LEGISLATIVE COUNCIL

Tuesday 11 October 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:

Statutes Amendment (Closure of Superannuation Schemes) Amendment,

Real Property (Variation and Extinguishment of Easements) Amendment,

Financial Agreement,

The Flinders University of South Australia (Convocation) Amendment.

MEMBER, NEW

The PRESIDENT produced a letter from the Clerk of the assembly of members notifying that the assembly of members of both Houses of Parliament had elected Mr Terry Gordon Cameron to fill the vacancy in the Legislative Council caused by the resignation of the Hon. C.J. Sumner.

The Hon. Terry Gordon Cameron, to whom the oath of allegiance was administered by the President, took his seat in the Legislative Council in place of the Hon. C.J. Sumner (resigned).

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to a question, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: No. 2.

TELEPHONE CONVERSATION

2. **The Hon. C.J. SUMNER:** Further to the answer provided by the Attorney-General to a question asked on 10 March 1994 relating to telephone intercepts, can the Attorney-General advise:

1. What method did the police use to tape the telephone conversation with the Hon. Gordon Bruce, and what is the method used in other cases where telephone conversations are taped by the police?

2. Who provided the advice that there was no breach of Commonwealth Telecommunications Act and the South Australian Listening Devices Act, and—

(a) what information was given to people who provided the advice as to the circumstances of this taping incident?

(b) what is the basis of the advice?

The Hon. K.T. GRIFFIN:

1. (a) The Anti Corruption Branch officer used a speaker phone to talk to Mr Bruce and commenced to take hand-written notes. To assist the accuracy of the notes, he activated a portable tape recorder and placed it near the speaker phone.

(b) All calls to the Police Communications Centre are taped. All callers are alerted to the fact that their conversation is being recorded by a regular 'beep' sound on the line. The equipment which makes the recordings is Austel approved.

Police Security Services Division has similar equipment. Some senior officers of the department have equipment which has the capacity to tape telephone conversations. It, too, is Austel approved and incorporates the 'beep' tone on the line.

Police may also lawfully tape telephone conversations pursuant to a warrant issued under the (Commonwealth) Telecommunications (Interception) Act, 1979. After a warrant is obtained, the taping is coordinated by the Australian Federal Police in Canberra. The technical alterations needed to intercept the conversations are made by Telecom. Intercepted conversations are relayed back to Adelaide and recorded here in accordance with the warrant.

2. The Crown Solicitor provided the advice that there was no breach of the Commonwealth Telecommunications Act and the South Australian Listening Devices Act.

(a) The Crown Solicitor was provided with a copy of the Legislative Council *Hansard* transcript of 10 March 1994 together with information from the Commissioner of Police, detailing the events relating to the taping.

(b) In *R vs Oliver* 57 ALR 543 the court considered the question of a breach of section 6 of the Telecommunications Act, 1979 (C/w) and found that a microphone external to the telephone used, after the sound of the voice had left the telecommunications system, did not result in a breach of that section because there was no interception of the communication. A similar conclusion was also reached by the South Australian Full Court in the more recent decision of *T vs The Medical Board of South Australia* 58 SASR 382. Accordingly the law is such that because the recording made by the Anti Corruption Branch officer was done through a means which was external to the telephone system, there was no breach of the Telecommunications (Interception) Act, 1979 (C/w).

MEMBER, NEW

The PRESIDENT laid upon the table the minutes of the assembly of members of both Houses held this day to fill the vacancy in the Legislative Council caused by the resignation of the Hon. C.J. Sumner.

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

That the minutes be printed.

Motion carried.

MEMBERS' INTERESTS

The PRESIDENT: Pursuant to section 5(4) of the Members of Parliament (Register of Interests) Act 1983, I lay upon the table the Registrar's statement for June 1994 prepared from ordinary returns from members of the Legislative Council.

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

That the statement be printed.

Motion carried.

OMBUDSMAN'S REPORT

The PRESIDENT laid upon the table the report of the Ombudsman, 1993-94.

STANDING ORDERS COMMITTEE

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

That the Hon. Carolyn Pickles be appointed to the Standing Orders committee in place of the Hon. C.J. Sumner, resigned.

Motion carried.

JOINT COMMITTEE ON LIVING RESOURCES

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

That the Hon. T.G. Roberts be substituted in place of the Hon. Carolyn Pickles, resigned, on the committee.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Register of Members' Interests, June 1994—Registrar's Statement.
Ordered—That the Statement be printed (Paper No. x).
Ombudsman's Report, 1993-94.

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

Reports, 1993-94—
Department of the Premier and Cabinet.
Government Management Board.
Non-Government School's Registration Board.
Office for the Commissioner for Public Employment.
Parliamentary Superannuation Scheme.
State Clothing Corporation.
University of Adelaide—Report, 1993 and Statutes.
Development Act 1993—Premier's Report on Planning Strategy Implementation, 15 January-30 June 1994.
Regulations under the following Acts—
Debits Tax Act 1994—Penalty rate for unpaid tax.
Public Corporations Act 1993—State Government Captive Insurance Company.
South Australian Housing Trust Financial Statements

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

Agriculture and Resource Management Council of Australia and New Zealand—Record and Resolutions of 2nd Meeting, 29 April 1994.
Reports, 1993-94—
Mines and Energy South Australia.
Pipelines Authority of South Australia.
Remuneration Tribunal—Report relating to Determination No. 3 of 1994.
Evidence Act 1929—Report relating to Suppression Orders, 1993-94.
Regulations under the following Acts—
Daylight Saving Act 1971—Summer Time, 1994-95.
Fisheries Act 1982—
Fish Processors—Catch and Disposal Record.
General—Catch and Disposal Record.
Rock Lobster Fisheries—Southern Quotas.

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

Regulation under the following Act—
Liquor Licensing Act 1985—Dry Areas—Glenelg.

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

Reports, 1993-94—
Department of Transport.
Department of Transport (Office of Transport Policy and Planning).
Marine and Harbours Agency, South Australian Department of Transport.
Racecourses Development Board.
South Australian Greyhound Racing Board.
Regulations under the following Acts—
Development Act 1993—Certificate of Occupancy.
Road Traffic Act 1961—
Blood Analysis—Quorn Hospital.
Validation of Clearways.
Development Act 1993—Crown Development Report to establish two single unit transportable classrooms at Victor Harbor Primary School.
Local Government Superannuation Scheme—Rules.
Racing Act 1976—Amendment to Rules—DNA Testing Greyhounds.
Corporation By-laws—
Prospect—
No. 1—Permits and Penalties.
No. 2—Streets and Public Places.
No. 3—Garbage Containers.
No. 4—Parklands.
No. 5—Inflammable Undergrowth.
No. 6—Dogs.
No. 7—Animals and Birds.
No. 8—Bees.
No. 9—Caravans and Camping.
No. 10—Lodging Houses.
District Council By-law—
Stirling—No. 17—Caravans, Vehicles and Tents.

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

Reports, 1993-94—
Adelaide Festival Centre.
Department for the Arts and Cultural Development South Australia.
South Australian Museum Board.
State Opera of South Australia.

PRESIDENT'S COMMENTS

The PRESIDENT: Before I call any members who have notices of motion or questions without notice, I point out that on the last day of sitting there was a small altercation within the Chamber about which I made some comments which were seen to be offensive to some members. I apologise for that. However, as a result I may have to apply Standing Orders a little more rigorously than in the past. I apologise if my remarks seemed offensive.

QUESTION TIME

PARLIAMENTARY REFORM

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before directing a question to you, Sir, on parliamentary reform.

Leave granted.

The Hon. CAROLYN PICKLES: Following criticism by the Archbishop of Adelaide of the standard of parliamentary debate in Australia, there have been suggestions for reform in South Australia. Proposals include the adoption of the system introduced by the Australian Senate, which allows citizens aggrieved by comments made under parliamentary privilege to table a statement refuting allegations and the extension of Standing Orders to give the Speaker or the President authority to direct a member to leave the Chamber temporarily for misconduct.

Another important proposal, which is particularly relevant this week as we celebrate 100 years of women's suffrage with a conference, is that Standing and Sessional Orders be examined to see how the operation of Parliament might be changed to make it easier for women to meet family commitments and the obligations that attend being a member of this place.

My question to you, Sir, is: do you agree with the comments made by the Archbishop, and will you support a call for a bipartisan committee of members of Parliament to examine ways to enable the Parliament to function more effectively?

The PRESIDENT: As I remember it, a committee was set up in the last Parliament to look at this and it never reported. But if I recall correctly, in the opening speech of Parliament it was agreed that the Attorney-General would look at this matter and report back to Parliament. This was to do with members of the public having the ability to comment on and to submit a reply to comments made under privilege in this Parliament. Regarding the matter with the bishop, I will look at the article and respond in due time.

CHINESE DELEGATION

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table copies of a ministerial statement made today by the Premier in another place on the subject of a visit to South Australia by the Chairman of the National People's Congress of China.

Leave granted.

TRANSPORT FARES

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Transport, a question about TransAdelaide fares.

Leave granted.

The Hon. R.R. ROBERTS: On 18 August 1994 the Minister for Transport signed into Cabinet an urgent submission recommending sweeping increases for fares on TransAdelaide services. The covering note to the submission explained that the six-day rule was being broken as a decision was required before the budget session. We have since heard from the Premier how this submission was rejected by Cabinet. The Minister was rolled, apparently, and the Premier said that the Government rejected the proposed fare restructuring. He said it did not conform with Government policy. Then on 15 September the Minister told the Estimates Committee:

> There will be an increase in public transport fares, probably some time in January.

The Minister said she was looking for a flatter fare structure which, of course, means increased fares for longer distance commuters. My questions to the Minister are as follows:

1. Will the Government announce those fare increases for TransAdelaide fares before the Taylor by-election?

2. Will the Minister now rule out her stated preference for a flatter fare structure which would result in higher fares for longer distance commuters and disadvantage communities in the northern and southern suburbs?

3. What is the Government policy referred to by the Premier as being the reason for rejecting the Minister's last attempt to increase fares and was that submission rejected because Cabinet wanted to get even greater increases in revenue?

The Hon. K.T. GRIFFIN: In the light of the absence of my colleague the Minister for Transport on ministerial and Government business, I will undertake to refer that to her and she will bring back a reply.

AGENT ORANGE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about Agent Orange.

Leave granted.

The Hon. T.G. ROBERTS: In the *Advertiser* of Saturday 8 October there was a fairly lengthy article describing as a victory for Vietnam veterans an inquiry into Agent Orange and a changing of the Royal Commission's decision. The article itself is syndicated to the *Advertiser* by the reporter Ed Rush. There is a local quote from a Vietnam Veterans' Association representative, Mr Graham Nybo, who describes the decision as momentous and who says that this finally recognises that these people have suffered. I think his expectations are that the decision will overturn the information base and the misinformation that has been spread, particularly about the effects of Agent Orange on those victims who returned from Vietnam.

Mr President, as a farmer you would know that there were many rumours around during the same period that a lot of agricultural chemicals were impacting on the health of a lot of people in the rural industries, both farmers and agricultural workers themselves, who had been exposed to many agricultural chemicals during the period between the mid 60s and the late 70s and the early 80s, and that much of the information that was being supplied to suppliers and users, and to farmers and farmhands generally, was deficient in nature. Certainly, there were arguments amongst academics themselves about the impact of a lot of those chemicals.

It now appears that the information base now available to all those people who have been monitoring the health effects not only of Agent Orange but many other dangerous herbicides, pesticides, weedicides, slimecides, etc, have a more important landmark decision to operate from when applying for rehabilitation treatment and compensation particularly for Vietnam veterans. The State Government can do a number of things to assist the Commonwealth in identifying those people who have been affected by Agent Orange—not only Agent Orange but many of those other herbicides and weedicides to which people were exposed during that period. One of the problems that general practitioners in particular have is recognising the downstream and health effects of those chemicals, because it is very difficult to get the information required not only to treat the symptoms but to look at some of the cancer and leukemia causing effects of such agents. It is difficult for the medical profession to isolate out one agent that may have created the difficulties or the problems.

The questions I have in relation to the problems surrounding Agent Orange and the dioxin effects within other herbicides and pesticides are as follows. What support and assistance will be given by the South Australian Health Commission in assisting to identify the many health problems suffered by Vietnam veterans and others exposed to dangerous herbicides, weedicides, pesticides and slimecides etc that contain dioxin and other now known dangerous components? What training in recognising the symptoms of all these problems will the commission give to general practitioners to at least alert those people affected by those dangerous chemicals in pursuing claims to back up their problems in seeking to prepare their legal claims?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague in another place and the Minister for Transport will bring back a reply.

PORNOGRAPHY

The Hon. M.S. FELEPPA: I seek leave to make an explanation before asking either the Minister for Education and Children's Services or the Attorney-General a question about pornographic phone call services.

Leave granted.

The Hon. M.S. FELEPPA: I draw the Council's attention to the case of a boy of 11 years of age who incurred a $400 telephone bill by calling a 0055 number to listen to hard-core pornography. That the telephone calls were made without parental supervision is, I suppose, a problem for the parents who should be responsible for their children's conduct. However, that the phone calls could be made to such a service so readily is in my view a public and moral issue. It seems to

me that, from the *Sunday Mail* account of 25 September 1994, a caller simply calls the pornographic provider and the telephone service makes a charge for the whole of the call, that is, the telephone connection and the pornographic response. Remuneration is then passed on to the pornographic response service. That may be how it is, but the parent complaining on this occasion claims that the pornographic services should not be available to just any caller but should be available only to callers who subscribe to the service.

The charge for the pornographic response will then be made to the subscriber, and non-subscribers will not be able to access the service. In my view that would somehow restrict the availability of the service, and to some extent children would be prevented from dialling the service. While I do not agree that such a service should be provided, if it is to be provided it should not be available to everyone simply by dialling the telephone number. Its accessibility should be restricted particularly to prevent children using the service, as the boy of 11 years of age did so easily and so often in this case.

Will the Minister endeavour to have the pornographic telephone service brought under restrictions in line with other restrictions on the accessibility of hard core pornographic material which apply in this State? If this cannot be done by the State, will representations be made to have the services so restricted?

The Hon. K.T. GRIFFIN: The State Government has no jurisdiction to regulate access to telecommunications in the way suggested by the honourable member. Telecommunications is constitutionally the responsibility of the Commonwealth Government. The Commonwealth Parliament has enacted a range of legislation dealing with telecommunications, and there is a Federal Minister for Communications. My recollection is that this sort of issue has been raised not in here but publicly on several occasions at least in the past, and on each occasion the matter has been taken up with the relevant Federal Minister.

There is no constitutional competence in the State Parliament to seek to regulate that activity. Obviously, it is a matter of concern that pornographic material is available over the telephone line, as potentially it will become a matter of concern if that sort of material is communicated through the pay television system, but that also is a Federal Government responsibility. What I can do for the honourable member is forward a copy of his question and my response to the Federal Minister for Communications or such other Minister at the Federal level who has responsibility for this, requesting a response.

PRAWN FISHERY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the Gulf St Vincent prawn fishery.

Leave granted.

The Hon. M.J. ELLIOTT: I was approached by some fishermen in the Gulf St Vincent prawn fishery last week following a breakdown in negotiations between them and the Minister for Primary Industries. The Minister has just announced that there will be a $50 000 a year fee in addition to their standard $4 453 licence fee to recover the debt from the buy back. Those people with a long memory will recall that this issue has been going on in this Parliament for at least eight years.

The Hon. Anne Levy: Twenty or 30 years.

The Hon. M.J. ELLIOTT: I think it is eight years, in terms of the current saga. The buy back at the time was predicated on the recovery of the fishery within a three year period. History quite clearly shows that the recovery which occurred took much longer than that—in fact, twice that period—and that the fishery never recovered to the predicted level. Of course, the fishermen agreed to the buy back scheme based upon the advice that the Government gave them at the time through the Department of Fisheries.

The fishermen have expressed concern that applying a flat fee, and quite a high one of $50 000 a year, will have the impact that they will really have to catch as many prawns as possible to cover the debt and their costs, so that they can then hopefully have a little in their pockets as well; they are concerned that a high flat fee will encourage overfishing of the fishery. Their arguments were reported in the *Advertiser* of Friday 7 October. I note that, towards the end of the article, there is a response from Mr Adrian Scott (an economics adviser to Mr Baker), who said that '. . . legally the Minister was unable to apply a levy based on the number of kilograms of prawns caught'. Whilst that is true under the buy back scheme, I would draw to the Minister's attention section 46(b)(xiv) of the Fisheries Act, the principal Act in fisheries management, which, in relation to the making of regulations, refers to 'prescribed fees for the granting, renewal or transfer of a licence in respect of the fishery being fees of amounts fixed by reference to the estimated total value of production by the licence holders in respect of the fishery during an antecedent period'. In other words, it is possible to directly link a fee to the catch.

I believe that the response that the Minister's adviser gave to the *Advertiser* was, in effect, misleading. The Minister might use the defence that he was referring to the rationalisation Act, but the fact is that the other Act is also available for the charging of fees. I ask the Minister: will he consider using the powers under the Fisheries Act to make regulations to set fees which are linked to the value of the catch and therefore protect the industry from potential overfishing while it is still in a recovery phrase?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague the Minister for Primary Industries in another place and bring back a reply. I want to make the observation that if any inaccurate information has been provided, as asserted by the honourable member, it certainly would not have been with any intention to deliberately mislead. There may not have been any inaccurate information provided in any event, but I just want to make sure that that does not go unanswered immediately. I will refer the matter and bring back a reply.

STATE INFRASTRUCTURE

The Hon. T. CROTHERS: I seek leave to make a brief statement before directing a question to the Minister for Education, representing the Minister for Infrastructure, on the subject of future funding for infrastructure maintenance and new works for the State EWS and other matters related to privatisation.

Leave granted.

The Hon. T. CROTHERS: Recent reports have indicated that the State Government will endeavour to privatise at least parts of the EWS. It may well be that it is its intention, if it can, to privatise all of it. To that end, I refer to a report on page 5 of the *Advertiser* of 14 September this year. I, like many other South Australians, am well aware of the parlous

state of ongoing maintenance requirements and new infrastructures. Here I refer to the two very serious major burst mains problems which we have had in metropolitan Adelaide, particularly the first one, as it destroyed a family home, the consequences of which have left that family homeless, even to this very day.

Certainly, that was their plight very recently, and, in addition, there is the ongoing question of Federal funding of the EWS of those parts that are privatised. Questions also arise regarding our catchment areas, sewerage services, reservoirs, and the like, such as the ongoing and continuous filtration of our water supplies. The Murray River pumping stations and their associated pipelines also raise questions in respect of the privatisation of the EWS. Finally, but by no means exhaustively, the question arises about the quantum, purity and maintenance in respect of South Australia's allocation of Murray River waters. An article written by Pat Coyne in the *New Statesman & Society* of 27 May questions the whole concept of privatisation, particularly as it relates to present-day Britain.

He raises the spectre of the heads of instrumentalities raising their salaries outrageously. He cites the example of the Chairman of British Gas who raised his salary of £74 000 sterling per annum as a Government employee, to £379 484 sterling per annum after privatisation. And, in a like vein, the top pre-privatisation salary at the Thames Valley Water Board was £41 000 sterling in 1989-90 and by 1993, after privatisation, had rocketed to £306 000 sterling.

The article also talks about fees and commissions paid to advisers, consultants and people for their advice in relation to the privatisation of British transport, gas and electricity companies. The fees and commissions for these services alone was £780 million, but a précis-ed summary, which also appeared in the article by Mr Coyne and which was headed 'Facts to make your hair curl', stated that pay settlements in the same utilities to which I have just referred averaged 2.95 per cent last year. In fact, they have averaged that since privatisation, yet the salary of the Chairman of British Gas has increased by 512 per cent; the salary of the Chairman of British Transport by 713 per cent; and the salary of the Chairman of the Thames Valley Water Board by a whopping 758 per cent.

The precis also states that water charges have increased by between 45 and 82 per cent since privatisation; electricity charges by between 7 and 14 per cent; that share prices of regional electricity companies have increased by some 200 per cent; and water companies up to 170 per cent over the same period. Further, the article states that more than 200 000 jobs will have been lost since privatisation of the British utilities alone; more than twice that number in mining and associated supply are not included in that figure of 200 000. British Transport, for example, plans to cut its work force by over 60 per cent.

In short, the article is absolutely, and in the boldest terms, critical of British Thatcherism and, certainly with the figures and facts contained therein, one cannot but be worried about privatisation. I have a copy of Pat Coyne's article and I willingly make it available to any of my parliamentary colleagues who would want it; indeed, I would urge them to read the article. In light of the foregoing, I direct the following questions to the Minister for Infrastructure through the Minister for Education and Children's Services:

1. What difference, if any, will privatisation, either in whole or in part, of the EWS make to Federal funding and/or grants given or made and tied to the EWS by the Federal Government?

2. In the *Advertiser* article previously referred to, it is said that the EWS will save $38 million per year. How has that figure been arrived at? Has it, for instance, calculated the cost to the Australian and, indeed, specifically the South Australian community relative to the payment of unemployment benefits and other ancillary service benefits to the people in our community who will be rendered unemployed by the privatisation of the EWS?

3. If the EWS is privatised, what sort of regulatory body will be put in place to oversee the operations of the private company and, following on from that, the question is: who will regulate the regulators?

4. The article in the *New Statesman & Society* makes the point that it is the end users of water, gas, public transport, electricity, etc., who will ultimately pay a much higher price for their use. Does the Minister agree or disagree?

5. If the Minister disagrees with the last question, will he detail his reasons for so doing?

6. If the Minister agrees with the question—which sets out the British experience of privatisation of Government utilities—why does he and his Government persist in endeavouring to implement Thatcherism into our society?

7. If overseas capital is required to purchase the EWS what will be the adverse effect on Australia's balance of payment problems by the expatriation of profits out of Australia back to the overseas parent investor?

8. Will a consumer have to pay higher prices for the services provided by the EWS or is that in the view of the Minister not the case, and is it the view of the Minister that privatisation is not just another way of raising taxes, charges and Government revenue by a back-door method?

9. If privatisation of utilities here is, as has been shown to be the case in Britain, via Pat Coyne's article in the *New Statesman*, a failure, how much capital would be required to buy back the EWS in (a) 10 years' time, (b) 20 years' time, and (c) 30 years' time?

The Hon. R.I. LUCAS: I do not have the answers to all those questions. It will take me sometime to work my way through them. I will refer the honourable member's tick-a-box questions to the Minister for Infrastructure and bring back a reply as expeditiously as possible.

On behalf of Liberal members in the Chamber, I congratulate the new Leader of the Opposition and Deputy Leader of the Opposition on their positions and look forward to working with them and the other new member on the front bench in the due process of Government and parliamentary business in this Chamber.

VJ DAY

In reply to **Hon. T. CROTHERS** (25 August).

The Hon. R.I. LUCAS: The Premier, the Hon. Dean Brown, has provided the following response. The matter has not yet been considered by the South Australian Government.

PUBLIC SECTOR SAVINGS

In reply to **Hon. T. CROTHERS** (8 August).

The Hon. R.I. LUCAS: The Commissioner for Public Employment has provided the following response:

1/2. The conditions attached to the use of separation packages require a net work force reduction for each separation package paid and the scheme does not discriminate on the basis of age. The number of male and female public sector employees who have voluntarily resigned in order to accept separation packages and who are eligible to receive pensioner benefits is not known. I am

informed, however, that the average age of employees accepting packages over the last two financial years was 43. It is not possible to indicate how many of those employees who voluntarily resigned were also returned servicemen. It is also not possible to indicate which of these employees are entitled to receive old age pensions and other pensioner benefits as this would depend on their personal circumstances which are unknown to the Government.

In addition, those who accept separation packages are able to seek employment in the private sector where recent figures indicate employment is growing. The need therefore to rely on Commonwealth funded pensions is unclear but if this is occurring it would only be in a minority of cases.

3. The cost of separation packages for the last two financial years was $421.2 million as outlined recently in the budget. This figure reflects the cost of separation packages and the cost associated with employees in superannuation contributory schemes electing to 'cash up' their superannuation benefits.

4. There is no reason to expect that State taxpayers will have to pay any more as a result of employees voluntarily accepting separation packages. As indicated in my earlier response there is no indication that these former employees are now in receipt of pensioner benefits that they would not otherwise have been entitled to.

5. As indicated previously it is very unlikely that the vast majority of employees who have accepted separation packages will be eligible for the old age pension. The question of eligibility is, of course, a matter for the Commonwealth not the State.

