 000 a year have been suggested.

If that funding were to come out of the pool of funding given to the Libraries Board for distribution to public libraries around the State, this would arouse the ire of every local government body in South Australia, because it would have to come from the pool from which their public library funding comes, and consequently there would be reduced funding for every library in the State.

I understand that it is felt that the only possible solution to this problem is for the State Government to increase the contribution which is earmarked for the public library system to the Libraries Board for distribution, so that greatly increased funding can be provided to the City of Adelaide Lending Library with an increased contribution from the Adelaide City Council as well. Has the Government agreed to provide this extra funding so that the City of Adelaide Lending Library can be a properly funded lending library, serving the residents, commuters and workers in the City of Adelaide in an adequate fashion; and will the Government provide these extra resources in such a way as other public libraries, including the State Library, are not disadvantaged by so doing?

The Hon. DIANA LAIDLAW: I am not sure whether the honourable member specifically mentioned that the agreement negotiated between herself when Minister for the Arts and Cultural Heritage, the Adelaide City Council and the Libraries Board of South Australia expires on 30 June 1994. We are in the throes of renegotiating that agreement, and there are discussions between the Department for the Arts and Cultural Development, the Adelaide City Council and the Libraries Board. I have also held meetings with the Chair and Director of the Libraries Board.

My latest advice is that discussions are continuing and that the matter has not been resolved. I am therefore unable to give specific answers to the honourable member's questions in terms of the funding pressures. It is true, however, that all sources of funding are being explored because of the difficult conditions and the pressures under which the library is operating at the present time.

To put these pressures in context, perhaps I should report that when the library was first established it was estimated that the membership would be 30 000. It is in fact 68 000, so not only has it doubled but also it has far exceeded the original expectations. Of course, as the honourable member has noted, that places considerable pressure on resources and staff and also on those who wish to use the service in terms of their satisfaction with that service.

The present funding arrangements consist of some $422 000 from the Libraries Subsidies Fund with a matching contribution from the Corporation of the City of Adelaide. There was also an additional grant last financial year of $50 000 for materials purchase. I hope I will be in a position to advise the honourable member shortly that these matters have been resolved to the satisfaction of all.

The Hon. ANNE LEVY: As a supplementary question: will the Minister make available any new agreement which is reached with the Adelaide City Council and the Libraries Board as soon as it is concluded, rather than making people wait until Parliament resumes in August?

The Hon. DIANA LAIDLAW: Yes.

PRIMARY INDUSTRIES RESEARCH FACILITIES

In reply to **Hon. R.R. ROBERTS** (19 April).

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

To my knowledge, no consideration has been given to a grains research centre being established at Clare. However, several years ago, when the relocation of the Northfield Laboratories to the Waite Institute at Glen Osmond was being evaluated, consideration was given to transferring some of equipment used for the Field Crop Evaluation Program to Clare as distinct from Turretfield. The issue was raised at that time because heavy equipment was not able to be stored at the Waite Institute.

The storage of the Field Crop Evaluation Program equipment has still not been finalised and some equipment may be relocated to Clare to consolidate a capacity at Clare to service the agronomic programs in the northern agricultural districts. This decision would need to be made by the South Australian Research and Development Institute (SARDI).

The commitment made by the Hon Terry Groom related to establishing the executive headquarters of the South Australian Department of Primary Industries (PISA) Field Crop Group to Clare. This was the executive management function of Field Crops and did not relate any way to research or research facilities.

Since taking office, I have reviewed the range of options for the future location of the Field Crop Headquarters and particularly the costs involved. Regional options have included converting the vacant hospital at Blyth, leasing purpose built accommodation off the Clare District Council, renting additional accommodation in Clare and a building program on existing land owned by PISA at Clare.

In all cases, the costs involved are substantial, and in these times of maximising cost savings, I am not prepared to make major changes to accommodation in PISA unless the benefits can be clearly demonstrated on a business basis. This is particularly the case, given the release of the Government's Audit of the Public Service.

In addition to the above, the Field Crop Group in PISA has been able to substantially maintain its network of regional offices and personnel, despite severe cutbacks in finances precipitated by the previous Labor Government. Monies spent on accommodation compete directly with resources available for financing people on the ground, such as District Agronomists, and it is the latter which I give the highest priority.

In relation to other research facilities under review, the ODR recommended that the expenditure of state funds on the Kybybolite Research Centre and Wanbi Agricultural Centre should cease and this was agreed to by the previous Labor Government. I am currently assessing the future of Kybybolite and will be examining a report being prepared on the matter in the near future.

A decision has already been made to sell the Wanbi Agricultural Centre and this is currently proceeding. The research facilities based at Wanbi have been transferred to the Loxton Research Centre and have been bolstered by additional staff resources during 1994.

REPROMED

In reply to **Hon. T.G. ROBERTS** (12 April).

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

There is no record of any approach by the company to any agency within the Minister for Industry, Manufacturing, Small Business and Regional Development's portfolio.

No.

Yes.

TRAM BARN

In reply to **Hon. CAROLYN PICKLES** (20 April).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information:

1. On 20 April the Minister for the Environment and Natural Resources announced that the Government had decided to retain Tram Barn 'A' but in a reduced size.

2. The Minister indicated that he believed Tram Barn 'A' should be retained but that a reasonable portion at the end nearest the conservatory could be removed as well as some, if not all of the southern annexe.

3. The National Trust and the Botanic Gardens Board will work together to advise the Minister on how these changes can be achieved without losing the historical significance of the place. Future use options for the building include housing the National Trust's horse drawn vehicle collection or providing a venue for flower shows.

4. In reaching this decision, which has the support of the Chairperson, Botanic Gardens Board and the National Trust, the Government has demonstrated its willingness to protect and utilise the heritage listed buildings which it owns.

EUROPEAN WASP

In reply to **Hon. M.S. FELEPPA** (23 March).

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

1. The Minister of Housing, Urban Development and Local Government Relations has agreed to set up a committee to review the situation with European wasp. This committee has representatives from the Local Government Association (LGA), Health Commission, South Australian Museum and the Departments of Housing, Urban Development and Local Government Relations and Primary Industries and will be chaired by a representative from the LGA.

2. By June 30 1994, the Committee will prepare a report to the Minister and the Local Government Association which clearly identifies the extent of the problem in South Australia, possible approaches to the problem, the costs involved, on-going commitments and any legislative changes considered necessary. This report will also clarify State and Local Government responsibilities in this area and include information on public education/awareness strategies.

MINING REPORT

In reply to **Hon. M.J. ELLIOTT** (29 March).

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

The documentation necessary for a ministerial assessment of the issue in question required both the Sandra De Poi report and associated critiques of that report. These critiques, written by Mr John Rudge,Senior Lecturer in Occupational Health and Safety at the University of South Australia and Mr Stephen Cowley, Director of Victorian Institute of Occupational Safety and Health at the University of Ballarat, were not in the possession of the Minister for Industrial Affairs until 15 February 1994. Therefore, the answer to the honourable member's earlier question which was given in the Council was not misleading.

It follows from this that no assessment of the report was made by the Minister until after 15 February 1994. That assessment is still underway with the Committee having been recently requested for advice on what action it intends to take on the report.

VOCATIONAL COURSES

In reply to **Hon. M.J. ELLIOTT** (23 March).

The Hon. R.I. LUCAS: My colleague the Minister for Employment, Training and Further Education has provided the following response.

The questions raised by the Honourable Member relate to changing course structures, and to the special problems faced by people in country areas in accessing training opportunities.

COURSE STRUCTURE

The Department of Employment, Training and Further Education works continually with industry to update courses. This is necessary to ensure that training reflects changes to technology, law, or industrial arrangements. All courses, to retain their accreditation, must be reviewed and updated at least every five years, but most courses are reviewed more often than this. Departmental procedures require that whenever a course is replaced by a reviewed and updated version, transition arrangements are put in place to minimise inconvenience to continuing students.

The case referred to in the question appears to concern the Certificate in Vocational Welding. This course was accredited as a DETAFE course award in 1989. In August 1992, a minor review of the course was conducted in order to incorporate new national Metal and Engineering training modules. The minor review did not result in any significant change to nominal duration or course outcomes. Articulation provisions were developed to enable persons undertaking the course to continue with their study program with a minimum of adjustment.

The Certificate in Vocational Welding has now been replaced by the Certificate in Production Engineering, with effect from 1 January 1994.

The Certificate in Production Engineering has been developed nationally in cooperation with industry for the training of engineering operative level workers. It has been accredited and is on the National Training Board register. The course structure provides for training outcomes at least equivalent to the previous Certificate in Vocational Welding course to be achieved. However, the new course will have the effect of increasing the skill levels of tradespeople as well as giving them nation wide portability of their credential should they wish to relocate, as the person referred to in the question certainly has. Although every effort is made to cause as little inconvenience as possible during these periods of transition it is possible for an individual to be disadvantaged.

Students transferring from the previous Certificate in Vocational Welding course will be able to complete the requirements for the new award. Students will receive credit for all previous studies wherever applicable.

TRAINING IN COUNTRY AREAS

Courses at all DETAFE Institutes are offered on the basis of need and demand as well as meeting the Department's statutory requirements. This ensures that DETAFE courses are offered efficiently and effectively, optimising the available resources and making the most efficient use of the taxes of South Australians.

Institutes of Training and Further Education which have a country regional focus are flexible in meeting the training needs of the community. This training need is met by direct training, through flexible delivery mode, (which can include computer-based learning packages, video conferencing, recognition of skills gained in employment, tutorials and practicals and weekend workshops) or by the offering of courses in association with employers and/or Regional Development Boards. It may also be possible for a person to complete their course by attending a course in another regional centre (such as Whyalla or Port Pirie in this case).

CABINET HANDBOOK

In reply to **Hon. C.J. SUMNER** (10 February).

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

1. The Cabinet is operating under the general procedures established in the Cabinet Handbook prepared in May 1993.

2. The Cabinet Handbook is currently being reviewed and a variety of changes are likely to be made. One major change will be the incorporation of this Government's Code of Conduct in relation to the undertaking of ministerial duties. A copy of the code which was released publicly prior to the December election I am happy to table.

SMALL BUSINESS

In reply to **Hon. M.J. ELLIOTT** (20 April).

The Hon. K.T. GRIFFIN: On 9 February 1994 my ministerial colleague, the Hon. Graham Ingerson appointed an independent seven person committee to undertake a wide-ranging inquiry into the appropriateness of the Shop Trading Hours Act 1977 to current retail and consumer needs. In establishing this inquiry and framing its terms of reference much thought was given to the appropriate representation of the committee. The Government is satisfied that within the current membership the relevant knowledge and experience exists to more than adequately undertake this review. It should also be pointed out that members are not representative of any particular group or segment of the retailing industry whilst serving on the committee and were selected because of their backgrounds and expertise.

Importantly, the committee's terms of reference require a specific analysis of the effects of any proposed changes on the economic viability of the small business sector of the retail industry. Term of Reference 1.3 also specifically addresses the issue of Proclaimed Shopping Districts within South Australia. The committee will examine these matters and report its findings to the Minister for Industrial Affairs.

In regard to the concerns of small retailers in the Iron Triangle, I can advise that many submissions have been received by the Committee of Inquiry into Shop Trading Hours from this area and the surrounding regions. Furthermore, the committee visited Port Augusta on 18 April and heard further oral presentations from nine organisations and individuals from Port Pirie, Port Augusta and Whyalla. The committee has also visited other regions of the State to hear local views on shop trading hour issues.

The Committee of Inquiry is well placed to adopt a constructive and responsible approach to all issues under investigation. It is expected that the committee's report will be submitted to the Minister for Industrial Affairs in June and I can assure you that this Government is responsive to the concerns of small business in this State, including country traders and the Inquiry's recommendations will be considered against this background.

BUSINESS INCENTIVES

In reply to **Hon. T.G. ROBERTS** (24 February).

The Hon. R.I. LUCAS: The Premier and the Minister for Industry, Manufacturing, Small Business and Regional Development have provided the following response.

1. 2 500 inquiries as at 6 March 1994.

2. The package of seven different types of assistance programs begin on different dates. Applications are being processed as they are received and approved if they meet the criteria.

3. Detailed guidelines, program objectives, reporting requirements and agency accountability and responsibility have been developed by the agencies responsible for each of the programs, in consultation with the Economic Development Authority. The overall coordination, monitoring and regular reporting to the Government is the responsibility of the EDA.

4. The Export Employment Scheme is estimated to lead to 200 new jobs and the development of business plans for small businesses is expected to lead to confidence, growth and expansion and hence job opportunities.

MABO

In reply to **Hon. M.S. FELEPPA** (15 February).

The Hon K.T. GRIFFIN:

1. The Government is aware of the report 'Mabo v Queensland: Likely Impact Upon South Australia', and the Supplement to that report made in March, 1993. The legal advisers responsible for the preparation of those reports are also providing advice to the present Government.

2. Although it would appear that there was considerable work done by the public service in advising the previous Government respecting Mabo issues, the previous Government apparently took the view that the appropriate policy was one of 'wait and see'. The enactment of the Native Title Act by the Commonwealth faces this Government with new and different problems. The Government is aware that action must be taken in the very near future to resolve the issues raised by both the Mabo decision and by the Commonwealth Act. The Government is working very hard towards that goal. The Government has added to the persons who were advising the previous Government. For example, the Solicitor General has now become extensively involved in advising the Government on a variety of issues relating to Mabo and the Commonwealth Act.

3. I refer the honourable member to the Ministerial Statement on the subject of Native Title made by the Premier on 21 April 1994 (see *Hansard* p. 897) and tabled in the Legislative Council on the same day.

4. The Government considers this matter to be one of considerable urgency.

GRAND PRIX BOARD

In reply to **Hon. A.J. REDFORD** (13 April).

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

1. Leave and other entitlements due to members and staff of the Grand Prix Board is as follows:-

(a) Membership of Board Nil

(b) Staff

(i) Long Service Leave
Total Entitlements as at
31 December 1993 $119 000

(ii)Annual Leave
Total Entitlements as
at 31 December 1993 $71 000

2. Leave entitlements are taken when practical.

EMPLOYMENT

In reply to **Hon. T.G. ROBERTS** (9 March).

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

The Strategic Import Replacement Study, currently being undertaken, draws together private, public and union expertise to identify the potential for increased opportunities. The study is managed by the Economic Development Authority, with support provided by the United Trades and Labor Council, the Engineering Employers' Association, the Employers' Chamber of Commerce and Industry and the South Australia Centre for Manufacturing.

OMBUDSMAN

The Hon. K.T. GRIFFIN: The Ombudsman has written to me in relation to the use of the description 'Ombudsman' in the Industrial and Employee Relations Bill and asks that that letter be tabled. In accordance with that request, I seek leave to table the Ombudsman's letter to me dated 20 April and the documents referred to therein.

Leave granted.

ENGINEERING AND WATER SUPPLY DEPARTMENT

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Infrastructure a question about the Audit Commission report and, in particular, the key recommendation of the report that the Engineering and Water Supply Department be corporatised.

Leave granted.

The Hon. T. CROTHERS: I wish to quote certain sections of the Audit Commission report, particularly those which appeared on page 7 of today's *Advertiser*. The report acknowledged that the EWS was expecting a $65 million profit this year but said that that figure was much too low to provide a reasonable return to the Government in comparison with the enormous taxpayer equity invested in the department. So the department must become a corporation, it said, and operate as a more commercially oriented body to improve its performance. The newspaper article went on to say:

> To the Government this means considering a restructured organisation, higher prices, contracting work to the private sector and dumping up to 1 500 staff.

That is a sentiment with which I would concur if the report is put in place. The *Advertiser* article continues:

> To the Opposition and the unions it sets off warnings of reduced services and higher costs to the domestic customer.

The key, of course, to this whole issue is that part of the report which acknowledged that the EWS's expected profit of $65 million for this year is too low, and I suspect that the corollary to that statement is that, if the report is adopted, the operator who takes over from the EWS will reasonably expect to make a much higher profit than the $65 million that I have previously mentioned, because it can be said that this can be done only by reducing the present levels of staff and equipment, which in turn must lead to reduced servicing and service to present and future customers of the EWS.

Many people assert, and I for one would agree with them, that it is every South Australian's right to have access to fresh and potable water. Indeed, in the driest State in the driest continent in the world, it is an absolute necessity. Yet, this report commissioned by the Government recommends that the Government should divest itself of this responsibility. It is small wonder that some are calling this Audit Commission report the John the Baptist report, aimed at and designed to relieve the present Government of its fiscal responsibilities. I would urge the State Government to think again, and to assist it in its peregrinations I direct the following questions to the Minister:

1. Will a future buyer of the EWS expect to make more profit than is currently the case?

2. Will costs increase and services diminish to customers under such a new operator?

3. Who will be responsible for the construction of new water supply services and the maintenance of old services?

4. Who will be responsible for the cost of maintaining the quality of our current water supply?

5. Who will be responsible for the cost and ongoing continuance of research and development of new water supplies for South Australia?

6. Does the State Government believe that the current moneys that we receive from the Federal Government to assist us in our never ending struggle in this State over fresh water will continue to be given if a private entrepreneur were to take over from the EWS?

7. Does the Minister remember Chowilla and its associated works and the disastrous results which ensued from that for a previous Liberal Administration when the people of South Australia believed that on that occasion also they were being hoodwinked by the then Government?

The Hon. R.I. LUCAS: I shall be happy to refer those questions to the Minister and bring back a reply or organise for a reply to be sent to the honourable member.

PORT LINCOLN PRISON

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about Port Lincoln prison.

Leave granted.

The Hon. SANDRA KANCK: My question today follows from a question that I asked in this place on 24 March this year about the closure of Port Lincoln prison. Earlier this year the Minister stated that no decisions would be taken on the closure of Port Lincoln prison until after an internal Correctional Services review of the prison system had been undertaken. Last week, with the tabling of the Audit Commission report which pointed to South Australia's higher than average spending on prisons and recommended prison closures, we were again told that no decisions on the recommendations of the report had been taken. An article in the *Port Lincoln Times* of 8 March 1994 reported that prison staff have been offered targeted separation packages. My questions to the Minister are:

1. If a decision has been taken to close Port Lincoln prison, why has the Minister not publicly announced the closure; and why has no answer been forthcoming in relation to my question of 24 March about this matter?

2. If a decision has not been taken to close the prison, why are prison staff being offered voluntary separation packages?

3. Which other prisons are earmarked for closure in the light of the Audit Commission report and the internal Correctional Services review?

The Hon. K.T. GRIFFIN: I will refer those questions to the Minister for Correctional Services and bring back a reply.

ELECTRICITY SUPPLIES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Mines and Energy, a question about electricity distribution and generation.

Leave granted.

The Hon. T.G. ROBERTS: In the Audit Commission report a whole range of matters is addressed, including generation, distribution and transmission, and included in the proposed reforms are a number of reforms aimed at reform of labour management. In view of the time, my questions are:

1. What described franchising system was used as a model for recommendation in the Commission of Audit report?

2. What, if any, alternative energy generation methods were studied?

3. How will the Government deal with cross-subsidisation issues raised in the report in relation to all consumers but in particular rural consumers?

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

MOTOR VEHICLE INSPECTION

Order of the Day: Government Business No.1: Hon. Diana Laidlaw's motion:

That the Environment, Resources and Development Committee be required to investigate and report on the issue of compulsory inspection of all motor vehicles at change of ownership, be disallowed.

The Hon. DIANA LAIDLAW: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, line 14—After 'proclamation' insert 'and all provisions of this Act must be brought into operation simultaneously'.

I moved similar amendments during the workers compensation legislation. The reason for these amendments is that—and I suppose it is a question of trust—it would concern me greatly that this place might pass particular amendments and legislation leave this place in a particular form, and that later the total impact of the Bill could be affected by a decision not to proclaim certain clauses. To ensure that that does not happen, I am moving this amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The principle is not something we disagree with. In fact, in Opposition the Government sought to do the same on a number of occasions, but there were occasions when we recognised that there was a need to give the flexibility provided by the Acts Interpretation Act, to enable parts of an Act to be brought into operation earlier than others to enable a smooth implementation of legislation passed by the Parliament. It may well be that in this piece of legislation we will need to constitute the court and the commission for the purpose of having rules in place at the date when the legislation comes into operation.

The difficulty is that if it all comes into operation on the one date—although the Government has control of regulations, and certainly they will be in place at the time we seek to have the whole of the Act brought into operation—we do not have control over the rules of the court and the rules of the commission, both of which relate to the practices and procedures to be followed in matters before the court and the commission. That will apply whether we establish a new industrial relations court, as the Government believes is necessary and appropriate, and a new commission, or retain the old, as the Opposition wishes.

The fact of the matter is that this legislation will require a substantial rethink in the rules which govern the practice and procedure before the court and the commission. It is for that reason that I would ask the Committee not accept this amendment. Because the amendment was only tabled a short time ago, just after lunch, we have not had an opportunity to evaluate what parts will have to be brought in early to enable the sorts of practices to which I have referred to be implemented. We will certainly be doing that. Our intention is not to resile from the legislation passed by the Parliament and ultimately to enact it *in toto*. I suppose as a fall back position, which is already reflected in the Acts Interpretation Act, having been inserted several years ago, if the Government does not proclaim a particular provision to come into effect, then it will automatically come into operation two years after the assent to the Act. We certainly do not want to have to depend upon that. It would be a breach of faith on the part of the Government if Parliament passes the legislation in one form or another, but I do think from the point of view of good government and good implementation practice, it will be necessary to bring some of it into operation before other parts.

The Hon. R.R. ROBERTS: Like the Hon. Mr Griffin, I just cited this amendment of the Hon. Mr Elliott with respect to proclamation. I indicate we will be supporting it because of the expanse of its application. I take on board some of the arguments put by the Hon. Mr Griffin, but I indicate support for the amendments moved by the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: Recognising that we have before us some 60 pages of amendments in this piece of legislation and that the Government has even managed to put more amendments on file than the 'terrible blocking Democrats'—

The Hon. K.T. Griffin: No-one has accused you of blocking it.

The Hon. M.J. ELLIOTT: Not this week—it is due tomorrow or the day after! The point I was about to make is that it appears to me almost inevitable that we will be going through this legislation on a 'rough sort' basis. There will be some things clearly dismissed. Others are establishing a principle or at least the concerns are being expressed. This amendment expresses a particular concern. One other potential way around it is that the Government identifies particular sections, such as the rules, on which it feels it needs extra time, and they might be addressed. The important thing is that we do not get too strung out on the exact wording this time round, because we know we will be revisiting this legislation, perhaps either by way of recommittal or when it returns to us later this week. It is matters of principle rather than exact wording that will be the most important debates that we have.

Amendment carried; clause as amended passed.

Clause 3—'Objects of Act.'

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

Page 1, lines 18 and 19—Leave out paragraph (b) and substitute—

(b) to contribute to the economic prosperity and welfare of the people of South Australia; and.

I am simply replacing one paragraph, but in so doing, I make an observation about the objects as a whole. I think the objects are too narrow as they stand within the legislation. It needs to be recognised that we are talking about more than just the effects of the decisions within the workplace itself. We are looking, as the Government recognises, at questions of economy more broadly, but also, importantly, there are questions of welfare, not just of the employees but the impacts on the welfare of other South Australians as a consequence of decisions made within this Act. To that extent, it is important that it is recognised that this Act should not only contribute to the economic prosperity of the people of South Australia but also must contribute to the welfare of the people of South Australia.

While the wording is not exactly the same, it is a concept which is included within the objects of the Federal Act. I have not gone for a wholesale amendment of this section, but I do believe that this change, which is not a large one in its number of words, adds substantially to the objects. If we talk about economic prosperity, we are talking about increased employment, reduction in inflation and those sorts of things, but you are also talking about welfare. The very term 'maximisation of employment' causes me some concern in itself because it is possible that everybody in Australia could get a job within a couple of weeks if they were willing to work for the sorts of wages that people have to work for in Lahore or Dacca or some other very small third world country. To talk about maximisation is really an inaccurate term. I looked for another word, and probably 'optimisation' would have attracted me more but, at the end of the day, it is far better to talk in terms of looking for economic prosperity and welfare, and that adds significantly to the overall objects of the Act. I do not think it detracts from it in any way.

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

Page 1—Leave out the clause and substitute new clause as follows:

3. The principal object of this Act is to provide a framework for the prevention and settlement of industrial disputes which promotes the economic prosperity and welfare of the people of the State by—

(a) encouraging and facilitating the making of agreements, between the parties involved in industrial relations, to determine matters pertaining to the relationship between employers and employees, particularly at the workplace or enterprise level;

(b) providing the means for—

(i) establishing and maintaining an effective framework and protecting wages and conditions of employment through awards; and

(ii) ensuring that labour standards meet Australia's international obligations; and

(c) providing a framework of rights and responsibilities for the parties involved in industrial relations which encourages fair and effective bargaining and ensures that those parties abide by agreements between them;

(d) enabling the Commission to prevent and settle industrial disputes—

(i) so far as possible, by conciliation; and

(ii) where necessary, by arbitration;

(e) encouraging the organisation of representative bodies of employers and employees and their registration under this Act;

(f) encouraging and facilitating the development of registered associations, particularly by reducing the number of registered associations in an industry or enterprise;

(g) encouraging the democratic control of registered associations of employers or employees, and the full participation by members in their affairs; and

(h) helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

The objects that the Opposition is seeking to insert in this Bill reflect almost in their entirety the objects passed by the Federal Parliament with respect to its reform Bill amending the Industrial Relations Act 1988. We need to maintain consistency with the Federal system. That will be self-evident to anyone familiar with industrial relations. The Liberal Party appears to recognise this fact in its industrial relations policy, as at page 7 it was stated:

The cooperative and complementary arrangements with the Federal Industrial Relations system will be maintained.

With the objects proposed by the Government in this Bill, there will be no possibility of proper cooperation. Instead there will be two fundamentally different industrial relations systems. Much has been said in the paper about industrial parties seeking to opt out of the State's system and to regulate their industrial affairs under the Federal system. The Minister has been in the media on numerous occasions complaining of the intentions of some South Australian unions to move to the Federal system. If the Government was serious about keeping South Australian industrial relations under the State system, it would not propose the objects which are contained in this Bill.

For all the Government's arrogance, it cannot ignore the fact that the Federal industrial relations system is the predominant system in Australia. While the Minister would like to see himself as some sort of David battling against the Goliath of the Federal system, clearly that would be a delusion. The objects contained in the Government's Bill are heavy on rhetoric and light on substance. Conversely, the objects which the Opposition seeks to have inserted into the Bill are meaningful provisions which will set the scene for South Australian industrial relations taking full advantage of the future economic prosperity.

The Government cannot pretend that South Australia would be disadvantaged under the objects which are proposed by the Opposition. The objects we propose are sufficiently flexible to enable the process of workplace reform to continue as quickly as the community demands. The one difference between the Opposition's amendments and the Federal Reform Bill 1993 is paragraph (g) which reads:

. . . encouraging the democratic control of registered associations of employers or employees, and the full participation by members in their affairs;

This object has been removed without good reason by the Government. Unions and employer organisations have been and should still be the major players in representing the interests of their members. The democratic control and full participation is essential to maintain and enhance industrial relations in South Australia. This is particularly the case in enterprise bargaining. The Liberals 'freedom of association' philosophy goes too far in removing the fundamental place of registered organisations of employers and employees within the system. In the real world of industrial relations there is consensus that the industrial system must promote the rationalisation of organisations of employees in industries or enterprises. This includes further amalgamations and democratic control of the larger unions by the membership.

The Liberal proposition runs counter to the current reforms and would lead to another era where there is little or no public regulation. I commend our amendment to the Committee and hope that it is supported.

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

Page 1, line 23—Leave out ',where appropriate,'.
Page 2, after line 14—Insert—
and
(m) to help prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

In relation to the first of the amendments to delete 'where appropriate', I am addressing an issue which comes to the heart of a promise made by the Liberal Party during the election—in fact, it relates to a couple of promises. On the first page of its policy, the Liberal Party talked about providing choices for employers and employees when negotiating basic payments and conditions within (a) the award system or (b) enterprise agreements tailored for specific business. So, it is offering employers and employees choice between award and enterprise agreements. More importantly, the first sentence on page 3 of the Liberal Party policy document stated:

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

I have some concern as to the interpretation of the words 'where appropriate'. I do not believe that they add anything to the legislation and I believe that they may even be capable of being misinterpreted. I believe that it is better that those words be removed because there is an implication that progressively we are actually encouraging awards to be removed. If the Government is genuine about awards being a safety net and if it is genuine about providing choices—whether one goes under an award or an enterprise agreement—there should be nothing which tends to undermine the award system, even if the Government's intention is to encourage as many people as possible to be under enterprise agreements. On that basis I am moving for the removal of those words 'where appropriate'.