6. No, because it is not expected that consumer purchasing power will be eroded by the employees accepting separation packages. In fact the savings that are achieved as a result of public sector work force reductions is part of the overall strategy to improve this State's economic performance which in turn will lead to growth in employment that will more than offset the public sector reductions.

7. I take the honourable member's questions very seriously and I trust the answers provided satisfy him on the issues he has raised. As I have previously indicated, the Government has not attempted to reduce the public sector in an *ad hoc* fashion but has established a program of expenditure and work force reductions over the next three years to achieve its debt reduction strategy. The achievement of work force reductions to date has largely been through the process of voluntary separation where positions in the public sector are considered excess to requirements.

TECHNOLOGY OUTSOURCING

In reply to **Hon. M.J. ELLIOTT** (11 August).

The Hon. R.I. LUCAS: My colleague the Hon. Stephen Baker has provided the following response. The Government regards privacy of information as being of critical importance in the outsourcing of IT requirements.

In respect of the companies presently under consideration for an IT outsourcing contract, EDS and IBM are both world leaders in providing secure outsourcing services to government and commercial clients. They service numerous contracts around the world, covering defence, social security, taxation and the full range of government enterprises in many countries, the world's major financial institutions, and other commercial organisations both big and small. The British departments of Inland Revenue and Social Security are two examples of agencies with requirements for privacy as demanding as our own.

The companies' ability to implement required security measures has been assessed during the evaluation of proposals. Reference sites in Great Britain, U.S.A. and New Zealand as well as Australia have been inspected by the evaluation team. The evaluation has confirmed both companies' capabilities in meeting security and privacy requirements for the most demanding of customers.

The Government does not have legislation but it does have Cabinet approved information privacy principles which are similar to the legislated data protection and privacy principles applied in the European Community. No Australian State has privacy legislation although New South Wales currently has a draft bill under consideration.

South Australia does have its Freedom of Information Act 1991, which addresses most of these privacy principles in a legislative form.

The European Community's concerns have been met across Australia by the Commonwealth's Privacy Act 1988. Any exchange of information between South Australia and any European Community nation will not be jeopardised.

The Cabinet IT subcommittee has adopted the following principles aimed at the security and privacy of data in an outsourced environment:

- the Government owns the information and the outsourcing company is only the custodian of the information;
- the Government, as owner, specifies the security standards with which the outsourcing company must comply; and
- the Government's security standards will be consistent with the information privacy standards applying to all agencies as established in July 1992.

The Office of Information Technology has recently released 'South Australian Government Information Technology Security Guidelines' to the chief executive officers of all Government agencies involved in outsourcing of computer processing. It will shortly release a further document entitled 'South Australian Government Information Technology Security Standards in an Outsourced Environment' to these same agencies.

Responsibility for ensuring enforcement of the Government's privacy principles will remain with chief executive officers as it has in the past and they will have been made fully aware of the obligations and responsibility of the parties under the outsourcing arrangements.

Turning to the link between the Government's internal arrangements and the outsourcing vendor, the successful tenderer will be expected to meet any and all privacy requirements in the contract signed between itself and the Government.

A breach of the conditions of the contract, including the privacy requirements, would be regarded as a breach of the contract and hence provide grounds for possible termination. This is a powerful tool and I am advised will provide more protection than currently exists within the bureaucracy.

The Chairperson of the Privacy Committee of South Australia has stated that he has 'no concerns about the protection of privacy through outsourcing.' He is working with the Crown Solicitor's office to draft the appropriate sections for the contract.

In summary, the protection of privacy provisions under IT outsourcing are at least equal to those currently prevailing and in significant contractual aspects superior.

In respect of the first question asked by the honourable member 'will the Minister ensure that legislation is in place before any information technology is outsourced?' it is considered that current privacy measures within the Government together with contractual obligations to be negotiated with the chosen outsourcing contractors will provide adequate protection.

SCHOOL ASSESSMENT

In reply to **Hon. ANNE LEVY** (24 August).

The Hon. R.I. LUCAS:

1. To date South Australia has not been charged by New South Wales for the use of the Basic Skills Test. New South Wales has stated in writing that 'the per capita amount NSW intends to charge South Australia for South Australian students undertaking the test in 1994 will be $10.00 per student'. This charge includes the cost of printing all test booklets and reports and the costs of distributing these materials to South Australia.

The agreement with Virginia Chadwick, NSW Minister for Education and Youth Affairs, specifically includes a clause that South Australia will not be charged for the development costs to date of the Basic Skills Tests nor will these costs be passed on to South Australia up to and including 1998—the last year covered by the current agreement with NSW.

2. In making a decision to negotiate the use of the NSW Basic Skills Test an estimates of development costs to New South Wales were considered as was the extent of experience in South Australia of system-wide testing and testing expertise. NSW has provided a written statement of development costs. The statement reads, 'the actual development cost incurred by NSW for the 1994 Basic Skills Test (BST) was approximately $1.018 million'. It was considered that to develop tests of international standing would be prohibitive cost-wise for South Australia. The NSW Tests have been internationally recognised and have received accolades from the international assessment community for their innovative approach. The cost of resourcing a team and developing this expertise in South Australia was considered to be prohibitive. The tests were developed by NSW with support from experts of the Australian Council for Educational Research (ACER) with considerable national and international experience in test development. South Australia would not be able to match this expertise and given the extensive develop-

ment costs involved another way of implementing the Government's policy was considered.

Working collaboratively with NSW was considered to be the best option to provide tests of high credibility with no development costs to South Australia. This represents an enormous cost saving to South Australia of over $1 million. The information from the trial and information from other sources may reveal that any future redevelopment work and associated costs to meet the needs of South Australia will be minimal.

3. The cost of conducting the assessment in the pilot schools has been estimated* as follows:

Cost of tests including test booklets, marking, preparation of reports and distribution costs for approximately 2400 students @ $10.00 per student	24 000
Teacher relief time 61 days @ $200 per day for trial schools	12 200
Accommodation and travel for 80 observers estimated at $100 per observer	8 000
Production and analysis of questionnaire	2 500
Estimated costs of visits to and from NSW to receive and exchange information	10 000
Estimated costs of translation of questionnaires for parents	1 000
Production and analysis of report questionnaires	2 000
Current estimated cost of SA trial	$59 700.00

*The trial is still continuing and reports are not due back to South Australia until late October. At this point in time further work will be undertaken with the 41 trial schools. Until the actual number of students who participated in the test on the day will be known from the number of test booklets returned to NSW for marking. At this stage this work is still in progress and this information is not available. Until all invoices are received for all work undertaken to date actual costs are not available.

Teachers are not required to assess the results of the tests if by this it is meant that they mark the test. The test is machined marked in NSW and these costs are included in the costs per student outlined above. The time taken by teachers to interpret and use the test results is regarded as a part of a normal school program. The test administration and use of the test results form part of the day to day work of teachers at these year levels. Information from the test results will supplement the other information gathered from other assessments conducted by teachers as part of their daily programs.

The time that a teacher takes to apply the information from the results of the tests is dependent upon the demands placed on teachers to meet the needs of students in their care. This will obviously vary considerably from class to class, from school to school and from student to student. There is no agreed correct accounting procedure to determine and account for the costs of teachers' daily routine professional work.

4. This question also requested that estimated costs include 'teachers' time and all other costs'. Teacher time associated with the conduct of Basic Skills Tests is regarded as a normal part of a school program and as such is part of a teacher's professional work, just as, for instance, teacher time involved in administering sport's day is regarded as a part of a teacher's involvement with the school program. Such time will vary considerably as indicated in the response to Question 3.

The current estimated costs for implementing the Basic Skills Test in South Australia in 1995 for 32 000 students is therefore $320 000. The additional costs for administration and joint development of tests have not been finally determined.

NSW states that the per capita cost to South Australia for South Australian students 'is difficult to estimate. . . .(for the later years). . . notwithstanding that the method of calculation will remain the same and the development costs . . . ($1.018 million). . . will be excluded. This arises because the costs attributable to South Australian students include fixed and variable elements. Therefore, the per capita cost will vary from year to year depending on candidature. That is, the greater the candidature the lower the per capita cost and conversely, the lower the candidature the greater the per capita cost'. The per capita costs in 1995 will therefore be less than $10.00 per student.

ELECTRICITY TRUST

In reply to **Hon. ANNE LEVY** (10 August).

The Hon. R.I. LUCAS: The Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response: The Liberal Party policy prior to the last election, referred to in the question, addresses a number of issues with respect to renewable energy, demand management, least cost planning, and the approach of incentives rather than regulation to achieve energy efficiency in all sectors.

The policy deals with a range of sectors, including suppliers and consumers, and notes specific approaches to energy conservation through, for example, the encouragement of roof insulation.

It is not necessarily implied that 20 per cent of the State's electricity is to be derived from renewable energy sources. The statement made was in relation to the State's (total) energy supply.

ETSA has a commitment to research and development of alternative energies with potential application in South Australia. This commitment is in line with the Government's overall policy of encouraging the use of alternative energy. The ETSA alternative energy plan for the period 1993-1997 includes wind energy, solar energy, and fuel cell technologies.

As a means of optimising ETSA's investment in alternative energy research and development the plan includes a number of significant cooperative research and demonstration programs with other South Australian and Australian institutions. The benefits to be obtained through this approach of pooling resources to conduct such research on a meaningful scale include the ability to attract a significant level of funding from the Commonwealth Government.

ETSA's ongoing commitment to alternative energy research, development and application was summarised in a detailed breakdown of ETSA's energy related research and development programs for the period 1993-1994 prepared for the Statutory Authorities Review Committee. This report included descriptions of, and expenditure on, energy research and development including alternative energies. Contributions for this period also included costs of evaluating the existing Coober Pedy wind turbine generator.

A significant recent initiative has been the signing of a contract this year (1994) between ETSA and Energy Developments Limited for the use of landfill gas (methane) from seven landfill sites around Adelaide, with a total capacity of up to 28 megawatts. The first plant has been commissioned and is now contributing power to the electricity grid.

In the more general context of the Government policy of support for cost efficient application of demand management, ETSA currently has a number of significant demand management initiatives, including research, promotion, education, demonstration and support schemes.

These include a pioneer domestic energy research program, an energy audit program for commercial and industrial customers, and the demonstration of energy efficient technologies such as thermal storage, low energy lighting, and heat pump technologies. A major initiative for business growth in South Australia was launched by ETSA in May 1994. Grants of up to $100 000 have been made available for the implementation of technological solutions which improve business energy efficiency and productivity.

The programs outlined above indicate ETSA's contribution to the energy-related aspects of the Government's policy.

SUBMARINES

In reply to **Hon. T. CROTHERS** (23 August).

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

The construction of the Collins class submarines in South Australia has generated significant benefits to the State economy in job creation and expanding the skills base of the workforce. For these reasons, the project has consistently received bi-partisan support from the major parties in the South Australian Parliament. In this spirit, I commend the honourable member's interest in and support for the project. However, I do not believe it would be productive or of assistance to the Australian Submarine Corporation to pursue a political debate about when the first submarine may be completed.

CHEMICALS IN SCHOOLS

In reply to **Hon. M.J. ELLIOTT** (24 August).

The Hon R.I. LUCAS:

1. The use of chemicals in schools needs to be considered in the context of the duty of care owed to students by virtue of the Education Act, the Occupational Health & Safety Act and other Acts which bind the Crown. The duty of care is described in Section 1: Division 5: 97, of the Department for Education & Children's Services Administrative Instructions and Guidelines viz:-

97.1.1
· the duty to design and implement appropriate programs to ensure the safety of students:
· the duty to ensure that school buildings, equipment, etc., are safe;
· the duty to warn students about dangerous situations and practices.

97.1.2 The list is not exhaustive. Basically, the duty is to do what is reasonable in a given situation.

Section 1: Division 6. Safety Matters 104, provides further guidance:

Principals and all staff members should ensure that at all times:
· reasonable care is taken to ascertain any potential dangers which exist on departmental premises and that all necessary precautions have been taken to guard against an accidents arising therefrom.

With respect to poisonous and flammable substances, Section 1, Division 109.6 provides detailed information on the use of herbicides on school grounds. In addition to this information, the Department's Occupational Health & Safety Manual details policy with respect to the management of chemical hazards. Specific reference is made to the management of agricultural chemicals, including herbicides and insecticides, within the Agricultural Education section of the manual.

2. The prevention of accidents or injury is an integral part of the duty of care provisions. The spraying of chemicals is only undertaken on a needs basis and normally contracted through SACON (now the Department for Building Management) to qualified private companies specialising in this activity. Where possible, such activities are undertaken in holiday periods. In the event that this is not possible, staff and students are not permitted to re-enter treated areas until it is considered safe to do so. Advice on this matter is obtained by the Principal from the specialised contractor or Department for Building Management.

3. Guidelines exist for the management of herbicides and insecticides within schools. These may be found within the Administrative Instruction and Guidelines (Division 1: Section 6 109.6.2) and the Occupational Health & Safety Manual, General Provisions and the Agricultural Studies Section. In addition, an Education Gazette Notice of 6 May, 1988, dealt with procedures to be adopted in Education Department workplaces when chemical treatments are being carried out. A copy of these procedures is attached

A principal is required to meet the obligations under the Occupational Health & Safety Act to ensure that the workplace is safe. The acquisition and promulgation of information on hazardous substances is a requirement of this Act.

4. The management of hazardous materials is covered by the Occupational Health & Safety Act (and other complementary legislation). Guidelines for the management of chemicals have been included within the Manual. Specific models for the accounting of use of agricultural chemicals are included. In addition, whenever treatments such as the use of Cislin 10 are used, I am advised that records are maintained by the District Building Officer, Department of Building Management and or on the Department of Building Management MACS system under the pest control category. Information is therefore available.

5. A copy of the Material Data Safety Sheet for Cislin 10 is attached.

The principal health effects of the product are summarised:-

Swallowed:	Product harmful if swallowed
Eye:	Irritant
Skin:	Contamination of the skin, especially the face, may result in initial stinging followed by numbing which may persist for a few hours.
Inhalation:	Inhalation of spray causes transient irritation of nasal and buccal mucosa.

6. The potential contamination from outside sources, whilst of concern, is not the responsibility of the Department for Education and Children's Services and as such will not be included in Departmental Guidelines. However, should an incident occur which can be clearly related to overspray, the incident will be documented through the Accident/Incident Report (ED155) under the Occupational Health & Safety Act. Such a report will initiate an investigation. Normally these matters should be referred to the Minister responsible for the Environmental Protection Act in another place. I shall refer the matter to him for a response.

TRADING HOURS

In reply to **Hon. M.J. ELLIOTT** (10 August).

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

In extending trading hours, the Government will be acting entirely in accordance with laws set by the Parliament in the Shop Trading Hours Act.

More than 800 certificates of exemption have been issued previously without, so far as I am aware, any criticism from the honourable member.

ELECTRICITY THEFT

In reply to **Hon. ANNE LEVY** (11 August).

The Hon. R.I. LUCAS: The Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response: there is no accurate way of determining the amount of electricity fraud in South Australia. A figure often quoted in the electricity supply industry internationally is a loss of 1 per cent of annual revenue through theft. This would equate to approximately $9 million which equates to $15 for each ETSA customer.

Not only is the cost of such theft financial, but unqualified people who tamper with meters put themselves and others at considerable risk. Haphazard and unsafe modifications have been linked to electrocutions and fires.

ETSA has an active Revenue Protection Unit (RPU) which has been operating for approximately 20 years. Currently, there are three full-time staff who investigate all types of meter installation fraud and electricity theft.

The RPU has developed a number of strategies to combat the problem of electricity theft. These include:

· Ongoing training of all front-line field staff (eg Meter Readers) in the detection of meter interference.
· Saturation inspections of metering installations, targeting high risk commercial properties (eg fast food outlets) and occupation types (eg electricians).
· An active media campaign, encouraging members of the public to come forward with information regarding suspected electricity theft.
· Press releases regarding successful prosecutions to deter other potential thieves.
· A 24 hour Electricity Theft Hotline. Members of the public can confidentially and anonymously contact ETSA with information regarding suspected thieves.
· Computer programs which highlight suspicious customer accounts.
· Liaison with the SA Police Department (eg electricity theft and marijuana cultivation are often associated).

In 1993-94, the RPU investigated 269 cases of meter installation interference, prosecuting 14 offenders, with a further 19 individuals pending prosecution.

VIETNAMESE LANGUAGE STUDIES

In reply to **Hon. BERNICE PFITZNER** (10 August).

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

1. The University of Adelaide took over the teaching of Vietnamese when the institutional mergers occurred several years ago and has accorded it sufficient priority to obtain 10 Commonwealth funded intake places for the program.

The University has internal mechanisms for the determination of priorities and I have been advised that the suggestion that Vietnamese should be accorded a higher priority would be best directed straight to the Council.

2. No.

3. It is not a question of status but of finance. The University has stated that it is committed to providing the funds granted for Vietnamese to that program on the same basis as for other programs. The Arts Faculty is going through a period of readjustment and is not in a sufficiently robust financial position to be able to cross subsidise Vietnamese.

4. Vietnamese can only receive additional resources by transferring them from elsewhere within the University. Only the University Council can make these internal balancing decisions and I recommend to the honourable member that she raise the issue with the University Council.

VIRGINIA PRIMARY SCHOOL

In reply to **Hon. BERNICE PFITZNER** (4 August).

The Hon. R.I. LUCAS:

1. Virginia Primary School has one of the highest percentages of students from non-English speaking backgrounds in the State.

Data from the 1993 July Specific Population census show that the percentage of students from non-English speaking backgrounds at Virginia Primary School was 60.0 per cent. This places Virginia Primary School eighth highest on the list of State Government schools with students from non-English speaking backgrounds.

Many of these students come from families with no, or minimal, competence in English. In addition, many families come from rural backgrounds and, while they recognise the value and importance of English language learning to their children's education, they are limited in their capacity to provide support for their children at home due to their own difficulties with English and their limited understanding of the Australian education culture and ethos.

The school also has an estimated 45 per cent of students in receipt of school card. (1994 data is not yet available).

The English language learning needs of ESL students are highlighted by research from the United States and Canada (Collier 1987, Cummins 1980) which shows that children learning English as a second language take, on the average, between five and seven years before they can operate on the same academic level as their English speaking background peers. This is generally true for middle class children who do not necessarily suffer from other forms of disadvantage as a result of their migration experience or socioeconomic situation.

2. There are 139.3 full-time equivalent salaries allocated to mainstream schools through the ESL General Support Program. Of these 23 allocations of one or more FTE are made to junior primary and primary schools, 19 to secondary and senior schools and four to R-12 schools and non-metropolitan clusters Statewide.

3. The ESL program is part of the access element of the Commonwealth Government's National Equity Program for Schools (NEPS). The program has two components: the New Arrivals Program element and the General Support Program element.

Commonwealth and State funding for the new arrivals element is allocated annually on a per capita basis for each eligible newly arrived student identified by jurisdictions to be in need of intensive ESL instruction and based on length of residency in Australia. Commonwealth funding for the general support element is allocated annually according to numbers of students from non-English speaking backgrounds weighted according to the language used in the home and cultural background.

In South Australia the program is further supported by the State Government to meet an agreed formula for the distribution of salaries and support to schools.

At the State level, ESL staffing for the ESL General Support Program is made on the basis of a formula applied to enrolment data provided annually by schools through the July Specific Population census. The formula is based on length of residency and provides for the following:

- students resident less than one year 1 FTE:20 students
- students resident between 1-5 years 1 FTE:36 students
- students resident more than five years, or born in Australia 1 FTE:200 students.

A weighting for school card is also applied.

A total of 139.3 FTE is available for distribution annually. This represents approximately 53 per cent of the need identified through the residency-based formula.

4. The ESL program under current Commonwealth and State funding arrangements does not meet the needs of all ESL students in schools. As a response to emerging needs and as a means of continually improving service delivery, an ESL staffing working party, chaired by the principal Curriculum Officer (Multiculturalism in Education) has been formed to explore and advise on staffing needs of schools and a range of allocative mechanisms that will better respond to the needs of ESL learners. The principal of Virginia Primary School is a member of this working party. This group is expected to report on its findings by the end of this school year.

In terms of facilities, Virginia Primary School has recently received two of four transportable buildings for future classroom use. Discussions are currently being held between the school administration and facilities for the refurbishment and utilisation of these rooms.

ATTACHMENT 1

Number and location of schools with ESL appointments of one or more FTEs.

Notes:

(i) ESL clusters
ESL clusters linking a number of schools have been established in order to: provide ESL support to schools that would not normally attract ESL staffing because of low student numbers; stabilise ESL appointments in areas of fluctuating student numbers; and provide increased flexibility in responding to the changing needs of schools within the cluster.

(ii) ESL Support School Coordinators
The ESL Program funds 22 coordinator positions in schools Statewide to provide school-based leadership and support in the area of ESL teaching and learning to ESL and non-ESL staff in mainstream schools R-12.

Junior Primary and Primary Schools

- Aberfoyle Hub Primary School cluster 1.6
- Burton Primary School 1.7
- Christies Beach Primary School cluster 1.0
- Clapham Primary School cluster 1.0
- Cowandilla Primary School 1.3 (includes 0.3 ESL Support School Network Coordinator)
- Darlington Primary School cluster 1.5 (includes 0.3 ESL Support School Network Coordinator)
- Elizabeth South Primary School cluster 1.0
- Hallett Cove Primary School cluster 1.0
- Ingle Farm Primary School 1.0
- Linden Park Junior Primary and Primary School 1.5
- Lockleys Primary School cluster 1.0
- Magill Primary School and Junior Primary School (includes 0.3 ESL Support School Network Coordinator) 1.7
- Mansfield Park Primary School 2.2 (includes 0.3 ESL Support School Network Coordinator)
- Norwood Primary School 1.0
- Pennington Primary School 2.3 (includes 0.3 ESL Support School Network Coordinator)
- Reynella East Primary School cluster 1.0
- Reynella South Primary School cluster 1.2
- Ridley Grove Primary School 1.4
- Salisbury North Junior Primary and Primary School (includes 0.3 ESL Support School Network Coordinator) 1.3
- Settler Farm Junior Primary and Primary School (includes 0.3 ESL Support School Network Coordinator) 1 . 3
- Stradbroke Junior Primary and Primary School 1.0
- The Pines Junior Primary and Primary School 2.0
- Torrensville Primary School 1.0
- Virginia Primary School 1.0.

Secondary and Senior Secondary Schools

- Adelaide High School 4.5
- Charles Campbell Secondary School 2.0
- Christies Beach High School 1.6 (includes 0.3 ESL Support School Network Coordinator)
- Croydon High School 1.4
- Enfield High School 2.0 (includes 0.3 ESL Support School Network Coordinator)
- Findon High School 1.5
- Inbarendi College 1.2
- Marden Senior College 1.2
- Marion High School 2.3 (includes 0.3 ESL Support School Network Coordinator)
- Nailsworth High School 1.8
- Norwood-Morialta School 6.0 (includes 0.3 ESL Support School Network Coordinator)
- Parafield Gardens High School 2.3 (includes 0.3 ESL Support School Network Coordinator)
- Salisbury East High School 1.0
- Seaton High School 1.0
- Thebarton Senior College 4.0 (includes 0.3 ESL Support School Network Coordinator)
- The Parks High School 2.2
- Underdale High School 1.5
- Unley High School 1.5
- Woodville High School 4.5 (includes 0.3 ESL Support School Network Coordinator)

R-12 Schools
- Berri Primary School cluster 1.0 (includes 0.2 ESL Support School Network Coordinator)
- Coober Pedy Area School 1.7 (includes 0.2 ESL Support School Network Coordinator)
- Mount Gambier North Primary School cluster 1.0 (includes 0.2 ESL Support School Network Coordinator)
- Paralowie R-12 School 2.0

SCHOOL CLOSURES

In reply to **Hon. CAROLYN PICKLES** (16 September).

The Hon. R.I. LUCAS:

1. The estimated forty or so schools to be closed in the next three to four years have not been identified, a point which I have emphasised on many occasions.

The process to identify schools for closure or amalgamation will include formal restructure reviews, decline in enrolments to a level where curriculum options are severely limited and requests from school councils and local school communities for changes in the delivery of schooling.

2 and 3. Generally before school closure and amalgamation occurs it has been normal practice for broad community consultation to occur.

School restructure should not be considered as a necessarily negative experience. Some school communities have recognised that their students will be better serviced by closure, by amalgamation, by reconstructing their management structure, eg a small school becomes an outpost of a larger nearby school.

Community consultation has been and will remain an essential element in the restructuring of schools.

4. In a number of cases it may well be necessary to take such a decision despite opposition from local school communities in order to provide more viable curriculum options for students or to inject a dose of common sense into a situation where there may be a handful of students enrolled in a school only a few kilometres from another larger school.

SCHOOL SECURITY

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

The Hon. R.I. LUCAS: Steps to ensure the safety of staff and students at Woodville High School include the employment of security guards and the alteration of yard duty practices so that staff members work in pairs and are equipped with polaroid cameras and two-way radios.

There is a range of other preventative and reactive measures which has been initiated by Department of Education and Children's Services (DECS) to address the issue of staff and student safety from violence:
- Schools actively teach students about the responsibilities of citizenship through the curriculum in all year levels.
- Violent behaviour is often the result of sexual harassment or racism. Students learn about these forms of harassment and how to counter them. All schools have a responsibility to familiarise students with grievance procedures open to them if they are harassed. A violent response to harassment is never countenanced.
- Disruptive and violent behaviour is usually dealt with at the school level through the school discipline policy. The school discipline policy outlines schools' responsibilities to work in partnership with their communities to create safe, caring, orderly learning environments.
- Sanctions such as suspension, exclusion or expulsion may be used as a response to violent behaviour. Whenever a student is suspended or excluded from school, a behaviour plan is negotiated between the student, parents and the school. The student's adherence to the plan is monitored closely upon re-entry.
- If schools need further support to manage students with violent behaviour the Behaviour Support Team or the Interagency Referral Manager can be contacted in the nearest Regional Services Office. Behaviour support personnel work with teachers, students and families to help plan responses which will support behaviour change. Interagency Referral Managers coordinate support from other agencies (eg. FACS or CAMHS) for students and families.
- Learning centres manage the most disruptive students during exclusion. If successful re-entry to a regular school setting is not likely, a longer term alternative placement is sought.
- The Government has allocated $2 million over the next two years to increase the number of places in withdrawal programs such as those offered by learning centres as well as a range of other initiatives.
- Principals are soon to have greater powers to expel students who are over the age of compulsion.
- SA Institute of Teachers and DECS have cooperated in a joint working party to investigate violence in schools and make recommendations for actions which will make schools safer.
- DECS has recently released emergency guidelines outlining procedures for schools to follow in a wide variety of emergency situations.
- DECS now has three solicitors on secondment from Crown Law who help schools to access legal support when they need advice or action, eg. on Summary Protection Orders.
- DECS has established networks with the police to streamline responses to violence in schools. District Superintendents of Education have encouraged principals and local police to meet to cooperatively plan emergency procedures. This program is in its infancy but is working well.
- Senior staff (eg. principal, deputy and counsellors) are responsible for counselling individual students and supporting students, parents and staff in times of crisis.
- Regional Services Offices have support staff to help schools after traumatic situations. These include teams of social Workers and personnel counsellors.
- A rehabilitation service is provided through the Occupational Services Unit.
- DECS also has access to support from Crisis Care and Victims of Crime for additional help after a traumatic incident.
- In the Education Act there are legal options for staff who are assaulted, either physically or verbally. (Section 104). However, legal services advise there are stronger penalties against both students and adults in the body of criminal law, which is easier to access.

RURAL INFRASTRUCTURE

In reply to **Hon. T.G. ROBERTS** (25 August).

The Hon. R.I. LUCAS: My colleague the Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response. The Government has moved quickly and positively to advance regional development in this State. Its position is clear—for South Australia to achieve its economic and social potential more emphasis must be placed on its regions realising their potential.

Giving assistance to regions (through their own development boards) in setting and achieving their own visions for development, will provide a more sustainable, long term basis for regional development than a State welfarism approach.

In the context of ensuring an equitable approach to the provision of State Government resources, services and infrastructure across the State, the emphasis is on resourcing and assistance to ensure regions can help themselves in the task of economic and social development. The rationale for this approach is that:
- regions know their own areas best;
- regions are different and cannot be treated homogeneously;
- mature self determination offers more incentive and dignity and hence likelihood of success.

To initiate this approach to regional development, the Regional Development Unit of the Economic Development Authority (EDA) has been substantially upgraded and expanded to provide more appropriate levels of support and direction to the task.

The emphasis of this group is on helping the regions achieve real things on the ground, by creating more business activity and jobs and strategic infrastructure and to move into implementation of strategies and studies rather than more reporting.

PUBLIC SECTOR EMPLOYMENT

In reply to **Hon. T.G. ROBERTS** (2 August).

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

The Government's decisions on Public Sector Employment were first announced in the May financial statement.

The report in the *Advertiser* on 30 July referred to by the honourable member related to the achievement of the targeted reduction of 3 942 full time equivalent positions proposed by the former Government in the 1992 budget and the April 1993 'Meeting

the Challenge' statement, and additional separations based on the strategy announced in the May financial statement.

INDUSTRY DEVELOPMENT

In reply to **Hon. T.G. ROBERTS** (4 August).

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

(a) No.

(b) Following the review of agencies in the economic development portfolio which was undertaken earlier this year, the EDA has been refocussed with new objectives and priorities set. Those objectives are:

1. Provide a comprehensive and integrated range of services, support and assistance to all businesses throughout South Australia in their quest to attain and sustain international competitiveness.

2. Create a unique business climate as a major competitive advantage for South Australia.

3. Identify, analyse, target and generate high quality investment in South Australia.

STUDENT RESULTS

In reply to Hon. Carolyn Pickles, for **Hon. C.J. SUMNER** (3 August).

The Hon. R.I. LUCAS:

1. The SSABSA Annual Report for 1993 contains statistics relating to outcomes in all Board accredited subjects.

2. The statistics for student achievements in Mathematics 1 (PES), Mathematics 2 (PES), Physics (PES) and Chemistry (PES) are as follows for the past five years (SSABSA does not record the data on a school and sector basis).

Year	A (Grade)		B (Grade)		C (Grade)		D (Grade)		E (Grade)	
	F	M	F	M	F	M	F	M	F	M
Mathematics 1										
1989	138	335	265	529	302	573	136	323	78	224
1990	148	339	269	512	266	555	134	291	57	159
1991	188	379	292	560	282	528	120	265	36	160
1992	233	405	333	625	218	469	90	250	71	163
1993	308	521	325	631	130	325	49	130	15	69
Mathematics 2										
1989	163	334	263	534	290	578	131	327	73	208
1990	156	324	253	513	287	571	118	279	56	175
1991	206	407	301	555	253	488	112	247	44	186
1992	264	410	328	638	204	468	81	204	62	186
1993	230	338	253	483	191	424	88	238	63	187
Physics										
1989	191	468	332	725	371	823	176	497	97	316
1990	222	458	341	727	341	800	195	473	94	313
1991	203	393	430	827	393	874	173	489	81	320
1992	252	473	501	945	430	864	219	511	99	323
1993	258	443	450	851	402	752	166	471	89	291
Chemistry										
1989	194	371	395	621	414	664	247	384	188	340
1990	271	379	416	654	390	626	202	360	167	265
1991	272	395	490	727	401	703	204	325	77	213
1992	298	441	532	743	403	591	220	345	183	288
1993	254	364	482	663	462	605	219	325	115	199

3. The SSABSA statistic 1992: Participation and Performance document—a supplement to the information published in the 1992 Annual Report—contains comprehensive data on participation and achievement in Year 11 and Year 12 (Stage 1 and 2) subjects for that year. It is the intention of the authority to publish extended participation and performance statistics for each year.

4. In relation to gender and performance at Year 12 (Stage 2) the above document states:

> In 1992 there were 74 subjects in which the average Achievement Score for females was higher, by 0.5 in 20 or more, than the average Achievement Score for males. The list of subjects consists of 19 publicly examined subjects, 33 full year school-assessed subjects, and 22 half-year school assessed subjects.
>
> The dominance of school-assessed subjects in this list may be due, at least in part, to the fact that these subjects place much emphasis on continuous assessment, on completing specified work, and on working consistently throughout the course. It is often asserted that females in Year 12 are more likely to show application and consistency, and to be more mature and disciplined in their approach to study, than males. . . .
>
> . . . . Although females achieve higher, on average, in a majority of subjects, it may still be the case that the actual achievements of females are being understated in the reported assessments because the assessment modes used do not enable females to demonstrate their achievements to the same extent as males.
>
> A continuing program of research at SSABSA, and national initiatives such as the project on Gender Equity in Senior Secondary School Assessment funded by the Commonwealth Department of Employment, Education and Training, have been undertaken to shed more light on these issues, and to identify and promote principles and practices which must be followed to minimise inequities in assessments which related to gender.

5. Males achieved higher than females by 0.5 or more on average in the following 10 Year 12 (Stage 2) subjects. There is apparently no consistent pattern in these subjects.

Subject	Type
American History	PES
French	PES
Indonesian	PES
Modern History—Asia	PES
Spanish	PES
Australian Economic Studies	SAS
Agricultural	SAS
Applied Graphics	SAS
Work Education	SAS
Agricultural Practice	SAS

6. In relation to gender and performance at Year 11 (Stage 1), the Participation and Performance document states:

> The combined results for all subjects show that girls performed significantly better than boys overall: 83 per cent of results for females were at the satisfactory achievement level (SA), compared with 73 per cent for boys.
>
> This pattern is observed across a majority of larger enrolment State 1 subjects, although some variations do occur, particularly among smaller enrolment subjects. It is consistent with the findings for State 2 (Year 12) subjects. . .

TEACHER NUMBERS

In reply to Hon. Carolyn Pickles, for **Hon. C.J. SUMNER** (6 September).

The Hon. R.I. LUCAS: The Commission described a surplus

teacher as one who is not on duty in a permanent position. This included 1 039 permanent teachers who are placed in permanent positions that have been temporarily vacated by the permanent teacher who normally occupies the position (Permanent Against Temporary, PATs). The Commission also included 1 060 permanent teachers on leave without pay and a number of 130 permanent teachers for whom no temporary placement in a temporarily vacated permanent position could be found at the beginning of Term 1, 1994 (Temporarily Placed Teachers, TPTs).

Only the 130 Temporarily Placed Teachers were considered surplus by the Department for Education and Children's Services. A surplus employee is one who cannot be appropriately placed into a required position either in the Department for Education and Children's Services or elsewhere in the public sector.

At the present time, there are only nine surplus teachers (TPTs) in the system.

1. The Government will not reduce the number of permanent teachers to the number of permanent positions for teachers.

2. The 1 039 PATs mentioned in the Audit Commission's Report on page 138 of Volume 2 are not being targeted as a discrete group for reducing the overall numbers of teachers employed by the Department for Education and Children's Services in addition to the 422 teaching positions identified in the August 1994 budget.

3. Since the 11 December 1993 election, 369 surplus teachers have accepted Targeted Separation Packages, 94 of whom happened to be PATs at the time of their separation. 225 of the 369 separated between 11 December and the beginning of Term I.

TEACHERS

In reply to Hon. Carolyn Pickles, for **Hon. C.J. SUMNER** (4 August 1994).

The Hon. R.I. LUCAS: School teachers along with other public servants are subject to the provision of Commissioner's Circular No. 64 'Guidelines for Ethical Conduct'.

The GME Act general principles of public administration detailed in the Circular state—

Public employees

- in their dealings with the public and other employees are to exercise courtesy, consideration and sensitivity
- are to be impartial, accurate and competent advisers and efficient, prompt and effective implementors of Government policies
- are to perform their duties with professionalism and integrity and efficiently service the Government of the day
- are to observe fairness and equity in official dealings with the public and other public employees and real or apparent conflicts of interest are to be avoided.

The Commissioner of Public Employment recognises that public employees should not purely because of their employment with the Government be constrained from participating in community debate concerning political and social issues.

Teachers are subject to disciplinary action under section 26 of the Education Act. This section refers specifically to an officer contravening the Act, is negligent, inefficient or incompetent in the discharge of his duties, is absent from duty without proper cause or is guilty of any disgraceful or improper conduct.

Should the comments made by any teacher fit the above categories then disciplinary action may be possible. However given the spirit of the Commissioner's Circular there is unlikely to be any recourse if teachers make public comment in a prudent manner.

UNEMPLOYMENT

In reply to **Hon. G. WEATHERILL** (2 August).

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

1. The Government announced a targeted reduction in public sector employment in its May financial statement. A minimum workforce reduction of 5 500 full time equivalent positions will be required over a three year period from 30 June 1994 to achieve the savings required to eliminate the underlying budget deficit. All budget sector agencies are being required to meet savings targets. It should be noted that the former Government announced targets in the 1992 Budget and the April 1993 'Meeting the Challenge' statement to reduce public sector employment by 3 942 full time equivalent positions. However, as the Audit Commission has demonstrated, these targets were insufficient to meet the former Government's stated objective of eliminating the budget deficit by 1996.

2. My Government has announced a strategy to eliminate the underlying budget deficit so that Public Sector debt can be reduced on a sustainable basis. Eliminating the deficit and reducing debt are necessary to achieve the overriding objective of increased private sector investment and employment in South Australia. It is only in this way that more employment opportunities will be created for young South Australians.

WATER CONNECTIONS

In reply to **Hon. G. WEATHERILL** (11 August).

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

The Engineering and Water Supply Department will continue to be responsible for the provision and maintenance of the service between the main and the property boundary in accordance with existing practice. The contractor engaged by the Engineering and Water Supply Department to construct water connections will be responsible for all works associated with the laying of the connection pipe from the main in the roadway to the meter inlet riser located just inside the property boundary. This includes the restoration of road and footpath areas that are subject to excavation during the progress of the work, and for all of the work executed under the contract for a defects liability period of twelve (12) months after its completion and acceptance by the department. It will be necessary for the property owner to then engage an appropriately registered person to carry out the plumbing work. This scenario will also apply to the construction of sewer connections by contractors.

EWS PACKAGES

In reply to **Hon. G. WEATHERILL** (10 August).

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

1. On 9 August 1994, the Department of Industrial Affairs notified the Australian Industrial Relations Commission of the Government's determination that the targeted separation package scheme as operating up to and including 31 July 1994 shall continue in operation until 23 December 1994. Following this date the voluntary separation package arrangements outlined in Commissioner's Circular No. 70 will apply.

2. For public health and safety reasons, all sanitary plumbing work and work on (private) drains connected to the public sewerage system must be carried out by appropriately trained, accredited and registered people in accordance with the provisions of Regulation 8 under the Sewerage Act.

The clearing of chokes and the installation and repair of private drainage systems are activities that are restricted to master plumbers (or sanitary plumbers or drainers employed by master plumbers) who are appropriately trained and qualified through the apprenticeship, trainee, or improver system to the appropriate registration status.

The sewer choke truck operators are not trained or qualified by way of formal certification, however it may be possible to gain provisional registration as a drainer subject to their employment by an appropriately registered person whilst undertaking an appropriate training course to attain formal registration as a drainer.

This advice has been provided to various Engineering and Water Supply Department employees in recent months and is based upon the current plumbing registration regime and variation may occur given that the Builders Licensing Act and licensing procedures are being reviewed.

An option available under the Water Industry Training and Accreditation Program (or similar) would be to provide the individual involved with a statement confirming that the person has the relevant competencies necessary to undertake the clearing of choked mains and connections in public infrastructure thus equipping him or her for employment on these tasks in private enterprise.

The Engineering and Water Supply Department will investigate this option and consult with the workers and their union.

3. Service trucks are operated by construction maintenance workers who undertake repairs to damaged water mains and services, and install new water services and fire services.

These people were not offered packages.

Those who work on cold water repairs/installations are not subject to the same licensing requirements as workers on sewerage or hot water installations.

Similar to my response to question 2, an option available under the Water Industry Training and Accreditation Program (or similar) would be to provide the individual involved with a statement confirming that the person has the relevant competencies necessary to undertake installation and repair of larger water pipes in public infrastructure thus equipping him or her for employment on these tasks in private enterprise.

4. The honourable member was incorrect when he stated, 'The EWS has got rid of all emergency watermen and has no day shift, afternoon shift or night shift'.

The day shifts and afternoon shifts remain unaltered.

Four watermen previously undertook the night shifts. This arrangement has been reduced to one shift for the city and North Adelaide area, while other areas during the night are covered by watermen being on-call.

This arrangement was negotiated with the watermen and enabled separation package offers to be made to those who were interested.

Response times and standards of service have been maintained.

POLICE AND LESBIAN AND GAY COMMUNITY

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister representing the Minister for Emergency Services a question about the report entitled 'The Police and You'.

Leave granted.

The Hon. ANNE LEVY: Mr President, you and many other members may be aware that recently a report entitled 'The Police and You' was launched by the criminologist, Professor Paul Wilson. This report was prepared by the Lesbian and Gay Community Action Group, and it contains the results of a survey that it conducted about the experiences of gay and lesbian people with the police in South Australia. The findings of the report revealed several matters of concern to the gay and lesbian community, and those matters should obviously be of concern to all members of the South Australian community.

While there were certainly instances where relationships between the gay and lesbian community and the police were very good, they were concerned at the very high level of non-reporting of crimes against gay and lesbian people to police. Many gay and lesbian people are not reporting crimes against them to the appropriate authorities because they feel that the police will not take them seriously and will act in homophobic ways. The report put forward a number of recommendations to address some of the problems which were detected in the survey. Particularly with regard to the under-reporting of violence against gay and lesbian people, the recommendation was for the institution of specific contact officers in particular police stations. These would be police officers who were trained in dealing with crimes of this type, who would not react in homophobic ways and who would encourage the gay and lesbian community to report crimes against them—particularly violent crimes. Also, they would be officers who would deal with those matters sympathetically and who would take the reported crime seriously.

Members of the gay and lesbian community have put this forward as a solution as they feel that this would be the most appropriate way of ensuring that this under-reporting of crime against gay and lesbian people does not continue. By way of comparison, they have told me that particular problems require particular solutions. For instance, in regard to the relationship between police and Aboriginal communities, the police have instituted the whole system of Aboriginal police aids, and that has certainly improved the relationship between the police and the Aboriginal communities; and, in regard to domestic violence and the fears by many women that their concerns would not be treated sympathetically, the police have responded by setting up special domestic violence units which have certainly won much praise from people who deal with the survivors of domestic violence and which have been praised throughout Australia for the manner in which they have dealt with the problems that result from domestic violence.

Members of the gay and lesbian community feel that the best response for their problems is to have a particular contact officer whom they can trust within each police station. I understand that, in responding to the report, the Police Department has certainly indicated that it would be prepared to have training about gay and lesbian issues for recruits to the police force, and this obviously will in the long-term lead to better relations between the police and these communities. However, that is a very long-term solution and will have very little effect at present. Will the Minister consider the implementation of officers designated for gay and lesbian contact in South Australian police stations, as that should lead to an improvement in the relationship between the police and the gay and lesbian community, and furthermore encourage the reporting of violent crimes against these people so that they no longer are suffering in ways in which no member of the South Australian community should have to suffer?

The Hon. K.T. GRIFFIN: I will refer that question to the Minister and bring back a reply.

SUPPRESSION ORDERS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General a question about suppression orders.

Leave granted.

The Hon. SANDRA KANCK: Suppression orders are presumably handed down, particularly in cases of sexual crimes, so as to protect those victims from the embarrassment of making their ordeal public. However, at a weekend workshop about rape, which was organised by the Status of Women Committee of the United Nations Association of Australia last year, some victims of rape expressed anger that their names had been suppressed.

The workshop at which I attended recommended that, with the consent of the victim of a sexual crime, a suppression order on the accused be lifted. The people in that workshop expressed the view that it is a fallacy for the law to be, in theory, designed to protect the victim when the victim has no say in the matter. In a number of cases, victims (mainly women) are prepared to be identified. This could be for many reasons, including the victim's desire for the criminal to be identified. However, a suppression order prevents the victim from going public. In such cases, the suppression order protects the criminal and not the victim. My questions are:

1. Does the Attorney-General agree that suppression orders protect the criminal as well as the victim?

2. Would the Attorney-General consider altering laws relating to suppression orders so that a victim of a sexual crime could opt to not have a suppression order imposed on her or him?

The Hon. K.T. GRIFFIN: There are really two areas relating to suppression orders, the first of which is the general power of the court to make a suppression order, and I have tabled just today the relevant report in relation to the suppression orders which have been made by the courts in the past financial year. They relate not to crimes where sexual assault

has been alleged or proven but to other matters. There is a specific provision in legislation making it unlawful to publish the name of the victim of a sexual assault or anything which may tend to lead to the identification of the victim, whether male or female. That is the law that has been passed by the Parliament, and it has been the law for quite some time.

I have not had any suggestion made to me, other than by the honourable member, that we ought to review that law to give the victim the opportunity to agree to the information being made public. In some respects it may be that the suppression of the victim's name or anything which may tend to identify him or her will have indirect consequences in some cases of protecting the accused person. In most cases the philosophy behind the law when it was enacted and the general mood within the community was a predominant concern to provide protection for the victims, primarily women.

It also applies in relation to children. It would be inappropriate for the name of a father, uncle or some other relative who has been convicted of sexual abuse of a child to have that information disclosed publicly if it also leads or may tend to lead to the identification of the child. That is most likely to be the case because the relationship would undoubtedly be on the public record, and the relationship is not information which is presently required to be suppressed as far as I can recollect.

If the honourable member wishes to elaborate in correspondence with me the background of the proposal, I will certainly look at it. However, that indication should not be taken as any support for change. I am happy to look at it, to have the issues and the consequences of moving in the direction suggested by the honourable member examined and then to identify what course of action that consideration would suggest ought to be followed. I have no immediate intention of changing the law. I am happy to examine the issue, but without giving any indication that that is or is not a preferred option.

CRIME STATISTICS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about crime statistics and restitution and compensation orders.

Leave granted.

The Hon. A.J. REDFORD: The publication 'Victim Impact Statements in South Australia: An Evaluation,' published by the Attorney-General's Department and written by Ms Erez, Mr Roeger and Mr Morgan, reported on the number of restitution and compensation orders in the period 1980 to 1993. At pages 63 and 64 they refer to a significant drop in the number of restitution and compensation orders made following the introduction of victim impact statements, which occurred in about 1990. At page 63 the authors say:

> A possible contributing factor to the fall in the number of compensation or restitution orders. . . is legislation which came into effect in July 1992 which resulted in less serious matters being moved from the higher courts to the Magistrates Court.

At page 64, they say:

> Unfortunately data relating to the number of restitution or compensation orders made in the Magistrates Courts is not available. . . It can be noted, however, that evidence has been provided earlier in this report which shows that VIS are rarely tendered in the Magistrates Court. Given the minimal implementation of VIS in these courts significant change in these courts would not be expected.

As I understand it, the authors are unable to determine whether the Magistrates Courts are making significant numbers of restitution and compensation orders as a result of the lack of statistics. Will the Attorney-General investigate the position and advise whether data of this nature can be collected in future so that a proper evaluation of these issues can be made?

The Hon. K.T. GRIFFIN: I am not aware of the reason why these statistics are not available. There is an extensive range of statistical information available from the courts as is information from the police in similar areas. I will refer the question to the Director of the Office of Crime Statistics, who has much better knowledge than I have of the intricacies of this matter, and I will arrange to bring back a reply.

CAMDEN PARK APARTMENTS

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about Camden Park apartments.

Leave granted.

The Hon. BARBARA WIESE: I have been approached on behalf of tenants of the large group of two-storey Housing Trust apartments on Anzac Highway at Camden Park. These apartments, Henderson Court and McInnes Court, are over 30 years old. Earlier this year work began on refurbishment of the apartments, which included the replacement of asbestos roofs and the replacement of steel-framed windows with aluminium-framed windows. It was also decided to improve the aesthetics of the buildings by adding steel window canopies (to replace retractable canvas blinds) and porches. The problem facing tenants as a result of this upgrading is that the size of the windows has been reduced by nearly 20 per cent, the window glass has been tinted, and the window canopies further restrict light into the buildings. I have been told that natural light entering apartments is now below accepted lighting standards. There is now less ventilation to the apartments from the new windows and it is impossible to see the sky from many rooms in the buildings. In short, many of the elderly tenants believe that their quality of life has deteriorated as a result of the upgrade and they are likely to face higher electricity bills. My questions to the Minister are:

1. Will he investigate the circumstances of this project and ensure that remedial action is taken to protect the amenity of the apartments?

2. How much has been spent on this project?

3. Was the relevant building code on natural lighting adhered to?

4. Was the impact of the project on energy consumption taken into account?

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

SCHOOLS, VIOLENCE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about violence in high schools.

Leave granted.