The other amendment relates to questions of discrimination. This clause is essentially identical to one which is provided within the Federal legislation and I believe that it is important that, when awards, enterprise agreements and so on are being considered, we ensure that we prevent and eliminate discrimination. I am aware of some more recent lobbying in relation to one question; that is the question of age and the implications for junior wages. I make a couple of observations about that at this stage. I believe very strongly that junior wages are not only susceptible to but are abused in this State. The most obvious area is the area of retailing in supermarkets where the moment a person turns 18 they are sacked.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: There is another reason, but basically what is happening is that the youth wage has been a way of getting cheap labour in particular workplaces and that is unacceptable. I have not analysed exactly what the Federal Government has said when it has talked about training wages. As long as we are talking about genuine training, where a person, once they finish their training, does not get sacked, that is quite a different consideration. But having said that, I believe that if this was implemented overnight we might potentially have difficulties in that firms such as Coles, Woolworths and so on would sack all their juniors and put on 45-year-old women in their place, and that will also cause some significant disruption in the short-term.

At this stage I am stressing the principle held within paragraph (m) and that is important and should be within the legislation. If there is a matter of some finetuning that is something I will look at at a later stage, but at this stage I insist that this general question in relation to discrimination is very important and should be held within industrial legislation. I have noted the amendments of the Hon. Ron Roberts and I have not had any particular difficulty with those, but I have had particular difficulty in relation to the objects of the Act that I am seeking to amend. I expect that this may go on over a couple of days. If there are some areas where I feel the objects might still be deficient I may be amenable to a recommittal of this clause. It is one of the clauses where that might be necessary at the end of Committee, but I make no commitment at this stage one way or another because, generally speaking, the amendments that I am putting forward pick up the important issues.

The Government itself has an amendment in relation to objects on enterprise agreements and one wonders why it has now come up with such reasonable amendments in that area when it was not been quite so reasonable the first time it drew up the objects for the Act as a whole. Generally speaking, in drafting it has made a number of pretty obvious errors, and that is why we are seeing well over 10 pages of amendments and more being foreshadowed.

The Hon. K.T. GRIFFIN: I hope we are not going to get into the business of criticising each other in relation to amendments. The fact of the matter is that the Bill is a complex piece of legislation; it is inevitable that human frailty will be displayed on occasions by Government, the Opposition and the Australian Democrats and it is not unusual in any major piece of legislation with the number of clauses that are in this Bill that the Government will find the need to make refinements, partly as a consequence of consultation, partly as a consequence of its own further consideration of some of the issues which are raised. So, I do not think it ought to be regarded as something out of the ordinary that the Government has a number of amendments on file in relation to this Bill.

Nor should it be regarded as any defect in either the drafting or the appreciation of the concept, but rather indicating a preparedness after further consideration of issues—sometimes, as I say, after consultation—that the Government is prepared to make some amendments. As the Hon. Mr Elliott said, it may be necessary to recommit the Bill after we have been through it on the first occasion because the Government, the Opposition and the Australian Democrats may wish to reconsider aspects of the Bill in the light of the amendments that have been passed.

I certainly do not make any criticism of or apologies for the number of amendments that the Government has on file. I can indicate that there will be more, but we will try to give honourable members as reasonable an opportunity as possible to examine them as well as a comprehensive explanation before we deal with them. One needs to make that sort of general observation about the Bill and its amendments.

The Hon. Mr Roberts' amendments, which I will deal with first, do reflect almost identically the objects in the Federal legislation. A number of aspects do not reflect the Government's position on a number of important matters and there are some differences of emphasis that need to be recognised. For example, there is nothing in the objects akin

to our paragraph (b) or the paragraph (b) that the Hon. Mr Elliott would seek to have inserted. We make specific reference to the provision of 'a framework for making enterprise agreements, awards and determinations affecting industrial matters that is fair and equitable'. Just in that context I should remark on the amendments of the Hon. Mr Elliott. Whilst he refers to welfare, I do not think we are that far apart, because we refer particularly to fairness and equity to both employers and employees. It is important to recognise that.

The objects that the Hon. Mr Roberts proposes to move include paragraph (f), as follows:

> encouraging and facilitating the development of registered associations, particularly by reducing the number of registered associations in an industry or enterprise;

We certainly do not discourage employees or employers from joining registered associations, but we say that it is a matter of choice for them and not a matter for us to encourage; nor do we say that we have a special emphasis upon the reduction in number of registered associations in an industry or enterprise. We had this debate the year before last when the then Government sought to put in place some high minimum levels of membership of employee associations following amendments at the Federal level. We resisted that and, with the help of the Hon. Mr Gilfillan and the Hon. Mr Elliott, we managed to peg that back significantly.

The Government's Bill is not focused only on registered organisations. It proposes the establishment of registered organisations and a mechanism for incorporation, but it does not insist that only registered associations can be part of the industrial relations scene. Nor do we say that those who are employees, or employers for that matter (but particularly employees), must be encouraged to join a registered association.

I draw attention also to the Government's paragraphs (j) and (k), which again are not reflected in the amendments proposed by the Opposition. We seek to provide employees with an avenue for expressing employment related grievances and having them considered and remedied, including a right to review of harsh, unjust or unreasonable dismissals.

We recognise that principle in our objects, and we also quite significantly provide that one of the objects is to provide for absolute freedom of association and choice of industrial representation. That is one of the key principles upon which this legislation is based, and it is quite significant, I would suggest, that that is not reflected in the amendments proposed by the Hon. Mr Roberts. It is quite obvious, therefore, that the Government is not proposing to accept the amendments of the Hon. Mr Roberts.

In relation to the Hon. Mr Elliott's amendments, as I said earlier, I think we do place emphasis on welfare through the focus upon fairness and equity in paragraph (f), and we believe that paragraph (b) is a fair enough object to have included. It is in the interest of both employers and employees because we want to encourage an economic climate in which employment opportunities are maximised. We also think it is in the best interests of the public, the consumers, business and employees that inflation be kept to a minimum.

I note the objection of the Hon. Mr Elliott that everyone could get employment at slave labour rates, but that is certainly not encouraged by any of our objects and, of course, the reference to fairness and equity and the whole framework of the Act taken in its proper context clearly demonstrates that that is not our position, particularly when we focus on some of those other non-remuneration matters such as leave, sick leave, parental leave and so on.

Notwithstanding that, I indicate that in respect of paragraph (b) we will be prepared to support the Hon. Mr Elliott's amendment. As to paragraph (e), where he seeks to delete the words 'where appropriate', we will not object to that amendment. Certainly, we do not intend to provide in the Bill for any downgrading of existing awards. The phrase 'where appropriate' was really and simply intended to ensure that no statutory presumption existed which advocated award coverage.

It must be remembered that many employees are award free, for example, managers and executives, and in many cases there can be no question that that is appropriate. Upon reflection I doubt whether the deletion of the words will introduce a presumption in favour of advocating award coverage, because the commission does have a general discretion to reject or accept award applications on merit.

As to the Hon. Mr Elliott's third amendment, the Government is not disposed to agree with it. We suggest that it is likely to lead to unintended consequences. In particular, the inclusion of non-discriminatory age principles in the objects would have the effect of creating a statutory presumption, at the very least, for the abolition of all junior award rates of pay and require all juniors, being persons under the age of 21, to be paid adult wages. Of course, the Hon. Mr Elliott has already made an observation about that in the light of representations that he says have been made to him.

Such a consequence would be of grave concern to the Government, and it is in direct conflict with the specific exemption in the Equal Opportunity Act in relation to awards, junior wages and age discrimination. I understand that a clause in the Federal Act is similar to the proposed amendment of the Hon. Mr Elliott. It has been assessed to have the same unintended consequences, and because of that I understand that the Federal Government suspended the operation of that provision for several years to enable the issue to be addressed more carefully. In the light of the 40 per cent youth unemployment in this State, we should be particularly sensitive to that.

I draw the honourable member's attention particularly to section 85(f) of the Equal Opportunity Act which deals with exemptions, and in particular subsection (4), which provides that this division does not render unlawful (a) acts done in order to comply with the provisions of an award or industrial agreement made or approved under the Industrial Relations Act South Australia 1972 or (b) a decision to offer employment only to a young person or the employment of a young person where the rate of pay for that employment is a rate less than that applicable to an adult fixed by or in accordance with the provisions of an award or industrial agreement made, approved or certified under the Industrial Relations Act SA 1972 or the Industrial Relations Act 1988 of the Commonwealth.

I make one other observation about the clause, and I know that on other occasions we have dealt with similar sorts of provisions in Bills outside the Equal Opportunity Act. I make the point that the Equal Opportunity Act applies, subject to the exemptions and others to which I have referred. It seems to me that it does introduce a potential element of conflict in relation to other areas of discrimination if on the one hand the Equal Opportunity Act addresses the issue comprehensively and provides for exemptions and modifications, as the case may be, yet on the other hand this object is expressed in a way which does not at least give recognition to the fact that

there are exemptions and modifications under the Equal Opportunity Act and that such discrimination appears in a particular context, specifically defined in that Act.

If one were to seek to interpret the paragraph (m) which the Hon. Mr Elliott proposes to insert, one would see that it was not done in the context of the Equal Opportunity Act but in isolation from it. I therefore have some concern about the way in which that is expressed from the point of view of its interpretation and the context in which it appears, although I should hasten to say that we very much support the provisions of the Equal Opportunity Act in relation to its focus upon eliminating discrimination.

In summary, I therefore oppose the Hon. Ron Roberts' amendment, I indicate support for the Hon. Mr Elliott's amendments to paragraphs (b) and (e) and indicate opposition to his to additional paragraph (m).

The Hon. M.J. ELLIOTT: I make a further observation on the question of junior workers. As I understand it, a little further on in this legislation there is a deletion from the existing definition of 'industrial matter' which deals with the employment of juniors. As I understand it, that legislation previously included a phrase the 'number or proportion that may be employed'. The effect of that was that there were some ways of controlling how many apprentices and so on were taken on in proportion to the number of skilled tradespeople, and that has a number of important implications.

Previously, awards could take that sort of thing into account. The very fact that the Government has decided not to pick that up within the definition of 'industrial matter' has implications in relation to junior employment. So, the Government is certainly not maintaining the *status quo* on this matter; in fact, there has been a retreat—intentional or otherwise—from the position in the previous legislation. Was that intentional? If not, is the Government prepared to address that issue as part of a more general discussion about the question of age?

The Hon. R.R. ROBERTS: I note the Attorney's comments in respect of these matters. He pointed out that there is very little difference between the amendments we are proposing to this legislation and those contained in the Federal Act, and that is true. One difference between the South Australian Opposition's amendment and the Federal Reform Bill is paragraph (g), which provides:

> Encouraging the democratic control of registered associations of employers or employees, and the full participation by members in their affairs.

In his contribution Mr Griffin pointed out that our objects and others do not reflect the Government's paragraphs (j), (k) and (l); and in his contribution the Hon. Mr Elliott indicated his preference for his paragraph (m). The Hon. Mr Elliott's concern is picked up within our objects. Also, in paragraph (j), which is aimed at providing employees with an avenue for expressing employment-related grievances and having them considered and remedied, including the right to review harsh, unjust or unreasonable decisions, this issue is well covered in the present South Australian industrial relations legislation, where it is possible to go to a commission and do those things. It is quite clear that the Federal legislation, which our objects mirror, confers that capacity.

Paragraph (k) provides an absolute freedom of association and choice of industrial representation. Again, that is very clear within the Federal legislation. There has been great press and emphasis on the fact that for the first time the Federal legislation picks up the proposition that agreements and awards can be made by people other than registered associations. We do not have any disagreement with that. I personally do not like the principle, but that has been accepted within the Australian Labor Party and the trade union movement.

With respect to paragraph (l), I point out that that is exactly the difference between our proposition and the Federal position: we have picked up the Government's paragraph (l).

The Hon. Mr Griffin also said that we had no specific reference to the Government's fairness and equity principle. The very foundation of the Industrial Commission in South Australia and the Federal commission is that affairs are conducted within the industrial relations system on the balance of the evidence before it, against a backdrop of equity, good conscience and substantial merit. It is an underlying principle of industrial conciliation and arbitration in all commissions that equity and good conscience are assumed to be a fundamental part. I do not think we have to write that down again.

I point out to the Hon. Mr Elliott that the prescriptions in our objects in this legislation are well known, having been adjudicated on many occasions. They are well known within the commission and understood by every commissioner, and the same goes in the Federal sphere. I suggest to the Hon. Mr Elliott that all his concerns are contained within our amendment, including his prescription for the discrimination clause.

If we are to deal with industrial relations on a State and Federal basis, it is common sense, if possible, to have a mirror of the two objects of the Act. The Government has expressed a desire to maintain a State system. If we are to have a different set of objects and change the rules as the principal players in South Australia know them, the obvious inclination of those principal players—unions in particular—will be, 'We know what the rules are in the Federal sphere. We do not want to go through another litigious process of finding out the meaning of these objects when we know what the ground rules are and how we will play the game in the Federal scene.' Therefore, I urge the Hon. Mr Elliott to consider accepting our package in total. I think it is accurate to say that all the things that he is trying to achieve are contained in these objects. It has the attraction that it is well known and has been tested and it has the distinct advantage of being mirrored in the Federal scene as in the South Australian scene.

The Hon. A.J. Redford: How many court cases have there been on the Federal objects?

The Hon. R.R. ROBERTS: I do not know the answer to that.

The Hon. A.J. Redford: Probably none.

The Hon. R.R. ROBERTS: That may well be the case.

The Hon. A.J. Redford: So it is just as confusing.

The Hon. R.R. ROBERTS: There are issues within the objects now contained in the South Australian legislation that have been tested. Industrial matters have been tested on numerous occasions. The proposal by the Attorney-General talks about employee related matters. We are talking about an industrial matter and your Minister has tinkered around with the definition of 'industrial matter' and made it less restrictive. If there is an industrial matter that the Government does not like, it wants to move a regulation to take it out. In the past, if there were an argument as to whether it was an industrial matter, the commission, against all the other standards that have been developed and interpreted over time, can look at the issue and make a judgment based on equity, good conscience and substantial merit on the evidence in each

case that has been presented. Indeed, on numerous occasions it has done that, and it is quite capable, within the objects of this legislation, of continuing that very good record of interpretation and minimising disputes in South Australian industry. I think that is what it is really all about.

I would encourage the Hon. Mr Elliott to go the whole hog in respect of his three amendments. The Attorney-General has already said that he is prepared to go along on a couple of parts, but he is not prepared to introduce the Hon. Mr Elliott's very important paragraph (m) which, in my view, has a fairly major role in the interpretation of this legislation in respect of dealing with different classes of people. To go down the path that the Hon. Mr Elliott has indicated is certainly his right, but I suggest that the better way is to embrace all these issues in the one set of objects which encompass his concerns and cover the challenges that have been put forward by the Attorney-General in respect of equity and fairness. I think those issues are well covered and well known and accepted in industrial relations and there is nothing to be frightened of about that. If the Hon. Mr Elliott wants those two words written in, although they are well known and accepted, I point out that, if they are not law within the Industrial Relations Commission, they are certainly lore and they are given the same amount of credit as the law.

The Hon. K.T. Griffin: 'Lore' has a connotation of mystery.

The Hon. R.R. ROBERTS: I can tell the Attorney-General that, after 25 years in industrial relations, the lore is accepted. That is the way we do things and that is what industrial participation and enterprise bargaining are about. In most cases they are more enforceable and more protected than the law. When you have a law, there is an inclination by some—certainly not by me—to say, 'Let's find a way around it.' But if it is an accepted practice in industry, the principal players in the industry will protect that in more detail than the law. I do not want to get into an argument on philosophy. However, I urge the Hon. Mr Elliott to come back to the objects of the legislation and view it in totality. I submit to him in a final plea that all his concerns and the issue of equity and good conscience are also covered. I ask him to support our proposal in its entirety.

The Hon. K.T. GRIFFIN: As I interjected, lore has some sense of mystery about it. It also suggests, from what the Hon. Ron Roberts was saying, that because it has been in place for 25 years it is a good and proper thing to do. Australia is now in the real world and we have to modify our practices and arrangements for the benefit of employers and employees. This Bill addresses a need to change but still to protect the interests of employers and employees within a particular framework and to provide sufficient mechanisms to ensure that they are adequately protected against abuse.

My response in respect of the objects proposed by the Hon. Ron Roberts is that it does not necessarily follow that because it is in the Federal Act it ought to be a mirror of what happens in South Australia. If we were to adopt that, we would not have a South Australian industrial law. Some might say that is a good thing, but, from the point of view of South Australia, it is not this Government's view that we should go down that path. Our view is that South Australia has some unique characteristics and, as an elected Government, we have a right to put in place a framework which will facilitate arrangements between employers and employees and enable South Australia to provide more employment opportunities without the abuse of employees and without employers being taken to the cleaners. We seek to achieve a balance in this legislation. Merely to suggest that we should be mirroring the objects of the Federal legislation is to suggest that all that is good and bad at Federal level ought to be in place in South Australia. We are trying to set in place a framework which, with the benefit of experience, has more positive than negative aspects.

In response to the Hon. Mr Elliott's question about the numbers of young workers, the whole object of the Bill is to try to simplify the legislation. The definition of 'industrial matter' is 'a matter affecting the rights, privileges or duties of employers or employees. . . or the work to be done in employment'. Then it deals with a number of issues and goes on at paragraph (d) to refer to 'the employment of juniors, apprentices, trainees or any other class of persons'. Our view is that the sort of issue to which the Hon. Mr Elliott referred is now covered by the definition of 'industrial matter'. That will give the appropriate tribunal the necessary jurisdiction to address any disputes that may relate to that issue and, in respect of awards, to make an award which deals with that matter.

The Hon. T.G. ROBERTS: It is important to get all the ingredients right at the outset. It is good that the objects are being discussed broadly. I think that a certain amount of flexibility is being displayed between the Government and the Democrats at the moment, but there is not too much flexibility with respect to accepting our objects. I think that the objects set out by the Opposition totally integrate the working relationship between an award and an agreement and the objects that most people would agree we should be working towards to get a framework and philosophical position that can be accepted by employers, unions and the community generally.

If we adopt the narrow framework being put forward by the Government we could end up with some difficulty, not around interpretation but around the overlying philosophy included in the Bill, because the Bill does not match the objects of the Act in many cases, and the emphasis on maintaining the power relationship in the hands of the employers is one that many people could object to. Paragraph (b) provides:

> to contribute to an economic climate in which employment opportunities in South Australia are maximised and inflation is kept to a minimum;

The Attorney-General has outlined that it is his intention to provide the wage mechanism as a strategy for controlling inflation, which is a fear of trade unions and employees in this State.

Many mechanisms exist for controlling inflation in this State and wages is only one part of it. That is why emphasis has been placed on the objects and people ought to be concerned about using that as a focus. The appropriate objects and the appropriate marrying of the objects of awards and agreements are the critical issues, as far as the Opposition is concerned. The critical issue is that when collective bargaining and enterprise bargaining is moved in workers in the community will want to know that a minimum standard is being applied and that a safety network of awards applies beneath that.

The Opposition's objects stitch all that together. It is not confused; it is an integrated part of the total Bill and sets out the principles and objectives that we can all agree to at a later date in many of the areas. In determining 'fair and equitable' the Hon. Ron Roberts has indicated that the commission has done that since time immemorial. What we have now is an unknown in relation to who will determine what is fair and equitable and who will set the bench mark in the framework

for comparisons. At the moment, with the integration of awards and agreements that operate federally, if you have a Federal agreement under the framework of an existing award then you are able to set the standards through the agreement to either mirror or improve on the award conditions.

There is no indication of that in the whole of the agreement. So, I would conclude that fairness and equity is not a test set by the negotiating partners in a fair and equitable way. Fairness and equity will be tested not under the watching eyes of a commission but, in some cases, an ombudsman will be looking at testing fairness and equity in some of the outcomes. I do not think that is a fair and equitable way to proceed. What is the situation if one looks at how a State or a Federal award operates with some enterprise bargaining agreements operating off a principal award now?

I ask the Attorney-General: how will a company proceed if it is operating in a loss circumstance—and for taxation purposes many companies do operate in a network of companies? One company is highly geared and highly technically equipped, with sound investment strategies being made by the central management of that corporation, yet for taxation purposes another company will be run down and will not have the same investment strategies as seen in the advanced section of the company that is making the profits? If you break it down by enterprise agreements without the fairness and equity built into an overall award provision, you will end up with the loss making company not being able to negotiate anything other than what would be regarded as the base for the award.

There is pressure on awards, as we all know. What would happen and what is happening is that large corporations are adjusting their enterprise bargaining strategies around their accountant's creativity in breaking down companies within companies. It will be a very difficult stage for anybody to judge fairness and equity in a market that is breaking down into such small enterprise units, based not around any sort of economic strategy that will either advance the State's interest or advance the nation's interest at all, but certainly breaking down into units that will advance the provisions for profit making and profit taking. They are the problems inherent in not being able to achieve an overall award strategy provision with provisions for fairness and equity built into collective bargaining or enterprise bargaining strategies. I would recommend that the Democrats look at the Opposition's integrated objects of the Act, which builds in that framework.

It does not give guarantees on fairness and equity outcomes but it certainly puts together a framework that allows those negotiations at least to be tested by the negotiating bodies that will be a party to the new industrial relations Act. In many cases a lot of those organisations will either abscond to Federal awards or they will already be there, but a large range of companies would still fit into that category. In conclusion, I say that the problem that we will have in relation to awards, enterprise bargaining arrangements and contracts is that with the writing of single contracts in the place of awards—which I suspect will be part of an advanced stage of the industrial relations Bill—although they may be easy to understand and in layman's language there will not be much in there for people to understand and interpret. That is my other concern in moving away from awards and enterprise bargaining arrangements to probably what will be chamber written, single page contracts.

The Hon. K.T. GRIFFIN: I am not quite sure where the Hon. Terry Roberts was seeking to go. The fact of the matter is that there are mechanisms for providing safeguards under this Bill, whether in relation to awards or enterprise agreements. The commission has to be involved in the approval of an enterprise agreement, to be satisfied that it is entered into without coercion and that it reflects minimum standards except in certain circumstances when it has to be satisfied that, notwithstanding that there may be some substantial disadvantage, in the context of the whole agreement it is in the interests of the employees. So, there are protections there in relation to awards.

The awards are made by the commission. Parties have an opportunity to make representations, so that, regardless of the financial strength or weakness of a particular employer, the interests of the employees and the employer are taken into consideration by the commission in both areas. So, although one might be in a tax loss situation it may nevertheless be reasonably healthy from a cash point of view or an asset point of view but not in terms of profit. I must confess, I do not believe that the objects which the Government is proposing detract from fairness and equity and place some undue emphasis upon any one factor or another.

The Hon. R.R. ROBERTS: This will be my last contribution on this matter. I do need to answer the point raised by the Attorney-General when he said that because things had been in the Industrial Relations Act for sometime, that is no necessity to leave them in. It does not automatically follow that because there is a change of Government, there is an automatic necessity to change them, either. One of the problems about cases in Federal areas, and this has been touched on by another contributor, is that the objects of the Act are a crucial part of the Act, and that is why I am prepared to spend a little bit of time on this clause. It is not my intention to spend the same amount of time on every other clause, when there are 230-odd clauses in the Bill.

On this particular occasion, the composition of the objects of this amendment introduce in my opinion a number of what I would call mickey mouse statements and some motherhood type comment. In themselves, read in isolation, they do not mean a hell of a lot. What we are really talking about, on an occasion when a dispute arises in respect of any other part of the Bill that may occur over the next three or four years, industrial commissions and courts charged with the responsibility of settling those disputes or sorting out the matters concerned will go back and look at the objects of the Act. This legislation has been drawn up by the Government in a very crafty manner, and there are many pitfalls and traps within it.

I would suggest that when this piece of legislation was drafted, the Government looked at all the pitfalls encountered in Victoria and Western Australia and their experience in New South Wales and many other areas, and looked at a portfolio of cases that principal employers have lost in the past, put it altogether, and said, 'Let's re-write this so we do not get caught again.' I know that the Hon. Mr Elliott has expressed his point of view that he is prepared to look at this again—and I accept that at this stage—but I point out that this clause is pivotal to the whole Bill and to the operation of almost every dispute that will come before the Industrial Commission in the future, where there is no clear case evidence to rely on when interpreting a new Act.

It seems to me commonsense that we can look at the body of law that is presently before industrial commissions, that has been tested and arbitrated and clearly laid down for everybody who works in the area to understand, both on a State and Federal level. When people are interpreting Acts or trying to settle disputes, there is a propensity within both

forums to look at what has happened in other areas, and I think it makes commonsense. I will make no further contribution on this clause, but I put those matters on the record because I think they are important.

The Hon. M.J. ELLIOTT: When looking at the question of age and discrimination, I made the observation that in relation to 'industrial matter', there are changes made that obviously affect juniors insofar as whether an award might determine how many juniors there are. In his response, the Minister suggested that in fact paragraph (d) was quite sufficient because it mentioned juniors, apprentices, etc. He may have been ill-advised because he appears to be ignoring clause 84(2)(a), which specifically precludes the commission from regulating the composition of the employer's work force. I asked the Minister specifically whether or not there was an intention that that bit which had been removed from 'industrial matter', which largely affects junior workers, was a deliberate omission, and his response was that the whole issue was covered. If one looks at clause 84(2)(a), I have a need to repeat that question, because his answer appears to ignore the impact of clause 84(2)(a) upon the present definition of 'industrial matter', which goes back to the questions being asked on this clause about discrimination on the basis of age.

The Hon. K.T. GRIFFIN: My information is that the existing Act does not provide for proportions of employees of differing statuses to be addressed.

The Hon. M.J. Elliott: It does, under 'Industrial matter'. Paragraph (e) provides, 'proportion of junior apprentices to number of employees may include. . . '.

The Hon. K.T. GRIFFIN: I know it says that, but it does not talk about proportions.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Yes, 'including the number or proportion that may be employed', that is right. It talks about employment of juniors and apprentices in the industry, including the number or proportion that may be employed.

The Hon. M.J. ELLIOTT: Could I just indicate that with respect to paragraph (m), which is part of what we are debating, there are some questions about whether or not my amendment quite fits the bill, but I am also making the point that what the Government is doing elsewhere is actually moving away in a significant manner from what is the current position. I was asking whether or not that was deliberate, because I need to know the intent of the Government on this matter before I can ever make any sensible decisions about what finally might happen to paragraph (m).

The Hon. K.T. GRIFFIN: I think I can start on this point. I am sorry if I misunderstood the earlier question. It was a deliberate policy decision to not permit the commission to determine proportions of employees, whether young employees, older employees, men, women—whatever description is used. It was intended that 'industrial matter' would relate to the terms and conditions of employment of juniors, for example, and that is in the definition of 'industrial matter'. Certainly it was not intended (and I am sorry if I misunderstood it earlier) that if, for instance, you had 50 people in your work force, the commission would not be able to make what is essentially a management decision that you will have X number of these sorts of people, Y number of those sorts of people, or such proportions, to organise your work force.

One might criticise that in relation to bodies like some of the fast food outlets, which tend to use younger people rather than older people, but the fact of the matter is that, provided the terms and conditions of employment are honoured, it ought to be a matter for the employer as to how he, she or it arranges the structure of the work force. It is essentially a management decision. It comes back to the old issue of employing people on the basis of their ability rather than their age, and certainly I would espouse that view. Currently awards provide for junior and trainee wages—and the Federal Government has just indicated this sort of trainee on-site, with no formal training outside the workplace, at 80 per cent of the adult wage. If that is not a gimmick to try to get more people in jobs without providing a formal education structure, I do not know what is. So it is there at Federal and State level, and at the State level we are proposing that the employer has the management decision about the composition of the work force.

Hon. M.J. Elliott's amendments carried; Hon. R.R. Roberts' amendment negatived; clause as amended passed.

Clause 4—'Interpretation.'

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

Page 2, line 27—Leave out 'Industrial Relations Commission' and insert 'Industrial Commission'.

This is a consequential amendment which relates to our opposition to the abolition of the present Industrial Commission and the establishment of a new commission. Our position, which will be stated more fully later on, is that the present Industrial Commission should continue in existence.

The Hon. M.J. ELLIOTT: I do not care greatly about the name but I do care a great deal about the issue of transitional provisions, which we will visit later on. I am not going to support the amendment but that does not mean that I oppose the principle because I in fact have amendments to be dealt with later on relating to exactly the same matter.

The Hon. K.T. GRIFFIN: I oppose the amendment. It is our view that this is a new era and that this Bill makes some significant changes to the framework within which industrial relations will be conducted in South Australia, and it is therefore important to send some public signals that there is a new era and there is change which is being effected. It is for that reason that we believe that the focus ought to be on the Industrial Relations Commission and not just on an Industrial Commission. It is all about relations between employer and employee so that it is a more accurate reflection to refer to it as an Industrial Relations Commission. The Hon. Mr Elliott has indicated that there are some important issues about transition, the present Industrial Commission and the new Industrial Relations Commission, and I recognise that those will be issues of great importance for us to debate when we get to them, and I certainly do not see this as necessarily pre-empting a debate on those issues of principle. I therefore indicate again the Government's opposition to the amendment.

Amendment negatived.

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

Page 3, line 1—Leave out definition of 'contract of employment' and insert—

'contract of employment' means—

(a) a contract under which a person is employed for remuneration in an industry; or

(b) a contract under which a person (the 'employer') engages another (the 'employee') to drive a vehicle that is not registered in the employee's name to provide a public passenger service (even though the contract would not be recognised at common law as a contract of employment); or

(c) a contract under which a person engages another to carry out personally the work of cleaning premises (even though the contract would not be recognised at common law as a contract of employment); or
(d) a contract under which a person (the 'employer') engages another (the 'employee') to carry out work as an outworker (even though the contract would not be recognised at common law as a contract of employment);

The Opposition proposes to reinsert the definition of 'contract of employment' which appears in the present Act. The definition proposed by the Opposition overcomes a situation where certain classes of employees such as drivers, cleaners and outworkers would not come within the common law definition of 'employee'. As a result these workers are not subject to protections afforded to employees under the Act; they are taken to be independent. This is clearly a farce. The Government in its definition exhibits its intention again to throw industrial relations back into a contractual system which prevailed in the nineteenth century. Many studies by respected industrial relations academics have shown that a purely contractual model of employment is way out of date. Instead, modern day industrial relations participants recognise that certain groups of employees, who might be defined at common law as independent, still require the protection of industrial relations legislation.

The Government does not give any good reasons for excluding categories of workers who are currently covered by the present jurisdiction. It wants to exclude the opportunity of those workers in the transport industry who are within the definition in paragraph (b) from having their wages and conditions regulated or to exclude women workers who are working as part-time cleaners or outworkers from the protection provided by the Industrial Commission. The current provision should be maintained. The widest possible definition should be included to ensure that the award safety net is as wide as possible and provides basic protection for workers in the context of enterprise bargaining. The Government is seeking to abandon such workers. We note that the ALP amendments are not seeking to broaden the definition in any way; in fact they leave it the same as it is. I commend our amendment to the Committee.

The Hon. K.T. GRIFFIN: We oppose the amendment. The difficulty is that if one expands the definition of 'contract of employment' it brings in a whole range of other people who are really outside the employer-employee relationship. We believe that this legislation ought to be focused on that relationship and not on all the other relationships which are contractors or subcontractors. In the building industry there is a measure of protection for subcontractors under several pieces of legislation, for example. Subcontractors intend to be independent of any person who might be described as an employer and who would be in the normal employer-employee relationship where the employer would give directions to or have the employee under the control of that employer.

Contractors and subcontractors are not subject to that control or direction. So, why distort the relationship by imposing the potential that they will either be covered by an award—some of them against their will—or by an enterprise agreement? Of course, they are unlikely to be covered by an enterprise agreement under this Bill unless a majority of them agrees. But even if a majority agree, why should not the minority who say, 'We want to act on our own; we want to be independent; we want to run our own truck; or we want to run our own subcontracting business in the building industry or whatever' be allowed to do that independently of and without constraints imposed under industrial legislation? It is for that reason that we believe very strongly that the focus of the Bill ought to remain as it is; that is, a contract of employment is synonymous with a contract of service and not extended to the areas proposed by the Hon. Mr Roberts.

The Hon. M.J. ELLIOTT: The question of contracts and outworkers is one of the more difficult issues, other than the more traditional industrial measures, that we will be arguing throughout this legislation. There is no doubt that there is a number of legitimate contracts and that a large number of contracts are contrivances to avoid employer obligations.

The Hon. K.T. Griffin: And employee obligations.

The Hon. M.J. ELLIOTT: And employee obligations. Some are artificial contrivances, and the legislation really seems to duck that issue in a substantial way. I can understand that possibly in the pre-enterprise agreement era a person in the cleaning business might say that the award was too inflexible, that it created difficulties and that they therefore started creating contract arrangements. I do not defend it, but I understand perhaps why it happened. However, we are looking at legislation where a person who calls himself or herself a cleaning contractor has a large number of people—

The Hon. K.T. Griffin: The name doesn't mean anything. It is the substance of the arrangement.

The CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: Regardless of the name, where we have a person in the cleaning business who has a large number of people working for them, ostensibly under a contract arrangement, now that the Government through this legislation is offering an enterprise agreement process, whatever arguments they may have wanted to put—although strictly speaking they are acting against the intent of the old law—they are no longer reasonable under this legislation, because it is about providing flexibility whilst also providing a safety net.

If the Government is seriously committed to South Australian workers having some sort of safety net, we should be careful that the legislation does not allow a loophole where people misrepresent an employer/employee relationship as being something else. I know there is always a difficulty in this area. There is no doubt that there are a number of legitimate contracts. Even at the present time under the present legislation a number of contracts are highly dubious.

Without passing an opinion on the content of the amendments being moved by the Opposition but addressing the issue, I believe that the legislation this time is deficient—at least from my reading—and that it should include some tests which determine what is a genuine employer/employee relationship and what is just a contrivance to avoid obligations.

I say that on the basis that the Government made a promise about safety nets. If the Government were genuinely committed to those promises, it should address this issue. I support the amendment now because I am supporting not necessarily the amendment's content but the fact that there are difficulties in this area that the Government has avoided simply by not addressing the issue at all. That is unfortunate, and I would like to give the Government the opportunity to address this issue in a substantial way.

The Hon. K.T. GRIFFIN: Outworkers are addressed in the Bill. They are addressed.

The Hon. M.J. Elliott: There should be some—

The Hon. K.T. GRIFFIN: That is fine, but let us not make a point about outworkers when outworkers are covered

in the Bill. As to those contracts that are contrivances, it is clear from all the cases over the years that they will be struck down. Just something which is a sham will not stand up to close scrutiny. Of course, if one extends the definition of 'contract of employment' under the Bill, that does not mean that for other purposes under the law they will be regarded as employees. So we have a distinction between so-called industrial legislation which might relate to remuneration and which might apply to a contract rather than to an employee but, nevertheless, there are other consequences outside the industrial arrangement which may mean that the employee may not receive benefits or may in fact do so depending on the case under the general law.

So, it is not such an easy matter to say, 'Look, let's protect those who are not really contractors but there is a contract,' when in fact if there is a sham it is not a position where the courts will uphold it. Even under industrial law the arrangement will be such that it will be struck down if it is a sham or contrivance with such artificiality in it that close scrutiny will not disclose that it is a proper employee/employer relationship.

The Hon. T.G. ROBERTS: The Attorney-General has said that unlawful contracts will be struck down. My experience is that unlawful contracts rarely come before the courts for verification or registration. They tend to be found out either by an employee getting injured or a contractor going broke. It is always a secondary dispute that brings those unlawful contracts to the attention of anyone, either in the commission or the unions that represent those members' interests.

The Hon. K.T. Griffin: This doesn't solve that problem.

The Hon. T.G. ROBERTS: No. My question is whether the Attorney is willing to impose a penalty for the encouragement of striking unlawful contracts or encouraging people to be drawn into awards that either breach the Taxation Act or breach awards and/or agreements that challenge minimum standards of awards and agreements. Is the Government prepared to look at those sorts of proposals?

The Hon. K.T. GRIFFIN: I am not quite sure what the Hon. Terry Roberts is driving at.

The Hon. T.G. Roberts: Introducing a penalty for people who engage in such unlawful acts.

The Hon. K.T. GRIFFIN: If it relates to taxation, that is a Federal matter and the State has no jurisdiction. Any penalty that we sought to impose would be struck down as being unconstitutional. There is a problem of how you address that—whether the Government ought to be seeking to impose a penalty for entering into some arrangement that might be a sham. The fact of the matter is that the law applies. If a person purports to be a contractor but in effect and in law is an employee, then the law is clear. There are consequences for the employer and the employee in that arrangement.

The Hon. M.J. Elliott: What are the penalties?

The Hon. K.T. GRIFFIN: How can one make a judgment about penalties? What are we going to penalise—the fact that they entered into that sort of arrangement? I do not believe that any Government or Parliament ought to be imposing penalties to regulate the way in which people conduct their lives but, if the law imposes obligations upon employers and employees, and if someone has entered into a contrived arrangement to establish a contract but not an employer/employee relationship, then the penalty will be that ultimately if the employee or the contractor is disadvantaged the employer will end up having to pay under this legislation.

It may be to the advantage of the employee; the employee may be getting much more as a contractor than he or she would get as an employee. Are you going to penalise the employee and the employer for entering into arrangements which give benefits over and above awards and enterprise agreements? It is a very complex area, and I do not believe that you can just come out and baldly say what penalties you are going to impose when the whole area is such a complex one.

The Hon. M.J. ELLIOTT: There are quite clearly areas where the employer is in a position of significantly greater power. Part of this may be picked up by outworkers, but I will illustrate the power difference by way of an example. In South Australia there are examples of women, particularly migrant women, who are being paid $1 an hour for the manufacture of clothes. The Hon. Mr Griffin has put the sort of argument that they may have entered a relationship that was mutually beneficial. Some contracts that are entered into are mutually beneficial, but I doubt very much that this is one of them.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I think the Attorney misses the point. The point I was making is that people can effectively be in an employer-employee relationship where one of them is not in a strong bargaining position and where they do end up accepting something which is significantly below what an award would give them. While the example I gave was in the outworker area, it illustrates how extreme it can get.

As we leave the area that is currently defined as 'outworker' and enter this other vague area of contracts, the same sort of thing can occur and the same sort of disparity in that power relationship can occur. The issue is where quite clearly a person has gone below the award. Certainly there will be a penalty in so as far as the employer will have to pay all moneys owed, etc., but there will be no penalty beyond that. The worst that can happen is that they end up having to pay everything they should have paid in the first place, Where they have abused their position—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I don't care. Where they have clearly abused their position it does not seem unreasonable that there should be a penalty beyond simply paying what they should have been paying all along.

The Hon. A.J. REDFORD: I am not sure whether I can assist the Hon. Mr Elliott in relation to this clause.

The Hon. T. Crothers: I'm not sure if you can assist anybody.

The CHAIRMAN: Order! If the honourable member wants to have a say he can rise to his feet.

The Hon. A.J. REDFORD: In my experience there are three main areas where this sort of thing comes to the attention of the authorities, that is, the commission, the Department of Labour or an appropriate union, and then the question whether or not there is a contract of employment comes into question. The first of those occurs when there is a taxation problem and, with all due respect, that is a matter for the taxation authorities; the second tends to arise where there is an accident, and that is a matter that is generally dealt with under the WorkCover legislation; and the third is when the relationship comes to an end.

It is disappointing that in my practice as a lawyer over a number of years I have had situations where employers have tried to enter into contractual arrangements with their employees because of unique employment conditions (and I

will give an example in a minute) which in some respects are better than the award system and then, at the end of the employment period, the former employee goes to the Department of Labour, and the employer, who has paid a significant sum of money more than that which would have been paid under an award, is liable to pay out a significantly greater sum.

I will cite an example which I had not six months ago and which involved a person who ran an after-hours plumbing contract business. When this person examined the terms of the award, he discovered that he could not run his business profitably so, instead of giving all the award conditions, he paid an hourly rate. The hourly rate in the award was about $10 an hour and he offered to pay $19 an hour. The employee accepted that, took it on board and did that contractual work on that basis.

Then, when at the end of the three year period the work started to dry up, the employer said, 'I am sorry, but I cannot give you any more work. You would be better off trying to find something in an alternative place,' the employee or subcontractor went off to the Department of Labour and said, 'Look, I believe I was an employee.' And, in a technical sense, when one had a look at all the decisions of the Industrial Court, he was an employee. The net effect of that was that that employer was liable to pay $20 000-odd and in fact his company went into liquidation as a result, and four other subcontractors who were quite happy with the arrangement were put out of work.

That is the sort of thing we are trying to get rid of with this legislation. At the same time, I have no problems with what the Hon. Mr Elliott says about these dollar per hour arrangements. They are outrageous and ought to be stopped, and we hope that this legislation will prevent that from happening. At the same time, however, we want some degree of flexibility. The problem with strictly defining 'contract of employment' is that we will eat away at that flexibility and in my view not provide any advantage to the employee, because at the end of the day he is not protected under other legislation. So, it is not a matter of penalty when one looks at this issue.

The Hon. K.T. GRIFFIN: I do not want get diverted into discussing questions of penalties, but the important thing in relation to employment contracts is that there are inspectors. This Bill provides for an employee ombudsman who will be independent and who will have an opportunity to resolve the sorts of issues that the Hon. Mr Elliott identified. That is one safeguard that is there, if we want to go so far as to say that there are inspectors who have particular powers. However, inspectors have a specific responsibility. If we like we can include those as well to endeavour to protect the sorts of persons to whom the Hon. Mr Elliott referred.

I would suggest that there are safeguards against abuse in the Bill and, whilst the issue of a penalty is something to which I have not given consideration, I would suggest that it is not the issue to which we ought to be focusing in respect of this definition.

Amendment carried.

Progress reported; Committee to sit again.

WORKCOVER CORPORATION BILL

The House of Assembly intimated that it had agreed to amendments Nos 1, 3 to 8, 10 to 14, 16 and 18 to 22 without any amendment; had agreed to Nos 9, 17 and 23 with amendment; and had disagreed to amendments Nos 2 and 15 and made alternative amendments in lieu thereof.

WORKERS REHABILITATION AND ADMINISTRATION (AMENDMENT) BILL

The House of Assembly intimated that it had agreed to amendments Nos 1 to 3, 5, 6 and 8 without any amendment; had made the amendments consequential upon amendment No. 8; had agreed to amendment No. 7 with amendments; and had disagreed to amendments Nos 4 and 9 to 21 but made alternative amendments in lieu of amendments Nos 4, 9 to 13, 17 and 18.

PASSENGER TRANSPORT BILL

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

Consideration in Committee of the recommendations of the conference.

The Hon. DIANA LAIDLAW: I move:

That the recommendations of the conference be agreed to.

I am pleased to report that the conference of managers has successfully resolved 26 matters that had been the cause of disagreement between the Legislative Council and the House of Assembly relating to the Passenger Transport Bill. The Bill now provides the basis for introducing exciting reforms and innovative new services in the delivery of passenger transport services in South Australia. It is the goal of the Government (and I believe of all members of Parliament) that we work hard to win back passengers to public transport and to generate repeat business. I believe that was the sentiment behind the good will that was expressed at the conference.

The outcome of the conference is a credit to all members of Parliament. I pay a special compliment to the Hon. Barbara Wiese and the Hon. Sandra Kanck. I also note that it is the first occasion on which I have worked with a shadow Minister for Transport and a spokesperson for transport, both of whom are women.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: It was almost left to women to sort it out. It was a special experience for me from that perspective as well. The greatest delight for me is that so much has been achieved in the public interest to reform public transport. I thank Parliamentary Counsel for an extraordinary amount of work over many months and his patience in the past few weeks. I also thank the staff of the Parliament.

I want briefly to run through the matters that were agreed at the conference. Amendments Nos 1, 2 and 3 to clause 4 related to the issue of the public corporation that the Hon. Ms Wiese had earlier moved in this place. The Government has agreed that the Passenger Transport Board be obliged to comply with certain provisions in the Public Corporations Act. Likewise, amendments Nos 6 and 7 to clauses 11 and 13.

With respect to amendment No 4 to clause 7, there was an earlier amendment in this place that all ministerial directions should be in writing. That has been accepted. It has also been accepted that such directions from the Minister must be published in the next annual report of the board. However, we have compromised in terms of the Minister having to lay a copy of the direction before both Houses of Parliament within six sitting days after the direction is given. A compromise was reached on ministerial directions and control.

The size of the board will now be five, not three as the Government had proposed. I felt very strongly that we should have a board which concentrated on its responsibilities because, from my observation of other boards from time to time, I believe that the bigger the board the less all members feel responsible for the work associated with being a board member and more power is left to the Chief Executive Officer. I must admit that my view was not shared by all in the Government, and the amendments from the Legislative Council relating to there being five members on the board have been accepted. Amendments Nos 8 and 11 to clause 15 are consequential on that decision.

Amendments Nos 12 and 13 to clauses 19 and 21 relate to a charter. That amendment was initially moved by the Hon. Sandra Kanck. The requirement that the board prepare a charter, after consultation with the Minister and the committees established under clause 25(1), remains an obligation upon the board, but in the compromise reached at the conference the matters that must be dealt with by that charter are no longer specified.

With respect to amendment No. 14 to clause 22, an amendment is proposed that for any change of service 28 days' notice must be given by the STA as TransAdelaide to the relevant authority, this being a local government authority, but it does not have to be complied with at all times in cases of emergency and the like. The conference agreed to place in the Bill some flexibility for the requirement of consultation between the TransAdelaide Passenger Transport Board and the relevant authority.

Amendment No. 15 to clause 25 is important in terms of the committees that the board must establish. This was the basis of some discussion. The compromise is that there be a Passenger Transport Industry Committee and a Passenger Transport User Committee and such other committees, including advisory committees or subcommittees, as the Minister may require. This is an important reform to the original Bill. I am particularly pleased to see a Passenger Transport Industry Committee rather than separate committees for taxis, buses, hire cars or other hire vehicles, because we are now requiring the industry as a whole to look at its responsibilities for the conduct of passenger transport services.

One of the difficulties with the passenger transport delivery of service in the past is that these groups have been at loggerheads. One reason for that has been the regulation and bureaucratic arrangements, and those issues are addressed in this Bill. We will be able to develop a much greater sense of responsibility and service with this umbrella Passenger Transport Industry Committee. The user committee will be of major importance because the whole thrust of the legislation has been to develop a customer friendly service, and the user committee will be important in ensuring that that objective is met.

Amendments 16, 17 and 18 to clause 39 relate to the matter that generated the most discussion in the conference, and that is the proportion of work that should remain, over a certain period of time, with the STA as TransAdelaide. Ultimately, it was agreed that until 1 March 1997 TransAdelaide will be guaranteed the right to conduct all services other than those it wishes to relinquish or new services to a level of 50 per cent of the total number of passenger services undertaken within the metropolitan Adelaide area in the year 1993.

This amendment, together with amendments to schedule 4, will ensure that STA as TransAdelaide has plenty of time to prepare for competition and has some time to consolidate the changes it is being required to make as a result of this important piece of legislation. The new amendments to schedule 4 require that TransAdelaide may, until 1 March 1995, continue to operate a regular passenger transport service without an authority of service contract unless it wishes to relinquish services. The important and operative date is 1 March 1995, in terms of that guarantee of time, for the STA to prepare for these changes.

In terms of the changes, as I previously discussed with the Hon. Sandra Kanck and the Hon. Barbara Wiese, I believe that there is strong determination within the STA to meet the challenge of competitive tendering. Many officers I speak to tell me that they will not be pushed around by the private sector. They do not like the argument that the private sector is better than anything that the public sector can provide. They are going out, as the public transport arm, to prove that what they believe is so. The Government is guaranteeing that the STA as TransAdelaide will have 50 per cent of regular passenger transport services until 1 March 1997. It does not mean that it is confined to providing only that 50 per cent; it can compete for the remainder of the work that will be competitively tendered. It has always been my belief that it will compete successfully and win much of that work.

I can indicate from my earlier discussions with the trade union movement—before we moved to the conference stage—that it was well aware of the Government's commitments in terms of savings, and this is reinforced by the Audit Commission report. The Government is looking at annual savings over a period of time of $34 million. The unions are well aware that that does not all come from workers' pockets; it comes from a whole range of restructuring and administrative changes, including service changes. That funding is a key part of the changes that the Government proposes to public transport and a key part of our commitment for new and innovative services, including more frequent services.

Such new and innovative services would not be possible unless we generated savings, nor would it be possible to put extra security people on trains, etc., for fare evasion and safety reasons, but those initiatives can now proceed thanks to the goodwill of members in this place. Amendment 19 to clause 40 relates to any contract over five years. If it is agreed that a contract be extended beyond five years, that must be reported in the annual report, and it will no longer be necessary to report to Parliament. Amendment 20 to clause 47 relates to taxis. The Government has agreed, through the House of Assembly, that it will delete the reference to a 'taxi of a prescribed kind'.

Amendment 21: the House of Assembly will no longer insist on its amendment to that provision, so that there will be a review of this whole new structure for delivery of passenger transport services from 1 January 1998. Amendment 22 is most important; it refers to schedule 2. The Legislative Council no longer insists that the Minister cannot direct TransAdelaide to transfer, assign, lease or otherwise dispose of a public passenger vehicle. The Legislative Council is again not insisting on the following provision: that the Minister must not direct TransAdelaide to cease to provide regular passenger service.

Amendment 23 to schedule 2 is again a reporting provision: that any direction the Minister gives in relation to these matters TransAdelaide must cause a statement of that fact to be published in the next annual report. Amendment 24 relates to schedule 3. A great deal of discussion occurred about this matter of public transport infrastructure. Ultimately, it was

agreed that the Minister can, after the commencement of this Act, sell property infrastructure, including land, if the Minister reports in the *Gazette* that the land or infrastructure is no longer required for passenger transport services. However, if the Minister determines that such land is required for passenger transport services in the future, such as depots around the metropolitan area, the tram track, railway lines, the O-Bahn track, or the operations control centre on North Terrace, those items could be sold but only on condition that, if the private sector purchaser wanted to resell them, then the Government must have first option to repurchase that property, and I think that that is absolutely essential.

While I and the Government initially objected and dismissed outright amendments moved first by the Hon. Barbara Wiese and accepted by the Legislative Council, I see the wisdom of requiring that if land or property that in the future will be needed by public transport is sold, the purchaser cannot just flog it off next day for housing or any reason, because that is not in the State's interest. I am really pleased with the way we have worked through that issue. If it is to be sold and then to be resold, the option given to the Minister for repurchase would be on the basis of the market value of the property. It would be assumed that the property would continue to be used for passenger transport purposes, so it would not be offered back to Government at an inflated price that one could imagine could be realised if it were sold for housing and the like, so it is within the capacity of any Government to repurchase that property at a reasonable price. Essentially, that is the thrust of these amendments. I again commend all managers for their cooperation and goodwill and I especially thank the Hon. Barbara Wiese and the Hon. Sandra Kanck for a testing time as we debated this Bill in conference, a most rewarding personal experience and one that I know will be in the best interests of STA's TransAdelaide and, most importantly, the travelling public.

The Hon. BARBARA WIESE: I would like to support the remarks made by the Minister with respect to the outcome of this conference. I, too, agree that the conference was conducted in a very cooperative way. Although we had some very difficult issues to work through, the approach taken by the relevant parties in this matter was always a cooperative one and one which sought as quickly as possible to reach a satisfactory compromise that we could all live with at the end of the day. It was inevitable that there would be some significant differences within the Parliament about the Passenger Transport Bill as introduced by the Government. However, it is important to stress before making remarks about the areas of difference that there were significant areas of agreement. We all agreed with the need for a restructuring in certain areas relating to the delivery of passenger transport services in South Australia. There were numerous areas that were not the subject of disagreement for resolution by conference of both Houses. I would make that point just in passing.

The area of most controversy related to the provision of what might be called regular passenger services, that is, the services that are currently provided by the State Transport Authority. As far as the Labor Party was concerned, our approach to this Bill and to the business of the conference was essentially to achieve four key results. First, we wanted to ensure that the legislation provided a fair go for the State Transport Authority, or TransAdelaide as it will become known. Secondly, we wanted to ensure the protection of the integrity of the public transport system, and particularly essential infrastructure within the public transport system. Thirdly, we wanted to ensure there was appropriate accountability on the part of decision makers who will be involved with the provision of public transport services in our State. Finally, we wanted to ensure that industry representatives and users would have the ability to participate in the development of passenger transport services in the future.

I think the outcome of the conference has, to a very large part, achieved the objectives that the Opposition had with respect to these broad headings. I am particularly pleased that the conference recognised the need, which I expressed when we were debating this legislation in the Council but which was not picked up at that time, that there was a need for a moratorium period, as I termed it, which would enable the State Transport Authority to undergo the restructuring that is necessary internally in order that it will become competitive, so that it can compete on an equal footing with operators in the private sector once competitive tendering is introduced. Although the date that we agreed on (March 1995) as the time from which competitive tendering would begin is a little earlier than I would have chosen ideally, nevertheless, I believe that it is possible within that time frame for the State Transport Authority, its work force and the unions that represent its work force, to negotiate a reasonable arrangement that will lead to appropriate restructuring.

I am also pleased that the conference was able to agree on a timetable for the phasing-in of competitive tendering. The Minister mentioned that it was agreed that, until March 1997, 50 per cent of what I might term the existing services which are currently provided by the State Transport Authority will be protected. That provides essentially a phasing-in period, so up front we have a moratorium on the introduction which allows the STA unfettered to work with its people to prepare itself for competitive tendering, and thereafter for a period of two years there is a phased approach to the introduction of competitive tendering.

The provisions for more accountability to both Parliament and the community through the introduction of some of the measures contained in the Public Corporations Act with respect to the disclosure of board members' interests and the conditions for involvement with contracts, as well as reporting arrangements to Parliament on key issues, were very important matters in my view. I am very pleased that we were able to reach accommodation on those matters, because it is important to remember that the Passenger Transport Board, which will be responsible for the regulation and delivery of services across the State, has some enormous responsibilities and will be involved with some very large contracts, perhaps some worth millions of dollars, and we need to ensure that there is the highest level of accountability on the part of the people appointed to that board.

The question of public transport infrastructure was a matter of considerable concern to me because I did not want to see a situation arise in the future whereby the Government might choose to sell what would be termed an essential piece of public transport infrastructure, only to see it at a later date sold off by a private sector operator who had been successful in purchasing that infrastructure, for whatever reason.

It is important to acknowledge that there are essential areas of infrastructure. The Minister named them; they relate to the railway lines, the tram lines, the O-Bahn service, interchanges and depots and also the control centre on North Terrace. They are essential to the delivery of an integrated public transport system in our metropolitan area, and should any one of those items of infrastructure be lost to the public transport system it would be very difficult to replace them.

So, although my preferred option would have been to ensure that that infrastructure remained as an asset of the Crown for all time unless the Government verified that it was no longer needed for the purposes of public transport, the compromise reached provides a degree of protection that is at least, in large part, satisfactory because it provides for the Minister to make that declaration; that a piece of land is no longer required for public transport and therefore there is no objection to it being sold.

However, should the Minister or the Government wish to sell, for example, a bus depot, the Government would have to provide a period of public notice prior to sale so that, should there be a view in the community that this was the wrong way to go, people would have the opportunity to take appropriate action. Furthermore, after sale of such an item of infrastructure the Government would have first right of refusal to re-purchase such land or infrastructure should it be deemed necessary in order to preserve the integrity of the public transport network. That was a very important issue and I am pleased that we were able to reach an agreement on it.

Another important point in the 'fair go for the STA' category was to establish some rules by which all operators who are providing public transport, and in this case regular transport services, should operate. It is important that we try to preserve the highest possible standards in maintenance of vehicles and standard of vehicles. It is also important that all players in the game should be operating on a level playing field with respect to these things. So, I was pleased that the Council and the House of Assembly also agreed with the proposition that those standards should be high and that they should apply across the board because that will help to ensure that all players have a fair go.

Finally, the introduction of amendments which provide for industry representatives and public transport users to be represented on advisory committees is also an important step in ensuring that appropriate bodies and individuals can have a say in the way our public transport system is developed in the future. With the amendments which have now been agreed to through the conference the Bill is now largely acceptable to all parties to the extent that it can be at this stage because we should also acknowledge that the full nature of competitive tendering and future tendering arrangements is still not fully known and that it will not be until we have a clearer idea as to how the competitive tendering system will work in South Australia with respect to the provision of regular passenger transport services that we can be assured that it will be in the interests of the travelling public in general and that it will meet the objectives that I am sure we all share: to improve the usage of public transport, to increase patronage.

Time will tell whether these objectives can be achieved, but I certainly believe that, with the position we have now reached we have, to the extent that we can, effected the outcome in this area. We have an agreement which is largely satisfactory. I certainly hope that, with the development of these new arrangements for the delivery of passenger transport services in South Australia, the level of cooperation that we enjoyed within the conference of the Parliament will be the same level of cooperation that participants outside this Parliament will enjoy in the future development of these new arrangements. I wish all participants well in achieving satisfactory outcomes for the future.