The Hon. CAROLYN PICKLES: I have received a very disturbing report that a staff member on yard duty at Parafield

Gardens High School was assaulted by three ex-students during the scheduled break. During the Estimates Committees of 14 September, in response to a question on violence in schools by the Hon. Ms Stevens in another place, the Minister said, 'Once we get into the secondary area we are essentially but not completely becoming reactive in trying to solve the problems.' The Minister also said he was waiting for advice from a committee that included representatives from SAIT and his department on violence in schools. I understand that the committee was to have its final meeting on 14 September. My questions to the Minister are:

1. What were the circumstances of the alleged incident at Parafield Gardens High School? If the Minister wishes to make that response privately to me, I am very happy to take it that way.

2. Have any offenders been apprehended and what action is being taken against them?

3. What action has the Minister taken to ensure a similar incident does not occur again?

4. Has the Minister now received advice from the SAIT/departmental committee on violence, what was that advice, and will he table a copy in Parliament?

The Hon. R.I. LUCAS: I will be pleased to seek some specific detail on the Parafield Gardens High School incident for the honourable member and provide her with a reply. In relation to the SAIT/departmental working party report, to which I referred during the Estimates Committee, I presume they had their last meeting on 14 September, but I must confess I am not sure of that. I certainly have not yet seen the results of their deliberations, but as a result of the member's question I will follow up the issue with departmental officers and provide as much of a reply as I can to the honourable member.

The Hon. CAROLYN PICKLES: A supplementary question: is the Minister prepared to table a copy of that report when he receives it?

The Hon. R.I. LUCAS: I am generally very open about these things, but I would like to at least have a look at the report—I have not seen it yet. All I can advise the honourable member is that I would like to have a look at the report and then make a judgment about it, but I generally operate on the basis of, if at all possible, making information available.

SCHOOL BUSES

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister for Education and Children's Services a question about changes in school bus routes.

Leave granted.

The Hon. ANNE LEVY: Opinions have been expressed to me from a number of country councils, both town councils and district councils, regarding the changing of school bus routes by the Education Department without any consultation with the local council before the change. While the Education Department states quite clearly that it does not expect the roads along which school bus routes travel to be given any priority in terms of council works, the various councils are concerned about the state of the roads along which their children will have to travel on the way to school, and they certainly wish to take school bus routes into account in terms of their road work priorities and road work maintenance programs.

I understand that as a consequence in the past they have frequently asked the Education Department if it can give them prior information before the route of any school bus is altered so that they can take that into account when determining their road maintenance works. I understand that, despite numerous requests to this effect, the Education Department has continued not to consult councils in relation to unilateral changes which it decides to make to the route for school buses. On at least one occasion the council learnt of the change from parents of the children concerned when they contacted the council, without the council ever having heard from the Education Department. Would the Minister take the appropriate steps to ensure that the Education Department does consult and inform country councils of any changes which are proposed to school bus routes so that the councils can take this into account in determining their road work priorities?

The Hon. R.I. LUCAS: I am prepared to consider that and to ask officers to have a look at the possibility. I must point out that the practicalities of what the honourable member is suggesting would need to be explored in some detail before giving any absolute commitment, because the simple facts of life are that, in relation to a small country school, if one family with three children moves out of one location and another family with four children moves in at another location, the bus route has to be rerouted in order to maintain it and keep the numbers. The movement into and out of the district is not a factor that the Education Department, or its bus transport system, has any control over.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: It does not matter when it happens. If the member is talking about forward capital works programs for councils in country areas, in my experience of country councils, it is not the sort of thing that those councils can turn around in a month or two. They are looking at planning some time ahead. Decisions that are taken on country bus routes are sometimes the results of variables out of the control of the department and, if families move out and new families move in, bus routes sometimes have to be rerouted to ensure the ongoing viability of the bus route or, otherwise, there will not be enough children on it to justify its continued existence. The honourable member started off with some remarks, I thought in her explanation, although I will refresh my memory afterwards, in relation to bus routes in towns and in country areas.

The Hon. Anne Levy: No, the town councils and the district councils.

The Hon. R.I. LUCAS: I thought perhaps the honourable member had been contacted by the Clare council in relation to a particular issue that that council had in relation to decisions that had been taken to change a bus route in the Clare district. I am happy to refer that question to officers in my department and seek their advice on it and see what sort of consultation might be practicable and bring back a reply.

ISLAND SEAWAY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Transport, a question about the *Island Seaway*.

Leave granted.

The Hon. T.G. ROBERTS: When the *Island Seaway* was first launched there was a lot of controversy about its ability to be able to handle the job in an efficient and effective way. Many politicians made reputations on bagging the *Island Seaway* but, we have seen by the passing of time, the *Island*

Seaway, being a purpose-built craft, did serve the islanders very well. There were a few days when it was not able to put to sea but in general terms it served the purpose for a time. The current Government has made the decision to stop the service of the *Island Seaway*. My information is that there are a lot of people on the island who are not happy with that decision, although if one had looked at the press and perhaps spoken to some members opposite they would say that the *Island Seaway* is being closed down without a murmur and that everybody is happy with the decision. My question is: what will be the impact on Kangaroo Islanders with the withdrawal of service in relation to services and costs for islanders?

The Hon. K.T. GRIFFIN: I will refer the question to the Minister for Transport.

SOUTH AUSTRALIAN COUNTRY ARTS TRUST (TOURING PROGRAMS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 September. Page 300.)

The Hon. ANNE LEVY: The Opposition supports this Bill, which seeks to amend the South Australian Country Arts Trust Act relating to the functions and powers of the Country Arts Trust. As indicated by the Minister in her second reading speech, the trust has opportunities to manage touring companies not only in South Australia but also in country areas of other States. Under its functions as set out in the Act, it is not able to do this. I understand that this situation arose when the trust applied for and was awarded by Playing Australia a touring grant of $260 000 to enable it to tour Circus Oz not only throughout regional South Australia but also in Queensland and Western Australia next year.

The change to the Act has been requested by the Country Arts Trust and it is very optimistic about the tour by Circus Oz. It seems virtually assured of success as already the venues in the three States are falling over themselves to be included in the tour, and its financial and artistic success seems assured.

The Minister made the point that the trust will not be taking financial risks interstate: when it tours productions through regional areas of other States, it will sell the product to venues and manage the tour but will not be taking the financial risk there, although of course it will continue to take the financial risk when it tours its product throughout South Australia.

The trust is convinced that, particularly when Playing Australia, which is the Federal Government's body which grants money for touring of artistic product throughout the country, is involved, the subsidy is such that there is no problem whatever in selling any artistic product. A particular venue will have to pay SACAT $4 000, while Playing Australia is also contributing perhaps another $2 500. In this way tickets can be at a reasonable price and the product can tour thanks to the heavy subsidy from the Federal Government in a way that is ensuring that all areas of Australia receive high quality artistic product.

Comparable organisations in other States will be applying for touring grants from Playing Australia. They will be touring arts products not only in their own States but in regional areas other than in their home States. Comparable organisations include the Arts Council in Victoria and Arts on Tour in New South Wales. I understand that a new and still fairly small organisation known as Country Arts WA has come into existence in Western Australia. Of course, these bodies will manage tours throughout regional South Australia and they will then be acting in a comparable manner. They will not be taking a financial risk in South Australia. SACAT will take the financial risk in this State.

For example, a very exciting tour by the Queensland Ballet will occur in the not too distant future throughout regional South Australia. This tour is being managed by the Arts Council of Victoria, and SACAT, and not the Arts Council of Victoria, will take the financial risk in South Australia.

It is probably unnecessary to amend the Bill to ensure that SACAT will take the financial risk only within South Australia and not when it tours product to other States. Perhaps one could say that it cannot take the financial risk outside South Australia without ministerial approval. Of course, this is equivalent to what the Minister herself tried to do for the Adelaide Festival Centre Trust: the Minister tried to ensure that it could not undertake certain types of activities without first seeking ministerial approval.

However, this Council wisely decided that it did not agree with that unnecessary restriction on the Adelaide Festival Centre Trust. I believe that would have been a quite unnecessary restriction on the South Australia Country Arts Trust if such an amendment were moved.

Certainly, SACAT tells me that it has no desire or intention to risk any of its funds interstate-there is no incentive whatsoever to do that, any more than the Victorian Arts Council or Arts on Tour will ever wish to risk their funds on a South Australian tour.

I believe that this is a good and sensible arrangement that should work well. Certainly, if stupid activities did occur in the future, the Act could be tightened up then, which was the Minister's response when her amendment to the Adelaide Festival Centre Trust Act was not supported by this Council. The Adelaide Festival Centre Trust and the South Australian Country Arts Trust are responsible bodies that can be trusted to behave responsibly in the best interests of arts in this State.

I must point out that when the Minister introduced the Bill she uttered not a single word of criticism of the South Australian Country Arts Trust, unlike the situation a few months ago when we amended the Adelaide Festival Centre Trust Act, yet the situations are most comparable. The Adelaide Festival Centre Trust wished to undertake a new and exciting activity which was to be of considerable benefit to it, but at the last minute it found that its powers and function under the Act did not extend to this new activity and so an amendment to the Act was required.

The current Minister criticised the Adelaide Festival Centre Trust most roundly at that time and with bad grace indeed agreed to change the Act so that the trust could undertake that further activity.

We now have the analogous situation where SACAT wishes to undertake a most worthwhile activity but finds at the last minute, having got the money for that activity from Playing Australia, that it does not have the power to undertake that activity under the Act and, consequently, it wants its powers and functions changed. I support the amendment

wholeheartedly in the interests of SACAT, just as I supported the Adelaide Festival Centre Trust earlier this year.

One cannot help noticing that in this case there is no criticism on the part of the Minister, whereas in the previous case she was strongly condemnatory of the Festival Centre Trust for seeking an amendment to its Act after it had organised a particular arrangement. It is ironical to me that the Minister can be so critical in one situation but not in the other.

I stress that the Opposition is critical in neither situation, and we certainly applaud the initiatives which are being undertaken by the Adelaide Festival Centre Trust and, as in this case here, by the South Australian Country Arts Trust, both of which are acting extremely responsibly and undertaking an enormous amount of worthwhile artistic activity for the benefit of the people of South Australia.

The Hon. L.H. DAVIS secured the adjournment of the debate.

LAND AGENTS BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. ANNE LEVY: Prior to moving my amendment, I ask when the Attorney expects this collection of Bills to come into operation. I realise that regulations are to be prepared and that there may be more after consideration in the Committee stages, but has the Attorney any suggestion as to how long it will be before all four Bills come into operation simultaneously?

The Hon. K.T. GRIFFIN: Certainly, we would expect to bring the four Bills into operation at the same time. No forward plan has been so carefully defined that we can predict that it will come into operation on 1 February or 1 March. It certainly will not be this year, because a range of other legislation is still being finalised. Commercial tenancies, residential tenancies, commercial and private inquiry agents—a whole raft of legislation—is still to come, and that is taking the time of the legislative review team.

However, discussions are already occurring with various professional organisations in respect of the implementation of the legislation. To some extent until we know the final form of the Bill it is difficult to predict what regulations will be necessary, but it is not impossible at least to prepare the framework for regulations. I would like to think that it would come into operation either about 1 February or 1 March next year. There will need to be an appropriate lead time adequately to inform those who are affected by it, as well as consumers, and to give the Office of the Commissioner for Consumer and Business Affairs an opportunity properly to prepare the training necessary for staff, because the Commissioner is taking over more of the responsibilities for registration, if for nothing else. So, one could probably predict early next year. My hope would be the earlier the better, but about February or March is my prediction at the moment as to when we should bring it into operation.

The Hon. ANNE LEVY: I thank the Attorney for that response. I move:

Page 1, line 22—Leave out the definition of 'court'.

This is the first of a number of amendments. The next one is restoring a definition of 'tribunal', which means the Commercial Tribunal established under the Commercial Tribunal Act, and I have on file a whole series of consequential amendments. I suggest that this is probably the place to determine this matter of principle and then all the other amendments will either be accepted as consequential or not moved, depending on the outcome of the debate.

Basically, this amendment is concerned with the abolition of the Commercial Tribunal and the Opposition's objection to the abolition of the Commercial Tribunal, certainly by means of this Bill.

The Government has apparently stated that it intends at some stage to abolish the Commercial Tribunal, but it has not brought forward legislation to do so. I certainly feel that this matter should be properly debated with a Bill before us to do just that and not attempt to do it by stealth—by whittling away at the powers of the Commercial Tribunal in a whole series of pieces of legislation until we are left with an empty shell, whereby the Commercial Tribunal exists but it has no functions, so it obviously at that stage must be abolished. I certainly feel that it would have been much better to bring in a piece of legislation, if that is what the Government wishes, to abolish the Commercial Tribunal and let us have that as a full and open debate.

The current Bills before us have been sent around for consultation, but the surreptitious reduction of powers of the Commercial Tribunal has not been a core part of each of these Bills. Many of the people to whom these Bills have been sent have not realised that this is part of an abolition of the Commercial Tribunal. There is no comment whatsoever from the Law Society, for example, as to whether or not it agrees with the abolition of the Commercial Tribunal. I feel that many in the community and many concerned with these issues are totally unaware of this abolition by stealth. For that reason, if for no other, the Opposition wishes to put the Commercial Tribunal back into the legislation so that we can then have the appropriate debate about the Commercial Tribunal with a Bill relating to the Commercial Tribunal before us. That Bill can contain the consequential amendments to other Acts, such as the Land Agents Act.

Apart from this question of our objection to having the Commercial Tribunal abolished by stealth in this way, without the commercial or legal community being explicitly made aware that this is occurring, I would like to very much defend the Commercial Tribunal as one which has a very honourable history and is of considerable use to the consumer affairs system in this State today. The Opposition wishes to express a vote of confidence in the Commercial Tribunal as being a most efficient and cost effective avenue for dispute resolution. We are sure that if we had a Bill relating to the Commercial Tribunal before us, our view would be echoed by the Law Society and the many users of the Commercial Tribunal.

The Attorney has sought some justification for his approach regarding the Commercial Tribunal from the green paper which was released when I was Minister of Consumer Affairs. That paper was entitled 'Occupational Licensing Reforms'. There is no doubt that that paper recommended the removal of licensing responsibilities from the Commercial Tribunal. The Government of the day accepted that as an appropriate recommendation. I will quote two passages from that green paper dealing with the Commercial Tribunal. On page 4, it stated:

> The Government of the day saw the establishment of the Commercial Tribunal as an extremely significant step forward, both for consumers and for business. It was hoped that the new system could readily and easily accommodate any new trade or industry group that the Government might decide to regulate in the future. It

was considered that the Commercial Tribunal provided a flexible and streamlined licensing system which would be of benefit to the Government and to members of the public.

We completely endorse these remarks without any reservation. I would stress that the Commercial Tribunal has been, and continues to be, seen to be of great benefit to both consumers and business entities that come before the tribunal. I am not here talking about routine applications which can well be handled by the commissioner instead of the tribunal, but I am talking about the substantial disputes which are resolved before the Commercial Tribunal.

In the context of examining the question of who should be the licensing authority for various industry groups, the review team established by the then Commissioner for Consumer Affairs looked at the question of appeals from decisions to refuse a licence. On this point, and I quote from pages 11 and 12 of the green paper, it stated:

> At present there is a limited right to appeal from the Commercial Tribunal to the Supreme Court. This is an expensive, complex and intimidating process, one which very few would be willing to undertake without legal representation [which of course adds further to the expense]. The review has therefore taken into account the need for a simple, quick and inexpensive forum of appeal from whatever body has responsibility for the initial determination of a licence application.

We fully endorse the principle that there should be a form of appeal from a licensing or registering authority which is simple, quick and inexpensive. It cannot be said that what the Attorney is proposing meets those criteria. We certainly do not oppose the Commissioner for Consumer Affairs being given the responsibility for initial determinations regarding registrations, but we feel it is essential that the appeal from that administrative decision should go to the Commercial Tribunal as it has done for the past 10 years or so. The Commercial Tribunal has proved its role as being simple, quick and inexpensive as a forum for resolution of certain disputes.

In contrast, the Attorney is suggesting the District Court, which is relatively more expensive and certainly more complex and intimidating, not only for consumers but also for a great number of small business owners. Yet this is what the Attorney is suggesting should be the forum for the disputes in relation to real estate agents, conveyancers, etc., not only in relation to registration of such people, but also in relation to substantive disputes about the services provided by these people.

I must reply to one further point raised by the Attorney in this place in relation to the Commercial Tribunal. The Attorney has suggested that it would not be accurate to describe the Commercial Tribunal as a consumer court. Of course, nobody is suggesting that the Commercial Tribunal is or should be a forum in which consumers are favoured in some way.

The point is that it has been and continues to be a forum in which consumers who have no substantial training and who have no particular financial resources are still able to cope with the procedures of the tribunal; they feel that they are given a full and proper opportunity to put their case without any disadvantage if the other side is legally represented. The general perception throughout the community is that, in the Commercial Tribunal, justice can be obtained and obtained simply, quickly and cheaply. This is an admirable role of the Commercial Tribunal.

I should make it clear that the Opposition is certainly not completely and absolutely committed to maintaining the *status quo*. For example, we would not necessarily be opposed to the Commercial Tribunal's operating under the umbrella of the Courts Administration Authority if that were to streamline administration. If the Government wanted to ensure accountability of the Commercial Tribunal by putting it under the administration of the Courts Administration Authority we would certainly consider that. Similarly, if the Commercial Tribunal was to be physically housed in the District Court administrative structure—perhaps somehow attached to the Administrative Appeals Division—that might be a more efficient allocation of resources.

In other words, the Commercial Tribunal certainly could be collocated with the District Court in much the same way as the Equal Opportunity Tribunal currently operates. We would certainly be prepared to look at administrative arrangements in that way as there might be cost savings that could be achieved. However, I reiterate two issues we feel very strongly about: first, any such arrangements should be dealt with in a separate Bill to the extent that any legislative change is required; and, secondly, and most importantly, we feel that the Commercial Tribunal should maintain its present procedures, its cheap costs and its rules regarding representation.

As long as these crucial matters to the people who use the tribunal are maintained, we certainly do not mind under which roof the tribunal is housed. But any talk of so-called 'streamlining' as justification for abolition of the Commercial Tribunal is not supported by history, or by the genesis of the Commercial Tribunal and how it has operated since its inception. I am sure I do not need to remind the Attorney that the initial proposal for the Commercial Tribunal came from Judge Noblet when he was Director-General of the Department of Consumer Affairs. This was supported by Chris Sumner in 1979, and the Bill to establish the Commercial Tribunal was introduced by John Burdett in 1982.

It was supported by all sections of the Parliament and the jurisdiction of the Commercial Tribunal gradually expanded as various industry groups had their licensing, disciplinary and dispute resolution requirements allocated to it. It was certainly seen as very necessary at the time, and I have quotes from the Hon. John Burdett extolling the virtues of the construction of the Commercial Tribunal. He stressed that it was a flexible system; it could accommodate groups, even if they were not required to be licensed but obliged only to comply with a code of conduct, as has been proposed on numerous occasions.

It was a very flexible arrangement and truly could be said to be streamlining when it was introduced by the Liberal Government in 1982. But the Government is now taking us back not only to the 1970s when there were various industry boards and tribunals, but we are going back even further in time when the first port of call was the District Court, or even the Supreme Court, for resolution of disputes arising out of the behaviour of the members of various occupations or professions. The Government's approach completely overlooks the efficiency that derives from specialisation in dispute resolution.

The Commercial Tribunal is certainly specialised in dispute resolution in a way that does not occur in the District Court. It may be hard to measure the value of specialisation but it does have an impact in two different ways: first, it means that the tribunal develops a very consistent approach to the same types of problems, which unfortunately keep recurring, and consistency can be assured; and, secondly, of course, the input of the consumer and industry representatives

as members of the tribunal itself means that the quality of decision making is undoubtedly improved.

The Attorney talked about abolition of the Commercial Tribunal as part of streamlining: sending everything to the District Court. Certainly, I have not seen any costings supporting the proposition that taxpayers will get any better value for money by abolition of the tribunal—certainly not in terms of dispute resolution—and I very much doubt that the Attorney has seen any such costings, either. The District Court is undoubtedly more expensive than the Commercial Tribunal. I would suggest that the value of the specialisation, which the Commercial Tribunal has, and the value of ready access to justice, which appeals to small business people and consumers who use the tribunal, are matters which do not seem to have been taken into account by the legislative review team set up by the Attorney. It certainly does not mention them.

I have probably laboured the point, but I do feel that the point needs to be clearly made that we regard the Commercial Tribunal as a most valuable and efficient forum for resolution of a great variety of disputes concerning occupational or professional groups. The Commercial Tribunal is cheaper, quicker and more efficient than the District Court. It is more user friendly in terms of procedures, legal requirements, legal representation, and so on, for these people than is the District Court. I move this amendment on two grounds: first, we feel the Commercial Tribunal should not be abolished; secondly, we feel that if it is to be abolished this is not the place to do it. It is a matter which should be put forward, discussed and given consultation throughout the community before such a drastic step is taken. I am moving this apparently very simple amendment because of the consequences which flow from it.

The Hon. K.T. GRIFFIN: The Government opposes the amendment and agrees that this should be the amendment upon which we test the issue of whether or not the Commercial Tribunal should be given jurisdiction under this Act. The approach that the Government took was to look at the structure which it was seeking to put in place for the registration and administration of land agents. Having done that, we then looked to see what sort of matters would be likely to be the subject of some contention, and decided that, because of the limited nature of those, it was appropriate to direct the resolution of those issues to the District Court and not to the Commercial Tribunal. The honourable member has suggested that this is abolition of the Commercial Tribunal by stealth but, as I indicated in my reply, we have made no secret of the fact that, on the basis of the change in structure across a range of legislation from licensing back to registration and conferring responsibilities on the Commissioner for Consumer Affairs rather than on the tribunal, there were few, if any, functions which ought to be the subject of determination by a so-called specialist tribunal.

I do not resile from the support which in Government on the last occasion we gave to the establishment of the Commercial Tribunal. If one casts one's mind back to that time, there was a proliferation of tribunals dealing with a variety of matters. There was the Credit Tribunal and the Land Agents Board, to name just two. The thrust of our initiative at that time was to try to streamline those functions and responsibilities into one body, and the Commercial Tribunal was an appropriate means by which that could be achieved. So we abolished a range of boards and tribunals and brought them under the one umbrella. We did that also in relation to a number of other tribunals, which we brought under the umbrella of the District Court, and that is a move which continued under the previous Government when the Attorney-General brought before us legislation designed again to abolish some tribunals and to put the jurisdiction into either the General Division of the District Court or the Administrative Appeals Division of the District Court, and there is any amount of legislation brought in by the previous Government which refers matters of dispute to the District Court in one or other or both of those divisions rather than to a specialist tribunal or to a body like the Commercial Tribunal.

So that trend to rationalise boards and tribunals has proceeded throughout the 1980s, and when we came to office there was a proposition to abolish even more tribunals, and I will be proceeding with that in due course. There will be a Bill brought before Parliament to deal with a number of disciplinary and other tribunals, where we will abolish them and the jurisdiction will, we hope, if Parliament agrees, be conferred upon the District Court in one or other of its appropriate divisions. The Commercial Tribunal served us well during the 1980s, but the experience of members of the tribunal from time to time was that they felt isolated from the mainstream of judicial and quasi-judicial decision making and, in addition to that, the workload dropped significantly, to the extent where Judge Noblet, when I came to be Attorney-General, was actually spending two weeks every month or so in the District Court. He was volunteering to do that.

The Hon. Anne Levy: Put them in the same building.

The Hon. K.T. GRIFFIN: That may be, but the other point that has to be made—and I acknowledge that the Hon. Anne Levy has suggested that the Opposition is prepared to consider collocation and other arrangements—is that the tribunal was seen to be an arm of Consumer Affairs. There was not the independence, which is important, particularly where a tribunal is making decisions which may affect directly or indirectly the affairs of Government or involve Government officials.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They can be collocated, but that, in the Government's view, is inadequate. With this package of Bills, we have looked at the functions, which ought to be the subject of some judicial or quasi-judicial decision making. Under this Bill, we have limited that because there will be no more licensing. The tribunal will not have to decide whether a person who applies for a licence is a fit and proper person but only whether certain criteria have been met and, if they have been met, registration will be automatic. Then, at the other end, there is the disciplinary process presently undertaken by the Commercial Tribunal, and we say that that ought to be dealt with in the District Court. That disciplinary process is generally instituted by the Commissioner for Consumer Affairs and not by consumers or other citizens.

It is interesting to note that, in relation to disciplinary matters under the Land Agents, Brokers and Valuers Act, only eight disciplinary matters were brought before the tribunal in 1993-94 and nine matters in 1992-93, and all of those, in those two years, were instigated by the Commissioner for Consumer Affairs. There were 18 licensing matters brought before the Commercial Tribunal in the past financial year. But we are removing that under this Bill, if the Parliament accepts the structure which we are proposing.