The Hon. SANDRA KANCK: I have not accepted the view extolled by the Government, that it has a mandate to implement everything that it promised during the election, but if there was a mandate for anything this Bill probably would be the closest that we could come to. The Minister, then shadow Minister, released her passenger transport strategy back in 1993. That strategy provided a skeleton upon which to work and the Bill, as it came into this Parliament, gave it a little more shape and the amendments that we were then able to make to the Bill put further flesh on it. As the Hon. Ms Wiese has said, we are still not quite sure how it is going to look because we do not no what the complete agenda is. However, only time will let us see that.

In the conference of managers everyone was willing to make concessions and I was really pleased with the lack of acrimony and with the high level of goodwill that existed. It is interesting to note that, when we had gone through the Committee stages of the Bill some weeks ago, I had feedback—unsolicited—from other members of Parliament and various employees of the Parliament. I must have had half a dozen people comment to me about the way in which the three women who were charting this Bill got on with the business; we stood up, said our bit, we did not grandstand and we got through what was really a very substantial Bill in a minimal period. Each of the people who commented on this said, 'This must have been because it was three women.' It certainly was a unique experience.

This is the first time of which I am aware that a major piece of legislation has gone through this Council with three women being responsible for it. I am really excited about that because, as a candidate, people often asked me, 'What difference does it make having a woman in Parliament?' If this is any indication it does make a difference. That consensus, the frankness and the listening to each other continued in the conference. In its final form the Bill obviously does not reflect my philosophy; there is no way that it could have. I was certainly no champion of competitive tendering, but I am happy with the Bill in the sense that we have come out now with some safety nets in place and with accountability in place. It is probably the best that we could expect in the circumstances and I would like to extend my thanks to all the people who were involved in getting us to the position we are now in.

Motion carried.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 859.)

Clause 4—'Interpretation.'

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

Page 3, line 2—Leave out 'Industrial Relations Court' and insert 'Industrial Court'.

This is part of the Opposition's argument about the maintenance of the integrity of the Industrial Court and Commission of South Australia. The amendment provides for its continuum under the Bill. The amendment is self-explanatory. We canvassed some of this area earlier and I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The amendment is opposed on the basis of the previous argument about the commission.

The Hon. M.J. ELLIOTT: The amendment is opposed.

Amendment negatived.

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

Page 3, after line 3—Insert the following definition:

'demarcation dispute' includes a dispute about the representation under the Act of the industrial interests of employees by an association of employees;.

The proposed definition is necessary as the Government decided to include in the Bill a jurisdiction whereby the Industrial Relations Commission can deal with demarcation disputes. The scheme proposed by the Government is that the commission will be able to exercise its general jurisdiction over demarcation disputes in so far as resolving any industrial action associated with the dispute is concerned. However, should the employer wish to demark work in favour of one particular trade union to the expense of another trade union, this will need to be done through an enterprise agreement.

This proposed scheme is necessary in order to maintain the integrity of the Government's policy relating to freedom of association, whilst at the same time recognising the practical need for a statutory mechanism to address the problem of demarcation disputes in terms of both the loss of productivity caused by industrial action and the core problem of inter-union disputes over coverage of employees in an establishment. Subsequently a number of other amendments will be moved by the Government to address these specific matters.

As to the definition that I presume the Hon. Mr Roberts will move to insert, it is the Government's view that because of the focus of the Bill the definition which we have specifically identified is the essential feature of a demarcation dispute rather than the very broad approach proposed by the Hon. Mr Roberts, and I will oppose his amendment.

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

Page 3, after line 3—Insert—

'demarcation dispute' includes—

(a) a dispute within a registered association or between registered associations about the rights, status or functions of members of the association or associations in relation to employment;

(b) a dispute between employers and employees, or between members of different registered associations, about the demarcation of functions of employees or classes of employees;

(c) a dispute about the representation under this Act of the industrial interests of employees by a registered association of employees;.

The amendment reinserts into the Bill that which is already contained in the Industrial Relations Act 1972. The Government's Bill does not give power to the Industrial Commission to arbitrate on demarcation disputes. The fact that the Government has chosen to omit demarcation disputes from the commission's jurisdiction is incomprehensible to the Opposition. All parties in industrial relations, particularly employers, recognise the usefulness of taking demarcation disputes to the Industrial Commission for resolution. It is not possible to try to ignore demarcation disputes and hope that they will simply go away.

The process of union rationalisation will continue in spite of anything the Minister tries to do. Inevitably, the rationalisation of union coverage at a Federal level will have ramifications for South Australia. From time to time this will lead to a demarcation dispute in the work place that can obviously be the source of considerable disruption. Over recent times the Industrial Commission has dealt with demarcation disputes with positive results. There is absolutely no reason why demarcation disputes are also being included within the commission's jurisdiction. I commend our amendment to the Committee.

The Hon. K.T. GRIFFIN: I would make a couple of other observations. One is that the Government's amendment is certainly inclusive; it is not a limiting definition. However, the Hon. Mr Roberts' amendment talks about a dispute within a registered association or between registered associations. That is very limiting because our Bill does not limit the scope of the Act only to registered associations, which are incorporated under this Bill, and extends to other associations. Therefore, it seems appropriate that the broader inclusive definition that I propose be the one that is preferred in the context of this Bill.

The Hon. M.J. ELLIOTT: Both the Government and the Opposition are inserting a reference to demarcation disputes. There seems to be an acknowledgment on both sides that it needs o be in the legislation. At this stage the Attorney has not explained clearly why the Opposition's definition is inadequate. He has addressed the question of a registered association versus an association generally, but more generally the definition appears to be a wider one, and he has not indicated that there is a problem with it and at this stage is insisting on his amendment.

The Hon. K.T. GRIFFIN: I make the point that the Government's amendment is paragraph (c) of the Hon. Mr Roberts' amendment, so we are really arguing about paragraphs (a) and (b). I believe I have already dealt with paragraph (a) in terms of the limitations which are imposed thereby and the focus only on disputes within or between registered associations in relation to employment.

The Hon. M.J. Elliott: It is not restricting employers.

The Hon. K.T. GRIFFIN: It includes it, but tends to focus only on that. If you took out 'registered', I suppose you would certainly meet the point which I am making. Paragraph (b) deals with disputes between members of different registered associations about the demarcation of functions or classes of employees, whereas I would have thought that that tended to focus on what were basically inter-union disputes which might affect the workplace but which were not directly related to issues of representation of the industrial interests of employees.

Also, in relation even to paragraph (c) of the amendment, the Hon. Mr Roberts' amendment talks only about registered associations, and the whole focus is on registered associations. We say that is too limiting, even though the definition of 'demarcation dispute' includes certain matters. They may tend to be interpreted in a rather limited way if all the categories are related only to registered associations.

The Hon. M.J. ELLIOTT: I do not believe the Attorney has made a case why paragraphs (a) and (b) should not be included. He has argued to some extent that they may already be included in any event, but he certainly has not made a case against (a) and (b). On the basis of that I support the amendment, noting that there is still the other issue of association versus registered association, and we can revisit that issue.

Hon. K.T. Griffin's amendment negatived; Hon. R.R. Roberts' amendment carried.

[Sitting suspended from 6 to 7.45 p.m.]

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

Page 3, lines 24 and 25—Leave out paragraph (b) of the definition of 'enterprise agreement matter' and insert—

(b) a matter subject to an enterprise agreement, including a dispute about such a matter;.

The reason for the Opposition's amendment is that the commission should have power to arbitrate about a matter which may be related to an industrial dispute even though it is the subject of an enterprise agreement. The Bill would

allow an industrial dispute to continue to fester with perhaps massive industrial action, taking place with neither party being prepared to concede any ground and with the Industrial Relations Commission being left powerless to intervene in matters in the public interest or to resolve the dispute.

The Hon. K.T. GRIFFIN: The amendment is opposed. The answer to the Hon. Ron Roberts is that clause 73 deals with the form and content of an enterprise agreement. Subclause (2)(c) provides that an enterprise agreement:

> . . . must include procedures for preventing and settling industrial disputes between the employer and employees bound by the agreement and address the question of the commission's power to intervene to prevent or settle industrial disputes.

In those circumstances we take the view that it is inappropriate to leave the matter as open ended as the honourable member wishes. Paragraph (b) of the definition of 'enterprise agreement matter' reads:

> a matter related to an industrial dispute between the parties to an enterprise agreement but not a matter under Chapter 3, Part 6.

The honourable member seeks to open up the whole matter which is the subject of an enterprise agreement, rather than acknowledge that clause 73 requires provisions to be made for the settling and preventing of industrial disputes in respect of an enterprise agreement. We say that our provision is technically accurate and appropriate whereas the amendment is too broad and does not address the technical issue of clause 73.

The Hon. R.R. ROBERTS: We are trying to give the same sort of powers to the commission to look at things within an award, such as a demarcation dispute, and in an enterprise agreement the same thing could apply. We have canvassed the arguments fairly widely in respect of demarcations and I see this fitting in the same area. It clearly qualifies that an industrial matter ought to include those industrial conditions that are laid out in an enterprise agreement in the same way as in an industrial award. It is a matter of consistency. If we are to apply the provisions of choice and conditions of employment under an enterprise agreement or industrial dispute, we should be able to get relief equally from both in the case of disputation before the commission. If we accept the Government's line, that we have an Industrial Relations Commission and an enterprise agreement commissioner, even on that basis—and I do not agree with it, of course—there ought to be relief from issues which arise out of an industrial agreement or an enterprise agreement arrangement. It is fairly clear that that is a sensible way of going about it.

The Hon. M.J. ELLIOTT: I have not totally followed what the Hon. Ron Roberts has said so far. However, there is a related matter about which I am concerned and will be addressing later in relation to clause 73(2)(c) where I disagree with the Government. At that point there will be times when the commission will need to intervene in enterprise agreements and they cannot be absolutely precluded. I am not quite sure how much addressing that issue addresses the concerns of the Hon. Ron Roberts, because, as I say, I have not quite followed what he is seeking to achieve with this amendment.

The Hon. K.T. GRIFFIN: I should like to explore this a little further. The definition of an 'enterprise agreement matter' is in the Government's view quite logical. It is 'a matter arising under Chapter 3, Part 2', or 'a matter related to an industrial dispute between the parties to an enterprise agreement but not a matter under Chapter 3, Part 6 (unfair dismissal)'. Any commissioner can hear a dispute in relation to unfair dismissal matters under an enterprise agreement, and it is not limited to an enterprise agreement commissioner. There is no attempt to prevent anyone from having an unfair dismissal matter in respect of an enterprise agreement dealt with by any commissioner.

Clause 41(2) provides:

> If the commission is to be constituted of a commissioner, and is to determine an enterprise agreement matter, the commissioner must be an enterprise agreement commissioner.

An enterprise agreement matter is referred to there and, according to the definition that we are discussing an enterprise agreement means what is set out in paragraphs (a) and (b), but it does not mean unfair dismissal. The definition of 'enterprise agreement matter' excludes unfair dismissal under an enterprise agreement.

The Hon. R.R. Roberts: Why?

The Hon. K.T. GRIFFIN: Because they are going to be dealt with not only by enterprise agreement commissioners but by any commissioner.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That is what we are saying. We are not saying that they will not be dealt with.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The logic of the scheme is that if you look at clause 41, if the commission is to be constituted of a commissioner and is to determine an enterprise agreement matter, the commissioner must be an enterprise agreement commissioner. So what the Hon. Mr Roberts' amendment would do would be to say, in terms of the definition, that only an enterprise agreement commissioner can deal with an unfair dismissal matter under an enterprise agreement. We are saying that it is open.

Except for unfair dismissal matters, issues which arise under an enterprise agreement are dealt with by an enterprise agreement commissioner, but in relation to unfair dismissal, because it is not related solely to the issue of enterprise agreement, it is an issue that can be dealt with either by an ordinary commissioner or by an enterprise agreement commissioner. That is the first issue that needs to be addressed. The second issue relates to the sorts of matters which go to a commissioner anyway. What the honourable member's amendment would seek to do is that even the matters which under clause 73 of the Bill are to be the subject of agreement under the enterprise agreement—that is, the procedure for preventing and settling industrial disputes—would then be the subject of determination by the commission.

We are asking why you want to give the commission the power to determine disputes in relation to an enterprise agreement where those disputes are already required by clause 73(1)(c) to be the subject of dispute resolution procedures in the enterprise agreement. With due respect, it is an overlap and it denies the essential ingredient of an enterprise agreement, that is, that you must have disputed resolution procedures.

The Hon. M.J. ELLIOTT: I will indicate that the question of dispute resolution is something that has concerned me, as I said before. I believe that it can be quite adequately addressed by my amendments to clause 73(2)(c), which I have on file. The effect of the amendment that the honourable member has here appears to be, first, to make sure that a dispute is seen as an enterprise agreement matter. As I said, that can be addressed in another way. In relation to unfair dismissals, the Minister has covered that quite adequately anyway. In the circumstances, unless there is some new

matter other than that which we have covered then I will not support the amendment.

The Hon. R.R. ROBERTS: Let me just say that on the question of unfair dismissal we are chasing off after one fox—there are other issues. I am advised that there may be a dispute about a matter that is not included in the enterprise agreement.

If we take the Minister's line and we arrived at that point, it says that the enterprise agreement commissioner, as I understand it—and I may well be wrong—can look at any matters in the enterprise agreement, but there may be matters which are not addressed in the enterprise agreement itself that may be the subject of dispute. Under the Government's Bill, as I understand it, those issues could not be resolved by the definitions in this proposal and this would allow a dispute to fester for some time without the ability to resolve the dispute.

If we apply the Opposition's amendment it is clearly a dispute within an enterprise agreement and is subject to resolution by the commission, despite the fact that the dispute itself is not embraced within the terms of the enterprise commission. Whilst it is not embraced in the actual terms it is a dispute nonetheless and commissions in the past were charged with the responsibility of resolving disputes. It has been a fundamental function of the commission since its inception to provide a forum where disputes could be resolved by people acting in good faith based on those three principles we have espoused: equity, good conscience and substantial merits of the case.

What we are proposing is a reasonable situation; it allows the commission in the new form or in the old form to perform a fundamental function of commissions in conciliation and arbitration, a function it has been performing since its inception. I take the Attorney's point about unfair dismissals, and that is a specific target. But I am saying that it is quite possible that disputes will arise in enterprise agreements or awards which are not within the fine terms of the agreement itself but which can provide circumstances where extended disputation can take place, and there is no mechanism under this Act for those disputes to be resolved—they fester on.

What we are asking for is a fairly reasonable proposition: that you allow the commission to undertake one of its principal functions—to resolve disputes. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: What we propose in clause 73(2)(c) is much the same as in the Federal Act, because the agreement has to provide procedures for preventing and settling industrial disputes between the employer and employee bound by the agreement. It is not just disputes which relate to the terms of the agreement; it is disputes between the employer and employee bound by the agreement. It must address the question of the commission's power to intervene, to prevent or settle industrial disputes. 'Industrial dispute', as defined in the Bill means:

> a dispute, or a threatened, impending or probable dispute, about an industrial matter. . .

That definition is very wide. An industrial dispute does not come to an end only because the parties, or some of them, cease to be in the relationship of employer and employee.

I would suggest that there is a fairly good logical progression between the various provisions which accommodate all the issues to which the honourable member is referring and about which he is raising some concern. I do not think there is anything which will be beyond jurisdiction as such because, remember, that the agreement has to be approved, where it is an enterprise agreement, by the enterprise agreement commissioner. In those circumstances, if there are not adequate procedures identified under clause 73(2)(c), then the commission will not approve it.

The Hon. M.J. ELLIOTT: I will reject the amendment because, after further analysis, I actually realised the amendment is more restricting than is the current Bill. The current Bill provides for 'a matter related to an industrial dispute between the parties to an enterprise agreement'. That is fairly broad, whereas the amendment provides for 'a matter subject to an enterprise agreement'. If you have an enterprise agreement and a problem which was not anticipated by the agreement arises, as the Opposition has currently drafted the amendment that actually means that enterprise agreement commissioners cannot look at it.

That is one of the key areas where you would want to involve the commissioner. In clause 73(2)(c), one of the major problems is that it is possible the enterprise agreement might preclude any conciliation. If there is an unexpected problem arising, which is not covered by the agreement, how on earth is it resolved? It seems to be a catch 22 situation. I would not have thought the Hon. Mr Ron Roberts would want to create that situation. I think it is important that if we allow some conciliation, particularly in relation to matters not covered by the enterprise agreement, then paragraph (b), as currently found within the legislation, needs to remain. I am opposing the amendment because I think it is actually more restricting than the current legislation. I am sure that is not the intention but I think that is the effect.

Amendment negatived.

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

> Page 4, lines 8 to 17—Leave out the definition of 'industrial action'.

The Opposition seeks to remove this definition as it is a consequence of the Government's Bill to impose penalties against unions pursuing industrial actions arising from their attempt to gain an enterprise bargaining agreement with their members' employers. It is not possible to have such a definition in the Bill when the Government's legalisation does not provide for a legal right for workers to strike during an enterprise bargaining period. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The primary clause in which the definition is referred to, and for which it is enacted, is clause 80 which provides:

> If an employer or employee bound by an enterprise agreement engages in industrial action, the commission may, on an application by another person bound by the agreement who is affected by the industrial action, order that the applicant be released from the agreement or that the terms of the agreement be varied in a specified way.

So, it is quite clear, at least in that context, that we do need a definition of 'industrial action' for the purposes of identifying those areas in respect of which the commission may act to order that an applicant be released from the agreement or that the terms of the agreement be varied in a specified way. If the definition is not included, one really then has to question how is clause 80 interpreted. Do you extend it or use what might be a common parlance, an industrial action, or is it defined in some other way? The Government takes the view that such a definition is not outrageous or inordinately extensive, but certainly seeks to define. If one looks at the paragraphs, 'industrial action' means a work practice or a way of performing work adopted in connection with an industrial dispute that restricts, limits or delays the perform-

ance of the work. Elsewhere, the Bill refers to 'industrial dispute' but not 'industrial action', so as far as I can see, it is limited to clause 80 and is an important aspect of clause 80. I oppose the amendment.

The Hon. M.J. ELLIOTT: I would suggest that the Hon. Ron Roberts might care to address clause 80. This amendment is really consequential on a change that I presume will occur there. In those circumstances, it would be most useful if he made some observations in relation to that clause and the particular concerns that he has.

The Hon. R.R. ROBERTS: My major objection to this is that the things that are outlined in this clause have long been a part of the industrial scene. All these things have been interpreted by the present commission. We come back to the philosophical position where I am saying that the commission in its present status really covers all these disputes. To me, this just seems to be written in as a tool to prohibit what has been in the past legitimate actions by unions in the conduct of their day-to-day industrial relations. These things have all been handled. There has never been a problem that has not been able to be resolved in the commission. This appears to have been put in the award to stop or limit the ability of the registered associations and/or employees to exercise any position of equality.

The basic tenet in an employer-employee situation is this myth that runs about that the partners are equal. Obviously that is not true, because one holds the purse strings and the other is the employee. Over the period of 100 years, techniques have evolved to allow parties to negotiate and to empower both parties. This clause is just a club to ensure that workers cannot have or create a position where they have some bargaining power. To me it is just a club to stop legitimate industrial negotiations and actions in support of claims that have been taken to be within the bounds and duties of the industrial relations scene in the past. This to me is something that has been called for by employers to ensure that workers cannot exercise their rights or the equal bargaining power in the workplace. It is not necessary, and it is unnecessarily restrictive on the ability of employers to negotiate their working conditions.

The Hon. K.T. GRIFFIN: I disagree with that explanation of what clause 80 does. If one looks carefully at clause 80 which deals with—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott asked, 'Because industrial action is defined for the purposes of clause 80, what is the consequence of clause 80?' I disagree with what the Hon. Ron Roberts was suggesting were the consequences of defining 'industrial action'. If one looks at clause 80, it relates to an employer or employee bound by an enterprise agreement. Where the employer or the employee engages in industrial action, according to the definition, the commission may, on application by another person bound by the agreement who is affected by the industrial action, order that the applicant be released from the agreement or that the terms of the agreement be varied in a specified way.

If, for example, the employer is engaged in a lock out, the employee may be bound by a condition not to strike. In those circumstances, it would be appropriate and it may be also required under the agreement that the employee attend for work and undertake certain work. In those circumstances, the employee may apply to the commission. The employee, being bound by the agreement and affected by the industrial action, applies to be released from the agreement, so either the employee can go on strike, if that is necessary or, more importantly, need not honour the obligation to go to work or perform the work which the employer is preventing from occurring.

On the other hand, if the employee decides to take some industrial action which, according to the definition, may be the refusal to do particular work that might be covered by the enterprise agreement, then the employer is bound by the agreement, but the employer may say, 'This employee is not honouring the contract, and in those circumstances, what I want to do is be released from my obligation or I want it varied.' The commission can do that. Subclause (3) provides:

> The commission may only make an order under this section if satisfied it is fair and reasonable to do so.

So, there is the measure of equity, fairness and reasonableness built into it already, and the commission has to be satisfied that it is fair and reasonable before it makes a decision to either vary the enterprise agreement or to release an employer or employee bound by the agreement from certain obligations. I would have thought that that was an essential requirement of the Act because the agreement itself may not anticipate what happens if one party is not able to honour the terms of the agreement because of the action of the other. In those circumstances it is quite reasonable I would suggest for the commission to have jurisdiction to make a variation, or to say to one party, 'Because of the circumstances which the other party has created you are not then bound to do this, this and this.' I think that is quite reasonable. It is not a question of employers being empowered to crush the worker. It is a commonsense approach to dealing with an issue under an enterprise agreement where the commission thinks it is reasonable to make a variation because industrial action has been taken: nothing more, nothing less. I would have thought that it is an integral part of the way in which enterprise agreements ought to be dealt with in those circumstances.

The Hon. T.G. ROBERTS: I will not hold up the proceedings too much, but perhaps it is a clause that should not be there. It is a cluttering clause, if you like, which impedes good industrial relations. The application probably should be made before the dispute gets to a point where a third party is making application to intervene, and the better course of events would be that the matter be brought before the commission prior to it getting to the stage where intervention was required. Where you have third party intervention, the more people involved in disputes the more difficult it becomes to settle them.

The Hon. K.T. GRIFFIN: There is one other matter to which I want to draw attention, namely, section 113h of the present Industrial Relations Act which relates to industrial agreements. Subsection (6) provides:

> If a person or association bound by an industrial agreement under this division engages in industrial action in relation to a matter dealt with in the agreement, a party to the agreement who is affected by the industrial action may apply to the commission for a declaration that the party so applying is no longer bound by the agreement.

'Industrial action' is defined quite extensively in section 113. All we are doing in our provision in clause 80 is not just providing that the agreement is at an end; that is, a party applying is no longer bound but we are giving the commission jurisdiction to vary, which I think is a better solution to the problem than merely saying, 'That is it; the commission has no discretion; you are out; the agreement is at an end; or one of the parties is no longer bound by the agreement.' We are saying that if it is reasonable to do so the commission may make some variation.

The Hon. M.J. ELLIOTT: I understand what the Hon. Mr Terry Roberts is saying about the clause being a cluttering clause and about the possible implications of it, and I think that his comments are true as far as the legislation is now drafted. However, with amendments elsewhere I do not think that the clause then remains a problem. If you read clause 80 in conjunction with clause 73(2)(c), as it currently stands the situation is that it might be possible that an enterprise agreement precludes finding your way before the commission. The only way you can then settle it is to actually go into an industrial action and then you will find yourself before the commission. That will be the effect of it. In fact, the combination of clause 73(2)(c) as now drafted and clause 80 provides that, if you cannot settle your dispute, you go to industrial action and that will force it then before the commission.

I do not believe that is what the Government would want to encourage. I am looking to amend clause 73(2)(c) to intervene so that we do not find ourselves in a clause 80 type position. I am not concerned about clause 80 in other respects so long as there is regular review of enterprise agreements, which the legislation does not currently have. That would mean that every two years you would have a chance to bring up problems that are developing within the workplace. So, if we have that and if we have a genuine safety net, the worst that could happen under clause 80 is that you are told that you are back under the award again.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: If that is not the case you can say so. However, clause 80 within the Bill as it now stands is probably non-helpful. If we get clause 73 right it largely loses its relevance more than being a particular imposition.

The Hon. K.T. GRIFFIN: Mr Chairman, with respect I do not agree with that but we can debate that again in more detail on clause 73. I think it is important to recognise that clause 73(2)(c) indicates what an enterprise agreement must have. It must include, among other things, procedures for preventing and settling industrial disputes between the employer and employees bound by the agreement and address the question of the commission's power to intervene; that is, not provide for it but address it. Do we want the commission to intervene or some other body to intervene?

The Hon. M.J. Elliott: If you do not allow them to intervene and there is a problem then you are forced to go into industrial action.

The Hon. K.T. GRIFFIN: Not necessarily, because if you have a mechanism for resolving disputes, that is the mechanism which applies. You do not have to go to the commission.

The Hon. M.J. Elliott: That is presuming the mechanism works.

The Hon. K.T. GRIFFIN: There has to be a bit of good faith there somewhere. If you go into an industrial action, even if you are bound by an enterprise agreement, there is no guaranteeing that the commission is going to make an order which relieves you of your obligation to apply. I am told that in enterprise agreements it is not uncommon that in return for a significant increase in remuneration there will be an agreement that there will be no strike or that employees will not engage in industrial action. If in fact there is a breach of that clause in relation to the undertaking, the employer is in the position of having to find a way to be relieved—and presumably there will be provisions which will enable that to occur—but if all else fails the fall-back position for the relevant party is clause 80.

The Hon. M.J. Elliott: You should not be encouraging that.

The Hon. K.T. GRIFFIN: We are not encouraging it.

Amendment negatived.

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

Page 4, lines 28 to 32 and page 5, lines 1 to 13—Leave out definition of 'industrial matter' and insert—

'industrial matter' means a matter affecting the rights, privileges or duties of employers or employees (including prospective employers or employees), or the work to be done in employment, including, for example—

(a) the wages, allowances or remuneration of employees or prospective employees in an industry, or the piece-work, contract or other prices paid or to be paid for the employment, including any loading or amount that may be included in wages, allowances, remuneration or prices as compensation for lost time and the wages, allowances or remuneration to be paid for work done during overtime or on holidays, or for other special work, and also the question whether piece-work will be allowed in an industry;
(b) the hours of employment in an industry, including the lengths of time to be worked, and the quantum of work or service to be done, to entitle employees to any given wages, allowances, remuneration or prices, and what times are to be regarded as overtime;
(c) the age, qualification or status of employees, and the manner, terms and conditions of employment;
(d) the relationship of employer and apprentice;
(e) the employment of juniors and apprentices in an industry (including the number or proportion that may be employed);
(f) the employment of any person, or of any class of persons, in addition to those referred to above, in an industry;
(g) the refusal or neglect, without reasonable cause or excuse, of any person bound by an award, order or enterprise agreement to offer or accept employment, or to continue to be employed on the terms of the award, order or agreement;
(h) any established or allegedly established custom or usage of an industry, either generally or in a particular locality'
(i) the monetary value of allowances granted to or enjoyed by employees;
(j) the dismissal of an employee by an employer;
(k) a demarcation dispute;
(l) the performance of work nude or partially nude, or in transparent clothing;
(m) a matter classified as an industrial matter by regulation;
(n) all questions of what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of society as a whole;

The Opposition seeks to include in the Bill the definition for 'industrial matter' as currently contained in the Industrial Relations Act 1972. This definition has been litigated on numerous occasions, up to and including the Supreme Court of South Australia. It is a very broad definition, which means that the Industrial Commission is capable of intervening in virtually any matter affecting the relationships between employers and employees and making orders and all determinations arising from any such disputes.

The Government's definition significantly reduces the scope of the definition of 'industrial matter', turning the clock back 30 years or more in relation to what constitutes an industrial matter, that is, matters involving employer and employee relationships. The Government's definition omits certain specific matters contained in the Opposition's amendment. Those matters were contained in the existing Act. It is difficult to understand why the Government seeks to exclude these matters from the jurisdiction of the commission.

The Opposition has already talked about the need to include demarcation disputes within the commission's jurisdiction. No serious party to an industrial relations system would oppose such an inclusion. The definition contained in the Bill exemplifies the Government's desire to restrict the

influence of the Industrial Commission. Instead, the Government would prefer to see sensitive matters such as demarcation disputes resolved in the work place. Such matters have often produced industrial disputation and disruption.

The ability for the parties to approach an independent body such as the commission is fundamental to peaceful and stable industrial relations. As such, the Opposition supports a full and broad definition of 'industrial matter'. The Opposition also strenuously opposes the provision within the definition for the Minister to exclude by regulation any particular matter. This is yet another incursion into the independence of the Industrial Commission. Potentially the Government could seek to rush through a regulation excluding a certain matter from the commission's jurisdiction simply because it has a vested interest in the commission's not dealing with the matter.

Given that the Government is the largest employer in South Australia, it is not difficult to imagine such a situation. Our amendment consequently removes the ability for the Government to exclude any regulatory matter from the definition. The Liberal's amendment unnecessarily restricts the ability of the commission to look at industrial matters, such as excluding pieceworkers. Although there are few employers wanting to use pieceworkers, there is still the necessity for reasons of public policy for the conditions of employment to be fairly regulated. If not, many women pieceworkers would be the subject of free market employers engaging in exploitative practice.

In the Liberal's drafting there is a restriction on the notion of a limited form of time work which could cut out the ability of having remuneration for established provisions such as stand-by allowances and the like. We believe that this is an important inclusion in the Bill. This matter has always been clear in the commission's mind. We have been able to work peacefully through an industrial relations system in South Australia with those outlines of the definition. They are well tried and proven. Therefore, for the reasons outlined, those matters are fundamental to the understanding and continued good practice of the commission and I commend the amendment.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It is not true that we have excluded a number of matters that the Hon. Mr Roberts has referred to. The only change in intent is that we have a provision that allows for certain matters to be excluded by regulation from the definition, remembering that there is always the capacity to scrutinise these issues at the parliamentary level on any motion for disallowance. If we look at the question of piecework and paragraph (a) of the definition of 'industrial matter', one sees that it means:

> the wages, salary, allowances or other remuneration or benefits to be paid or provided for work done by an employee;

Piecework has to be encompassed by that description. If one looks at the issue of demarcation disputes, one will see that we have an amendment on file that overcomes that issue. Our intention was to upgrade the language, to modernise it. I was trying to find where and when the Opposition's drafting originated, but I have not been able to discern that yet. However, it is in language which is cumbersome and not in line with modern drafting. All the issues encompassed by the present Act in our view are covered by 'industrial matter', except as I have already indicated. We would prefer to maintain the provision of the Bill as we want it and not support the amendment.

As to the dismissal of an employee by an employer, that is not in the definition because unfair dismissal is separately dealt with not as an industrial matter as such but as unfair dismissal. There is no exclusion of that issue from the ambit of the Bill. It is there but it does not need to be included in the 'industrial matter' definition to be dealt with. It is dealt with separately and explicitly. No-one can deny that it is dealt with explicitly. For these reasons, we oppose the amendment.

The Hon. M.J. ELLIOTT: I have an amendment to a later part of a clause concerning exclusion by regulation. That matter is new to this legislation. After further examination, I will not proceed with that amendment. I would rather see changes to 'industrial matter' occurring directly in the Parliament by direct change to the legislation itself. That is the first indication that I want to give. When I look at the drafting of the legislation before us and compare it with the old legislation, I see that the changes are more than simple modernisation. I acknowledge that modernisation is happening but within that modernisation there is at least on the face of it some substantial changes, and on that basis I will be supporting the amendment.

The Hon. K.T. GRIFFIN: Would the Hon. Mr Elliott be so kind as to point out where these omissions or differences are, and it may be that I can address those and put his mind at rest?

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I have covered all those. I am anxious to respond to the general observation that there are in our drafting matters which do not include matters in the original provision and that our provision is something more that just a redraft but excludes particular matters. I have addressed the issue of unfair dismissal and that of demarcation dispute, on which I have an amendment. I have dealt with the issue of piecework, and I would be interested to know what the Hon. Mr Elliott believes is still to be covered which is presently in the Act but not in this definition.

The Hon. M.J. ELLIOTT: While the Minister says that he has addressed those matters, I am not as yet convinced.

The Hon. K.T. GRIFFIN: With respect, I do not think that that is good enough, but I do not have any option but to leave it at that. One of the issues is a non-issue, because demarcation disputes are to be involved. There are two other issues. As I indicated, unfair dismissal is clearly in the Act and does not need to be in the definition.

The other issue is piecework, which clearly is covered by paragraph (a) of the definition. If they are the only two issues, I would submit that they have been adequately addressed, and I see no reason to go back to the cumbersome and outdated drafting of the present Act.

Amendment carried.

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

> Page 5, lines 26 to 30—Leave out the definition of 'outworker' and substitute the following definition:
> 'outworker'— see section 4A;.

The Opposition's amendment to clause 4 is the insertion of a new clause 4A which seeks to provide all the protections currently enjoyed by outworkers under the existing legislation as well as expanding on the coverage to persons carrying out clerical work. The Government's Bill leaves out the important words 'work on' which on our legal advice substantially reduces the protection for workers in industries that traditionally have been sweatshops, in particular, in the clothing trades and other areas where work is done away from traditional industrial environments.

The Hon. K.T. GRIFFIN: I would like a bit more than that. It does not seem to me to be a fair explanation of proposed section 4A, which follows on this amendment. The Hon. Mr Elliott has an amendment with regard to the words 'working on', and I indicate that we will accept that amendment. We recognise that it was an omission, so that solves the problem.

It is the Government's view that, with the amendment proposed by the Hon. Mr Elliott, the definition in the Bill meets the objection. If one goes further and looks at the Hon. Ron Roberts' amendment one sees that it is an extraordinary proposition, because 'an outworker' includes a body corporate of which the person is an officer or employee and for which the person personally performs all or a substantial part of the work undertaken by the body corporate and is engaged, for the purposes of the trade or business of another, to work on, process, etc.

Then there is a further provision in relation to outworkers in proposed subsection (2). It seems to the Government that that is quite an extraordinary provision which we certainly ought not to support, because it really is so broad as to make a nonsense of the concept of 'outworker'. There are protections in our Bill, including the appointment of the employee ombudsman, to assist outworkers and investigate their claims, and because of that it is appropriate to vote against the amendment, which I will be doing.

The Hon. ANNE LEVY: There are two separate matters in this definition of 'outworker', and the Hon. Mr Elliott has also picked up the question of 'working on'. If we do not include that, this provision will cover only those people who are doing packaging or processing. It will exclude a lot of people who are currently classed as outworkers, particularly women in the clothing trade, where they take partly finished garments and sew them at home. They are currently outworkers. Without the inclusion of 'working on' they would no longer be classed as outworkers and would lose the protection which they have had up to this time.

The other parts of the amendment really relate to preventing practices which have been engaged in by employers. Some employers have refused to employ someone as an outworker unless they form themselves into a company, so that they are employing a company rather than an individual. In that way they avoid their obligations as employers under the old Act. They have dreamed up many ways of getting around the provisions of the Act so that people whom Parliament intended to be classed as outworkers are not so classed, and consequently these people (and I reiterate, mainly women) then lose the protection which Parliament intended them to have.

The Hon. K.T. Griffin: You are saying that the outworker incorporates.

The Hon. ANNE LEVY: Yes; there are employers who refuse to employ outworkers unless those outworkers form themselves into a company so that the—

The Hon. M.J. Elliott: That is because of the old contract laws.

The Hon. ANNE LEVY: Yes, that is right. They will find any loophole possible. Another dodge which has been used is to employ a middleman—and I say 'middleman' advisedly, because it usually is a man. The employer then says, 'I am employing this middleman, and it is his job to deliver the half-finished garments to ensure that they are completed by the women who are working in their own homes,' and in this way the employer tries to avoid all obligations towards the people who are actually doing the work for him.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: This is not the situation of a company. This is where the employer says he is employing a middleman and the middleman's job is to distribute the work, collect it and in fact do everything which one might say is the responsibility of the employer with regard to outworkers, but the employer says he is employing only this middleman. In this way he avoids all obligations which Parliament intended the employer to have with regard to the outworkers. These circumstances are not fanciful; they have arisen. They have been taken to the Industrial Commission by the clothing trades union, particularly in a case before Deputy President Riordan in 1987.

Deputy President Riordan recognised a whole lot of the lurks in which employers were indulging to avoid the provisions of the Act and also to avoid outworkers being their outworkers. This has been done in an attempt to bring outworkers outside the definition of an employee so that the requirements of an employer towards an employee are thus negated and the outworkers are left unprotected.

I do not know whether these amendments are in the best possible legal language—it may be that Parliamentary Counsel could put them in more elegant language—but the purpose is clear: it is to prevent exploitation and lurks which have been indulged in by employers to get around the provisions of the previous Act. I am glad to see that clerical workers are at last to be brought within the ambit of outworkers in situations where clerical work is performed in a person's own home. I am grateful to see that finally incorporated. Without these other amendments, employers will use any loophole to get out of an employee-employer relationship..

The Hon. M.J. ELLIOTT: A little earlier when we were debating the question of contract workers, I indicated that I was supporting that amendment not necessarily because I supported the wording, but because I supported some of the concepts behind it. I think we have the same situation here and my reaction is again the same. It is not my intention to proceed with my own amendment at this stage. However, I want the Government to understand that if it is serious about safety nets for workers—and those sorts of things were in its policy—it must ensure that this legislation does not allow rorting of the legislation. I suspect that this may not be the way to go. In fact, I suggest to the Hon. Anne Levy and the Hon. Ron Roberts that the reason for setting up incorporated bodies is that the previous Government put in a clause about contracts and this Government is trying to stay one step ahead. I suggest we should have a clause that contains a test of a genuine employer-employee relationship and perhaps get away from the concept of outworkers, contract, and so on. I think it should be possible to devise a test so that we do not have these constant games that are being played. If we try to close it off by picking up the latest lurk, the next lurk will emerge within months.

The Hon. Anne Levy: It's a process of evolution.

The Hon. M.J. ELLIOTT: That's right. It is a bit like the influenza virus. The Government must recognise that significant rorting is going on. Significant numbers of employees are being abused in these categories. The Government has put an outworker clause in, which tends to suggest that it recognises there is a problem. I am suggesting that if there is a problem it must be addressed in such a way that the clever lawyer cannot play another game and get around the intention of the law. I would have thought that the Hon. Mr Griffin would acknowledge that the intent of the law was

important and that we should try to get the law right so that the games cannot be played. In supporting the amendment I make the same point as I made in relation to contracts: I want a law which ensures that when there is an employer-employee relationship, if one exists, it needs to be recognised as such and we should not allow some of the games that have been going on for far too long and for some people to be severely abused by the process. The example of people getting a dollar an hour, which is happening in Adelaide, is a good illustration of that.

The Hon. R.R. ROBERTS: I thank the Hon. Anne Levy for her contribution. She has studied this issue over many years and made passionate pleas in successive Parliaments on behalf of people who are engaged as outworkers. I am also pleased that the Hon. Mike Elliott has indicated his support for this worthwhile amendment. However, I point out that we are talking not just about a few people. The latest report from the *Financial Review* of 9 June 1993 shows a massive increase in the number of people working from home. It is estimated that there are 250 000.

The Hon. M.J. Elliott: It's not a bad thing in itself.

The Hon. R.R. ROBERTS: It's not a bad thing in itself, but, in view of the numbers who are involved and given the rorts and the history of this aspect, it is important that we do this. I thank the Hon. Mike Elliott for his support.

The Hon. K.T. GRIFFIN: The Hon. Anne Levy has identified the position under the clothing trades award, and I have no dispute about that. I should have thought that the provision in the Bill was broad enough to catch the sorts of practices to which the honourable member referred. The clause provides:

> 'outworker' means a person who is, for the purposes of the trade or business of another, engaged at the person's own residence or other premises that were not established for commercial purposes in—
>
> (a) clerical work; or
>
> (b) processing or packing articles or materials.

Here I am happy to accept the Hon. Mr Elliott's amendment to paragraph (b) relating to working on processing or packing articles or materials. That is broader than employee-employer relationship and extends to the contract situation because it is a special case.

The introduction of the body corporate is a device to catch others, but it may not in itself be effective to do so. It looks as though the Government will not be successful in resisting the amendment, but we will keep an open mind on the issue as we work through the Bill in subsequent stages. I think it is important, as the Hon. Robert Lucas interjected, to recognise that outworking helps and suits many people. Last year or the year before we had the proposition by the previous Government to extend the scope of the industrial relations legislation to include journalists and a whole range of other people—even the kids who deliver the *Messenger* newspaper—and so broadly expand the ambit of the legislation that it was met with outrage across the community. Fortunately, they are not going that far on this occasion. We have to try to get some balance. The Government does not support the so-called rorting of the system or the imposition of very low rates of return compared with what might normally be paid in the community; nor does it condone the advantage that is being taken of those who lack the necessary competence, skills, language or other abilities to bargain and negotiate appropriately with those who seek to have piece work undertaken for them.

The Hon. J.F. STEFANI: I do not want to prolong the debate, but I want to refer to a couple of matters that may help the Hon. Mr Elliott on this issue. There are very clearly established tests for employer-employee relations, and they are generally enforced by the taxation office. When a taxation audit of any company is carried out the possibility of an employer-employee relationship is carefully investigated. We have therefore the true test of an independent contractor. If that test is not met the taxation office generally dictates that the person engaged in that way will become an employee and will be treated as such by the tax office.

The Hon. M.J. Elliott: Not by anybody else.

The Hon. J.F. STEFANI: No, but that leads to the next issue: the tax office makes that decision and at that stage we have a reversal of the position and PAYE deductions are then exercised.

The Hon. M.J. Elliott interjecting:

The Hon. J.F. STEFANI: That is when the negotiation of the wage becomes the issue between the two parties. It has been my experience that that situation has occurred and therefore there is an adjustment of the wage. The second issue that comes to the test is through the WorkCover legislation (where there are clearly defined relationships) where an employee is treated as an employee, and if it is a contract relationship certain tests have to be met, otherwise the employer is liable for any levies and penalties if an injury occurs to an employee.

The Hon. T.G. Roberts: Except when they go out for lunch.

The Hon. J.F. STEFANI: That is another issue. I want to bring those two points before this Chamber because they are realistic tests. They are commercially applied in every day business when the tax office or the WorkCover auditors check businesses.

The Hon. M.J. Elliott: Do they go to the home of outworkers?

The Hon. J.F. STEFANI: They go to the places where they are engaged by the businesses, and that is where they pick up this information. Without extending the debate, I wish to put those two issues on record. They are tests that are applied and I consider them to be realistic tests of the relationship between parties.

The Hon. ANNE LEVY: I, likewise, do not wish to prolong this debate but I would point out that WorkCover provisions and taxation provisions only apply to people who earn a certain amount. Plenty of outworkers do not earn $5 000 or whatever it is per year; they do not reach a taxable amount and so the taxation laws do not come into it at all.

Members interjecting:

The Hon. ANNE LEVY: The taxation laws only apply if you earn a certain amount.

The Hon. J.F. Stefani: You have to have a declaration on file.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: Yes, they say they are not employing them.

The Hon. J.F. Stefani: Even subcontractors have to have a declaration on file; don't you know that? The prescribed payments system—

The Hon. ANNE LEVY: Yes, but if it does not reach a certain amount they do not want to know you. The only comment I would make to the Attorney-General is that I agree that perhaps the wording of the amendment is in a different style from that of the rest of the Bill. This Bill will obviously go to a conference. It may be that between now and

when the conference is held Parliamentary Counsel could devise wording which fits with the rest of the Bill but ensures that these loopholes are not available. I am sure that there will be commonsense applied. It is not the wording but the principle we are concerned with.

Amendment carried.

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

Page 7, lines 11 to 19—Leave out subclauses (2) and (3) and insert—

(2) A group of employees consists of two or more employees employed in a single business or at a particular workplace or particular workplaces in a particular occupation or particular occupations but the group must include all the employees employed in the business or at the workplace or workplaces (as the case requires) in the relevant occupation or occupations.

The Opposition amendment seeks to ensure that enterprise agreements cannot apply where there is only one employee employed by an employer. In such a situation the employee should be protected by the minimum rates award. If the employer wishes to pay above award wages and conditions they are free to do so. The Opposition does not support a position where only one employee, on their own, has to negotiate an enterprise bargaining agreement with their employer when the power relationships between the two are clearly so unequal as to manifestly favour the employer.

The Opposition's amendment also insists that if an enterprise agreement is to be entered into it must cover all of the occupations of a particular class. For example, if an enterprise agreement is to be entered into for clerks with a particular employer all clerks should receive the benefit of the enterprise bargaining agreement and not only a limited or small section of those workers. The employer is still free to enter into an enterprise agreement, say, for example, with just its drivers or storemen and packers but, if it wants an enterprise agreement with those people, it must be for all of those employees, not just for a small section of the same class of worker.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. Subclause (2) deals with a class of employees in addition to all employees. So that if the employer wishes to enter into an enterprise agreement with a class of employee, maybe permanent employees, whether full-time or part-time, rather than the casual employees, then the employer is entitled to do that. There may be a very small business where the employer and one employee are happy to have an enterprise agreement, remembering two things: one, that the enterprise agreement must be approved by the commission before it is binding and valid, and, secondly, the employee ombudsman can become involved if there is a dispute between the two.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, the employee ombudsman can be involved even without coercion.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: And give advice, but the commission has to be satisfied that there is no coercion. It is quite straightforward. My question is: why should one exclude one employee and one employer when we do not exclude two employees and the one employer? It just does not make sense. What you are saying is that that employer and employee cannot enter into an enterprise agreement, which is to be registered before it is binding and enforceable, and run the gauntlet of the enterprise agreement commissioner. With respect, it does not make sense.

What you are then doing is saying that the employer and employee have to then, if there is an award, depend upon the award, when it may not suit either of them to do that. It may be more convenient for both of them to have some modification of hours or the conditions of employment. In those circumstances, one really ought to be able to have an agreement. The other point, just reiterating, if the employer wants an agreement with a particular class of employees employed in a single business or at a particular workplace, why should not the employer and those employees reach an agreement? Again it has to run the gauntlet of the enterprise agreement commission. There has to be no coercion and the other minimum standards have to be addressed. I would have thought in the context of what we are seeking to do, and that is to give flexibility with protections to employees, that we ought to be able to deal with the issue of enterprise agreements in this flexible way proposed in the Bill, but not allowed by the amendment of the Hon. Mr Ron Roberts. I therefore very strongly oppose the amendment.

The Hon. A.J. REDFORD: In rising to speak to this amendment, I am not sure that I precisely understand the intent of the amendment. However, it concerns me that it has the capacity to drag particular employees on a shopfloor down to the lowest common denominator. There are many situations where you have a group of employees who are dealt with on a particular basis, and it may be, as this Act and the awards and enterprise agreements develop, that they are dealt with purely and simply on the basis of an award or a general agreement across the board. My concern with this amendment is that there may be situations where you have a particular individual who is perhaps better or in a different work situation who may want to negotiate on his own behalf for what he wants himself. I know that I have been in that position where I have been an employee and wanted to be remunerated on a wholly different basis, because of my personal circumstances, from that which applied to other workers. The difficulty I have with this amendment, and the Hon. Mr Ron Roberts may correct me, is that it has the capacity to restrict those individuals who want to have their own particular basis of employment for their own purposes and for very good reason, without exploitation, from being able to embark upon that process. That is what concerns me about this amendment.

The Hon. R.R. ROBERTS: Your attitude is exactly what concerns us about this. You are talking about individual contracts within employees. What we are saying is where there is a group of employees, there ought to be an enterprise agreement that covers the circumstances of all of them.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: That may be your point. What we are saying is that by lodging in the commission a contract between one employer and one employee does not make it an agreement. It is an individual contract. The honourable Attorney said that this can be agreed and ratified by the enterprise commissioner. There is nothing specific which says you have to have everything possible in the enterprise agreement. It specifies some things that must be included, but basically as a minimum. There can be other agreements. You can get something passed, and members may recall the types of individual contracts that were produced at the time of the New Zealand changes. There was one well known pizza deliverer who had in his agreement a one liner for about seven or eight areas, which was an abysmal piece of industrial bastardry and exploitation of

workers but probably would have qualified because it had very basic ingredients which could have been approved.

I make no apologies, because I certainly have no attraction for individual employees, because it allows employers in a dominant situation to go around and coerce people into situations which are not in their best interests. If we are talking about an enterprise agreement, I take the point made by the Attorney-General as to what is the difference between 1 and 2, they are very small numbers. We are saying that a group of employees must make an enterprise agreement, not include a provision where an employee can go around individually, and screw them all down, which worries me about the contribution by the Hon. Mr Redford. You might have felt very comfortable in your situation and felt you were Frank Galbally of your profession, and that you ought to have been remunerated higher than somebody else. I am reluctant to believe that you would have gone forward and said you would take less than somebody else.

There will be situations where, from time to time and from work load to work load, you may be in a position to bargain higher or lower. I await with interest the Hon. Mr Elliott's contribution on this, but I am embarrassed by the point made by the honourable Attorney-General as to 1 and 2. The principle that we are espousing is sound. We are talking about groups of employers as against individuals in a clearly unequal bargaining position in an employer/employee situation, especially in times of recession or where there are cut backs in an industry and you are able to screw them senseless in some situations, where in other situations there is an upturn in the industry.

One only has to look back through industrial relations history when there was full employment and we had screams from employers saying we had to go to the Industrial Commission and the commission had to set those minimum standards and we did not go above those. The cycle changes, and the cycle will change in industries from time to time in favour on one occasion where there is a go ahead industry and there are markets to be had, and you will be able to negotiate reasonable wages, but there will be other occasions when the industry is in decline when those individual employers will be able to be screwed to the ground. I think the principle is clear there. If I am unable to convince the Hon. Mr Elliott of the principle involved, I will certainly seek to make some submissions later on in regard to these matters.

The Hon. M.J. ELLIOTT: I believe that the Hon. Ron Roberts might be tilting at a windmill on this occasion. On my reading of a particular class of employees, I do not see how you can possibly argue that, if two employees are in the same occupation within a workplace, they would be seen to be of a different class. I would have thought they were of the same class. In those circumstances, his fear about individual contracts for every employee I just do not see as being possible under the wording of this clause. I do not see any benefit gained by the amendment and will not be supporting it.

The Hon. T.G. ROBERTS: There are a number of contributions made in the Bill about reducing union power in relation to the awards as they stand now, but I really cannot see anything wrong with the way things operate in small business premises at the moment. Everybody knows where they stand. They know how to pay their minimums and how to pay their overawards to people and reward them in a way applicable to those people doing work outside their normal hours without claiming penalties—all sorts of personal arrangements that people have. I see this as an unnecessary step in relation to coverage. If people are looking at it as I do, perhaps as a blue eye clause, it is also a recipe for reliance on employer organisations to provide protection, cover, support and succour. If people are talking about minimising union representation in the whole of this argument, this clause probably builds in a relationship that builds in a reliance to employer organisations for advice.

Amendment negatived; clause as amended passed.

New clause 4A—'Outworkers.'

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

Page 7, after line 19—Insert new clause as follows:

4A.(1) A person is an outworker if—

(a) the person is engaged, for the purposes of the trade or business of another (the 'employer') to—

(i) work on, process or pack articles or materials; or

(ii) carry out clerical work; or

(b) a body corporate of which the person is an officer or employee and for which the person personally performs all or a substantial part of the work undertaken by the body corporate is engaged, for the purposes of the trade or business of another (the 'employer') to—

(i) work on, process or pack articles or materials; or

(ii) carry out clerical work,

and the work is carried out in or about a private residence or premises of a prescribed kind that are not business or commercial premises.

(2) A person is also an outworker if—

(a) the person is engaged, for the purposes of the trade or business of another (the 'employer') to—

(i) negotiate or arrange for the performance of work by outworkers; or

(ii) distribute work to, or collect work from, outworkers; or

(b) a body corporate of which the person is an officer or employee and for which the person personally performs all or a substantial part of the work undertaken by the body corporate is engaged, for the purposes of the trade or business of another (the 'employer') to—

(i) negotiate or arrange for the performance of work by outworkers;

(ii) distribute work to, or collect work from, other outworkers.

This clause seeks to clarify the discussion that we had when we talked about the inclusion of outworker. It extends that and explains clearly what we are talking about in respect of that matter. We have canvassed the arguments in respect of outworkers and agreed that we need to have some provisions in this Bill which cover the situation with outworkers, and I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: I have already indicated that we do not support this amendment. The substantive debate has already occurred on the earlier issue of the definition of 'outworker'. I merely record that position.

New clause inserted.

Clause 5—'Application of Act to employment.'

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

Page 7, lines 23 and 24—Leave out paragraph (b).

I recognise that a similar provision exists in the current Act, but I believe that this subclause is too broad. It seems to me that, if you have a permanent part-time worker working in your home, that should not immediately preclude a person from some sort of protection in terms of their work conditions, which effectively this subclause does. I know that things such as baby sitting and so on are included and I have no problems at all with that. However, I would like to see these matters handled by regulations, as covered in subclause

(c) and that the regulations should be a little more specific about precisely what workers are outside this Act rather than by the clause which I am asking to have removed, which I think is too all-encompassing.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The definition of 'employee' in section 6 of the present Act specifically excludes:

(e) any person employed by his or her spouse or parent;
(f) any person employed in a casual or part-time capacity where that employment is wholly or mainly carried on in or about a private residence and is not for the purposes of the employer's trade or business.

That is really a reflection of what is there already.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I know that, but I cannot understand why the Hon. Mr Elliott is seeking to exclude it.

The Hon. M.J. Elliott: All existing legislation is not perfect and that is why you are amending it, I thought.

The Hon. K.T. GRIFFIN: Yes, but you have not given a good reason why you want to exclude paragraph (b); that is all I am saying. It is already in the Act. I would hope that the Hon. Mr Roberts, because it was in the previous Government's legislation, might be constrained to vote against the Hon. Mr Elliott's amendment on this occasion. It will extend to domestic cooks, the person who comes into to do some cleaning or ironing, the baby sitter or the pensioner who comes into do a bit of gardening. If paragraph (b) is excluded it means that the Act then applies to all those people, and I must confess—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It is interesting that the Hon. Mr Elliott now wants to exclude things by regulation. We have put up a few of those propositions on occasions. He has had a go at me for my consistency of approach on this, yet here he is saying, 'Well, look, exclude it by regulation.'

The Hon. M.J. Elliott: Perhaps you did not hear what I said earlier—

The Hon. K.T. GRIFFIN: I was listening to you. Sometimes I can't make sense of what you say, but I listen to you. Generally we get on pretty well even though we might disagree but on this occasion it ought to be quite clear that, in a domestic situation, where it is not used for the purpose of trade or business, we specifically exclude casual or part-time workers from the ambit of the legislation.

The Hon. R.R. ROBERTS: I am not going to take up the Attorney-General's invitation to support his point of view on this. In fact, I do not know who put this proposition in the previous legislation, but I condemn them whether it was a Labor or Liberal Government. I do not believe there is a right to exploit workers wherever they work. That is my basic position.

The Hon. Diana Laidlaw: One wonders why anybody works at all, with your philosophy.

The Hon. R.R. ROBERTS: I tell you why they work: for remuneration; they do not go to work to get screwed by employers—that is one thing they do not want. I indicate I will be supporting the amendment as moved by the Hon. Mr Elliott.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: You persuaded me in your other arguments. You cannot always go on what is in the legislation. You are too persuasive, that's your problem.

The CHAIRMAN: Order! There is no need to get personal; it is only 20 past 9.

Amendment carried; clause as amended passed.

Clause 6—'Industrial authorities.'

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

Page 8—
Line 7—Leave out 'Relations'.
Line 8—Leave out 'Relations'.

This simply is a reflection of the Opposition's amendments with respect to the maintenance of the existing Industrial Court and the commission under its new legislation. They are consequential amendments.

The Hon. K.T. GRIFFIN: I oppose the amendments. The Hon. Mr Roberts has lost previous amendments in relation to this and I would have thought that it would not be necessary to move them. Certainly, where I have lost amendments and there are consequential amendments I do not intend to move those later.

Amendments negatived; clause passed.

Clause 7—'Establishment of the court.'

The Hon. R.R. ROBERTS: I oppose clause 7 and move to insert the following new clause:

Continuation of the Court
7. The Industrial Court of South Australia continues in existence.

This amendment, along with the equivalent amendment for the commission, is one of the more important amendments that the Opposition seeks. The continuation of the existing Industrial Court in this Bill is fundamental to the maintenance of judicial independence in South Australia. This is not the first time the Government would have heard about the matter of judicial independence in this Bill. It is well-known that the Chief Justice, Justice King, has written to the Attorney-General decrying the Government's attack on the independence of the industrial judiciary.