The Hon. Anne Levy: You will still have appeals.

The Hon. K.T. GRIFFIN: There may be licensing appeals.

The Hon. Anne Levy: No; registration appeals.

The Hon. K.T. GRIFFIN: Registration appeals; but they are not going to involve ordinary consumers; they are going to involve the Commissioner.

The Hon. Anne Levy: And an individual; the real estate agent, the valuer, and so on, are individuals too.

The Hon. K.T. GRIFFIN: That may be so, but they are not going to involve consumers. The procedures of the District Court have really come a long way since the early 1980s, because they have streamlined. The former Attorney-General brought in legislation to provide for conciliation, mediation and a whole range of less formal structures by which decisions could be made or preliminary matters could be considered by the District Court and, of course, there is the General Division and the Administrative Appeals Division. So there is a freeing up within the court process, so that there will not be, I would suggest, the emphasis upon formality, upon process and upon a detail which might characterise an adversarial civil case, but even in those there have been—

The Hon. Anne Levy: Are you taking wigs and gowns out of the District Court?

The Hon. K.T. GRIFFIN: That is irrelevant to the determination—

The Hon. Anne Levy: It is an indication of attitude.

The Hon. K.T. GRIFFIN: It is not an indication of attitude. The fact of the matter is that the processes have been freed up and are becoming freer in terms of resolution, pre-trial conferences and matters such as that in both the civil and criminal jurisdictions. Also, the tribunal presently hears appeals from decisions by the Commissioner with respect to claims against the Agents Indemnity Fund. The vast majority of these claims relate to the activities of mortgage financiers, and they are now to be excluded from the coverage provided by the fund. My quick look at the statistics for the past financial year indicated that none of those matters went before the Commercial Tribunal.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: If we talk about motor vehicles, the fact of the matter is that, if you have a dispute about repairing a second-hand motor vehicle within its warrantee period, those—

The Hon. Anne Levy: You would wait for six months for a hearing in the District Court.

The Hon. K.T. GRIFFIN: You have to go to the Magistrates Court or the District Court now. The only involvement of consumers in that context is in the licensing or de-licensing process. Those who have a dispute relating to domestic building work can use the tribunal if it concerns workmanship, but they cannot make a claim if the dispute is about the cost of the contract or any matter that does not involve workmanship. Again, they have to go through the normal court process.

As regards real estate matters, there is not and never has been any way for a consumer to ask the tribunal to determine a dispute between the consumer and a real estate agent, conveyancer or valuer. Again, those consumers have to use the normal court system, and they have had to do it under the existing Act.

Several other matters need to be addressed. The honourable member asked about the Law Society's attitude to the abolition of the Commercial Tribunal, or, more particularly in the context of this Bill, who should hear disputes. The Law Society, the Institute of Conveyancers and the Real Estate Institute have not complained about the processes that we seek to put in place through this Bill for the resolution of disputes.

The Hon. Anne Levy: They have not had the substantive issue drawn to their attention, which is the abolition of the tribunal.

The Hon. K.T. GRIFFIN: In all the statements that I have made, I have specifically referred to it. The Opposition may be concerned about what might happen down the track, but we have to look at this Bill and others in this package and the issues which may need to be resolved by a judicial or quasi-judicial body. I suggest that they are very limited, and they are the sorts of issues which presently are most likely to be resolved in the court rather than in a tribunal.

I should like to correct something that I said earlier. The honourable member interjected when we were talking about appeals from the registration process. There are no appeals from the registration process. A person either meets or does not meet the entrance criteria. Those who do not meet the entrance criteria have the opportunity of applying to the Minister for an exemption and not to any tribunal or the court. The view that we have taken is that the streamlining processes which we seek to put in place, moving from licensing to registration, involve objective rather than subjective criteria as to who is a fit and proper person and other processes which do not to any significant extent involve any decision making by an independent tribunal or court.

I should like to make a couple of observations about cost and expertise. Consumers in dispute with real estate agents, conveyancers and valuers must now, under the existing system, take their dispute through the general court system. Whether it is small claims, Magistrates Court, District Court or Supreme Court is largely irrelevant. I cannot see that any additional costs will be incurred by them in resolving disputes under this Bill, because those disputes will continue to be heard where they are at the present time.

Disciplinary actions will be heard in the general division of the District Court. Although, as the honourable member interjected, they involve individuals—agents—experience has shown that in those jurisdictions consumers very seldom bring disciplinary actions. Most commonly they act as witnesses for the commissioner who takes the action. I suggest that that will continue under the framework of this Bill. The issue of costs will assume little importance, but I suggest that even under the processes of the District Court, because of the streamlining of the processes in that court generally, the question of costs will not be such a significant issue.

There is no doubt that members of the tribunal have made a valuable contribution over the years in terms of expertise, but other courts, including the District Court, have also managed to deal with cases of great complexity in both criminal and civil arenas without such panels. If they were not able to do so, I suggest that the tribunal arrangements would have been imposed on all courts, not just one. It is a fallacy to suggest that the District Court will not be able to deal efficiently and effectively with the limited issues which are likely to be referred to it under this and the other Bills in this package.

Again, I make the point that we looked at the process, the structure and the issues which may have to be resolved by a court or quasi-judicial tribunal and we took the view that because of what is operating under the present Act the change that we propose, which is likely ultimately to involve the abolition of the Commercial Tribunal, will not be to the disadvantage of any citizen, consumer, commissioner or land

agent in respect of a disciplinary matter. I strongly oppose this amendment on those grounds.

The Hon. SANDRA KANCK: I will not take a great deal of time on this matter as everything has basically been said. The Democrats will be supporting the amendment. I have not heard enough argument to convince me that the tribunal does not have a function to fulfil. I think that anything that is less legalistic and more user friendly has to be supported, and the specialist nature of the tribunal is particularly appealing, so we will be supporting the amendment.

The Hon. K.T. GRIFFIN: I am disappointed with that, but I guess we will fight it out in another forum. The question of being less legalistic is a fallacy. In disciplinary and other proceedings relating to contempt of the tribunal, the tribunal presently is formal and applies the rules of evidence in a strict way. As a general practice the tribunal has, in effect, sat as a court and has adhered fairly strictly to the rules of evidence, even in matters where it is not required to comply strictly with those rules of evidence. This will not change that approach. If anything, I suggest that the matters which are to be resolved will be just as easily resolved with the same application by the District Court as is presently given by the Commercial Tribunal. In fact, because it is brought within the mainstream of the courts and judicial officers who have a broader experience of matters in dispute will be presiding, it is likely that they may have greater skills of dispute resolution than those who comprise the Commercial Tribunal. I am disappointed with the indication given by the Australian Democrats, but, as I said, we will fight that out in another place.

The Committee divided on the amendment:

AYES (8)

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

NOES (7)

Davis, L. H.	Griffin, K .T.(teller)
Irwin, J. C.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Schaefer, C. V.	

PAIRS

Feleppa, M. S.	Laidlaw, D. V.
Roberts, T. G.	Redford, A. J.
Wiese, B. J.	Stefani, J. F.

Majority of 1 for the Ayes.

Amendment thus carried.

Clause 3—'Interpretation.'

The Hon. ANNE LEVY: I move:

Page 2, after line 24—Insert:

'Tribunal' means the Commercial Tribunal established under the Commercial Tribunal Act 1982.

This amendment is consequential on the amendment that has just been carried.

The Hon. K.T. GRIFFIN: A number of amendments will now be consequential. Having lost the vote on the principal issue, we can take them as consequential. As I said before the division that has just been conducted, we will quite obviously revisit the issue at another time in another place.

Amendment carried; clause as amended passed.

Clauses 4 to 6 passed.

New clause 6a—'Sales representatives to be registered.'

The Hon. ANNE LEVY: I move:

Page 4, after line 13—Insert:

Sales representatives to be registered

6A.(1) A person must not—

(a) be or remain in the service of a person as a sales representative; or

(b) hold himself or herself out as a sales representative; or

(c) act as a sales representative, unless registered as a sales representative or agent under this Act.

Penalty: Division 6 fine.

(2) A person must no employ another as a sales representative unless that other person is registered as a sales representative or agent under this Act.

Penalty: Division 6 fine.

This, again, is the first of a number of amendments in relation to which, if accepted, there will be consequential amendments farther on. If not accepted by the Parliament, all the remaining ones will not, of course, be moved. With this again we can have the substantive debate on the topic at this point.

The Opposition wishes here to ensure that real estate representatives continue to be, to some degree, regulated. In the past, under the current Act, land agents and their sales representatives all have to be licensed. The Opposition agrees that the licensing system is going too far, and we certainly approve changing to a registration system which is dealt with administratively by the Commissioner of Consumer Affairs, who gives the registration, provided that certain criteria are met, and those criteria are set out in the Bill.

However, what the Government has done is suggest that this registration should apply only to the land agent and not to the employees of that agent or the sales representatives of that agent. The Opposition feels, for a whole number of reasons, that sales representatives, like real estate agents, should continue to be registered. There was a report of the VEETAC (the Vocational Education, Employment and Training Committee) working party on mutual recognition which put forward a report on the review of the partially registered occupations. I have a copy of it here, and I am sure that the Attorney has seen it. This report was looking at the regulatory requirements for different occupations right around the country and, of course, found numerous ones where registration or licensing was required in one State and not another, and this certainly has led to a great deal of confusion. There is agreement that such anomalies should be abolished.

However, when it comes to real estate sales representatives the current situation in the law is that they are required to be either licensed or registered in every State of Australia and also in the Northern Territory. The only place where they are not required to be licensed or registered is the Australian Capital Territory. I find it slightly strange that the Australian Capital Territory should be the means whereby the wise decisions of the Parliaments of all six States and the Northern Territory are to be reversed and no regulatory requirements required whatsoever for these real estate sales representatives.

I assure the Council that the Queensland Government has no intention whatsoever of deregulating sales representatives and, in fact, has passed legislation recently to ensure that they continue to have to be registered. While I am not aware of what other Governments in the country may be planning, to this day none of them has removed the requirement for real estates sales representatives at least to be registered. It is quite unnecessary for South Australia to lead the way in this Gadarene rush and certainly depart from Queensland and bring in greater lack of uniformity than presently exists.

We are moving an amendment which provides that sales representatives would have to be registered in much the same way as real estate agents. The requirements would be that they have the education qualifications required by regulation,

that they have not been convicted of an offence of dishonesty and that they have not been suspended or disqualified from practising under a law of this State, the Commonwealth or another State or Territory. They should be able to be deregistered as one of the disciplinary actions to be taken against them if the tribunal judges that such an extreme penalty is necessary, so that they can be prevented from continuing as sales representatives if their behaviour is so extreme that such disciplinary action is warranted. Real estate sales representatives do not come very high on the list of highly regarded occupations when community surveys are done.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: They may come above politicians and journalists, who jointly hold bottom place, but they are not much higher up, and there is in general not a great deal of trust in real estate representatives; nor is there in general a feeling that they are people of great integrity. That may be an error. I am not saying that this is a factual situation, but it is the perception amongst many people in the community.

Registration of individuals before they can practise as real estate sales representatives will ensure that they are people who have certain qualifications and that they are worthy of respect, and it is hoped that they may be held in greater esteem if it is generally known that they do have to meet particular qualifications before they are able to practise as real estate sales representatives.

The Hon. K.T. GRIFFIN: The Government opposes the amendment, and quite vigorously so. What the Hon. Anne Levy did not mention in relation to the report of the Vocational Education, Employment and Training Committee on Partially Regulated Occupations is that the need for the current style of regulation no longer exists and it recommends their deregulation.

By the amendment the Opposition would continue the heavy handed regulation on this occupation. The Government is attempting to streamline regulation and remove unnecessary bureaucracy without derogating from consumer protection.

Members will recognise that we now have in this Bill, as opposed to the one that was introduced in May for public consultation, incorporated provisions which ensure a minimum standard of entry into this occupational group. We have placed the emphasis back on the industry and away from the Government for the industry to select appropriate employees to engage in this employment. Again, one has to look at the structure that we are proposing. We are proposing that the emphasis of the responsibility will be on the manager, on the land agent, so the land agent engages salespersons. The land agent carries on business and the disciplinary consequences come back onto the agent.

We have said, as I have indicated, that, if the salesperson has a minimum standard of education, meets the prescribed education qualifications and he or she is entitled to be a salesperson, it is a matter for the agent whether or not that person gets a job and is able to sell. The advice from the Commissioner for Consumer Affairs is that there have been relatively few instances of misconduct by sales representatives which would warrant regulation. The requirement to register sales representatives adds another layer of regulation upon the industry without any additional responsibility being attached to them or there being any benefit to the public.

What is required for the registration of a sales representative under the existing Act is that the applicant be a fit and proper person to be registered and that the applicant have the requisite period of experience or educational qualifications acceptable to the tribunal. That involves considerable administrative effort on the part of the Government in the processing of applications and in maintaining a register. There is an additional business impost upon the sales representatives to provide an annual return containing prescribed information and to pay a prescribed annual registration fee.

When we looked at the whole industry we took the view that that significant bureaucracy was quite inappropriate because it did not deliver commensurate benefits to consumers. We took the view that we could get rid of it. As I said, that is in line with the VEETAC report and its recommendation.

As to what is happening in other States, I draw members' attention to the fact that we are really at the forefront of legislative change in respect of this industry.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Queensland may not, but there was a meeting of officers three or four weeks ago considering the whole area of occupational licensing, and they expressed considerable interest in moving down this path.

The Hon. Anne Levy: Do you have officers deciding policy?

The Hon. K.T. GRIFFIN: No. The Government makes the policy decision, and that is what is in the Bill. It is a Government policy decision. In other States I have talked to other Ministers, and they are much attracted to a total overhaul of their own regulatory environments, because it is burdensome and unnecessary and does not justify its existence.

What we have put in place under this legislation is an adequate mechanism for protection of consumers such that we do not want to impose this heavy hand of bureaucratic regulation in an area where it is not warranted. Although in some areas of the industry they may like to protect their occupation by registration or licensing requirements, the fact is that there is no public benefit coming from this heavy impost and bureaucratic regulatory framework imposed upon land salespersons.

The responsibility is with the land agent, and there are adequate controls in relation to the way in which the land agent carries on his or her business and more than adequate protections for consumers. So, very strongly the Government rejects and opposes the amendment proposed by the Opposition.

The Hon. ANNE LEVY: I feel I should respond to some of the comments made by the Attorney-General. He is suggesting that this is heavy handed regulation. I do not see that it is heavy handed at all for someone to show that they have the required educational qualification, that they do not have a conviction for dishonesty and that they have not been suspended or disqualified in any other State or Territory. Provided they can meet those (one would have thought) simple criteria, they will be entitled to get their registration. The cost can be such that it is revenue-neutral as far as the State is concerned, but I maintain that it is a protection for the consumer. It is all very well to say that the land agent is responsible for the people he or she employs; I agree. On the other hand, if a sales representative behaves dishonestly or defrauds his employer, the land agent, sure, the land agent can then dismiss him as any employer would do, but there is then nothing to stop that person going down the street, getting himself employed to do exactly the same job with another

land agent. He will not be disqualified, because there is no disciplinary procedure in place.

If someone is registered, as we are suggesting, it is not heavily bureaucratic. It is not the licensing system that existed previously; it is a simple registration, but disciplinary action can be taken against an individual. The ultimate penalty is that he cannot then practise as a real estate sales rep, so he will not be able to pass from one real estate agent to another around the city, being sacked by each one, with no-one able to stop him then getting a job with another, where he may be defrauding client after client—in other words, the consumers in this State. We must not forget that to the average consumer a real estate sale is the most important and expensive purchase they will ever make in their lives, and they need to have confidence and trust in the person who sells them that extremely important purchase. Without any form of registration, the trust in real estate sales reps will be even lower than it is at the moment, and that is just not fair on the consumers of this State when they are making this extremely important purchase (to them)—probably the most expensive purchase they will ever make in their lives.

The Hon. K.T. GRIFFIN: What the honourable member ignores is the fact that if there is a criminal offence then criminal sanctions apply, provided that person is caught by the authorities. If the authorities do not detect the fraudulent behaviour, no registration system will stop it because, if the police are not aware of it, the Commissioner will not be aware of it, and what the honourable member is referring to is a conviction for dishonesty. I would suggest that, in the real world, the convictions for dishonesty which would then disqualify the sales person from registration would be sufficient to exclude them from any future employment opportunities. In terms of civil responsibility, if there is a defalcation, then the agents' indemnity fund if nothing else would give some protection to the customer or client, and the agent who engages that salesperson would have vicarious liability, so that there is not the detriment to which the honourable member refers as a result of that sort of behaviour. I am not persuaded that there is any merit at all in the proposition which the honourable member wishes the Council to support.

The Hon. SANDRA KANCK: Once again I am left in a position where there is very little for me to say other than which way I will vote. I am interested in the Attorney-General's idea that it is burdensome to have the sales representatives registered. On paper it does not look to me to be particularly burdensome. I have not read the report to which both members have referred, but it seems to me that if you are to go down the track of not registering sales agents you are conducting an experiment. If you tell me it is burdensome and you have nothing else for me to compare it against, it is as if you were performing an experiment without any control against which it can be compared. It seems to me that the system is working. The Attorney-General has not presented enough arguments to persuade me against the registration, so I support the amendment.

The Hon. K.T. GRIFFIN: I am disappointed to hear that (I hope) preliminary indication of intention to support the amendment. The Government's argument is that proceeding to a registration process creates a bureaucratic obligation which serves no public benefit, because first there will be an application. That has to be completed by the applicant, lodged with the Commissioner for Consumer Affairs and processed, the registration issued and the fee paid. In addition to that, there will have to be annual returns to update information and the register will have to be kept. The Commissioner will not necessarily be in a position to be informed on each occasion that a conviction has or has not been recorded, so it may well be that, as part of the process, certainly upon application and even upon renewal of the registration, the Commissioner should make some inquiry of the Commissioner for Police. That application or registration will then need to be processed and again a fee paid to keep the register up to date.

There is a cost both to Government, to sales persons and ultimately to the consumer, whatever cost is paid by the salesperson in that process. It will have to be paid by somebody. Governments cannot pay it; it will be recovered and ultimately it will come from the consumer. While it may be a relatively small amount spread over a number of vendors, it is another cost and another burden upon a person carrying on business where there is no commensurate benefit to the consumer. Whilst it may be comfortable to say that the person is or is not a registered salesperson, it depends on how up to date is the register as to whether it will be any indication that the person is a satisfactory salesperson, even among those who are presently licensed.

The Hon. Anne Levy refers to the fact that land agents and salespersons are held in low esteem. It is not a factor of the registration or licensing that has any influence on that. It is the way in which they behave towards their customers or clients. So, I would suggest that registration will not give any more confidence to the public in dealing with a salesperson than licensing at the present time, and will certainly not be something that acts to the detriment of the consumer in making a decision as to whether they will or will not deal with that particular salesperson. The fact of the matter is that it adds another cost, it adds another burden, and there is no commensurate benefit.

The Hon. Sandra Kanck says she has not seen the VEETAC (Vocational, Education, Employment and Training Committee) report on partially regulated occupations. The fact of the matter is that it does address the issue of land agents and salespersons. It makes the recommendation that there is no longer a need to regulate or licence, or however you like to describe it, salespersons. That is a report which other Governments around Australia are presently considering. The fact also is that under mutual recognition, if we move, our salespersons may well be able to carry on business interstate, but if we do not move, and if it is so called deregulated in other States, salespersons interstate will be able to come into South Australia.

From the Government's perspective, our view is we retain protections for consumers. We abolish the heavy handed need for a regulatory framework, but we provide sufficient protections for consumers and sufficient disciplinary focus upon land agents to satisfy both the Government's and the community's obligation to persons who are vendors or purchasers of real estate.

The Hon. SANDRA KANCK: I do not know how long ago it was in the debate that the Attorney-General quoted either the number of convictions or defalcations that are on record, and the fact that they were low was being argued as proof that regulation was not needed. Perhaps it actually proves that regulation is working. On the question of cost, he is saying it is another cost to the consumer. If I am buying a house and land that will cost me $150 000, another $50 on top of that is something I am prepared to bear because of the extra safety that I think I get in it.

The Hon. K.T. GRIFFIN: You may want to bear that, but the fact is that registration will not guarantee that you will

get good service. The Real Estate Institute has been promoting its membership and the advantages of acting with a person who is a member of the Real Estate Institute because of professional qualifications, professional indemnity insurance and a whole range of other things which I would suggest to them is a good marketing thrust, but the fact you are registered does not mean you are a person of integrity. All it means is you have satisfied the criteria. The same applies to agents.

If you look at the present licensing regime, where the Commercial Tribunal ultimately has the responsibility for determining, yes, you are a fit and proper person or you are not, there are very few occasions where the licensing body makes a decision that an applicant is not a fit and proper person. By what criteria do you determine who is or is not a fit and proper person? There are no criteria in any of the Acts of Parliament which establish that as the factor that has to be determined by the licensing authority.

The fact is that, if you want to deal with someone who is registered, that is not a guarantee by Government or anybody else that that person will deliver the service you want. You may get a better reference from, say, someone belonging to the Real Estate Institute if you are satisfied that the ethical standards, the obligations of members and the requirements of the Real Estate Institute have put that person in a better position to sell land, but I would suggest that even then there would be salespersons who are members of the Real Estate Institute who would not provide you with what you would regard as a satisfactory service for the money that you are paying. So, registration must not be regarded as a Government guarantee of either quality or quality service. It is important to recognise that. It provides nothing except an indication that a person has met certain minimal criteria.

The Hon. ANNE LEVY: I think the Attorney is setting up straw men and trying to confuse the issue. He talks about the difficulties of establishing that someone is a fit and proper person. In doing so, he is referring to the existing Act which nobody, as far as I am aware, is supporting. It is a straw man that he is setting up. What we are proposing is not a licensing system where people have to be fit and proper persons, and I agree with his comments on the difficulty of establishing such fulfilment of criteria. We all know that all the Commercial Tribunal has done to fulfil that criterion is see whether people have criminal convictions. If they have not, and there is no obvious and known blot on their copybook, they are regarded as fit and proper people. But nobody is defending that system.

What we are proposing is a registration system by the Commissioner of Consumer Affairs, not the licensing system through the tribunal, exactly the same as the Attorney is supplying for the land agents. We are just saying that not only should agents be registered as a consumer protection but that their sales representatives should also be registered. The Attorney spoke earlier about disciplinary action if they had behaved illegally, in which case they would have been convicted. Under the Attorney's proposal, if they have been convicted of something, they can still go and get a job as a real estate sales representative. They can be convicted of the most improper, negligent, fraudulent behaviour as a real estate representative, pay the penalty, be it a fine or gaol, come out and promptly go back into the industry. There is absolutely nothing to stop it, if they do not have to be registered.

As a protection to the consumer, we say there should be this registration where, if it is felt necessary in the interests of the consumers of this State, they can be debarred from continuing in that occupation. It is strictly a consumer protection measure. I might state—which is perhaps a different argument—that we really do not know the views of all the sales representatives in this State.

There has been no attempt to find out. The Real Estate Institute has certain views, but we have received correspondence that the Real Estate Institute does not represent the views of all people in the real estate industry in this State. I can certainly quote from Queensland, where the Government, when sending out licensing or registration renewal notices, included a questionnaire to every real estate agent and real estate sales rep asking whether or not they approved of deregulation of sales reps, and 93 per cent of sales reps and real estate agents indicated that they wanted the regulation of sales reps continued.

The Hon. K.T. Griffin: Because it protects them in their occupation.

The Hon. ANNE LEVY: It also protects the consumer. The Real Estate Institute in Queensland was not supporting a registration system, but it was quite obvious it did not speak for its members. It has never been tested in this State, so we do not know. I say that, in the interests of consumers, we need to protect consumers in what is the most important purchase of their lives, by insisting on a simple registration requirement for sales reps.

The Hon. A.J. REDFORD: I shall deal first with the contribution just made by the Hon. Anne Levy. Clause 46(1)(f) provides a regime whereby a person who is a sales representative can be prohibited from being employed or otherwise engaged in the business of an agent. It would seem to me that there is quite an appropriate remedy where a sales representative has—

The Hon. Anne Levy: Action can only be taken if they are registered. If they are not registered you cannot take action.

The Hon. A.J. REDFORD: It does not say that. If the honourable member looks at the clause, it provides:

> . . . against the person to whom the complaint relates—

and if we go back we can see that it can relate to anybody—

> . . . by an order or orders do one or more of the following—
> (f) prohibit the person—

it does not say the 'agent'—

> from being employed or otherwise engaged in the business of an agent.

I would assume that that would cover a sales representative.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: If the honourable member disagrees with me she can say something when I have finished. I have some concerns about the statement that there has been a low number of defalcations attributable to the system of licensing under the previous legislation and that we impose an additional system of registration under this Bill. Whilst this might sound anecdotal, I recall an occasion in private practice when I acted for a land broker who defalcated on his trust account. In fact, many millions of dollars went missing. I acted for him during the appeal process. This incident occurred under the old regulatory regime run by the old Department for Consumer Affairs. This land broker had not had an audit conducted of his trust account nor had an audit been filed for some four years, yet he was allowed to remain in the practice of land broking and allowed to continue in his criminal way to defraud a number of people.

He is currently in the first or second third of his gaol term in Yatala at Her Majesty's pleasure.

The Hon. R.R. Roberts: He won't come back to you again.

The Hon. A.J. REDFORD: He did; I managed to get his sentence reduced by three years.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: The point I make—and this was under your Government when you were Minister—is that these audits were not being filed in the department and the department did nothing. I will name the person: it was Mr Hodby. The department did nothing—

The Hon. Anne Levy: Point of order: I was not Minister when Hodby was caught, tried and sentenced. I was Minister for Consumer Affairs from October 1992 on.

The Hon. A.J. REDFORD: All right, I withdraw that, but—

The Hon. Anne Levy: Get your facts right.

The Hon. A.J. REDFORD: I will say this: the Minister at the time made no comment, and the fact of the matter was that you had this you-beaut Rolls Royce licensing system in place and it failed. It let the little people down. This gentleman was allowed to continue with his practices despite this regulatory process, and my suggestion would be that the regulatory system failed. There is nothing to suggest that a system of registration would succeed any better than no system at all, and there is nothing to suggest that the cost that is attributable to that will prevent the very same thing occurring again. The most effective and sensible system I have seen is the one imposed on the legal profession by the Law Society. That is an industry based system where they have regular checks. They have arbitrary checks or checks without notice at different times of the year by the Law Society's auditor. The registration of the business is predicated on an appropriate audit report being filed.

It seems to me that this previous heavy, regulatory scheme that we had did not protect the consumer at first instance, from what happened in that case, and there are many other examples where that occurred, where there were people who were continuing in their criminal conduct, who were obliged under legislation to get audits done. They did not get those audits done and yet their registration continued. In fact, taking it almost to the extreme, what happened was that there was almost an aura of respectability given to these people by the very fact that they were allowed to continue in business through that previous licensing system. Mr Hodby could continue to say to the general public during this process, 'I am licensed; you can trust me.' A licensing system can tend to create a false expectation and a false security in the minds of the consuming public.

We can go so far to protect the consuming public but the consuming public must be careful. I agree that we must have some form of regulation for agents because they have the most to lose. However, when you analyse what sales representatives must do to become licensed under the existing system, or what they have to do to become registered under the proposed system, it is not that great, so they do not have a lot to lose. The very essence of a licensing or registration system is to make of some value what a person has to lose if they cross the line. In this case you are not creating that, because it is not of great value.

Whilst there has been a low number of defalcations, I suggest that that is not due to the fact that we have had a heavy regulatory system in place. My suggestion would be that, on the whole, most people are honest and that the people who are going to commit these crimes will do it irrespective of any sort of licensing system and any sort of bureaucratic regime. At the end of the day, the bureaucracy failed many people, particularly in the Hodby case. People were given a false sense of security by the very existence of that bureaucracy. If you look at it in that context—and I accept what the Attorney says—and then start analysing how much it costs and what we are getting for that cost, I suggest we are not getting very much for that cost. I would urge you to reconsider your tentative viewpoint on that issue.

The Hon. ANNE LEVY: I think the Hon. Mr Redford is suggesting that, because something fails once and is not flawless, you throw the whole thing away so that the flaws can occur every time and not just once. Also, Mr Chair, I would request that you ensure that members address you, as the Chair of this Committee, instead of turning their backs to you and addressing the Hon. Sandra Kanck, as if she were the Chair of this Committee, and even referring to her as 'you'; in other words, addressing her and not you, Mr Chair, who under Standing Orders is the person who should be addressed in this Chamber.

Also, through you, Mr Chair, I wish to ask either the Attorney-General or the Hon. Robert Lawson for legal advice. My reading of clause 46 is not that which the Hon. Mr Redford has just applied to it and, unless there is some agreement that he is wrong, I would certainly like to seek legal advice on the question. The Hon. Mr Redford suggested that, under clause 46(1)(f), a sales representative could, through the disciplinary procedures, be prohibited from continuing to be employed as a sales representative. That is not my reading of it. The causes for disciplinary action under clause 43 are for disciplinary action against an agent—not against a sales rep, but against an agent, and no-one has any argument with that.

If, as the Bill currently stands, there can only be disciplinary action against an agent, then as clause 46(1)(f) says that someone can be disciplined, he can be prevented from continuing to work as an agent. I do not see how that in any way affects a sales representative. Certainly, my amendments further on when we get to clause 46, I think it is, provide that, likewise, disciplinary action can be taken against a sales rep who is registered, and one of the penalties can be that that sales representative can be prevented from continuing as a sales representative. However, my reading of the Bill as it stands before us is that there is no way that disciplinary action can be taken against a sales representative or that he can be prevented from continuing as a sales representative by the disciplinary proceedings in the court. I know that under Standing Orders the Attorney-General is not meant to give legal advice, but if he cannot give it I would certainly ask the Hon. Robert Lawson whether my reading of this clause is correct and whether the Hon. Mr Redford is barking up the wrong gum tree.

The Hon. K.T. GRIFFIN: I am entitled to give legal advice to the Council, as a Council, but not in the context of the debate on a particular Bill, I suspect. I will walk through the structure of the relevant provisions and we can then work out what is intended. Clause 43 deals with causes for disciplinary action.

The Hon. Anne Levy: Against an agent.

The Hon. K.T. GRIFFIN: Yes; it states:

There is proper cause for disciplinary action against an agent if—

and then one can go down to, say, paragraph (d)—

. . . in the case of an agent who has been employed or engaged to manage and supervise an incorporated agent's business—the agent or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business—

and then if one goes across to clause 45—

. . . on the lodging of a complaint—

and that must relate to a complaint in respect of disciplinary action—

the court must conduct a hearing. . .

and then under clause 46—

On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is a proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following—

In the case of a person who is registered as an agent it can suspend, and:

. . . in the case of a person whose registration is suspended—impose conditions as to the conduct of the person or the person's business as an agent after the end of the period of a suspension. . . or prohibit the person from being employed or otherwise engaged in the business of an agent.

I think it primarily is related to the conduct by the agent of the business. I think it is at least open for an employee of that agent, under the disciplinary processes, to be prevented from being employed by that agent. However, the focus is on the agent. To be fair about it, that is my interpretation. The focus of the disciplinary provisions is upon the agent. I know I argue against my own position on that, but the fact of the matter is that that is the framework within which it may be possible to get an order against the agent not to employ a particular person. But the focus is on the agent.

The Hon. Anne Levy: I thank the Attorney-General. That is how I read it, as a non-lawyer.

The Committee divided on the new clause:

AYES (8)

Cameron, T.G.	Crothers, T.
Feleppa, M.S.	Kanck, S.M.
Levy, J.A.W. (teller)	Pickles, C.A.
Roberts, R.R.	Weatherill, G.

NOES (7)

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

PAIRS

Elliott, M.J.	Davis, L.H.
Roberts, T.G.	Laidlaw, D.V.
Wiese, B.J.	Stefani, J.F.

Majority of 1 for the Ayes.

New clause thus inserted.

Clauses 7 and 8 passed.

New clause 8A—'Entitlement to be registered as sales representative.'

The Hon. ANNE LEVY: I move:

Page 5, after line 9—Insert new clause as follows:

8A. A person is entitled to be registered as a sales representative if the person—

(a) has the educational qualifications required by regulation; and

(b) has not been convicted of an offence of dishonesty; and

(c) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth.

This is consequential on the one that the Committee has just passed. If we are to have sales representatives registered, these are the entitlements for registration.

The Hon. K.T. GRIFFIN: I agree that it is consequential.

New clause inserted.

Clause 9—'Duration of registration and annual fee and return.'

The Hon. ANNE LEVY: I move:

Page 5—

Lines 13, 14, 18, 19, 22, 24, 26 and 28—Insert 'or sales representative' after 'agent' wherever occurring.

Lines 23 and 24—Insert 'or sales representative's' after 'agent's' wherever occurring.

These amendments are all consequential.

Amendments carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Qualifications of sales representatives.'

The Hon. ANNE LEVY: This is consequential. Other clauses having been inserted about qualifications of sales representatives, this clause becomes superfluous so we oppose it.

The Hon. K.T. GRIFFIN: I agree that it is consequential to do that.

Clause negatived.

New clause 11A—'Notices to be displayed at agent's place of business.'

The Hon. ANNE LEVY: I move:

Page 6, after line 16—Insert new clause as follows:

11A. A registered agent must exhibit and keep exhibited, at each premises from which the agent conducts business, in a prominent position so as to be easily read from outside the premises, a notice stating—

(a) the agent's name; and

(b) if the business is not carried on in the agent's name—the name in which it is carried on; and

(c) the address for service of the agent.[1]

Penalty: Division 7 fine.

[1] See section 62(2).

This is a slightly new matter. Existing legislation ensures that all licensed land agents must have in a prominent position where it can be read a notice displaying not only the name of the land agent but also the premises, because premises for land agents also have to be licensed.

The committee has proposed, and we accept, that there is no need for the premises to be registered, licensed or in any way supervised. The premises of a land agent are hardly a matter of health and safety, but it is felt that the person who wishes to buy a house must have ready access to the agent's name (and, if the business is not carried on in the agent's name, the name in which it is carried on) and the address for service. The agent when becoming registered must indicate the address for the service of notices. We feel that this information should be available not only to the Commissioner for Consumer Affairs but also to the client so that, if he needs to get hold of an agent, there is an address to which he can send correspondence.

New clause 11B relates to advertisements, but the two new clauses are tied together. If there is an advertisement in the paper, the consumer, if he has complaints subsequently, must have some name and address where he can make contact. Therefore, the advertisement should have this information, as should the place of business. It should not be carried out in a back shed—not that I have any objection to back sheds—but the consumer must know when he goes there the name of the agent with whom he is dealing and the address to which correspondence can be sent so that, if he needs to make

contact in future, he has that information readily available. It is analogous to the provisions in the present legislation, except that in the present legislation the premises have to be registered. We do not feel that is necessary.

The Hon. K.T. GRIFFIN: The Government can see no public benefit from having this obligation imposed upon agents. I would guess that very few, if any, of the thousands of people who go through the doors of land agents would be concerned to identify anything other than the fact that they are going to a particular agent. Whether or not that person is registered or licensed is irrelevant or whether the business is carried on in a name other than the agent's name is largely irrelevant, too. They are looking for reasonable service and getting a job done. This would impose yet another regulatory obligation upon agents. I expect that agents will have their name on the plaque, anyway, and, if it is not the name of the agent who is carrying on the business, it will be a business name registered at the State Business Office under the Business Names Act. I do not see any good purpose being served by advertising the address for service of the agent.

The amendment does not make it an obligation that there be a statement to the effect that a person is a registered agent. But, even if it did provide for that, it would not persuade me to support it. The fact of the matter is that it is a bit of extra bureaucracy. It is not likely to provide any public benefit, and for those reasons we do not support it.

The Hon. ANNE LEVY: I would argue that if someone goes to do business with an agent they are told, 'Come in here, I am a land agent.' There is no name; there is no plaque anywhere; there is no obvious address; and they are promised, 'I will show you a new beaut house tomorrow.' That person may even put down a deposit of a few hundred dollars. Then they come back the next day and the person has vanished. They have no means of trying to contact that person.

Most businesses have their names up, anyway. I do not see that to require people to put up their name or to make clear what their address is so that people can have a means of contacting them is any great imposition. If they are not in the phone book, there is an address at which they can make contact. I do not think that is asking very much. Surely, any agent who is proud of being an agent will want to have his plaque up.

The Hon. K.T. GRIFFIN: It is not in the real world. The fact of the matter is this has got a penal provision; you commit an offence if you do not do it. Whilst there may be some consumers who will go along to premises at the invitation of someone who says, 'I am a land agent,' without the name on the premises, but, nevertheless, knowing the address because the potential customer will go to that address, it really is quite unreal. The consumer is most unlikely ever to go into those sorts of premises where they are not already identified. But there is a penal provision on this.

But, as I say, it is now the Hon. Anne Levy who is constructing, perhaps, men and women of straw. It is an unrealistic view of how someone may wish to carry on business. Even if someone does say, 'I am a land agent; come in,' and then vanishes the next day, what will this achieve? It will not achieve anything because, even if the person is, in fact, a registered agent, the person has skipped. If the person is not a registered agent, then certainly other offences may have been committed, but this, again, will not create any benefit for the consumer.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: There will be discipline if you can trace the person. But the fact that someone puts up a name and an address one day at a particular address does not mean that the next day, if that person wants to disappear, you are going to be able to catch the person to impose the discipline. I would suggest that it is not a realistic obligation tied in with a penal provision.

The Hon. R.D. LAWSON: I direct a question to the Attorney-General. Regarding names, one of the difficulties that obviously arises in relation to the names of land agents arises because of the common practice now of franchising. People believe they go to L.J. Hooker, but they are not dealing with L.J. Hooker at all, or Hookers: they are dealing with ABC Pty Ltd trading as L.J. Hooker in a particular area. Of course, there are a number of other major national names which are used only as trading names. Are there any provisions in the current Bill dealing with this issue because, it seems to me, that is something which might be considered either in the context of the Act itself or the regulations?

The Hon. K.T. GRIFFIN: There is no provision in the Bill relating to that of which I am aware because, again, we are focusing on the agent. The agent has the responsibility for carrying on his or her business. It is the registered agent who attracts the disciplinary provisions. There may be a company which is also registered as an agent, but we have provided that the business has to be carried on by a registered agent. So, it may be that that particular company owns the business, as in a franchising situation, but the business is carried on by a registered agent and all the focus is upon the registered agent. Again, this amendment does not even address that issue. It says:

> A registered agent must exhibit, and keep exhibited, at each premises from which the agent conducts business, in a prominent position. . . . . a notice stating—
>
> (a) The agent's name;
>
> (b) If the business is not carried on in the agent's name—the name in which it is carried on.

So, it is quite possible that in those circumstances you might have half a dozen agents'—maybe a dozen on some of the bigger agencies—names up on the board, and it might be carried on under the name of Myles Pearce, Whimpress, or Woodham Biggs. That may not be the actual registered agent, but it is carried on by a number of natural persons who are, in fact, registered agents. It seems to me that that again does not achieve much, even if that provision is there, as well as the address for service of the agent.

Referring again to the point of franchising, branch offices and a whole range of options, provided that they are carried on by registered agents, which is the focus of this Bill, then that is all that needs to be done.

The Hon. ANNE LEVY: Do I take it from the point raised by the Hon. Mr Lawson that in the case of someone who has a franchise, say, from L.J. Hooker, they may have only the sign 'L.J. Hooker' up and the name of the agent may not be known? If, then, a customer wishes to make contact with or to assign liability to a particular agent for some misdemeanour, or know how to get on to them in some way, if the agent's name is not up and only 'L.J. Hooker' is up, there will be no point in taking action against L.J. Hooker which has a head office—I don't know where: Sydney, the Gold Coast or wherever—and they will just say, 'It is nothing to do with us, a franchisee,' and the particular customer, unless this amendment is carried, will not know the name of the agent or against whom to take action because the agent's name is not up; it is only L.J. Hooker, Myles Pearce, or what have you. There will be no means for them to know the agent against whom they are taking action. It is a bit difficult to lay

complaints or to take action against someone if you do not know their name.

New clause negatived.

New clause 11B—'Advertisements.'

The Hon. ANNE LEVY: I move to insert the following new clause:

11B. (1) An advertisement published by or on behalf of a registered agent relating to the acquisition or disposal of land or a business must contain—

(a) the name in which the agent carries on business; and

(b) the address for service of the agent,[1]

and if an advertisement does not contain those particulars, the agent is guilty of an offence.

Penalty: Division 7 fine.

(2) A registered sales representative must not publish, or cause or permit to be published, an advertisement relating to the acquisition or disposal of land or a business except in the name, and on behalf, of the registered agent by whom he or she is employed.

Penalty: Division 7 fine.

(3) A person must not publish, or cause or permit to be published, an advertisement relating to, or in connection with, an intended transaction relating to the sale or disposal of land or a business or offer to sell land or a business without the prior consent in writing to the transaction of the person by, or on whose authority, the land or business is to be sold or disposed of.

Penalty: Division 7 fine.

[1] See section 62(2).

I still persist in moving this, despite the result of the previous new clause, because it seems to me that this is a different case. This is a question of an advertisement which is put in a newspaper, say, by an agent, and which may contain all sorts of misleading material. If the name of the agent is not there, or an address is not there, there is no way that anyone can make contact, follow up or in any way deal with the matter.

It seems to me that truth in advertising must include the ability for the consumer to make contact with those who have placed an advertisement that may be misleading. We all know that misleading advertisements do occur but, if there is no name and address in the advertisement, there is no way that anyone can take action to seek redress. It seems to me that this is a different matter from the display of a name at a place of business. This concerns an advertisement that is circulating freely.

The Hon. K.T. GRIFFIN: The Government opposes this amendment for similar reasons as it opposed the last amendment. In the real world of business if an agent is advertising a property for sale the agent will put either his address or phone number or both. It is just not good business practice if you are looking to do business and sell property not to do so. We have looked at what benefit there is in making this a mandatory obligation with a penalty attached. A division 7 fine is not something that one laughs at. It is a conviction; a division 7 fine is a $2 000 fine and a mark on the record. If there happens to be some inadvertence, for example, and the strict provisions of the proposed amendment are not included in the advertisement, then a penalty may well ensue, but the question of intent may be relevant in determining the level of penalty. It seems to us that no public benefit is served in the real world of imposing or creating a statutory offence, imposing a penalty where advertisements do not carry this particular information. The fact of the matter is that, if they do not carry information, they are not going to sell anything.

The Hon. ANNE LEVY: I certainly dispute the last comment of the Attorney. Many an advertisement may carry just the phone number, and it is perfectly normal in classified advertisements, where people do not give addresses but give phone numbers only. If a real estate shonk puts an advertisement in the paper and just puts in a phone number, people can ring him or her and he will say, 'I will come to your place.' No address is ever determined. It may not be his correct name that he uses and, if the consumer is then defrauded, he has good grounds for laying a complaint but he does not know who to complain about. You need a name and address before you can complain about someone. A phone number is not an address for the purposes of trying to identify someone and lay a complaint against them. I am sure that names and phone numbers are what are most likely to be provided in an advertisement—not an address.

The Hon. K.T. GRIFFIN: The problem is that whilst there may be a person who advertises that he or she has land or property for sale and to contact a particular phone number or address that person may be a registered agent. If as a result of that behaviour—remembering that there will be surveillance of the real estate industry—which demonstrates a pattern of practice where the conduct is such that that general pattern of conduct is regarded as undesirable, not just in one incidence but in a series of incidents, disciplinary provisions can be applied by the Commissioner.

The Hon. Anne Levy: They don't know who it is to take discipline action against.

The Hon. K.T. GRIFFIN: You can give a fictitious phone number or address. If you are a registered agent, there is going to be a register and it will have available the name, address and phone number.

The Hon. Anne Levy: Are we talking about sales representatives—

The Hon. K.T. GRIFFIN: By or on behalf of a registered agent. You are talking about sales reps as well. I am dealing with it as a whole. Remember, you have a registered agent. The information is accessible. A complaint about an agent is most likely going to be made to the Commissioner.

The Hon. Anne Levy: But not the name of the agent. The advertisement could be for L.J. Hooker and give a phone number. If a person wants to lay a complaint, who can they lay it against?

The Hon. K.T. GRIFFIN: Under the general law, if it is L.J. Hooker with an address and/or a phone number, most likely the Commissioner, from the register, will be able to identify where that person is.

The Hon. Anne Levy: What if they have given their home phone number?

The Hon. K.T. GRIFFIN: In the *Sunday Mail* there is a whole page of L.J. Hooker advertisements and the properties may all be in different locations. They give a phone number to contact and in most instances it is the name of an agent.

The Hon. Anne Levy: Under the current law they have to give an address.

The Hon. K.T. GRIFFIN: They give an address—one address-but it may be a whole series of franchisees.

The Hon. Anne Levy: I'm only asking for one.

The Hon. K.T. GRIFFIN: Actually, you are asking for more, because an advertisement published by or on behalf of a registered agent must contain the name under which the agent carries on business and the address for service of the agent. In such a composite full page liftout you might be looking at a number of different agents who might have responsibility for different properties.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: But what public benefit is there? That is the issue we are raising. In the real world, what public benefit is there? It is all very well to talk about 'What if?', but I suggest that in the real world they are a bit more likely to be remote rather than regular instances where you need that information which is not published.

The Hon. ANNE LEVY: I certainly agree, and one would hope that these incidents will be rare and hopefully nonexistent. But as I understand the law, we do not just hope that people will behave properly. We have to have laws to make sure that they do and to protect consumers if they do not. All that is being suggested here is virtually what is in the current law. I do not know that any land agents have ever expressed concern that currently any advertisement that they put in has to have their name and address in it. They conform with that and I have never heard them complain otherwise. If someone puts in a name like L.J. Hooker, which obviously can be anyone of many franchisees, with a phone number, and then they do the dirty on some consumer, the consumer has no name or address about whom to lay a complaint. Before someone can lay a complaint with the Commissioner for Consumer Affairs they must have the name and address of the person they are complaining about, otherwise the complaint is not worth anything and the Commissioner cannot follow it up.

The Hon. K.T. Griffin: There is an advertisement in the newspaper.

The Hon. ANNE LEVY: If there is an advertisement in the paper saying 'L.J. Hooker'—and I am not casting aspersions against L.J. Hooker but using that as an example—and there is a name and phone number, and the name is that of a large institution and is not the name of the individual, there may be no way of finding out the name of the person who is the shonk or how to get onto to them in any way. The consumer may have every ground for complaint, but who is he complaining about? We all have constituents who come to us with complaints, but unless there are specifics how can we follow them up? Likewise, the Commissioner will not be able to follow things up unless there is a name and address. It is not asking much; they do it now without any problems. Why not continue to require that they give a name and address in an advertisement, which they seem to cope with perfectly well at the moment? It is that safeguard for the consumer if there is something shonky going on. It is not a tedious burden to put on people. They have had it for years and never complained about it. They obviously do not regard it as burdensome. Let us continue it as protection for the hopefully very rare consumer involved.

The Hon. K.T. GRIFFIN: We do not go back to what has been happening and the fact that no-one has complained. We are looking to the future to try to establish what is necessary. I would suggest that the honourable member really draws a very long bow. The fact is that this establishes an offence if you do not put your name and address, an address for service and the name in which the agent carries on business. It may be that they do it now, but that is no reason to say that they should continue to do it into eternity. We have looked at it and we do not think it is necessary, because in the real world most if not all will have the name of the agency and the phone number and address and, in the real world, if there is a complaint against, say, L.J. Hooker and no specific agent is identified, then the Commissioner will undoubtedly use his powers of investigation to obtain the information.

The Hon. SANDRA KANCK: Will the Attorney-General make some comment on what role the register of land agents might be able to play in this tracking down process which the Hon. Ms Levy has raised?

The Hon. K.T. GRIFFIN: I am happy to answer the question now, but I can see that it will drag on for a bit longer. We are coming back tonight, so I will answer it after the dinner break.

Progress reported; Committee to sit again.

[Sitting suspended from 6.5 to 7.45 p.m.]

The Hon. K.T. GRIFFIN: The Hon. Sandra Kanck asked a question prior to the dinner adjournment about the register. There is a register required to be kept of agents. The Commissioner must record on the register disciplinary action taken against a person under this Act and note of any assurance accepted by the Commissioner under the Fair Trading Act in relation to a registered agent, remembering that under the Fair Trading Act it is possible for the Commissioner to require an agent to give an assurance relating to the way in which his or her business may be conducted or for other matters relevant to the area of work. So, the name, address and information relating to the registered agent will be on that publicly accessible register.

The Hon. Anne Levy: Not phone number?