This matter transcends Party politics. The independence of the Industrial Commission and the Industrial Court has been an irreplaceable foundation for stability of industrial relations in South Australia. The Government is seeking to break the mould of judicial independence that has served the South Australian system so admirably for so long. There is no justification whatsoever for the Government's provision. In its own policy (page 7) the Liberal Party states:

The Industrial Commission will continue.

The Government is unable to claim any sort of mandate for this reprehensible attack on judicial independence. It is apparent from other provisions in the Bill that the Government fundamentally misunderstands the notion of the separation of powers. Conversely, it is a matter well understood by the South Australian community. South Australia has been well served by an independent industrial judiciary for many years, and the community will not support any attack on that independence.

The ways in which the Government's Bill undermines that independence are twofold. First, the Government will be able to decide under its provisions that a member of the commission or the court will not be reappointed upon the establishment of the new bodies. This is clearly a means for the Government to move aside those members of the commission or the court whom the Government considers will hinder the implementation of Liberal Party ideology.

Secondly, the Government proposes to put members of the court and commission on fixed term contracts. A fundamental tenet of judicial independence is that members have tenure. Members should not consider that they have to tailor their decisions to please a Liberal Government, nor to obtain a renewal of their contract. Such pressure would have obvious

ramifications given that the Government is the largest single employer in South Australia. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: The Hon. Ron Roberts misrepresents the position that the Government has taken in relation to the court. We propose that there will certainly be a new court. It will be the Industrial Relations Court of South Australia and, as far as I am aware, the Hon. Mr Elliott will support that, but we will deal with the issue of the composition of that court in the transitional arrangements.

I certainly intend to outline when we get to clause 14 what the Government proposes to do about the court and the commission. That is the appropriate place to outline what we are seeking to achieve. The Committee will have seen from newspaper reports over the weekend that the Government has been considering the issues raised by the Chief Justice. We do not agree that the propositions in the Bill, in the transitional provisions in clause 9, impinge upon the issue of judicial independence, but we have indicated that, if it is necessary to put the issue beyond doubt, we will have some amendments, and those amendments are being drafted.

As soon as they are drafted they will be put on file and, with the concurrence of the Committee, when we get to clause 14, having identified what the format of the amendments will be, we will recommit that part of the Bill after members have had an opportunity to consider the amendments.

This is a complex issue and there are varying views about judicial independence and the extent to which it is affected by one or other actions of Governments from time to time. The Hon. Mr Sumner, as the former Attorney-General, had to address this issue on occasions and Governments will continue to have to address it as they deal with issues about courts, commissions and other tribunals. I can indicate that we certainly oppose the amendment and will be addressing the substantive issues when we deal with the composition of the court.

The Hon. M.J. ELLIOTT: I would like to move an amendment that I do not have on file. I move to insert the following new clause:

Continuation of Court

7. The Industrial Court of South Australia continues in existence as the Industrial Relations Court of South Australia.

To suggest that a new court is being created is a fallacy. It is a matter of political convenience that a new court is being created. Certainly, it is not a new jurisdiction in any significant way that is being created; largely the way it works is the same. There is an addition to some of the matters it covers but substantially it is the same court. I note also that this is something of which the Government gave no hint in its policy. It is a substantial change which has caused a severe backlash broadly throughout the community.

I was not willing to support amendments about the name because, at the end of the day, the name is neither here nor there. However, to support a charade that we are establishing a new court would be exactly that. It would be supporting a charade, and I will not play a part in that. Whether or not other matters need to be addressed later, we can determine as we deal with the other clauses. However, the clause as it stands is a falsehood and I am not willing to support it, and that is why I have moved my amendment.

The Hon. K.T. GRIFFIN: That is disputed. Certainly, there are similarities in the jurisdiction but there are also some changes in the jurisdiction, particularly because this Bill now places a significant emphasis on enterprise agreements and the necessity to appoint an enterprise agreement commissioner. It is in the circumstances of the different approach that this Government believes needs to be taken that we believe some changes are necessary, particularly to the nature of the court.

The difficulty at the moment is that this is a court that has a limited jurisdiction in relation to some industrial matters, with something like 70 per cent or 80 per cent of its work being taken up with the Workers Compensation Appeal Tribunal dealing with appeals in relation to workers compensation.

In fact, in the past year or so a number of the judges formerly with the Industrial Court were transferred back to the District Court: Judge Allan, Judge Russell and Judge Lee, and there may have been a few others. They were transferred because there was not enough work in the Industrial Court. Depending on what happens with the High Court challenge, there may or may not be sufficient work for the South Australian court, whether it be the Industrial Relations Court as a new court or the Industrial Court as the continuing court as proposed in the amendment.

The fact of the matter is that, if there is insufficient work in that core industrial area, one has to question why one wants an Industrial Court. Why do you want an Industrial Court if 80 per cent of the time of the four judges who are there is taken up as members of the Workers Compensation Appeal Tribunal, not with industrial matters as such?

An honourable member interjecting:

The Hon. K.T. GRIFFIN: They might be doing a good job in workers compensation, but it is ludicrous to suggest that we ought to continue with a court such as the Industrial Court, or the Industrial Relations Court as a continuation of the Industrial Court, with a President who has the status of a Supreme Court judge and paid more than a puisne judge of the Supreme Court and Deputy Presidents—other judges of the jurisdiction—who are paid more than District Court judges, mainly because they are in line with what the Canberra Presidents of the Industrial Court are paid.

They are paid more than the District Court judges, and look at the work they do: they do a bit of legal work in relation to the Industrial Relations Act on points of law and appeals from the commission and that is it, plus workers compensation.

So, if you are looking at remuneration packages, you have to ask why they should be paid more than judges of the District Court, who are actually exercising a very diverse jurisdiction. They exercise jurisdiction in criminal and civil matters; in civil matters they exercise unlimited jurisdiction, similar to the jurisdiction of the Supreme Court; and, in criminal matters, all matters except murder and treason. Serious trials are dealt with by the District Court. You really have to question whether you need four judges doing that sort of work or whether you cannot adopt a new framework in which those sorts of matters are dealt with.

The Industrial Court really acts as a court of appeal from the industrial magistrates only in terms of its criminal jurisdiction, but the industrial magistrates do not deal with indictable matters; they deal only with summary matters, that is, matters carrying penalties of imprisonment of up to two years. There is some question about whether industrial magistrates ought to be dealing with those sorts of matters, anyway, away from the mainstream of the courts, where there might be more consistency of approach, where there is not just the primary focus on so-called 'industrial offences' and where there can perhaps be a greater level of consistency in

the penalties that are imposed across the range of offences which come before the courts, rather than working in splendid isolation from the mainstream of the courts.

In terms of the Industrial Court, one does have to question seriously whether merely exercising that limited appellate jurisdiction in relation to criminal statutory offence matters and the limited jurisdiction on appeal on legal matters under the industrial relations area of the law warrants a court of this status.

The Government had intended to address that issue by the transitional provisions in clause 9 of the first schedule, where we were seeking to ensure that some flexibility was given in relation to the changed jurisdiction of the court and the limited work which was being undertaken. Already in the workers compensation area there has been a suggestion by the President that because they are now listing matters in December and January they need an additional judge or at least a temporary judge to undertake some of the work to keep the trial list delays down. That is fair enough.

The Government and I would like to see a much more extensive exchange of judicial officers between the District Court and the magistracy on the one hand and the industrial jurisdiction on the other. We would also like to see the commission distinguished from the court so that the commission is not necessarily chaired by a legal practitioner or a judge but that we have some options there, because we do not really need a legally trained person as the presiding member of the commission. But, in relation to the court, the Government and I refute the assertion made by the Chief Justice and the judges that the independence of the judiciary was significantly prejudiced by what the Government was proposing in the transitional provisions. To put that beyond doubt we have in mind that the judges of the new Industrial Relations Court would actually be judges of the District Court assigned to the—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: We would propose to designate judges from the District Court to the Industrial Relations Court in much the same way as the Youth Court was established. The Youth Court has judges who are judges of the District Court designated as judges of the Youth Court and judges who are designated as either principal judiciary or ancillary judiciary. A number of judges, for example, in the District Court, go on circuit to outlying parts of South Australia and are designated as ancillary judiciary of the Youth Court. They sit in the Youth Court jurisdiction when they get to the country location.

The same applies to magistrates. There are principal magistrates—two of them at the moment in the Youth Court—and there are ancillary magistrates who are magistrates in the Magistrates Court but who are designated as Youth Court ancillary magistrates for the purposes of hearing matters in suburban and other courts around South Australia.

If we follow the model of the Youth Court, let us face up to the fact that the Youth Court jurisdiction did not change significantly, yet the previous Government brought in legislation that sought to and did abolish the old Children's Court. It established a new court, the Youth Court; it translated Judge Newman and other judges and magistrates back to their traditional jurisdictions; and it allowed the Government of the day through the Governor to designate District Court judges as principal judges of the new Youth Court, and the same with magistrates.

No-one then complained about interference with the independence of the judiciary. It was accepted by the Parliament, by the Australian Democrats and the Labor Party which was in power, that this was an appropriate course to follow. The judges of the then Children's Court retained their status as judges, but they were moved to the original jurisdiction and a new judge of the Youth Court was appointed with one of the judges of the old Children's Court continuing in office.

Under the Youth Court Act the judges were to be appointed for terms not exceeding five years. There is no fixed term, except that they cannot be appointed beyond five years. They could be appointed for two years, one year, two years. No-one then complained about judicial independence being interfered with. The initial appointments can be for up to 10 years in the Youth Court and then they go back. There has been some concern that the period of appointment is for five years only and it may be that at some time in future that will be changed and extended. But Parliament will make that decision, not the executive arm of Government.

We take the view that the way to put beyond doubt the issue of judicial independence is to ensure that in the new Industrial Relations Court no judge is removed from office, no judge loses his or her benefits, pension, holiday leave, sabbatical leave (six months after every seven years), sick leave, non-contributory pension and all the rest of it. All that is retained.

The Hon. T.G. Roberts: Who gets that?

The Hon. K.T. GRIFFIN: All the judges. Looking at clause 9 in the transitional provisions, this Government was proposing that their status and benefits would be retained but we would seek to appoint a new court. In my view, no-one can complain that they were being sacked, because they were not; no-one can complain that their status was being changed, because it was not: they could go back to the District Court. They are being paid more than District Court judges, but we intended that there should be no increase in salary until the salaries and remuneration of the other judges of the District Court reached the same level as that of the judges of the Industrial Relations Court.

The only difficulty related to Judge Stanley, the President of the Industrial Relations Court. We recognise that under the Act he has the status of a Supreme Court judge and he is entitled to be known as His Honour Justice Stanley. The Government proposed that we would retain all that: he would retain the status; he would be entitled to be called the Honourable Justice Stanley; he would be entitled to retain a salary which was higher than that of a puisne judge of the Supreme Court; he would be entitled to retain his non-contributory pension; he would be entitled to continue until age 70; and he would be entitled to retain the benefit of six months sabbatical leave after every seven years. I point out that if they do not use that leave they get retirement leave before they retire at age 70. Everything was being protected. As 70 per cent of his work was workers compensation, we had in mind to delegate his task to the workers compensation area. What can be less confrontationist in relation to judicial independence than that sort of scheme?

They are the sorts of propositions that we will still be putting forward for consideration. We believe that this jurisdiction has significant changes from the jurisdiction which the Industrial Court presently exercises in no way different from that of the old Children's Court, which was abolished, and the new Youth Court with some members of the old Children's Court appointed and some new members as well. We did not raise a problem about that, even though during the debate there were some suggestions in one or both

Houses that the target of the Government of the day was Judge Newman because it wanted to get rid of him. We did not argue that there was any infringement of judicial independence in those circumstances.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, I did not want to get rid of Judge Newman.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I do not know what the Chief Justice did in those circumstances. The point is that we will be moving to put beyond doubt the issue of judicial independence. The Chief Justice has circulated letters and the Law Society has made a statement about it, but if members ask any ordinary person in the street whether a fixed term appointment and protection of all the benefits, salaries and status mean that the Government is trying to get rid of somebody or is undermining judicial independence, they will laugh at you. In those circumstances, we are prepared to put forward a proposition which enables a new approach to industrial relations to be undertaken with a new court and a new commission. That is the way it ought to be. The amendments are not quite ready for circulation—they are still being drafted—but we will be putting forward those propositions.

The Hon. R.R. ROBERTS: I am impressed by that passionate display. The only trouble is that if those laudable things that the Attorney-General says he is going to do were always his intention before the Supreme Court judges and before the Chief Justice spoke out, why was it not in the legislation when we started? Clearly it was not in the legislation.

We shall be supporting the Hon. Mr Elliott's amendment because he picks up the same concerns as we have. Frankly, we were concerned that the Government was going to disband one court in order to get rid of one lot of judges and introduce a new court with a few people on which it could rely to do its bidding, and I am still of that belief.

The Attorney-General has said that there was never any problem about the independence of the judiciary. Today he is saying that the Chief Justice, the Federal Law Society and the Supreme Court judges are all wrong. Therefore, the only person of whom we know with judicial experience is the Attorney-General: everybody else is wrong. I am surprised that the Attorney-General should say, 'Don't worry about all this. We are going to introduce something down the track which will fix it up and it was always our intention to do it anyhow.' However, it never showed in the legislation until the things that have taken place in the past few days with the Chief Justice having to step forward and say, 'This is intolerable.' All of his colleagues have agreed with him, including the Federal Law Society. We shall be supporting the Hon. Mr Elliott's amendments.

The Hon. M.J. ELLIOTT: One thing can be said for legal training: you are trained to argue even when you are wrong, and the longer you are arguing the more likely you are to be defending something which is wrong because you are busy justifying yourself. I do not believe it was a matter only of the Chief Justice. I think all the judges of the Supreme Court were of that view, and certainly Mansfield, representing the Law Council of Australia, speaking more generally on behalf of the legal profession. I can assure the Attorney-General that many other people, both inside and outside the practice of the law, were also expressing concern.

We have not seen the amendments yet, but we are told some amendments are coming. I would like to make the point that simply guaranteeing that the members of this particular court remain judges of the District Court, might guarantee that their conditions, superannuation, and everything else remain intact, but that is a different issue again from the independence of the court. I am not talking about the independence of the judiciary or a particular judge and the influence that the Government may or may not bring to bear on them, but the very fact that the Government may put in the particular people it wants in a particular court, and that it may be removing people it does not want in itself is an attack on the independence of the court as distinct from the independence of the judiciary in terms of the individuals.

I am not convinced, from what I have heard so far, that the amendments to be moved by the Government in fact tackle the question of the independence of the court as distinct from simply guaranteeing that anybody who is a judge stays a judge and is paid whatever he or she is currently paid, and whatever other perks and privileges go with the job. I do not say that to reflect on the judges, but in my mind that is a side issue if you genuinely believe in the independent way that our court system functions. Without having seen the amendments it is difficult to take things further.

I make the point again that while there has been some modification in the jurisdiction it is essentially the same jurisdiction, and the point we are arguing at this stage in clause 7 is whether or not we are in fact creating a new court—I do not believe we are—as distinct from what I think the Government is looking for: the justification to place particular judges it wants into the court. This is the mechanism by which it can do it, and it is an attack on the true independence of the court system, which is my concern.

The Hon. K.T. GRIFFIN: The Hon. Mr Roberts asks why what I was suggesting was not already in the Bill? The fact is that the Government believes that the way in which it had approached the issue was not an infringement of the principle of judicial independence, simple as that. But what we have indicated is that, the matter having been raised with us, we do not want a confrontation with the courts about what is or is not an infringement of the principle of judicial independence. We said, 'We will address it so that it puts that issue beyond doubt.'

I acknowledge that the Hon. Mr Elliott and the Hon. Mr Roberts have not seen the amendments, but they will be on file in time for us to debate it when the provisions are debated, and they will have a real opportunity to consider them, hopefully overnight, so that we can deal with them tomorrow or Thursday, whenever we get to finally recommitting the Bill. What we are seeking to do—

The Hon. R.R. Roberts: Which Thursday is that?

The Hon. K.T. GRIFFIN: Depends how long we keep going. The issue is judicial independence. What do we mean by judicial independence? Everyone talks about judicial independence and it means different things to different people. The Leader of the Opposition, when he was debating the issue at the second reading stage last week, said that he had no objection and saw no objection to a fixed term of appointment, fine. He did not recognise that when he had the Youth Court Bill before us last year, because the Youth Court Bill provides that appointments can be made for periods which in aggregate do not exceed five years. So, you can have a two year appointment renewed for a year and appointed for another two years.

He was in conflict with what he was proposing in the Parliament last year. That is the first issue. If he means fixed term, I can give an assurance that we will fix that because our amendments will provide for a fixed term: no renewal, six

years. But the initial appointment is for 10 years. We will fix it. They do not have to come back and look over their shoulders and say, 'Am I doing a good job for the Government because if I'm not I will not get reappointed.' A fixed term gets rid of that argument about infringement of the principle of judicial independence.

Then, are we sacking judges? No, we are not sacking judges. We would not even dare to sack judges. No fool would ever try to sack judges. If you do you will have the whole weight of the legal profession, not just in Australia but around the world—

The Hon. M.J. Elliott: You could sack the court.

The Hon. K.T. GRIFFIN: Let me just answer that. What happened last year with the Youth Court? There was a Bill in this place that passed with the support of the Australian Democrats, and the Hon. Mr Elliott was here, which abolished the Children's Court. It removed the Senior Judge back to the District Court.

The Hon. R.R. Roberts: He just said that.

The Hon. K.T. GRIFFIN: I interpreted what the honourable member had to say as a criticism of the abolition. Ultimately Parliament has to make the decision. I accept that Parliament comprises—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Parliament makes the decision and if both Houses agree to a certain course of action, that is fine. Ultimately no-one can argue that a Parliament cannot abolish a court; no-one can argue that. That is not an infringement of the principle of judicial independence. It is not an infringement of that principle. But what is unsavoury, and I think inappropriate, is for a Parliament, merely by an Act of Parliament, to dismiss a judicial officer. There are mechanisms in our constitution—an address of both Houses of Parliament— for removal of judges without cause. It has only happened once in the history of South Australia, with Mr Justice Booth in the early days of the colony.

Parliament can dismiss without cause, but it has not been done. It is a cumbersome process and it means basically that judges are not accountable to the Parliament. In theory and constitutionally, yes, but in practice, no. No-one can tell me that by Parliament abolishing a court—not the Government—it is an infringement of the principle of judicial independence. If you did argue that you would have to say that if, over 150 years, we established a whole range of courts, we could never abolish them. Look at the Federal Labor Government: it has abolished its Industrial Court; it has a new Industrial Relations Commission.

It has done this on a number of occasions. South Australia used to have a court of insolvency and that has been abolished because the jurisdiction was ultimately taken over by the Federal Government by Act of Parliament. It cannot be argued that abolition of a court is an infringement of judicial independence. If that point is reached you then have to say, 'What does judicial independence really mean?' Sure, we intend to preserve the status, position, salary, remuneration, and all the rest of the present judges. But the Parliament is entitled to translate judges to different jurisdictions, if it so wishes. That is not an infringement of the principle of judicial independence.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I am talking about the constitutional issue. Parliament is entitled to shift judges to new jurisdictions. One has to remember, in any event, that at least two judges of the Industrial Court already hold commissions as District Court judges. The only two magistrates also are magistrates in the Magistrates Court. So, really, where is the problem? I understand that the Hon. Mr Elliott, the Hon. Mr Roberts, and other members of the Committee have not seen our amendments and it is therefore difficult to make a final judgment on those.

All I ask is that there be an open mind on it, in the light of the experience of the Parliament, and the experience when the previous Government was in power when the Parliament passed legislation to deal with the Youth Court. It established the ERD Court and it established the Coroner's Court with a 10 year tenure for the Coroner. All those issues are relevant in determining how we will approach this issue.

All I ask is that we keep an open mind on it and not close it off. The Hon. Mr Elliott has moved an amendment. If that is carried for the moment, I hope when he sees my amendments he will be able to keep an open mind on them and consider the issues of principle, rather than our talking about judicial independence without really defining what we mean by that term.

The Hon. T.G. ROBERTS: I am prepared to keep an open mind on the matter because I have not seen the amendments on the basis of the contribution made by the Attorney-General and the amendment put forward by the Democrats. The arguments that the Attorney-General put forward this evening I do not think would have been the same arguments had we had the Bill before us last week. I suspect that time and pressures from outside have caught up and I suspect that the amendments may have a conciliatory approach to the settlement of the matter and perhaps the amendments may line up in accord with perhaps what the Hon. Mr Elliott is saying, or if they do not, they will be quite close to it. Had we been rushed into considering this proposition this time last week, I suspect we might have had some sort of toing and froing on it and we might have had to settle it in conference or some other way. I suppose that is what conciliation and discussions are all about, and hopefully we can come to some settlement on it.

I certainly do not have a legal background, far from it, but I do not take the Youth Court appointments in the same principles as the Hon. Mr Griffin. I take the principles that the decisions made in the Youth Court in general terms do not have political implications in relation to the decisions being made. You can get a whole load of decisions in the Youth Court that perhaps reflect on unfair sentencing or sentences that are a bit light and perhaps impact back into the community. There are some residual problems associated with sentencing but, in the main, unless there is a huge outcry and a whole series of related events that do impact importantly politically, you do not get the political pressure to start influencing the courts on the way they make their decisions. Had the process been continued—

The Hon. K.T. Griffin: Are you suggesting they should be politically motivated in the industrial courts?

The Hon. T.G. ROBERTS: No. What I am suggesting is that had we been considering the same proposition this time last week, we may have been looking at concerns about some of the pressures that might be applied back into the courts to make decisions that would have had a political understanding or an outcome in relation to some of the people that lined up on the benches. In many of the cases, the independence of the judiciary is already established by those individuals in those courts. They have an open mind and an independent mind. In other cases there are people who do take into consideration the Government's position of the day and their political

colour. It is a hypothetical argument we are discussing at the moment. I do not think it is relevant.

When we look at the amendments and weigh them up, we will be in a better position to judge. An overall comment on the circumstances in which we find ourselves, I really think we are building a *Mayflower* to go onto the Grand Prix track, not just in relation to the aspects of the courts but in relation to the whole of the Bill. If you look at how the industrial relations system worked in the 1970s, I was part of an organisation that advised its membership never to go near the commission, to always solve their disputes with the employers, and if they did not have the industrial muscle or negotiating ability to work out their employer's ability to pay, and to work out a fair and equitable arrangement in relation to—

The Hon. K.T. Griffin: Was that Don Dunstan's era?

The Hon. T.G. ROBERTS: It was before industrial democracy, actually. It was one of the reasons why industrial democracy was put on the agenda, to try to get some balance between employer and employee relationship, because it was a jungle out there. There was a class war being fought in the workshops. That whole class has gone.

The Hon. A.J. Redford: Who won?

The Hon. T.G. ROBERTS: I think it has been called a draw. The accord spelt out the new rules in which the industrial debates were to take place. The point I would make is if you were to draw up an industrial and employee relations Bill to suit the climate of the 70s, the one we have before us is the one that we would have. The point I would make is that we have moved a long way towards an employee/employer relationship that is based on mutual respect for each other's position to survive in the marketplace and for the nation to have a general direction in which to go and that there are many issues that both employee and employer organisations can agree to address in a way that is non-confrontationist. In 20 years we have come that far. It has been quite a remarkable turnaround.

I would place less emphasis on arbitration and more emphasis on conciliation in relation to the way to proceed, but we have almost set up a two-tiered system here where you will have some people availing themselves of the courts and commissions and others able to establish working relationships at an enterprise level. I suspect that what we may be doing is drawing together an industrial relations system that really bears no relation to the marketplace. That is a little unfortunate, but it will depend a lot on how we are able to pool all aspects of the awards—and the Hon. Mr Elliott made the position quite clear in the early stages—the relationship between the awards, the agreements, the commission and the industrial workplaces as to whether or not the system will work, or whether we have a whole lot of red tape that will mitigate against poor industrial relations. Only time will tell.

I suspect that there will be a lot of conferencing, and a lot of employer organisations running seminars. There will be many unions trying to interpret the new industrial relations law in a period when I would have thought that industrial harmony and worker/employer relationships harmony is what is required to put us on a fairly sound footing in a lead up to what I see as a reasonable upturn in the economy.

The Hon. M.J. ELLIOTT: I think the Hon. Terry Roberts hit the nail on the head when he talked about the potential for this particular court to be political. All courts have the potential to be political, but I do not think any court has as much potential as this one to be political. Under it are the matters that are at the very tensions that we see between Labor and Liberal, between employers and employees. The tensions that exist between them have the potential to appear within this court. As I said, like no other court, it has the potential to be significantly political. In such circumstances, the capacity to amend significantly the composition of that court and to change it (although we are still guessing at what the Government will put up next), is a significant opportunity to politicise the court. When we consider all the pluses that this legislation potentially offers if we get it right, it is just unnecessary. There was nothing in the policy to suggest there would be a change. There has been no substantial argument put forward as to why there should be a change. Whilst bringing in enterprise agreements, the change is not a substantial change in the jurisdiction. There has not been a substantial case put to me for wanting to create a new court and all the other things that go with it, and all the arguments that have now been opened up about the independence of the court, rather than just the independence of the judiciary itself.

It has the capacity for the court to be politicised in a way that I do not think has existed previously in South Australia. It is such a stupid thing to do when the legislation is offering real opportunities elsewhere. If we get a safety net and we get it right, the award system is working properly and we encourage many people to go into enterprise agreements, South Australia will reap enormous benefits. If we put anything into this legislation that creates the opportunity for the industrial system to be politicised, it is a backward step, and it is unnecessary.

The Hon. A.J. REDFORD: In making this contribution, as a lawyer, I am conscious of the Hon. Michael Elliott's comments about the contribution of the Attorney-General in that he said that it was very persuasive and it sounded very good but the Attorney-General was a lawyer so therefore he dismissed it. Labouring under that disadvantage—and I appreciate that it does not matter how persuasive or how logical I am, my argument is about to be dismissed—I ask the Hon. Mike Elliott to keep these things in mind when he does in fact see the amendments. I have not seen those amendments, either, and I am relying to a large extent on what the Attorney-General has said in regard to the shifting of the existing court into the District Court. The first point that the Hon. Mr Elliott makes, and I think a significant point, which needs to be rebutted, is that he is concerned that the transfer of this court into the District Court is a political exercise.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: Assuming that that is the way the legislation reads, and I understand that the honourable member has some degree of cynicism with that. But assuming that that is the way it turns out and that it is what we intend to do and in fact what the legislation says we ought to do, I suggest that the honourable member might consider the fact that the District Court has a reputation of being far less political than any other court in this State. The Industrial Court in fact does have a reputation, rightly or wrongly, as being a political court; that employers and employees have for quite a number of years perceived that court as a political court.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: Yes. Whereas the District Court which has some 22 judges and which has a broader spectrum of people, much broader experience, a much broader background and certainly the intellectual capacity to deal with issues of this type is far less likely to be perceived as a political institution than a specialist court such as the Industrial Court, particularly as it now stands. It seems to me that it gives the community the opportunity to be exposed in

industrial relations to a much broader perspective and a much wider set of views—

The Hon. T.G. Roberts: A wider set of views but narrower interpretation.

The Hon. A.J. REDFORD: I reject that on the basis that, in my experience of over 15-odd years of having been admitted to the bar, there has never been any suggestion that the District Court is political. In fact, it is the least politicised court of any court—

The Hon. T.G. Roberts: I said, 'narrower interpretation'.

The Hon. A.J. REDFORD: How can you say that?

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: You cannot say that a lack of experience means a narrowness in interpretation. That is wrong. In fact, if you bring them into the District Court you give employees—and I know you are principally concerned with them, and some people outside your Party are concerned with employers—another tier of appeal; they can go to the Supreme Court. There is a level above the District Court. Indeed it protects the independence of the justices far more than the current system. It seems to me that you overlook what the Hawke-Keating Government did with the previous Arbitration Commission in a Federal sphere recently. If that had been part of the Federal Court structure there is no way in the world that the Keating-Hawke Governments would have been able to do what they did. That is the first point I make.