The Hon. K.T. GRIFFIN: I would have thought the phone number would be available but I must confess I had not turned my mind to it. It would certainly make good sense for it to be available. It is information about the agent and I would expect that, in the context we are debating, if you have L.J. Hooker as the incorporated agent, you would also have details of the agent who carries on the business under that name. In relation to an incorporated agent, that business must be carried on by an agent who is similarly registered under the Act. There is a measure of protections there. If you have a fly-by-nighter who is not registered, it does not matter whether or not you have these provisions in relation to providing details of the name and address for service in the advertisement. Certainly there will be a breach of an Act even from the perspective of having advertised as having a property for sale if that person is not registered or is not the owner of that particular property. So, in the real world there will be adequate information available, in my view, and that is the reason why the Government rejects this amendment as creating an offence or offences in relation to obligations which, in the whole scheme of things, are not necessary to be imposed by an Act of Parliament.

The Committee divided on the new clause:

AYES (5)

Crothers, T.	Levy, J.A.W. (teller)
Pickles, C.A.	Roberts, R.R.
Weatherill, G.	

NOES (7)

Davis, L.H.	Griffin, K.T. (teller)
Irwin, J.C.	Kanck, S.M.
Lawson, R.D.	Redford, A.J.
Schaefer, C.V.	

PAIRS

Elliott, M.J.	Laidlaw, D.V.
Feleppa, M.S.	Lucas, R.I.
Roberts, T.G.	Pfitzner, B.S.L.
Wiese, B.J.	Stefani, J.F.

Majority of 2 for the Noes.

New clause thus negatived.

New clause 11C—'Requirements for professional indemnity insurance.'

The Hon. ANNE LEVY: I move:

11C. (1) A person must, at all times when carrying on business as an agent, be insured in accordance with the regulations.

(2) An agent's registration is suspended for any period for which the agent is not insured as required under subsection (1).

This amendment is a requirement for professional indemnity insurance to be held by land agents. This is supported by land agents in South Australia. I know we have the indemnity fund but the indemnity fund does not cover all situations where a client of a land agent might suffer pecuniary loss due to the action of an agent. The fact that in some cases the client might be able to take civil action against the agent is not of much value if the agent is in financial straits and does not have professional indemnity insurance. The collection of Bills before us ensures that the valuers must have professional indemnity insurance and that the land brokers must have professional indemnity insurance and contribute to the indemnity fund.

The Bill before us suggests that land agents need not have professional indemnity insurance but must contribute to the indemnity fund. We certainly uphold the existence of the indemnity fund as it has existed for the past 22 years. It is not an onerous levy placed upon land agents, yet it is a protection against malpractice or illegal behaviour on the part of a land agent. It seems to us that on many occasions the indemnity fund would not be called on, yet a client might have grounds for civil action against the agent—civil action which could result in damages, be it for negligence or non-action on the part of the agent, and that an agent should have professional indemnity insurance against such an occurrence.

In the same way as the Government obviously feels that land brokers should have professional indemnity insurance as well as an indemnity fund, we feel the same should apply to land agents, that as well as contributing to the professional indemnity fund they should have professional indemnity insurance. It is a protection for the consumer. There is no point in suing someone for damages due to negligence if they are broke, in that you cannot get blood out of a stone, whereas if it is a requirement that they have professional indemnity insurance then the consumer will certainly be able to recover damages whatever the financial plight of the land agent, provided they are entitled to such damages.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We take the view that professional indemnity insurance on the part of land agents is an unnecessary additional impost on the real estate industry with no demonstrable benefit to either land agents or consumers.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I will get to that in a minute. It is true that the indemnity fund covers defalcation and misappropriation or misapplication of trust funds on the part of agents. Those are items which might be insurable for an additional premium under professional indemnity insurance. Fraudulent activity on the part of an agent is something that would, in any event, if detected, be dealt with under the criminal justice system and, if there is criminal behaviour, then it is my understanding that the professional indemnity insurance is somewhat restricted in relation to what might be paid if it is a criminal act.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: The issue has to be narrowed down to negligence, I agree, but the REI and the Institute of Valuers and Land Economists certainly require their members to hold professional indemnity insurance. So from that point of view, as a member of that professional or business organisation, it is a requirement that can be used to positively promote to the public the use of their members for professional work because they do have professional indemnity insurance. It is a plus in terms of marketing. Whilst executing a contract is a significant step in the process of acquiring land, the more significant step is the actual preparation of the conveyance and mortgage documents, the execution of those documents and the settlement.

Of course, significant funds are generally handled by brokers but I acknowledge that that is covered largely by the indemnity fund. On the other hand, because of the nature of the part that brokers play in the settlement process, the actual conveyance, it is the Government's view that it is appropriate to require conveyancers to be covered by professional indemnity insurance. In fact, the Institute of Conveyancers has specifically proposed that conveyancers be covered because of that, and also because there is a desire, at least on the part of conveyancers, to ensure that there is a consistency of approach between the legal profession and conveyancers because, at least in one area, they both do the same sort of work.

Lawyers are required by law to have a professional indemnity insurance which is, as I said in the second reading reply, managed by the Law Society on behalf of the whole profession (members and non-members), and because of that they have negotiated some fairly competitive rates. My recollection is that for this current year the premium per partner of a legal practice under the master policy which the Law Society has been able to negotiate is something like $3 700 for the year. In New South Wales and Victoria, it is something more than double that. I am not suggesting that will be the rate applicable to conveyancers or to real estate agents, although I suspect that the amount payable by conveyancers will be more than that payable under the voluntary scheme applicable to real estate agents.

The legal profession, of course, has a much wider area of activity which can run into multi-million dollar claims because of defective advice. With conveyancers there can be significant claims, but nothing of the range of that which might affect members of the legal profession. Again, in terms of real estate agents, we do not believe that there will be such wide-ranging claims that would warrant compulsory professional indemnity insurance. It is, of course, not a requirement of the present Act; I acknowledge also that it is not a requirement of the present Act for conveyancers to be compulsorily insured, but I hope I have been able to identify the reasons for the distinction between the conveyancers and the agents.

Looking at all the issues, the Government took the view that no good purpose was served in compulsory professional indemnity insurance on agents; it would add another cost burden, which ultimately will be passed on to consumers, and although that may be small per consumer it is yet another impost, and the Government was looking at what is reasonable in the circumstances. There have not been significant problems with real estate agents; there have been more problems with brokers, for example, Hodby, Windsor and Schiller—

The Hon. Anne Levy: And the mortgage.

The Hon. K.T. GRIFFIN: And the mortgage financing. Of course, that is now excluded. So, it is the Government's view that there is not a significant detriment to consumers sufficient to warrant the requirement for a mandatory professional indemnity cover.

The Hon. A.J. REDFORD: If this is successful in terms of the nature of the insurance policy, what events are to be insured against? The proposed clause is silent on that point. What are the excesses to be paid? Is the agent to bear a certain amount and, if so, how much? What is the limit of the insurance? Is it to be $100 000, $500 000, $10 million or $20 million? Is it to be an across-the-board insurance policy, or is it to be an amount that is different for each agent's business? If so, how is that to be determined? Also, is the insurance the subject of no claim bonuses and so on? In other words, is there going to be a competitive regime in terms of this insurance, or will there be a single insurer?

I would be interested to hear what the Real Estate Institute has to say about these matters, because on previous occasions when this sort of issue has arisen it has usually been the industry that has set those standards and then gone to the Government of the day and required it to implement legislation to do that.

The Hon. Anne Levy: It wants it, as I said a minute ago.

The Hon. A.J. REDFORD: But it is unclear as to what is wanted.

The Hon. ANNE LEVY: I will respond to both the Attorney-General and the Hon. Mr Redford. The suggested new clause 11C, which requires professional indemnity insurance, is identical to the clause proposed by the Government in relation to conveyancers. So, I am not drawing any distinction between what is required for land agents and what is required for conveyancers. It may well be that as the Law Society manages to arrange a very good deal in professional insurance for its members—

The Hon. A.J. Redford: It has gone up 100 per cent this year. I don't think you would find too many lawyers saying it is a good deal any more.

The Hon. ANNE LEVY: It may well be that the Real Estate Institute, likewise, can arrange a good deal. I certainly appreciate the Attorney's comments that the insurance premium for a conveyancer would be very much less than that for a lawyer because the range of professional activities being undertaken is so much less and because the financial consequences of negligence are very much less than could apply in the legal situation. It would seem to me that the same would apply for a real estate agent: the range of activities undertaken is probably very much less than a conveyancer undertakes and certainly much less than a lawyer undertakes, and the financial implications of negligence would not be anywhere near what they would be for a lawyer.

So, the premium would be a great deal lower, and, divided amongst all the clients of a real estate agent, it would be a trivial sum passed on to the consumer compared to the cost of what the consumer is purchasing. Whether it is an extra $20 or $30 per client, I accept the point made by the Hon. Sandra Kanck earlier that when one is spending $150 000 or $85 000 on a property, an extra $20 or $50 is neither here nor there, and I doubt if consumers will be concerned about that.

The Attorney-General has not in any way made clear why he feels that conveyancers need such professional indemnity insurance but real estate agents do not. He agrees with me that the indemnity fund for neither occupational group would cover negligence; it is for malfeasance and general criminal activity. So, a client who suffers as a result of the negligence of his land agent has no call whatsoever on the indemnity fund and, unless the real estate agent with whom he is dealing has professional indemnity insurance, which I understand would always cover negligence, his ability to be compensated for the negligence of the agent may be an empty one.

To be a member of the Real Estate Institute one must have professional indemnity insurance, so a very large number of, but not all, real estate agents already have professional indemnity insurance. Not all real estate agents are in fact members of the REI and, as such, they do not have to have professional indemnity insurance. It seems to me that this could be said to give an unfair advantage to those who are not responsible enough to join their association compared to those who do responsibly join their professional association. I am concerned not so much with that as I am with protection for the consumer, who, it seems to me, should be able to have redress in the case of negligence not only in the case of a conveyancer (with which the Government agrees, as can be seen from its Bill) but also in the case of a real estate agent, and that will be possible if this amendment is passed.

The Hon. A.J. REDFORD: What sorts of things is the honourable member saying in terms of excesses and the extent of the coverage?

The Hon. Anne Levy: Ask the Attorney-General what he intends to do about conveyancers.

The Hon. A.J. REDFORD: Well, the honourable member moved the new clause. For us to make a proper and informed decision these issues ought to be disclosed. We should know what the mover has in mind because it is such a broad issue. There has been talk about negligence. Are we to cover misleading and deceptive conduct? Will that be the subject of provisions in the insurance policy? Has there been any discussion about the differences between the levels of risk from an insurance underwriter's point of view in underwriting risks from conveyancers as opposed to land agents? The excesses, the extent of the insurance, the exemption clauses, what is to be covered and the nature of the underwriting risk need to be properly considered before we as a Parliament can say that we ought to impose this upon the industry.

The Hon. ANNE LEVY: As I said earlier, I mean this to be exactly the same for real estate agents as the Government is proposing for conveyancers. Perhaps the Attorney-General could answer the Hon. Mr Redford's question with regard to conveyancers and I will say that the same is to apply to real estate agents.

The Hon. K.T. GRIFFIN: I should like first to deal with a couple of other issues. I do not accept that there is a so-called advantage or disadvantage in terms of a particular member in the sense that one may choose not to join the REI and therefore avoid the obligation imposed by membership to take out professional indemnity insurance. Such a person may arrange for his or her personal satisfaction a policy of insurance relating to professional indemnity, but others may choose not to be insured. I think that is something about which they should be able to make a choice.

Looking at the disciplinary provisions in clause 43 and examining the range of matters for which disciplinary action may be taken against an agent, it is obvious that if an agent has not acted in an ethical way, in accordance with the law or has defaulted in some way or has improperly arranged for another person to execute a contract for the sale and purchase of land, it is caught by the disciplinary provisions in the Act.

I suppose one can speculate that someone in those circumstances who may be acting unethically may not have

professional indemnity insurance even if he or she is required by the Act to carry it. I know that then becomes an offence, but that is not much comfort for the consumer in circumstances where an agent may have allowed the insurance to lapse or may not even have taken it out, although required by the Act to do so. I suggest that we are dealing at an end of the market which, if there are problems, can be adequately addressed under the provisions of the Bill, particularly in relation to disciplinary action. In any event, mandatory obligations to conform to the requirements of the statute are not likely to fall on particularly fertile ground and may not be of much advantage to consumers.

The Hon. Anne Levy suggested that I had not adequately explained the distinction between the Government's position in relation to conveyancers as opposed to that in relation to agents. I thought that I had adequately addressed that issue in some sense of parity in terms of competitive conditions between conveyancers and legal practitioners, but more particularly because the responsibility in relation to a real estate transaction is more significant in respect of the actual conveyancing and settlement than it is in relation to the execution of the contract.

As regards professional indemnity insurance in relation to conveyancers, the Government intends to prepare regulations which address the conditions that are to be imposed upon conveyancers. No decision has yet been taken on the amount of cover which must be taken out. We intend to discuss that issue with the South Australian chapter of the Institute of Conveyancers. In terms of the risks, it will be focused on negligence rather than on misleading and deceptive conduct which is likely to be a criminal act.

The Hon. Anne Levy: It could be covered by the indemnity fund.

The Hon. K.T. GRIFFIN: In any event, it could be covered by the indemnity fund. If the Committee is not prepared to reject the new clause, we should reconsider whether we want to make insurance compulsory in relation to conveyancers. The Government has decided to propose that in the Bill, with the concurrence of the Institute of Conveyancers, but would resist it notwithstanding the representations of the Real Estate Institute in respect of land agents. That matter may have to be revisited at a later time. I reiterate the Government's opposition to this new clause.

The Hon. SANDRA KANCK: When I made my second reading speeches on the Land Agents Bill and on the Conveyancers Bill I raised concerns about the inconsistency with regard to a professional indemnity fund, and it was addressed by the Attorney-General on both occasions. Having just checked *Hansard*, I found that I asked the Attorney-General whether he thought that the REI had got it wrong, and he said that he thought it had. Despite his saying that, I still cannot come to terms with the fact that a body representing a fair number of land agents in this State is saying that this is what it requires and the Attorney-General says that it has got it wrong. It seems to me that those people would probably know best. Generally, industry tries to go the other way and avoid regulation, but this is an area where people are asking for it. Given that the REI has been so strong on that, having looked again at what I said on the Land Agents Bill and on the Conveyancers Bill and having listened again tonight, I still have not heard enough that is convincing when I hear the industry say that it wants it. Therefore, I shall be supporting the new clause.

The Hon. K.T. GRIFFIN: The REI did get it wrong. It made a number of representations to the Government, and we have agreed with some and disagreed with others. For example, we disagree with the Professional Standards Tribunal. They wanted to impose practising certificates right across the spectrum of real estate agents, but we take the view that that is quite inappropriate. It is an extra layer of bureaucracy and cost which cannot be justified.

They were seeking to impose that upon everybody, whether they were members of the Real Estate Institute or not. They, of course, are among the bodies which provide the education framework for real estate agents and they are funded, to some extent, from the agents' indemnity fund in respect of some educational matters and initiatives. We have taken the view that that is unnecessary. In the environment in which agents carry on their businesses, we were not convinced, or in any measure persuaded, that those two issues ought to be picked up and legislated for. If one looks at the framework of this legislation, it is designed to provide a continuing measure of protection for consumers, but not by legislation to impose obligations and requirements which serve no useful purpose.

You might say in relation to professional indemnity insurance that a good many of them already carry it and you might well say that that is a measure of protection, but if you look at the likelihood of action being taken in relation to professional indemnity insurance by a dissatisfied customer—I have not got the figures—my understanding is that there are very few cases.

The Hon. Anne Levy: It would be a pretty low premium then.

The Hon. K.T. GRIFFIN: Well, no, it may not be—who knows? The legal profession in this State have managed to keep their premiums low because the claims record is very good, but they, nevertheless, pay the price for reinsurance and for the costs which are related to defalcations in New South Wales, Victoria and in some overseas jurisdictions where insurers and reinsurers are active. There is a certain levelling out, but, nevertheless, because of the processes which are in place in relation to the legal profession here the premiums are low compared to what they are in the other States, although high by other standards.

The other point to make is that conveyancers are a distinct occupational group from land agents. It is just a quirk of fate that they were ever put together in the one piece of legislation. They dealt with the real estate industry, and, of course, at some stage you could be a real estate agent and a conveyancer at the same time. You can work in the same firm. There was no sort of ethical movement to act for only one party. But they are really two different occupational areas, focussed, of course, on real estate and businesses. One does the selling; one does the conveyancing, the transfer, the settlement. They are quite distinct activities. It is our view that the negotiations of the sale and purchase does not warrant and is unlikely to encourage significant claims dependent upon professional indemnity insurance.

The Committee divided on the new clause:

AYES (8)

Cameron, T.G.	Crothers, T.
Feleppa, M. S.	Kanck, S. M.
Levy, J. A. W.(teller)	Pickles, C. A.
Roberts, R. R.	Weatherill, G.

NOES (7)

Davis, L. H.	Griffin, K .T.(teller)
Irwin, J. C.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Redford, A. J.	

PAIRS

Elliott, M. J.	Laidlaw, D. V.
Roberts, T. G.	Schaefer, C. V.
Wiese, B. J.	Stefani, J. F.

Majority of 1 for the Ayes.

New clause thus inserted.

Clauses 12 and 13 passed.

Clause 14—'Withdrawal of money from trust account.'

The Hon. R.D. LAWSON: Clause 14 of the Bill provides:

An agent may withdraw money from a trust account—

(b) in satisfaction of a claim for commission, fees, costs or disbursements that the agent has against the person on behalf of whom the money is held.

Members will note that the agent is given authority to withdraw money in satisfaction of a claim for commission. I direct a question to the Attorney about this provision. I appreciate, of course, that the provision is the same as that presently obtaining in the existing legislation. Very often one finds in practice that an agent is holding in his trust account a deposit paid in respect of a transaction, which, for some reason or other, does not proceed. The agent claims that he is entitled to his commission. In many cases the vendor of the land disputes that and says, 'Well, no, you have not introduced a buyer who is ready and willing or able to complete the purchase.'

This provision appears to allow the agent simply to take from the trust account money in satisfaction of his claim for commission, not any right for commission or debt for commission. Has this matter been considered by the Attorney and by the committee examining this matter? Might it be more appropriate to include a provision such as that in the amendment standing in my name about which I am undecided whether to proceed? Has consideration been given to the introduction of language such as that proposed which would enable an agent to withdraw the money from his trust account only in satisfaction of a debt and not a mere claim in respect of his commission?

The Hon. K.T. GRIFFIN: The Hon. Mr Lawson did raise this with me a while ago and we considered it but did not reach a final conclusion. There are arguments both ways. The legislative review team and the Government decided finally that we should endeavour to maintain the *status quo* in respect of the withdrawal of money from a trust account. I am not aware of the occasions where this has been an issue in dispute. It is not something on which we have a concluded view at this time. I suppose the only difficulty with a debt is the extent to which one would need to be certain that there were no outstanding disputes, liens, claims, etc. before acknowledging that the debt existed. If the Committee was comfortable with this, I would be prepared to give it more detailed consideration. I will need to refer it to the Crown Solicitor for a more comprehensive opinion. Also, the amendment has not been discussed with the Real Estate Institute and although, as I indicated earlier, I and the Government have disagreed with the institute in a number of areas, at least we have been able to talk about them and explain the reasons why we disagree. It may not accept them but that is the way we handled it and, before we make what may be regarded as a significant change from the provisions in paragraph (b), I would like the opportunity at least to discuss the matter with the institute. I am willing to give an undertaking that this matter will be addressed and resolved before the Bill goes through the House of Assembly. Members will have an opportunity to further consider the matter here, because the Bill will come back as a result of some of the amendments that have been made here.

The Hon. Anne Levy: Be gracious and accept the amendment.

The Hon. K.T. GRIFFIN: No. The honourable member knows that generally I am gracious and will accept those amendments where I believe there is merit. On this occasion we do not believe there is merit in the matters already resolved by division, but it is the right of the Council to take that view. I am not quarrelling with that—I disagree with it. As to this matter, I can give an undertaking in the terms I have indicated that I will ensure that members are informed about the outcome of the consideration of that issue.

The Hon. ANNE LEVY: I wish to ask a question of the Hon. Robert Lawson. I appreciate the explanation he gave for his rewording of the clause to change 'claim' to 'debt', and the consequent altering of words, but there is one difference between his amendment and the Bill which he has not discussed. The original clause talks about a claim for 'commission, fees, costs or disbursements'. The member's suggested amendment talks about satisfaction of a debt in respect of 'commission, fees, costs and disbursements'. Not being a lawyer, I do not appreciate the difference but I am sure there must be a difference in one case in having alternatives with 'or', and in the other case having a summation with 'and'.

The Hon. R.D. LAWSON: No difference is intended: 'and' should read 'or'. I am indebted to the Attorney for his intimation of the attitude that he takes on this matter.

Clause passed.

Clause 15 passed.

Clause 16—'Appointment of administrator of trust account.'

The Hon. ANNE LEVY: I move:

Page 8, line 20—Leave out 'Commissioner knows or suspects on reasonable grounds' and insert 'Tribunal is satisfied'.

The amendment is consequential on an earlier amendment accepted by the Committee.

The Hon. K.T. GRIFFIN: It is not completely consequential on the earlier amendments. Certainly, it restores the *status quo*, but clause 16 deals with the appointment of an administrator of a trust account. Under this legislation we are trying to place a lot more responsibility on the Commissioner for the administration of the Act, including registration, monitoring of trust accounts and a whole range of other responsibilities. It would seem to me that, if you put this responsibility back into the tribunal, you are moving away from the flexibility given to the Commissioner and also building into it a time delay because of the need to make an application to the tribunal, and maybe even to afford natural justice, because it is before a *quasi* judicial tribunal, to the agent.

I would prefer to see the amendment defeated because it would leave the responsibility with the Commissioner. Whilst it might be argued that, because the tribunal is going back in in a number of areas, there is some consistency of approach but I would suggest that, because of the streamlining we are attempting to develop in this area and because we want the tribunal largely to focus in the context of the amendments made, or the court under the Government's proposal, on disciplinary matters or matters in dispute it would inappropriate to carry this amendment. I indicate opposition to it.

The Hon. ANNE LEVY: I am in somewhat of a dilemma here. I indicated to Parliamentary Counsel that I wished to restore the commercial tribunal as opposed to the courts, which amendment has been carried by this Committee, and to make all consequential amendments. My amendment was presented to me by Parliamentary Counsel as being consequential on the amendment already passed. I cannot comment any further than that, but that is how it is tabled before the Chamber.

Mr Acting Chair, I do not now propose to proceed with my amendment and seek leave to withdraw it. I will also not be moving amendments standing in my name to clauses 17 or 18, but I will move amendments to clauses 19 and 20 in a different form, if I may.

Leave granted; amendment withdrawn.

Clause passed.

Clauses 17 to 18 passed.

Clause 19—Terms of appointment of administrator or temporary manager.'

The Hon. ANNE LEVY: I move:

Page 10—
Lines 11 and 12—Leave out 'court' and insert 'tribunal'.
Lines 13 and 14—Leave out 'court' and insert 'tribunal'.

In effect, what I am attempting to achieve is that, where an administrator or temporary manager needs to be appointed, this would be done administratively by the Commissioner of Consumer Affairs and need not involve the tribunal. However, in the appeal provisions against this administrative decision, if the agent or someone wishes to appeal the decision, that appeal should be to the Commercial Tribunal; that will be the appeal body for such decisions. Of course, it does not need to be mentioned within this Bill that the Commercial Tribunal Act allows any decision of the Commercial Tribunal to be appealed to the Supreme Court. But this would be providing that the appointment of such an administrator or temporary manager would be done administratively by the Commissioner, but that an appeal could lie to the Commercial Tribunal. I think that can be regarded legitimately as consequential to the amendment that we carried much earlier in the day to restore the Commercial Tribunal rather than the District Court to its involvement with land agents. In effect, this is making the Commercial Tribunal the appeal forum for the administrative decision of the Commissioner for Consumer Affairs in appointing an administrator or a temporary manager.

Amendments carried; clause as amended passed.

Clause 20—'Appeal against appointment of administrator or temporary manager.'

The Hon. ANNE LEVY: Likewise, I move:

Page 10—
Line 17—Leave out 'court' and insert 'tribunal'.
Line 18—Leave out 'court' and insert 'tribunal'.

Amendments carried; clause as amended passed.

Clause 21 passed.

Clause 22—'Audit of trust accounts.'