The second point I make—and I ask the honourable member to take into account my suggestion that he might think that the District Court is far less political—is that there seems to be in this place and, indeed in the community, a huge confusion as to what is meant by the concept of judicial independence. I remind the Hon. Michael Elliott of the extraordinary intellectual somersaulting that we have seen on the part of the Labor Party in the previous six months on the issue of judicial independence. The Hon. Michael Elliott might recall that sometime in June or July last year a Bill was presented to this place which established the Courts Administration Authority, and that was established on the misguided and incorrect principle as propounded by the then and existing Chief Justice; that the independence of the Judiciary was founded by the independence of the Judiciary as an institution. In fact, that is wrong; it is historically wrong and it has never been established, and we are now feeling the effects of that ill-founded argument imparted on this place by the Chief Justice.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: I say it for this reason—and your Hon. Mr Frank Blevins in another place is really pleased about this independence. At the first sign of trouble he whacks in a Bill on the other side and says, 'Listen, when the Governor gives a direction then the judges have to do what they are told.' That is the intellectual hypocrisy of your side of politics. As soon as it got a bit tricky the Hon. Mr Frank Blevins—and it is no mere coincidence that he happens to be slap bang in the middle of an electorate that happens to be losing a magistrate—suddenly says, 'Hang on, that independence is not good enough.'

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: Yes. They have the gall to come into this place, go on the high moral ground and say that we are going to have a clause in a Bill that says the Governor—and you and I know the Governor means the Government—can tell the Judiciary what to do. It is an absolute exercise in political hypocrisy so that Mr Blevins can run around in his marginal seat and pick up a few extra votes because he can say that he kept the magistrate. The problem with this whole debate is that you blokes have sat there and done somersaults on no less than three occasions in the space of six months. You have come along, you have said, 'Let's have a Courts Administration Bill.', you have given the Chief Justice absolute and complete control—and it is a control beyond any control that the independence of the Judiciary ever envisaged—and it gives the Chief Justice complete control over the District Court, the Magistrates Court and the Coroner's Court, which is absolutely starving for resources and which does not have the capacity to investigate why people die on our roads, why babies die in cots and why child restraints are unsafe.

All of that is now in the hands of the Chief Justice. You usurped that. You come along and you say, 'We want to have this court control because they might take magistrates away from country areas.' Then you come along and say, 'Hang on, this court might be a little bit disadvantaged. We are not going to let you shift them into the District Court—which has an absolutely admirable reputation for independence—we are going to look after our mates.' That is effectively what you have done. There is no intellectual honesty in anything that you have done on this topic in the past six months. The fact of the matter is that, if you analyse it, the independence of the Judiciary resides with the independence of the individual judicial officer.

The proposal as announced by the Attorney does not interfere in any way, shape or form with the independence of the individual judicial officer. There is no independence of the Judiciary if the whole of the independence of the Judiciary is founded upon the power of one single individual. The current South Australian court system, as promulgated by the Labor Party, shows that that in fact is the case. The Chief Justice has the complete power to veto any changes or any amendments in both the District Court and the Magistrates Court. You have confused the independence of the Judiciary, as saying 'That is the independence of the Judiciary as a separate arm of Government, as opposed to the independence of an individual judicial officer.' I fail to see how shifting judges from one court to another court that has an impeccable reputation can be seen as an attack on the independence of the Judiciary. I just cannot understand how, given your performance in the past six months, you can stand up and say that, because in effect your principles change from moment to moment and day to day, depending on which local constituency or which little vested interest group you happen to be supporting at any particular time. It is not a matter of high principle and you know it.

The Hon. T.G. ROBERTS: This is one of the important issues and it has been contentious in the public arena, in here and in another place. The Bill seeks to break up what is regarded by many people as the industrial relations club. Many people at all levels within the Liberal Party and its supporters—

The Hon. K.T. Griffin: Do you think it is a club?

The Hon. T.G. ROBERTS: No, it is just referred to as the club. It is the intention of the Bill to break down the relationship between the court, the employers and the unions. That has come out in some of the contributions.

The Hon. K.T. Griffin: Isn't that a good thing?

The Hon. T.G. ROBERTS: I will make my contribution and the Attorney can work out whether or not it is a good thing. The certainty we have at the moment is that the

industrial relations club has its own way of settling disputes within the industrial arena.

The Hon. K.T. Griffin: Not necessarily in the best interests of South Australia.

The Hon. T.G. ROBERTS: If the Attorney can show me cases where disputation has continued because of the industrial relations club—

Members interjecting:

The CHAIRMAN: Order!

The Hon. T.G. ROBERTS: I can show the Committee disputes that have been settled because of that industrial relations understanding—I will not call it a club but an understanding, because I am a bit more mature about how industrial relations operate—on the basis that the dispute has not been held up by legal argument in court. It has been resolved by telephone calls—

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: It is just a relationship that people have in going into dispute settling processes. What we have before us now is a changed relationship in a court that will not be determining the levels of understanding that would have existed in those chambers, union offices and employer organisations. People will be going in and the court will be making assessments of the Act based on law only. There will be no industrial relations interpretation. It will be a clear definition of what is included in the Act and a legal determination will be made that will not have an industrial relations component.

Many people say that is good, and that all those people in the industrial relations arena should abide by the law as determined by Parliament. That is fine, but those practical operators out in the field on a day-to-day basis know that the concept of the Bill as it stands is layering out industrial relations into confrontationist positions that will need another form of conciliation process to enable most of the disputes that will be coming through to be settled, if the intention of the Bill is defined in the Act. I believe that the cementing or changing of the relationship between the courts and the settlement procedure will be the basis for continued disputation.

We have just had a dispute at the Submarine Corporation for about 42 days; it was a totally unnecessary dispute about an on-site agreement around enterprise bargaining. The days of those disputes should be over. If we cannot get an industrial relations enterprise bargaining relationship set up with higher motives than screwing each other about, then I am not sure where we should be going to get a defined position. I do know that narrowing the definitions and the process of settlement is not a good outcome for industrial relations.

The Hon. R.R. ROBERTS: As to all the rhetoric that has gone on and the arguments about the differences involving courts and jurisdictions, the fact is that the legislation provides that the Industrial Relations Court of South Australia will be established. The Hon. Mr Elliott has scragged the Government in the scrum and exposed it for what it is on about. The Hon. Mr Elliott has said that the Government is going to have the same thing but with a different name—the same horse but a different jockey. The Hon. Mr Elliott has recognised the argument and we will support his amendment because he has hit the nail on the head. The Government is going to have a court; it wants to change the name of the court; and the Government was going to use this opportunity to get some of the legitimate people out and put a few toadies of the Liberal Party in. This amendment will stop the Government from doing that, and we support it.

The Hon. K.T. GRIFFIN: What we propose is a new horse, new jockey. Quite obviously—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You are perpetrating the fraud on the other side. We are seeking to establish a new court. No-one has yet answered how you can justify what happened with the Youth Court, which is going to be the same in relation to what we are proposing now. Why are you so antagonistic to what we are proposing? We are talking about a principle of judicial independence. I have enunciated that in clear terms and I do not think we can take it much further. The fact is that it will have some similar jurisdictions, some different. As I indicated, 70 per cent of the work of judges is done in the Workers Compensation Appeals Tribunal. It is ludicrous to have an Industrial Court with limited functions.

The Hon. M.J. Elliott: Why are you changing its name?

The Hon. K.T. GRIFFIN: It is becoming an Industrial Relations Court to focus on the changes of emphasis in the Bill.

Members interjecting:

The Hon. K.T. GRIFFIN: Everyone is talking about our putting our people in, but whatever appointments are made will be open for public scrutiny. The Labor Party has been in office for how many years.

The Hon. R.I. Lucas: For 20 years.

The Hon. K.T. GRIFFIN: For 20 years. We certainly do not want to politicise it. Rather, we want to have in place people who understand that South Australia is entering a new era of industrial relations. If it means breaking up the club, it will open up for South Australians—for employers and employees who are not part of that club—a new horizon. It will give them more opportunities and flexibility. That is what we are on about—a new day for South Australians—yet here we have the Democrats and the Australian Labor Party wanting to stick in the same old mould. We are about change and about prospects for the future of South Australians.

The Hon. M.J. Elliott: Why didn't you put it in your policy?

The Hon. K.T. GRIFFIN: We did put it in our policy that we are on about vision and change. All we are saying about this legislation is that this is a new deal for South Australians, and that means that we must change some of the old constraints—some of the old structures—and bring in the new.

The Committee divided on the clause:

AYES (6)

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

NOES (7)

Elliott, M. J.	Feleppa, M. S.
Kanck, S. M.	Levy, J. A. W.
Roberts, R. R. (teller)	Roberts, T. G.
Wiese, B. J.	

PAIRS

Davis, L. H.	Crothers, T.
Lawson, R. D.	Pickles, C. A.
Schaefer, C. V.	Sumner, C. J.

Majority of 1 for the Noes.

Clause thus negatived; Hon. R.R. Roberts' new clause negatived; Hon. M.J. Elliott's new clause inserted.

Clauses 8 and 9 passed.

Progress reported; Committee to sit again.

STAMP DUTIES (CONCESSIONS) AMENDMENT BILL.

Adjourned debate on second reading.
(Continued from 5 May. Page 770.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): On behalf of the Treasurer, I wish to respond to a number of questions raised by members in their contributions to the Bill. In particular, I understand that the Hon. Mike Elliott's position is that he would like the Government to place on the record its response to some of the questions he asked so that he might consider his Party's position in relation to the amendment to be moved by the Opposition and therefore the Democrats' attitude towards the Government legislation in its totality. I will refer first to the contribution made by the Hon. Anne Levy, who raised four main issues. The first was the suggestion that the Government should widen the proposed exemption to include transfers of the principal place of residence beyond just farm property. This is opposed by the Government because of the potential cost implications involved. The Stamp Duties Act already provides exemptions for transfers of the principal place of residence in some situations between spouses, and any further widening cannot be agreed to because of the very large budgetary implications of such an amendment.

We do not have actual figures on it, because the data are not broken down to the extent of rural transfers, metropolitan transfers, residential transfers, etc. However, out of approximately 50 000 conveyances of property each year roughly 20 000 would relate to house sales, the vast majority of which would be principal place of residence. Revenue from conveyance of property for 1993-94 is estimated at approximately $167 million.

The second point raised by the Hon. Anne Levy was that the Government should amend the criteria to ensure that the inter-generational farm transfer exemption is restricted to genuine farming situations. The amendment does this by adding a requirement that the sole or principal business of the transferor must have been the business of primary production.

The amendment is opposed on the basis that the proposed criteria set out in proposed new section 71(3cc)(1) and (2) are sufficient to ensure that the exemption will be limited to the target group—genuine inter-generational farm transfers—so that persons not engaged in primary production will not be eligible. The proposed criteria have been drawn in materially the same terms as those currently operating in Victoria.

The third proposition from the Hon. Ms Levy was that perhaps the Government should widen the rural debt refinancing exemption to include small business loans and principal place of residence loans.

I am advised that in another place the Treasurer, whilst opposing the amendments because of the cost implications, indicated sympathy for the amendments. That is a step forward, the Treasurer expressing sympathy for the amendments, but the cost implications were obviously too considerable as they related to small business. I am advised that, given the financial capacity, it was an area that would be looked at as a matter of priority at some time in the future.

The fourth issue raised by the Hon. Ms Levy was that the Government's claim that stamp duty was not being forgone was erroneous as duty would have been paid on transfer of the property when the parents died. The Government's response is that farmers have not been passing on their properties to their family group because of the stamp duty costs before they die. Stamp duty is not payable other than a nominal $10 on the death of the parent where a child takes the property by way of a will. This concession applies equally across the whole community. Therefore, in real terms the revenue impact will be small.

The Hon. Mr Elliott commented on a number of the issues raised by the Hon. Ms Levy, so the responses to him in relation to those questions are the same as to the Hon. Ms Levy. However, two additional items were raised by the Hon. Mr Elliott. One was the suggestion that the term 'intergenerational farm transfers' has a narrower scope than that currently being proposed in the Bill. The Government's response is that as part of the Liberal Party's rural policy release in November 1993 it was announced:

> We will waive the stamp duty where the transfer of land within the family unit occurs. The definition of 'relative' in the Bill is consistent with that policy. The definition is also consistent with Victoria's exemption of a similar nature.

I am also advised that the reference in the Liberal Party's rural policy to transfers of land within the family unit was a reference to intergenerational transfers, such as from grandfather-grandmother to father-mother, to son-daughter, and to intragenerational transfers such as brothers and sisters. The proposed legislation defines the scope of 'family unit' to include both types of transfer.

Those are the Government's responses to the queries that have been raised by members in their second reading speeches. I think it is fair to summarise the Government's position. A number of the amendments are laudable in their aim, but the simple facts of life are that the Government is in a precarious financial position and its financial capacity to do much at all is restricted by the findings that the Commission of Audit has brought down in the past few weeks and the work of Treasury in relation to the State's finances. Whilst individual members might like the Government to do more by way of tax concessions, indeed whilst the Government might like to do more by way of tax concessions, and whilst most could agree that there are equity problems when you move in one particular area and are unable to move in another area, the simple facts of life are that we do not have the money to extend the concessions beyond what is contemplated in the legislation.

If the amendment by the Labor Opposition were to be supported by the Australian Democrats, the simple fact of life is that the Government would not be able to afford that extent of tax concession. If the legislation, amended in that way, were to pass this Parliament, the money would have to come from schools, hospitals, roads, family and community services or some other area of Government services because the Government does not have a magic money tree.

Bill read a second time.

STATUTES AMENDMENT (WATERWORKS AND SEWERAGE) BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill ratifies charges made to Developers for the cost of augmenting the capacity of the water supply and sewerage infra-

structure, where specific proposed development makes that necessary.

The *Development Act* provides (and previously the *Real Property Act* provided) that Developers must meet the requirements of the relevant Minister with respect to water supply and sewerage services.

This usually means a requirement to pay for the cost of extending the reticulation system to service the new allotments. In some cases the development cannot proceed without building extra capacity into part of the existing infrastructure. This could mean building a new pumping station or tank, or merely enlarging existing infrastructure. Where this is required, the augmentation costs attributable to the particular development, is included in the conditions of approval of that development.

In 1987, the *Waterworks Act* and the *Sewerage Act* were amended to allow Developers to construct the extension of the reticulation system by private contract. Augmentation costs became a separate item; costed separately and charged separately.

The development industry generally accept the validity of the charge, however, is some doubt about the legality of the charge. This amendment cures any perceived defect.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides for the retrospective commencement of the Bill. Retrospectivity is necessary to put beyond doubt that charges for increasing the capacity of the infrastructure in the past were validly made. As mentioned earlier the development industry accepts that charges for this purpose are warranted. The need to increase capacity occurs because of additional demands resulting from division of land and it is generally accepted that this cost should be a cost of the division of the land. Section 109a of the *Waterworks Act 1932* and section 46 of the *Sewerage Act 1929* were inserted into their respective Acts on 1 July 1987. These sections allow developers to carry out infrastructure work at their own expense instead of paying the prescribed fee. They are both consequentially amended by the Bill and the Bill is made retrospective to the date from which they operated.

Clause 3: Interpretation

Clause 3 is an interpretative provision.

Clause 4: Amendment of s. 109a—Certain work may be carried out by owner

Clause 4 makes the consequential amendment to section 109a of the *Waterworks Act 1932* already mentioned.

Clause 5: Insertion of s. 109b

Clause 5 inserts new section 109b which allows the Minister to require a contribution towards the cost of increasing the capacity of the waterworks. If a developer pays the contribution but the division does not proceed because the application lapses or is withdrawn or because development authorisation is refused or conditional the amount of the contribution must be refunded.

Clause 6: Amendment of s. 46—Certain work may be carried out by owner

Clause 6 makes the consequential amendment to section 46 of the *Sewerage Act 1929* already mentioned.

Clause 7: Insertion of s. 47

Clause 7 inserts new section 47 in the *Sewerage Act 1929*. This section is equivalent to proposed section 109b of the *Waterworks Act 1932*.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

CONTROLLED SUBSTANCES (DESTRUCTION OF CANNABIS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The purpose of this short Bill is to clarify the powers of the police in relation to destruction of cannabis.

In a recent decision in the matter of R. v Sincovich, His Honour Judge Lunn held that, although police could seize an item for the purpose of preserving and retaining that property as evidence until a trial was concluded, it was unlawful for them to destroy it prior to any order for forfeiture being made in favour of the Crown.

Section 46 of the Controlled Substances Act provides that:

> A court before which a person is convicted of an offence against this Act may, by order, forfeit to the Crown any substance, equipment or device the subject of the offence.

This Section confers a discretion upon the court to order the forfeiture of cannabis plants, but by implication, only after the defendant has been convicted. His Honour went on to conclude that, if the police were to be entitled to destroy cannabis plants before they had obtained an order for forfeiture under Section 46 of the Act, they needed a statutory authority for it. Further, if the police hereafter destroyed plants without lawful authority, they risked the Courts exercising their powers to discourage such unlawful activities in accordance with Bunning v Cross.

As Hon. Members will appreciate, the only practical course available to police, once a sample has been taken for analysis, is to destroy the plants. It is impractical for them to store the large number of cannabis plants which come into their possession in such a way that they do not quickly decompose. Were they to attempt to dry and package them, they would encounter problems in keeping large numbers of plants secure while they were being dried.

The Bill therefore seeks to recognise the practicalities of the situation by providing the police with statutory powers to destroy cannabis. The interests of the defendant are also protected by the sampling requirements built in to the amendment.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for bringing the Act into operation by proclamation.

Clause 3: Insertion of s. 52A—Power to destroy cannabis

This clause inserts a new section into the Act that empowers the Commissioner of Police to destroy cannabis (i.e. cannabis plants, whether dried or alive—see definition of "cannabis"). Before cannabis is destroyed, sufficient samples must be taken for evidentiary purposes. The regulations will set out the rules for the taking of samples. A defendant must be given written notice of his or her right to have part of the samples analysed under section 53 of the Act. All samples will, however, remain under the control of the Commissioner of Police, or his or her nominee.

Clause 4: Amendment of s. 53—Analysis

This clause makes a minor amendment to section 53 of the Act, to make it clear that a defendant can initiate an analysis of any substance for any evidentiary purpose.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

STATUTES AMENDMENT (CLOSURE OF SUPERANNUATION SCHEMES) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The Government is concerned about the size of its accruing superannuation liability. Under present arrangements the total public sector employer liability for superannuation is currently around $4.4 billion.

In respect of the main state schemes, that is the State pension, State lump sum and superannuation guarantee scheme, the Government's unfunded superannuation liability is projected to more than double in real value over the next 28 years from $3.4 billion in June 1994 to $7.1 billion by June 2021.

Clearly, the government must at least take steps to slow the spiral in this accruing superannuation liability, which is a debt to be met by the taxpayers of this State.

This Bill which I now introduce, is a positive step to slow the increase in the debt accruing to taxpayers.

The Bill seeks to close the contributory superannuation schemes established for government employees, including police officers, to new entrants. In particular it is proposed to have the contributory lump sum scheme established under the superannuation act 1988 closed to new entrants as from 4 May 1994.

Those persons who have recently commenced employment or may commence employment shortly on the basis of a written offer, are provided with special transitional provisions under which they may still apply for membership.

The Bill also provides for those persons who become members of the Police Force following a period of cadetship that commences before 1 June 1994. These cadets will still be able to become members of the police superannuation scheme.

It is important to note that employees who are not members of the contributory schemes will still be accruing superannuation benefits. These employees are automatically members of the State superannuation benefits scheme which provides the superannuation guarantee benefits required under Commonwealth law. This superannuation guarantee scheme will continue and provide the Government's main superannuation arrangement for future employees. Furthermore, the Government will be giving consideration over the next few weeks as to whether the state superannuation benefits scheme should be expanded to accept voluntary contributions made by employees. Obviously such an expansion of the State superannuation benefits scheme will be on a non additional cost basis to Government.

Explanation of clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides for the commencement of the Bill on 3 May 1994.

Clause 3: Interpretation

Clause 3 is an interpretative provision.

Clause 4: Amendment of s. 7—Functions of the Board

Clause 4 makes a consequential amendment to section 7 of the *Superannuation Act 1988*.

Clause 5: Amendment of s. 22—Entry of contributors to the scheme

Clause 5 inserts new subsections into section 22 of the principal Act. Subsection (10) closes the scheme to persons who have not applied for acceptance before 4 May 1994. Subsection (11) is a transitional provision that allows a person who has received a written offer of employment but has not commenced employment before 3 February 1994 at least three months to apply for acceptance into the scheme.

Clause 6: Amendment of s. 16—Contributors

Clause 6 adds new subsections to section 16 of the *Police Superannuation Act 1990*. Subsection (1a) closes the scheme and subsection (1b) is a transitional provision. Up until now the Police scheme has been a compulsory scheme which explains the difference between this provision and the transitional provision inserted into the State scheme by clause 5.

Clause 7: Amendment of s. 20—Application of this Part

Clause 7 makes consequential amendments to section 20 of the principal Act. A group will commence their police cadetship near the end of May 1994. Paragraph *(a)* of this clause and paragraph *(b)* of subsection (1b) inserted by clause 6 are drawn with this in mind.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

PETROLEUM (SUBMERGED LANDS) (MISCELLANEOUS) AMENDMENT BILL

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

CONSTITUTION (ELECTORAL DISTRICTS BOUNDARIES COMMISSION) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill amends the *Constitution Act 1934* to require the Electoral Districts Boundaries Commission to publish a draft order of its proposals for electoral redistribution, to receive representations in writing on the draft proposals and, at its discretion, to hear and consider any evidence or argument submitted to it on those representations by or on behalf of any person.

The Government's election Voluntary Voting and Fair Elections Policy provided, in relation to the Electoral Boundaries Commission, that a Liberal Government will:

- require that, before the final order is made, the Commission publish a draft of the proposed redistribution, allowing one month for submissions for any changes;
- allow the parties a reasonable opportunity to make oral comments to the Commission on those further submissions before it makes a final order.

This Bill requires the Electoral Districts Boundaries Commission to publish a draft of its proposals for electoral redistribution. A provision of this nature is found in the Commonwealth Electoral Act and in practice has been found to be helpful in ironing out potential problems and correcting errors.

As any person can make written representations to the Commission initially it is logical that he or she should also be able to do so at the time the draft proposals are made. This Bill provides for a period of at least one month in which persons may make representations in writing on the draft proposals of the Commission.

Section 85(3) of the *Constitution Act* provides that the Commission shall consider representations made to it in relation to the proposed electoral redistribution, and may, at its discretion, hear and consider any evidence or argument submitted to it in support of those representations by or on behalf of any person. It is appropriate that the Commission should have a similar discretion to take oral evidence in relation to representations on the draft report.

This Bill is expressed to apply to the proceedings of the current Electoral Districts Boundaries Commission.

This Bill implements a stated election policy of the Liberal Government and makes a sensible reform to the process of electoral redistribution in this State.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 85—Representations to the Commission

Section 85 of the Act is to be amended to include a requirement that the Electoral Districts Boundaries Commission prepare a draft order for electoral redistribution and then send a copy to each person who made a representation to the Commission, and give public notice of the availability of the draft order. Interested persons will be able to make written submissions on the draft. The Commissions will have a discretion to take oral evidence in relation to those submissions. The Commission will then be able to finalise its order.

Clause 3: Operation of amendment

This clause specifically provides that the amendments extend to proceedings before the Commission on the commencement of the measure.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee (resumed on motion).

(Continued from page 880.)

Clause 10—'Jurisdiction to interpret awards and enterprise agreements.'

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

Page 9, lines 15 to 17—Leave out subclause (2) and insert subclause as follows:

(2) In exercising its interpretative jurisdiction—

(a) the court should have regard to any evidence that is reasonably available to it of what the author of the relevant part of the award or enterprise agreement, and the parties to the award or enterprise agreement, intended it to mean when it was drafted; and

(b) if a common intention is ascertainable—give effect to that intention.

This amendment clarifies the Government's intention in relation to the exercise of the courts interpretive jurisdiction. As originally drafted, the relevant clause required the court to give the effect of the intention of the parties at the time the award or agreement was made. However, given that some awards are made by arbitration and not by consent, it is necessary to alter the language of the clause to ensure that the intention of the relevant author, whether the party, through consent award, or the commission, through arbitration, is the relevant intention considered by the courts.

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

Page 9, lines 15 to 17—Leave out subclause (2).

The Opposition seeks the deletion of subclause (2). I notice that has been picked up in clause 10. The subclause purports to tell the court how to exercise its jurisdiction of interpreting awards and agreements. There is a certain amount of arrogance on behalf of the Minister in thinking that he can teach the industrial judiciary to do their job. Indeed, if the Minister had any understanding of industrial relations, he would be aware that there is a sound body of case law which sets rules for the interpretation of awards and agreements. This body of case law has been developed over many years of experience of qualified industrial jurors. The body of case law permits a court to have regard to the intention of the parties to the relevant award or agreement, as at the time the award or enterprise agreement was made. However, the rule is subject to various conditions which ensures that the process is not misused.

The body of case law recognises that it is often difficult to attempt to divine the intention of the parties that existed many years previously. The Minister would be well advised to leave this subject of interpretation to those people who are qualified and experienced in the processes. This does touch in some respects on a lot of the arguments that we had in the previous debate. Without recanvassing all those arguments, it just comes back to the problem that has obviously been bothering the Hon. Mr Elliott, and it certainly bothers the Opposition: again, we are now trying to put the Government's flavour and the flavour that it is attracted to in industrial relations. We are now trying to say, 'Let's put aside all the experience, all the case law on which you would normally make your judgments, by looking at the facts of the case that has been presented to you, plus the interpretations over many years that have set the standards by which the independent judges of the court and the commission have operated.'

We now say, 'It will be interpreted in this way.' I will be hard to convince that that is not influencing the way the independent commissioner operates. I urge the Committee and the Hon. Mr Elliott to support my amendment.

The Hon. K.T. GRIFFIN: I suppose one could summarise what the Hon. Ron Roberts said by suggesting that one should not let the facts get in the way of a good argument. Really, what the honourable member has just said demonstrates why we need a change of attitude. Industrial relations enterprise agreements are not about what the court believes ought to happen as a result of a long history of case law. We are entering into an era where employer and employee have negotiated an enterprise agreement. What can be clearer than the intention of the parties to enter into an agreement?

The Hon. T.G. Roberts: Nobody will see those cases that are settled.

The Hon. K.T. GRIFFIN: They will go to the commission. They go to the commission for approval, anyway.

The Hon. T.G. Roberts: It is the disputed ones.

The Hon. K.T. GRIFFIN: Sure, it is the disputed ones. What should we do? Should we impose the gloss and interpretation the court wants to put on it, without having any regard to what the parties intended? All this clause in its redrafted form does is say, in interpreting an issue—whether it is an award or an enterprise agreement—that the court should have regard to any evidence that is reasonably available to it, and to what the author of the relevant part of the award or enterprise agreement, and the parties to the award or enterprise agreement intended it to mean when it was drafted; and, then, if a common intention is ascertainable, to give effect to that intention.

It seems to the Government that that is really what the courts, the commission and others ought to be trying to get to: what was the intention of the parties? In the normal law where there is a contract, that is the way in which the court approaches it. What, from the face of the document and the surrounding circumstances, was the intention of the parties? For the Hon. Mr Roberts to suggest that somehow the Government is seeking to interfere with judicial independence is an argument beyond comprehension, because Parliament, in passing a law, always tells the court what should or should not be done. It sets the law.

Sure, the court then interprets that law but all that we are saying is—if the Parliament approves this amended subclause (2)—'Have regard to the intentions of the parties; see what they mean rather than putting your own gloss on it and distorting the real position.' That is all we are saying. I do not see why the Hon. Mr Ron Roberts finds that objectionable.

The Hon. M.J. ELLIOTT: I will be supporting the Government amendment. I do not see any difficulties with it at all.

The Hon. R.R. ROBERTS: There is a bit of a presumption by the Attorney-General that the Liberal Party has invented some new scheme involving industrial agreements. Industrial agreements are registered in the commission, and have been for 30-odd years. I have worked under industrial agreements registered in the South Australian Industrial Commission, and every time we had a dispute the Industrial Commission applied exactly what the Minister is talking about: the intention that was in the minds of the parties. We have never had a problem with the commission's interpretation of its responsibilities, its interpretation of the case law that has built up, and the reasons for the commission making those decisions.

What you are saying now is, 'Despite what you may have thought because of the case law and the precedents of the past, you will not interpret it this way, you will interpret it in the way we suggest.' I think that you are being presumptuous in saying that without direction the judiciary is not capable

of interpreting case law of which it has had a history of 40 or 50 years

The Hon. K.T. Griffin: We are putting it beyond doubt.

The Hon. R.R. ROBERTS: I do not think you are putting it beyond doubt. You are giving a distinct direction in the way you want the judiciary to interpret it, despite the history of the commission in dealing with an agreement in the same area you are talking about. There is no need for this clause. It just brings another facet to an argument. The Industrial Commission and the judiciary know exactly what it is all about, despite calling something an enterprise agreement now instead of an industrial agreement between two parties, which was done exactly the same way. The two parties sat down and determined the conditions they were going to work under, although when we talked about industrial agreements there was a minimum standard.

In many cases we sat down with the employer with that safety net in place and negotiated conditions over and above the minimum standard of the day. We then trotted off to the Industrial Commission and registered that agreement and then, from time to time, when disputation took place or interpretations were required, the commission looked at all the circumstances and made its decisions based on the circumstances of the case against the case law that was available and on the basis that it had to act with equity, good conscience and substantial merit in any case. I think that this is rude to the commission. It is rude to the people who have well served the industrial relations system throughout Australia for the past 20 or 30 years.

Amendments carried; clause as amended passed.

Clause 11 passed.

New clause 11A—'Declaratory jurisdiction.'

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

Page 9, after line 22—Insert new clause as follows:

11A. The court has jurisdiction to make declaratory judgments conferred by other provisions of this Act.[1]

[1]See, for example, section 105(3).

The clause actually confers upon the Industrial Relations Court a declaratory jurisdiction, specifically conferred by the provisions of the Bill. The amendment is necessary having regard to a proposed amendment to section 105(3), relating to the unfair dismissal jurisdiction. The amendment that will be proposed to section 105(3) by the Government will be an amendment that enables the State Industrial Relations Court to make a declaratory order as to whether the State law is an adequate alternative remedy within the meaning of section 170EB of the Federal Industrial Relations Reform Act 1993. This jurisdiction is necessary to ensure that a State court will be in a position to make such an assessment rather than the Federal Industrial Relations Court, and to protect the State unfair dismissal jurisdiction from the newly created Federal unfair dismissal jurisdiction.

The Hon. R.R. ROBERTS: We have no objection.

New clause inserted.

Clauses 12 and 13 passed.

Clause 14—'Composition of the court.'

The Hon. K.T. GRIFFIN: I want to reiterate the point I made earlier that from this clause through to clause 23 there will be a number of amendments, when the Bill is recommitted, to reflect the matters which I did refer to in the rather long debate on clause 7 and the issue of independence of the Judiciary. I want to put members on notice that it will be recommitted, if not for the whole Bill, then certainly in relation to these clauses.

Clause passed.

Clauses 15 to 23 passed.

Clause 24—'Establishment of the commission.'

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

Page 13, line 5—Leave out the clause and substitute new clause as follows:

24. The Industrial Commission of South Australia continues in existence.

This clause is similar to the one in respect of the court. Rather than canvass all the arguments again, I will let the Hon. Mr Elliott move his amendment and I indicate that we will be supporting an amendment along the same lines as the action he took with respect to the court.

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

Page 13, line 5—Leave out the clause and substitute new clause as follows:

24. The Industrial Commission of South Australia continues in existence as the Industrial Relations Commission of South Australia.

There could be a great deal of repetition of argument and we will have an opportunity to explore this later. I have already made clear to the Government that this issue needs to be addressed further, and there may be some contemplation of further amendment but, to put it beyond doubt, there are issues which are causing concern to me in the same way as they caused concern in relation to the court. I note the same sorts of concerns expressed in relation to the court have also been expressed in relation to the commission. I read in the letter of John Mansfield QC representing the Law Council of Australia as an example of that concern. I note that the concerns are much wider than that. There may be some possibility that the Government will be willing to consider further change, but in the absence of an absolute confirmation of that and seeing what changes may be considered, I simply proceed with this amendment at this stage.

The Hon. K.T. GRIFFIN: The amendment is opposed vigorously—but if I do not succeed on the voices I indicate that because of the hour I do not intend to divide. The Government seeks to establish a new Industrial Relations Commission for the very same reasons that it wants to establish a new Industrial Relations Court, and I do not want to reiterate the arguments on that. It is a new era and new attitudes have to be developed in relation to industrial relations and enterprise bargaining. It is all very well for the Hon. Mr Roberts to say that they have had industrial agreements in place for 30 years or so—everyone knows that—but they were very restrictive and restricted in their use and there were not a large number of them. There was not a large number of them and you always had to have the trade union or association of employees involved to be able to negotiate an industrial agreement. We are saying that you do not have to have an association involved in the negotiation.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I know that; that is what I am telling you. The legislation is much broader and it is a new era.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: But you are using that argument of industrial relations agreements.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: In some respects they do, but there has to be a much greater flexibility shown in attitude towards them.

The Hon. R.R. Roberts: By whom?

The Hon. K.T. GRIFFIN: By the commission. It is a new era, as I said. We say that there have to be changes and

that there have to be changes in attitudes. The Government is entitled to propose—and ultimately the Parliament may not accept it—a change in the industrial arena by abolishing the commission and establishing the Industrial Relations Commission. It is quite clear that there is a difference between the court and the commission. The commission is not a court; not even a tribunal. The commission exercises functions which are not functions of a court. That is the very reason why we have a distinction between the court and the commission. There are judgments even of our present Chief Justice which indicate quite clearly that the commission is not a court; it is not even akin to a court.

So, the principles of so-called judicial independence do not have any application to the Industrial Relations Commission. There is no relation at all to those, and we do not need to ensure appointment of commissioners until the age of 65 years is retained for this commission. We take the view that appointments of not less than six years are appropriate and the Bill provides for that. There is no need to have the sort of security of long tenure which the Opposition and the Democrats believe is necessary, because this commission does not deal with judicial matters.

The Hon. M.J. ELLIOTT: This might be an appropriate time to explore one issue a little further than I have so far. I have already talked about the politicisation of courts and commissions. I think the Government's response is that it has happened so far, the appointments have been Labor appointments and so on, and by implication it is the Government's turn to appoint its people. It is really a continuation of whatever politicisation there is. Now that we are looking at a more rapid turnover, I think it will increase the politicisation of both courts and commissions. I really think it is about time that we did something in legislation that tackled this question of politicisation. Just as the regular changeover is a problem, certainly the initial appointments are a problem in themselves.

So, to that extent I can understand some of the concerns that the Government may have at present. However, I do not think it solves the problem simply to say, 'Look, we have our people in now.' We should be giving judicial or quasi-judicial bodies very clear instructions by way of legislation, and we should ensure that the legislation provides precisely what is the will of the Parliament in the area of industrial employee relations, and then see that they are working under the courts and commission and, if they are not, we should be seeking to further change the legislation to ensure that the will of Parliament is upheld. I talk about the will of the Parliament because legislation is the will of the Parliament.

I have not put up amendments in this direction so far, but an alternative means to de-politicise the commission in the long term is to have a process whereby the appointments are not made by the Government but by the Minister or the Governor with the consent of both Houses of Parliament.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I think that is a nonsense, and I must say to the Attorney-General that the Liberal Party has in its own policy certain positions being filled in precisely that way.

The Hon. K.T. Griffin: No, not before the Parliament; a committee of the Parliament.

The Hon. M.J. ELLIOTT: Sorry?

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: You are saying by a committee of the Parliament.

The Hon. K.T. Griffin: That's what is in the policy.

The Hon. M.J. ELLIOTT: Well, whatever. I am saying that if we have something which is—

The Hon. K.T. Griffin: But they are officers of the Parliament.

The Hon. M.J. ELLIOTT: Yes, they are but the processes are important. Let us explore this: why did the Liberal Party in policy say that it would like to appoint an ombudsman in that manner? I would hope, expect and in fact believe that it is because it is a position which we want to be independent and which we want to be seen as independent, and to appoint in that way is one way of getting a guarantee of that. If we had a process whereby a ministerial appointment ran past the Parliament or the committee—I would have thought that the Parliament would be better than a committee, but that can be explored—and it was the present Liberal Government appointing people to the court or, in six years, a different Government wanting to put all its people in, which sets up a political game which I do not think is in the best interests of South Australia generally, we should be exploring the possibility of genuinely de-politicising these appointments, and that is all I am seeking to do.

I understand the Government's current concerns, but we are really repeating exactly the same problems about which it is complaining. As I said, I do not have amendments on file but I think the issue of independence is an important one and one which we should be seeking to genuinely address. Certainly we should not allow these bodies to be political, even if in the short-term a group sees it as being in its favour.

The Hon. A.J. REDFORD: There are a number of points I wish to make in relation to the question of the appointment of commissioners, and I hope that the Hon. Michael Elliott takes them into account when he considers the matter further on down the track. The first point I make is that the position of a commissioner is far different from that of a judicial officer, and therefore it needs to be considered in a different way. In justifying my position I refer to clause 27, which looks like it will go through substantially as printed and which provides:

> The commission has—
> (a) jurisdiction to approve enterprise agreements regulating remuneration and other industrial matters. . .

That can hardly be described as a judicial function. It also has jurisdiction to make awards regulating remuneration and other industrial matters. That again is not a judicial function. In fact, many courts have said that the making of awards is a legislative function. It is no different to the process that we are going through here, except that it is far more specialised and involves more specialised people.

The third aspect is jurisdiction to resolve industrial disputes, which is an arbitral or conciliatory function. Paragraph (d) provides:

> other jurisdiction conferred by this Act.

Paragraph (d) includes the jurisdiction under the unfair dismissal provisions. That could possibly be said to be the only function that a commissioner has which could approach a judicial function. The question is: should we as a Parliament—and I am making my comments also in relation to proposed amendments to clause 36 which seek to appoint commissioners to the age of 65—give these people this extraordinary length of tenure and security in light of what they do?

If one looks at other people involved in this sort of area we see that that is a most extraordinary and unprecedented position to put these people in. I refer to the two most

important areas they are involved in, and that is the jurisdiction to make awards regulating remuneration. That is almost akin to saying that what we ought to do in order to protect the independence of politicians and parliamentarians is provide the right to be in Parliament to the age of 65. Everybody here would agree that that is a nonsense. The second area is the jurisdiction to resolve industrial disputes. The fact of the matter is that, in the Family Court and in the courts system right across the board, the trend at the moment—and one only has to pick up any legal journal of any nature—is towards arbitration and alternative dispute resolution. More and more people are going to private arbitrators and private people seeking their assistance in resolving disputes based upon principles, and I acknowledge this, that have been developed in this arena.

To say that those people ought to be given—and in effect at my age it is almost lifetime tenure when you look forward to age 65—lifetime tenure misunderstands why we have lifetime tenure for judicial officers and the essential and important role of the commission. There was a comment by the Chief Justice—and I make no apology for this—who descended into the political arena when he wrote to the Attorney-General and then proceeded to circulate his correspondence to each and every member of this place. He said in his letter to the Attorney-General on 8 April 1994:

> There also appears to be cause for concern about commissioners who have the same security of tenure of judges under the present Act but whose term of office is restricted to six years under the new Act.

I will not go through the arguments we put half an hour ago in relation to the issue of the transfer of judges to the District Court. I think it is important to put what the Chief Justice said in that letter. I might say, and I suppose this is a gratuitous comment, that he is a former Labor Attorney-General.

I took the trouble to telephone the Chief Justice yesterday and I said, 'I can understand the proposition you are putting in relation to the judiciary. It is something I understand very clearly, but what I do not understand, having regard to the jurisdiction of these commissioners and their function, is why they should be put on the same level as a judge.'

If we start extending the concept of tenure and all the independence of the judiciary over and over until you get an enormous range of people, functions and office functions—one could go through literally hundreds of offices that we have under legislation in South Australia that perform similar functions or judicial functions that do not have the same security of tenure as judges—at the end of the day, perhaps not today, but tomorrow, next month or somewhere down the track, if you do not distinguish judges from other people, you will undermine the fundamental independence of the judiciary.

It might seem glib to say that now and people might say, 'The Liberals are playing a political game.' They are fair comments by the Hon. Michael Elliott, who said, 'This is just a political game and we have to keep politics out of it.' At the end of the day the real risk of playing this political game is that somewhere down the track someone is going to ask how we can justify the independence and lifetime tenure of commissioners. If we then find that we cannot justify that, then people will turn around and attack the real issue, which is the independence of the judiciary.

The Chief Justice said that he does not put commissioners on the same level. He conceded that it is not a judicial function. He also said that 'it is undoubtedly a different position', referring to the position of commissioners as against that of a judge. The Chief Justice could not speak for his brother judges at the time and would not make a stand on the appointment. I do not quote the Chief Justice lightly. I would go on the record by saying that, if the Chief Justice wants to enter the political arena, he must either put up or shut up.

When I approached him, that is what he said and I took careful notes of what he said. I am concerned that the debate has gone spinning off into the distance where we put commissioners on the same level as judicial officers, and I think there is a grave risk in that. The Hon. Mr Elliott was not in the Chamber when I spoke on the Bill in the second reading debate, but it is important to point out that 30 States in the United States have provision for limited term tenure for judges. I am talking not about commissioners but about judges.

The Hon. M.J. Elliott: How are they appointed?

The Hon. A.J. REDFORD: That is another issue, and the issue that the honourable member raised is not now before the Council. The position and appointment of judicial officers in the United States as a rule is generally by nomination of the Executive and subsequent approval by the House. Certainly, that is an interesting topic and debate and one that I hope we will revisit in the future. However, I do not want to go down that path for obvious reasons.

The Hon. M.J. Elliott: I am offering that as an alternative—

The Hon. A.J. REDFORD: I accept that. The Leader of the Opposition offered another alternative in the second reading debate. I spoke and he responded, saying he believed that a limited term tenure problem would be overcome with a provision to the effect that such a person appointed could not be reappointed, and that would then prevent either the appearance or the actuality. I invite the honourable member to read what the Leader of the Opposition said in the second reading debate. He said that would obviate the appearance of commissioners tending to favour a Government line to ensure that they got subsequent reappointment.

I will come to that point in a moment but, to expand further on the Chief Justice's views on the difference between the commission and the court (I am happy to provide a copy to the Hon. Michael Elliott), I refer to a comment he made in 1985 in a case, the *Queen and Industrial Commission ex parte General Motor's Holden*. It was quoted with approval only last year by His Honour Justice Mulligan of the Supreme Court. The Chief Justice said:

> The Industrial Commission is a tribunal—

we are talking of the current legislation, essentially—

> which is distinct from the Industrial Court. The courts consists of members who are appointed as judges and are subject to the provisions as to status, qualifications for appointment, security of tenure and retirement as apply to judges. The procedures of the court are and are plainly intended by legislation to be curial—

meaning court like—

> in character. Industrial magistrates must be legal practitioners of five years standing.

I take no absolutely no issue with what the Chief Justice says there as he is entirely correct. He further states:

> The commission is differently constituted. In addition to the members of the court who are President and Deputy Presidents, it is composed of any additional Deputy Presidents who may be appointed and of commissioners. The qualifications for appointment as Commissioner are not legal qualifications but experience in industrial affairs.

I will provide a copy to the honourable member. Justice Mulligan and, in the previous case, the Chief Justice went on

to discuss the different roles and interactions that the two bodies have. To put the commission, on the basis of independent judiciary, on the same basis as the Industrial Court is plainly wrong. It is certainly not a position that is endorsed by the Chief Justice and, to use that as an argument, is a furphy. If you want to use the independence of the commission being protected by keeping these people in office until age 65 years, then it must be justified purely and simply on its own merits. It cannot be justified by simply saying that the judiciary is independent, therefore the commission must be independent and we must therefore use precisely the same means with the commission as we use with the judiciary in keeping it independent.

We have had already in this place in the past days two different suggestions: the one by the Hon. Michael Elliott *vis-a-vis* the appointment of commissioners and the other by the Leader of the Opposition when he said that the position could be obviated or protected by not reappointing existing appointees. I invite the Hon. Mr Elliott and Opposition members over the next day or so when we really get down to the nitty gritty of this legislation and see some of the Government amendments to consider those other options.

It is a very dangerous step to begin saying, 'Let's call commissioners "judicial officers" and give them the independence and security,' because one must remember (and it is absolutely vital that we remember this) that if we give that independence we take away accountability. By and large, the judiciary is brought to account effectively because we have a lengthy and, unfortunately, expensive appeal system. We do not want to go too far down that path with the role of the commissioners in industrial affairs. At the end of the day one must consider making some degree of accountability.

I accept the suspicion of the Hon. Mr Elliott and the genuineness in his belief that there is some degree of political influence and manipulation or, at the very least, some suspicion of that. I accept that he has this view that both the Liberal and Labor Parties have played that exercise for a number of years.

I accept that, if that is the public perception and if that becomes the perception within the industrial relations arena, there is a real potential that the conciliation, arbitration and dispute resolution process can be undermined. I have already suggested that there might be other ways of going about it. I have had limited experience in this area, having appeared in unfair dismissal applications and a few other matters on the odd occasion. I would certainly not pretend to have the experience of the Hon. Ron Roberts, but perhaps some of us need more experience than others. It might comfort the honourable member to know that, outside this place (and I am not in the habit of naming names), employer and employee appointments have been made and, after a period of time (and the Hon. Ron Roberts would agree with me on this), both employers and employees have wished that appointees who have come from the employer side were not there. I must admit that that tends to happen on the employer side more often than on the employee side. There have also been employee appointments who both the employer and employee representatives wished were not there.

What particularly concerns me about the Opposition's and the Hon. Mr Elliott's amendments is that they will entrench some of these people into such a position for a very long time. We all know that the face of industrial relations has changed absolutely dramatically in the past 10 years, let alone over the past 30 years. One would be horrified to appoint a bright young industrial advocate or an exceptionally talented lawyer, union representative or employee/employer representative at the age of 38 and then to find that one had made a mistake and that he was universally condemned as an arbitrator—that is his function and other provisions in this Bill apply—as an adviser or as a legislator, yet we were stuck with him until the age of 65. So, I urge both the Opposition and the Australian Democrats to approach this with an open mind and with a view to understanding precisely what role it is that a commissioner plays. It is certainly not a judicial function: it is an administrative function, and it certainly does not deserve the strident opposition that it has been confronted with.

I do not need to remind members of the comments I made earlier about some of the somersaults (I think I used the word 'hypocrisy') that have been made in this place over the past 12 months in using the concept of judicial independence to support short-term expediency, to satisfy one's grave suspicions or to satisfy a very small industrial mandate or support base. This is absolutely fundamental to this Bill and very important. I apologise for having laboured for so long, but it is as important as that, and I ask that the Hon. Mr Elliott take some of those issues into account.

The Hon. M.J. ELLIOTT: I want to make quite clear that my goal in relation to both the court and the commission is that all interests in this area are able to see that the court or commission is impartial. I seek to achieve nothing more nor less than that. There may be a number of ways of achieving it, but I do not believe that the Bill as it now stands achieves that goal.

The Hon. K.T. Griffin: Why don't you start from scratch then?

The Hon. M.J. ELLIOTT: As I said at the beginning, there may be a number of mechanisms that can achieve that, but my goal is to have a body which, in itself, is seen to be fair. The most important part of that is the mechanism by which people get there and what influence might be brought to bear on them. I am looking for a mechanism. As I said, there may be a number of possible mechanisms that may achieve that final goal. I seek nothing more or less than that, but what I am saying is that, if that is what I seek, the current legislation does not achieve it.

Whilst I have moved one amendment, I have also flagged, without amendment, a further potential mechanism. There may be others, but I cannot think of them off hand. I do not think that the other suggestion that everyone simply has a fixed six year term with no reappointment will solve the matter because, politically, you could just put someone of a like mind in there. So, at best, that is only a part solution. I think it is important, and I believe that, if we have these particular bodies maintaining the respect of all involved, the challenge will then be to make sure that we get right other legislation in terms of awards and enterprise agreements. If we get that right, we will have achieved what everyone is hoping for.

The Hon. R.R. ROBERTS: The hour is late. The last two contributions by members opposite have dealt with two matters. The Hon. Mr Griffin referred to an argument that I put forward about the Industrial Commission and the operation of agreements and awards. He qualified that argument by saying that this is a new age and that it was much more restrictive under the old scheme. Let me remind the Hon. Mr Griffin what his Party told the people of South Australia. He said that the commission would continue. He also told the workers in South Australia that they would have the protection of the award. He did not go into a long

extrapolated explanation about this area or that area. He told the people of South Australia that they would have the safety net protection of their award. Now he complains because, in the past, the commission set those minimum standards and assured that they were adhered to.

We are not arguing about enterprise agreements—that argument has passed; we have agreed to enterprise agreements. Enterprise bargaining agreements are being lodged in the commission on every day of the week. There are more and more going in.

The Hon. K.T. Griffin: Only with the involvement of the trade union though.

The Hon. T.G. Roberts: What's wrong with that?

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: In the Federal arena, we have accepted that, and it is accepted here that this will take place. It is not improper to suggest that the Government's mandate was to provide a safety net for workers to ensure that they would not be disadvantaged. Members opposite rushed around the State telling people that they would maintain the independence of the commission.

We then had the other argument that is now being promoted by the Hon. Angus Redford and, to a large degree, by the Attorney-General, and that identifies where they are coming from. When the workers talk about the commission, they are not talking about the pecking order of judges of the Industrial Court—whether one judge is more important than another. When workers go to the commission, they do not say that this is that class of court or that one is higher than the other. They go to the Industrial Commission to get an independent decision for the dispensing of justice.

The Hon. Angus Redford is right: it is not like a court. The commission operates on commonsense principles most of the time not on arguments about the technicalities of law or on who has the smartest barrister or lawyer. As I keep saying, it operates on these principles of equity, good conscience and substantial merit. The Industrial Commission was set up to provide a forum in which employers and workers could seek conciliation and arbitration to resolve problems without the interference of lawyers taking technical points, and so on.

What has happened? Over the years we have qualified more and more lawyers, and work in the Industrial Relations Commission was below their dignity to be involved in until such time as they found there were not too many job opportunities in the proper courts. Therefore, they decided to get involved in the Industrial Commission and employers started turning up with barristers in agreed matters before the commission. I know, because I have been involved. We are trying to apply the rules of court here. The Hon. Angus Redford made his judgment about the pecking order of the higher echelons of the legal profession.

We are talking about an independent place to which workers go to have problems resolved. That commission has the respect of workers. They go there and they do not argue about the decision. Some 99 per cent of the decisions from the Industrial Commission are accepted by the registered agents of employees and by employers until you get some smart-arse barrister coming in and telling the commissioner that under the technicalities of the law he cannot do that. The Commissioner cannot be forced to do that so do not do it. If we take those people out of the equation, we have a system that has served—

The Hon. K.T. GRIFFIN: I rise on a point of order. I have been trying, by way of interjection, to seek the honourable member's withdrawal of that offensive remark. It is unparliamentary and I ask him to withdraw it.

The Hon. R.R. ROBERTS: I will say smart lawyer or barrister in deference to the Chair. I will withdraw the previous reference. The principle remains the same. When barristers come before the commission they interfere with and impair the progress of justice in most cases. We are not talking about a technical argument. People involved in industrial relations go to the commission for an independent judgment. By and large they have been able to maintain that stance over the years, and there is confidence in the industrial relations club, as the Hon. Terry Roberts has said. The Hon. Angus Redford said that some people are unhappy with decisions. I have been unhappy with every decision that has gone against me in the Industrial Commission. Every decision that has gone my way I have said has been a good decision. It is par for the course.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: We don't have lawyers; we have people with a few brains to represent us before the commission. Whatever the Hon. Angus Redford was on about with his hierarchical approach to the law has nothing to do with the perceptions of people and whether they accept the decisions of the Industrial Court. The Industrial Court plays a proper role. Whether it is a real court in the eyes of the mainstream legal profession does not matter; it is the forum where disputes between workers and employers are sorted out. Until now they have been free from interference by Government in the way that they conduct their affairs. The Government is proposing to put its own people in. At least the Minister for Recreation, Sport and Racing had enough decency and honesty, when talking about his portfolio areas and in particular the Chairmen of the Racing Board, the Trotting Control Board and the Greyhound Board, to say quite clearly, 'We want to get them out and put our people in.' The Government is trying to play the pea and thimble trick, making out that it is being honest, but it is being dishonest.

This clause reflects what we were doing in respect of the courts and it is fully justified on this occasion. I believe that the Industrial Commission plays just as important a part in the conduct of proper industrial relations in South Australia as the Industrial Court. It is only when people want to circumvent the findings of the commission and go on to the courts that we have a problem. If the commission is allowed to get on with its job free from interference it will do the job. It has done the job in the past and it is capable of doing it in future, but it needs to maintain its independence. We do not need pea and thimble tricks, shifting one lot of people out and bringing in another lot because we get the problems outlined by the Hon. Mr Elliott.

The Hon. K.T. GRIFFIN: The point of the matter is that you cannot blame lawyers for what happens in the industrial jurisdiction. Unions, employers and others engage the lawyers; the lawyers are engaged by the clients; and the clients want representation. There would be many occasions when unions have had lawyers in the Industrial Commission when employers have not, and there have been other occasions when employers have had lawyers there and unions mostly have, also. Let us not digress into this red herring that we are pursuing about what happens in the Industrial Commission, and who is and who is not to blame for what happens.

The fact of matter is that it is a contentious jurisdiction, just as the Industrial Court is a contentious jurisdiction.

People have rights they want to protect, they have positions they want to put, and they are entitled to have advocates to do it for them if they so wish. In view of the hour, I put on record that, if we are not successful in opposing this on the voices, I nevertheless will not divide.

Clause negatived; Hon. R.R. Roberts' new clause negatived; Hon. M.J. Elliott's new clause inserted.

Clauses 25 and 26 passed.

Clause 27—'Jurisdiction of the commission.'

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

Page 13, line 19—Leave out 'remuneration and other'.

The purpose of amending this subclause is to allow the commission to have the broadest jurisdiction to determine matters involving enterprise agreements or any industrial matter which is encapsulated within the broader definition of 'industrial matter' as proposed by the Opposition in clause 4.

With respect to enterprise agreements, the Government legislation limits the jurisdiction of the commission to dealing with remuneration and industrial matters. The Government's definition of 'industrial matter' is considerably more constrained than that provided for in the Opposition's amendments on this matter.

We have just gone through a whole raft of arguments about the Industrial Commission and its right to interpret, and so on. What we are talking about is industrial matters, and we do not need to lay it out with remuneration. I also note that we have this measure in the next clause, and the same arguments would apply.

The Hon. K.T. GRIFFIN: We oppose the amendment, but it is not a big issue over which everyone should fight for long hours. All we believe we should do is be explicit in this clause that it is remuneration and other industrial matters that are within the jurisdiction of the commission, mainly for the benefit of lay people who read it. If one goes back to industrial matters, one sees that remuneration is already included, whether under other the definition of 'industrial matter' or what is now in the Bill.

The Hon. M.J. ELLIOTT: I do not believe that the amendment actually achieves anything at all and I will not be supporting it.

The Hon. T.G. ROBERTS: I notice that occupational health and safety and training rights are not written into this other than being referred to as 'other matters'. I am wondering whether that was included.

The Hon. K.T. Griffin: You will have to ask your side. It is your amendment to the definition of 'industrial matter'.

The Hon. T.G. ROBERTS: I am asking for the Government's definition.

The Hon. K.T. GRIFFIN: We now have the Opposition's and Democrats' amendment, which is 'industrial matter' and you will have to ask the Hon. Ron Roberts or the Hon. Mike Elliott what they intend it to include.

Amendment negatived.

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

Page 13, line 21—Leave out 'remuneration and other'.

Amendment negatived.

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

Page 13, after line 22—Insert paragraph as follows:

(ca) jurisdiction to hear and determine any matter or thing arising from or relating to an industrial matter; and.

The Opposition's amendment is a very important one in that we are seeking to reintroduce, in a modified form within the current Bill, words relating to the jurisdiction of the Industrial Commission, as has been used in the existing Act. These words have been litigated upon considerably before the Industrial Court and the Full Court of the Supreme Court of South Australia on a number of occasions. The meanings are well understood by all industrial parties participating before the Industrial Commission. It allows the widest possible jurisdiction for the Industrial Court to settle and resolve disputes between employers and employees without the narrowness of definitions of these matters which are inherent in the Government's legislation.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We think it is superfluous. Paragraphs (a), (b) and (c) include the issues which are within the jurisdiction of the commission: approval of enterprise agreements; jurisdiction to make awards; and jurisdiction to resolve industrial disputes. What the Hon. Ron Roberts just said was that we want them to have the widest possible jurisdiction in relation to the resolution of industrial disputes. What is in the Bill, in terms of the definition of industrial disputes, industrial matter, and the jurisdiction to resolve those disputes is already there. Why do we need anything more?

The Hon. R.R. ROBERTS: For the very same reason that the Minister wanted to lay out everything in chapter and verse, and all those other clauses that he argues about so passionately. It makes it very clear what we are saying and the same arguments apply.

The Hon. K.T. GRIFFIN: It cannot be any clearer than what is in the Bill already.

Amendment negatived; clause passed.

Clauses 28 and 29 passed.

Progress reported; Committee to sit again.

ADJOURNMENT

At 12.9 a.m. the Council adjourned until Wednesday 11 May at 2.15 p.m.