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

Page 11, line 9—Leave out paragraph (b) and insert:
(b) lodge with the Commissioner a statement relating to the audit that sets out the information specified by regulation.

In its current drafting, clause 22(1) continues an existing requirement for land agents who maintain trust accounts to lodge a copy of the auditor's report with the Commissioner. This section necessitates the annual provision by the land agent of a complete audit report. This report becomes part of the file retained by Government on each registrant. In addition to this requirement, the Commissioner has the power under the Bill to conduct random audits on land agents' trust accounts. The Government therefore has two vehicles by which it can check trust accounts.

On information available to the legislative review team, the use and justification for the requirement to provide a copy of the audit report has diminished since the Government introduced the system of random audits currently conducted by K.P.M.G. Peat Marwick on land agents' trust accounts. Complaints have been received from industry to the effect that the requirement to provide a complete audit report to the Commissioner in light of the random audits is an unnecessary regulatory requirement upon them. The new Bill provides an opportunity to streamline this system. A mode by which the system can be streamlined is to amend the drafting of clause 22.

Regulation 24 of the regulations under the Land Agents, Brokers and Valuers Act 1986 requires that an auditor's report include a statement as to a number of specified matters which include, for example, whether the trust account is in order. The statement contains sufficient information for the purposes of Government making an assessment of the status and nature of a trust account. My amendment proposes that a statement be lodged by an agent which sets out the information specified by regulation.

I can indicate that the information which is envisaged to be required by regulation would be similar to that contained in the current statement provided by an agent. It is anticipated by the Government that this statement of information would be submitted to the Office of Consumer and Business Affairs on an annual basis together with the annual return. Effectively, this requires not the full audit report but the statement from the auditor that the audit is in order and, of course, along the lines that we have been discussing with industry over some period of time, it is likely there will be a greater level of intelligence available to the office in conjunction with the Real Estate Institute to identify those agents where a random audit or spot audit ought to be undertaken as a matter of urgency. So, there are sufficient protections in our view and this is an opportunity with this amendment to streamline the provisions even further.

The Hon. ANNE LEVY: I find this somewhat strange. I can understand that the Attorney-General is saying that the statement relating to the audit in the form which currently is supplied is adequate for the purposes of the Commissioner. Without being familiar with the details set out in that statement, it may well be that that is adequate for the Commissioner. I would have no value judgment on that matter. What I do find strange is his comments that the Real Estate Institute or agents have complained that it is burdensome—

The Hon. K.T. Griffin: I did not say 'burdensome'.

The Hon. ANNE LEVY: I think 'burdensome' was the word used by the Attorney about having to supply a copy of the auditor's full report. Presumably the auditor—

The Hon. K.T. Griffin: I did not say 'burdensome'. The need for a full copy of the auditor's report has diminished since the Government introduced the system of random audits.

The Hon. ANNE LEVY: I appreciate that that is one side of the argument. The Attorney is saying that the statement is sufficient, that they do not need the complete auditor's report, but I am sure in his explanation he implied that it was unnecessarily burdensome to provide the auditor's report. After all, if the auditor is supplying a report, it is hardly

burdensome to supply two copies instead of one and then put one in an envelope and send it off.

I cannot see that it is in any way burdensome to the agent whether he supplies another copy of the auditor's report, when he already has one, or a statement taken from that report. I am unable to comment on whether or not the statement is sufficient. I take it that the Attorney-General considers it is; I will have to accept his word for it unless there are suggestions to the contrary from people who are more familiar with the difference between a statement relating to an audit and the actual auditor's report. I am sure neither the Parliament nor the press in this State would accept a statement from the Auditor-General instead of the complete Auditor-General's Report.

It would be totally unacceptable to members of Parliament, the media and the public of South Australia if they were supplied only with a statement relating to the audit of the public accounts instead of the full report of the auditor. I do not know whether the Attorney-General would care to comment on that parallel: whether or not he feels it is a valid one, and whether we should err on the side of caution and stick with the full auditor's report being presented to the Commissioner as he originally proposed.

The Hon. K.T. GRIFFIN: I do not think the parallel is appropriate because the public accounts of the State provide information on the public record about the performance of Government across a wide spectrum of activity. The Auditor-General's statement merely that the accounts have been kept in an appropriate form would not necessarily satisfy the inquiring minds of parliamentarians, the media and others about the activities undertaken by Government with taxpayers' money.

Let me read to members the provisions in the regulations, because the auditor's report contains a wealth of information. Regulation 24 provides:

> Every auditor of an agent's trust account must include in the report furnished by the auditor for the purposes of the Act a statement as to the following matters:
> (a) whether the trust account of the agent has in the opinion of the auditor been regularly and properly compiled;
> (b) whether the trust account of the agent has been ready for examination at the periods appointed by the auditor;
> (c) whether the auditor demanded the production of a statement complying with regulation 25 for the last preceding audit and whether the agent complied with that demand;

Regulation 25 is an agent's statement. Regulation 24 continues:

> (d) whether the agent has otherwise complied with the auditor's requirements;
> (e) whether the agent's trust account is in order;
> (f) any matter required to be included in the report pursuant to the Act or these regulations;
> (g) any matter in relation to the trust account which should in the opinion of the auditor be communicated to the Registrar.

In that instance the Registrar is the Registrar of the tribunal. In my comments on the Bill I said that complaints had been received by the Commissioner to the effect that the requirement to provide a complete audit report to the Commissioner in the light of the random audits is an unnecessary regulatory requirement upon them. I did not say 'burdensome'. It is just another regulatory requirement, which is to be filed with the annual return.

The Hon. Anne Levy: A statement would also be a regulatory requirement.

The Hon. K.T. GRIFFIN: Regulatory, yes, but in a much more limited form. My understanding is that the audit reports are quite extensive. You have piles of paper coming in, and the question is whether you need it. My advice is that the Commissioner agrees with the proposition. After all, the amendment provides that the statement must set out the information specified by regulation and, if there seems to be some difficulty with that, the regulations can always be amended to include further information. But we are taking the view: do we need the information?

The Commissioner has indicated, in the circumstances in which random audits are now conducted that it is not needed, provided that this short-form statement is provided by the auditor. That is where it is. I can do no more than indicate to the Committee that, from the Government's point of view, the proposition seems to be reasonable.

The Hon. ANNE LEVY: I presume that Peat Marwick also supplied a statement of the form suggested by the Attorney when they audited the accounts of the State Bank, and, if so, would that have been adequate in the Attorney's opinion?

The Hon. K.T. GRIFFIN: I do not know what Peat Marwick provided. The matter is *sub judice*, so I am not—

The Hon. Anne Levy: A statement is always provided with an audit report.

The Hon. K.T. GRIFFIN: We are not talking about State Bank; we are talking about trust accounts. I will not discuss the State Bank issue: it is *sub judice* and it is inappropriate to canvass that position. What we are saying relates to the trust accounts. The trust accounts are to be distinguished from the statements of revenue and expenditure, balance sheets and all other documentation that accompanies the accounts of a business to tell those who may be involved—or the public in the case of statutory authorities, or the public in the context of the whole of Government activity—the health of the Government, the agency, or the company, as the case may be.

This does not deal with an assessment of assets and liabilities, revenue and expenditure, balance sheets, and so on: it deals with what has gone into and out of a trust account and whether what has gone in and out is proper in the circumstances. You do not look at a trust account report and say, 'Well, this tells me about the health of the business.' There are no judgments about depreciation, asset valuation, the conduct of the business, and so on. It is about: this money has gone in, this money has gone out; for this reason that was proper.

When auditors go through your trust account—and I have had some experience through professional practices over the years—they will do random checks of files as part of the regular monthly and then final annual audit within a practice. It will not be just a matter of looking at the ledger. It will be a matter of going back, reading through the file, looking at the transaction and looking at the documentation to determine whether the documentation is up to date and adequate and whether the trust account transactions reflect adequately the nature of the transaction. That is done on a random basis. I understand that is the same way in which auditors of a real estate agency conduct their audit of a real estate agent's trust account.

The legal profession at one stage (and I cannot tell you whether it is now the requirement) had to lodge with the Supreme Court the details of the balances in each trust account as at 30 June in the relevant year. You would end up with about 60 or 70 pages of information in some cases which had to be lodged with the court. I do not know how much of that sort of information is required presently to be lodged as part of an audit report. However, the Commissioner is of the view that, in the light of the other random audits which occur,

it is sufficient that there is the statement which identifies on the part of the auditor the key compliance criteria of the agent with the law. That is really as far as I can take it.

The Hon. SANDRA KANCK: I would have problems with this amendment only if there were some evidence of auditors conspiring with land agents to try to hide something. Has the Attorney-General any knowledge of any such instances occurring in the recent past?

The Hon. K.T. GRIFFIN: I do not have any evidence that there has been any conspiracy between auditors and land agents. In fact, if there was a conspiracy to reconstruct the audit statement in a way which provided false information that would be a criminal offence. I draw the Hon. Ms Kanck's attention to clause 12 of the Bill, which provides that an 'auditor' means a registered company auditor within the meaning of the Corporations Law. So you can only have auditors registered under the Corporations Law, for which there are significant criteria, auditing the trust accounts of an agent.

Amendment carried.

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

Page 11—

Line 15—Leave out 'auditor's report' and insert 'audit statement'.

Line 19—Leave out 'auditor's report' and insert 'audit statement'.

These are consequential amendments.

The Hon. Anne Levy: So it will read a 'statement or declaration'? You are still keeping the word 'declaration'?

The Hon. K.T. GRIFFIN: Yes, because clause 22(2) provides:

An agent, who did not maintain a trust account during a particular audit period, must make and lodge with the Commissioner a declaration, in a form approved by the Commissioner, setting out the reasons for not maintaining a trust account during that period.

Amendments carried; clause as amended passed.

Clauses 23 to 28 passed.

Clause 29—'Indemnity Fund.'

The Hon. ANNE LEVY: I move:

Page 14, line 17—Insert 'prescribed' before 'educational'.

This whole clause relates to the setting up of an indemnity fund, and this amendment relates to the purposes to which the money in that fund can be applied. Subsection (4) relates to where moneys in the fund can be applied by the Commissioner, such as in payment of the costs of administering the fund; for satisfaction of claims for compensation; in payment of insurance premiums under this division; in payment of amounts approved by the Minister towards the cost of educational programs, and so on.

My amendment would provide that the money in the fund would be used for prescribed educational programs conducted for the benefit of agents or members of the public, and those educational programs would have to be named in regulations. This is just a check that the educational program conducted for the benefit of agents is not one in underwater basket weaving on the Barrier Reef, which might be very nice but is hardly one of which I imagine most people would approve. The insertion of the word 'prescribed' will mean that these educational programs will be named in regulations, and the Parliament can be satisfied that they are proper educational programs for which moneys in the fund are being used, and not just for somebody's bright idea which, as I say, may not be appropriate in the circumstances. It is a question of a parliamentary watchdog being applied.

The Hon. K.T. GRIFFIN: I do not make this a big issue; it maintains the *status quo*, and to that extent it is probably something to which I cannot legitimately object. I make the point that, if one looks at the provisions of the Bill, one sees that the money can be used in payment of the costs of administering the fund, and that is provided in the annual budget which is tabled in the Parliament and there is accountability for that.

Also, the money can be used in, or towards, the satisfaction of claims for compensation, and that again is something which is on the public record. The same can be said with regard to insurance premiums. I should have thought that we really did not need to prescribe educational programs by regulation before the Minister could approve the amounts available for them or for any other purpose specified by this or any other Act.

Again, I do not propose to make a big issue out of it. It seems to me that there is an unnecessary requirement to go through the regulation process which the honourable member will recognise means taking the matter to Cabinet, putting it out for drafting, bringing it back to Cabinet and then sending it to the Executive Council for promulgation. If a majority of the Committee insist upon it, I will have no alternative but to accept it.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 14, line 18—Insert ', sales representatives' after 'agents'.

This is consequential on the earlier amendment.

Amendment carried; clause as amended passed.

Clause 30 passed.

Clause 31—'Limitation of claims.'

The Hon. ANNE LEVY: I move:

Page 15, line 8—Leave out 'court' and insert 'tribunal'.

This also is consequential.

Amendment carried; clause as amended passed.

Clauses 32 to 34 passed.

Clause 35—'Appeal against Commissioner's determination.'

The Hon. ANNE LEVY: I move:

Page 16, lines 4 to 14—Leave out this clause and insert new clause as follows:

Procedure for review of Commissioner's determination of claim.

35. (1) The claimant or the agent or former agent by whom the fiduciary default was committed or to whom the fiduciary default relates may, within three months of receiving notice of the Commissioner's determination, apply to the Tribunal for a review of the determination.

(2) Where an application for review is not made within the time allowed, the claimant's entitlement to compensation is finally determined for the purposes of this Division.

(3) On a review, the Tribunal must, by order, determine the amount of compensation to which the claimant is entitled.

(4) The Tribunal must give notice in writing of the determination to the Commissioner, the claimant and the agent or former agent.

(5) The claimant or the agent or former agent may appeal to the Supreme Court against the determination of the Tribunal.

(6) An appeal against a determination of the Tribunal under this section must be instituted within three months after the determination but the Supreme Court may, if satisfied that proper cause to do so exists, dispense with the requirement that the appeal be so instituted.

(7) On an appeal, the Supreme Court may—

(a) affirm or quash the determination reviewed or substitute a determination that the court thinks appropriate; and

(b) make an order as to any other matter that the case requires (including an order for costs).

I think this is consequential on replacing the Commercial Tribunal instead of the District Court. It is another matter which is being determined administratively by the Commissioner and an appeal against the Commissioner's decision goes to the tribunal. I think it is consequential on what we dealt with earlier.

The Hon. K.T. GRIFFIN: I think it is consequential, but I make the point that it will be revisited. This introduces yet another step in the appellate process. The Government's view was that if there were to be a disagreement with the Commissioner's determination, it should go straight to the District Court which, in the review process, would handle it expeditiously and it would be as cheap as the Commercial Tribunal. Of course, there is an appeal from the District Court to the Supreme Court in any event.

The Hon. Anne Levy: As there is from the tribunal.

The Hon. K.T. GRIFFIN: That is right. I reiterate that it is not acceptable, but I acknowledge that it is largely consequential.

Amendment carried; new clause 35 inserted.

Clauses 36 to 41 passed.

Clause 42—'Interpretation of Part 4.'

The Hon. ANNE LEVY: I move:

Page 18, after line 10—Insert:
'sales representative' includes—
(a) a former sales representative; and
(b) a person registered as a sales representative, whether or not acting as one; and
(c) a person formerly registered as a sales representative.

This is consequential on including real estate sales representatives as having to be registered and consequently coming under the disciplinary procedures set out in the Bill. There is a number of amendments, but they all relate to the fact that sales representatives will have to be registered, as do the agents, so the disciplinary processes which are available for agents will be available for sales representatives.

The Hon. K.T. GRIFFIN: I acknowledge that it is consequential.

Amendment carried; clause as amended passed.

Clause 43—'Cause for disciplinary action.'

The Hon. R.D. LAWSON: This clause deals with causes for disciplinary action. There is proper cause for disciplinary action against an agent if, going to lines 17 and 18, the agent has acted 'unlawfully, or improperly, negligently or unfairly'. Proper cause for disciplinary action exists under this Bill if a land agent has acted negligently. Clause 45 provides:

On the lodging of a complaint, the Court must conduct a hearing—

there is no discretion—

for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this part.

I query any negligent conduct giving rise to a cause for disciplinary action. In the course of a land agent's ordinary business, many matters could give rise to allegations of negligence: failing to place an advertisement in a particular paper, putting up the wrong time for an open inspection, failing to leave out an open inspection sign, a sandwich board, or one that points in the wrong direction. These negligent acts can be serious, but they can also be trivial. As the Bill is structured, no discretion is allowed. Clause 43 provides that there is proper cause if he acts *inter alia* negligently, and clause 45 provides that on the lodging of a complaint by any irate or dissatisfied customer of a land agent, the court—I presume it will now be the tribunal—must conduct a hearing for the purpose of determining a matter.

The Hon. R.R. Roberts: It could be another agent.

The Hon. R.D. LAWSON: Yes, another agent could be complaining. The Attorney-General will know, as a result of compulsory third party insurance, that the courts have been prepared to stigmatise as negligent the merest oversight or inattention. Any driver who causes injury to another is invariably found guilty of negligence, notwithstanding the fact that one might not regard the default as particularly serious or characterise it as negligent.

Section 85a of the existing legislation does use the formula 'acted negligently, fraudulently or unfairly'. So, the introduction of negligence into the concept of disciplinary action is not new. We have introduced in clause 43 'acting improperly' as also constituting proper cause for disciplinary action. I ask the Attorney, therefore, whether he has given consideration to whether or not we ought to either delete 'negligently' entirely or describe it, as I suggest in my foreshadowed amendment, as acting with gross negligence rather than mere negligence, or whether he has given consideration to the possibility of some amendment to clause 45, which would remove the automatic requirement for a hearing in the event of any trivial allegation of negligence. This is a matter which I have discussed briefly with the Attorney and I wonder whether he could give the Committee the benefit of his thoughts on it.

The Hon. K.T. GRIFFIN: I will take it from the bottom first. In clause 45, when we get to that, I can indicate that I will accept the amendment to change 'must' to 'may'. I think that then imports a discretion which probably the District Court has under the District Court Act, but the discretion is important to retain and, of course, that maintains basically the *status quo*, except in our Bill it is the court and in the present Act it is the tribunal. I suspect it will be the tribunal when it leaves this Chamber. So, the discretion will allow the court flexibility.

In relation to clause 43, we sought to import into this Bill similar provisions to those in the present Act. In the present Act there is reference to negligence being a basis for disciplinary action. Basically the criteria are whether the agent acted negligently, fraudulently or unfairly. So, the two words that we are considering are 'improperly' and whether we ought to qualify 'negligently'. My view is that we ought not to qualify negligently, that it is, as I say, consistent with the present legislation but is likely to provide to the court or the tribunal, as the case may be, some flexibility. There may be a series of acts which may be negligent, but not grossly negligent, but which, taken together, might reflect a course of conduct which demonstrate incompetence on the part of the agent.

Now, if we do change clause 45 to make the conduct of an inquiry or hearing discretionary, then, it seems to me, that if one were to leave 'negligently' in clause 43 it would provide the flexibility necessary and guard against that situation to which I have referred. So, my preference is to leave 'negligently' unqualified. It would be difficult, in any event, to determine what is gross negligence in the conduct of an agent's business. In respect of 'improperly', it is a difficult concept, but the way in which this Parliament has dealt with that has signalled that it is something which is behaviour, which, whilst not unlawful, certainly would border on that. I suppose, it is part way towards the impropriety concept in those criminal law amendments we made a couple of years ago relating to public offences, when we did again consider what is improper in the context of public behaviour.

'Improperly' here imports elements of misconduct, of behaviour of which is perhaps not in accord with what one would normally regard as reasonable and proper behaviour and conduct in dealing with the activities of an agent. Now, that is not a precise legal definition which I have given to the Committee, but I hope that it will signal the framework within which we are seeking to give jurisdiction in relation to an agent to the court, although the Committee will undoubtedly change that to the tribunal.

The Hon. R.D. LAWSON: I am indebted to the Attorney for his intimation and, on the basis of it, I will not move the amendment standing in my name for either lines 17 and 18, or indeed the following.

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

Page 18, lines 24 to 32—Leave out paragraphs (e) to (h) and insert:

(e) events have occurred such that

(i) the agent would not be entitled to be registered as an agent if he or she were to apply for registration; or

(ii) the agent is not a fit and proper person to be registered as an agent; or

(iii) in the case of an incorporated agent, a director is not a fit and proper person to be the director of a body corporate that is registered as an agent.

This amendment is proposed to more clearly reflect the provisions setting out the eligibility requirements for the registration of a land agent. The Government has been advised that the current disciplinary provisions could be better worded to facilitate grounds for disciplinary action against a land agent who no longer meets the eligibility criteria for registration. It has also been pointed out to the Government that the current draft does not provide for the discipline of a body corporate where a director ceases to be a fit and proper person to be a director and this is designed to overcome that problem. It is, essentially, a clarification of the drafting.

The Hon. ANNE LEVY: The explanation from the Attorney-General seems entirely reasonable. I would just point out that here we are back with 'fit and proper' and the difficulties of—

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

The Hon. ANNE LEVY: Yes, I know, but we were discussing earlier that it is very difficult to determine just what 'fit and proper' means and in grey cases how it is to be determined. There will be obvious cases where everyone would agree, but there will be marginal cases where it is harder. So that, although changing from licensing to a registration system has avoided some of these problems, we are not free of them.

The Hon. K.T. GRIFFIN: I acknowledge that. It is a difficult judgment to make, but when we were looking at the grounds for disciplinary action I wanted to ensure that there was, in a sense, a coverall provision, in those circumstances where someone might have been registered and have satisfied the criteria, but in the course of his or her conduct had demonstrated an incapacity to act ethically in the interests of the client or customer and so on. It seemed to me that if we were to import that sort of concept into the disciplinary provisions it would not prejudice registration as such, but would give us more flexibility if there was a case where we had, quite obviously in the public interest and the interest of consumers, a better prospect of preventing someone from carrying on a practice, for example.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 18, after line 32—Insert:

(1a) There is proper cause for disciplinary action against a sales representative if—

(a) registration of the sales representative was improperly obtained; or

(b) the sales representative has acted unlawfully, or improperly, negligently or unfairly, in the course of acting as a sales representative; or

(c) events have occurred such that—

(i) the sales representative would not be entitled to be registered as a sales representative if he or she were to apply for registration; or

(ii) the sales representative is not a fit and proper person to be registered as a sales representative.

This amendment is consequential upon the registration of sales reps.

Amendment carried; clause as amended passed.

Clause 44—'Complaints.'

The Hon. ANNE LEVY: I move:

Page 19, line 4—Leave out 'court' and insert 'tribunal'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clause 45—'Hearing by court.'

The Hon. ANNE LEVY: I move:

Page 19, line 7—Leave out 'court' wherever occurring and insert, in each case, 'tribunal'.

This is a another consequential amendment.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 19, line 7—Leave out 'must' and insert 'may'.

The Hon. K.T. GRIFFIN: The amendment is accepted.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 19, lines 10 and 15—Leave out 'courts' wherever occurring and insert, in each case, 'tribunal'.

Amendment carried; clause as amended passed.

Clause 46—'Disciplinary action.'

The Hon. ANNE LEVY: I move:

Page 19, lines 17 and 33—Leave out 'court' wherever occurring and insert, in each case, 'tribunal'.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 19, line 22—Insert 'or sales representative' after 'agent'.

This is a consequential amendment.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 19, line 29—Insert 'or from being registered as an agent under this Act' after 'Act'.

This is another consequential amendment.

Amendment carried; clause as amended passed.

Clause 47—'Contravention of orders.'

The Hon. ANNE LEVY: I move:

Page 20, lines 15 and 21—Leave out 'court' wherever occurring and insert, in each case, 'tribunal'.

The amendment is consequential.

Amendment carried; clause as amended passed.

Clause 48—'Delegations.'

The Hon. ANNE LEVY: I move:

Page 21, line 8—Leave out paragraph (c) and insert:

(c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of agents or sales representatives.

We are dealing here with the power of delegation, as follows:

The Commissioner may delegate any of the Commissioner's functions or powers under this Act—

(a) to a person employed in the Public Service—

which is perfectly reasonable—

. . . to the person for the time being holding a specified position in the Public Service—

again, we have no argument—

or. . . to any other person—

with the Minister's consent. The Minister stated that this delegation provision is required because of the agreements which come in clause 49. These are agreements that the Commissioner may, with the approval of the Minister, make with an organisation representing the interests of agents—I will call it the REI for short—and under these agreements it is envisaged that certain powers will be delegated. While it is perfectly reasonable for there to be delegation of powers under an agreement, we felt that this could be reflected in clause 48, which deals with delegations and picking up what is coming in clause 49, rather than the broad power to delegate any function to anyone in any circumstance, which is really Parliament abrogating its responsibilities, and to say that delegations can occur to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of agents or sales representatives.

In other words, if this amendment is accepted, it will mean that the Commissioner can delegate his powers and functions to anyone in the Public Service, to anyone with a position in the Public Service or to anyone as part of this agreement with the REI. The amendment enables what the Minister and the Government intended, which is that delegations can occur as part of agreements which the Government will form with the REI, but reduces what seems to me to be a totally irresponsibly broad delegation power, in allowing the Commissioner to delegate any function or any power to anyone at any time.

The Hon. K.T. Griffin: With Minister's consent.

The Hon. ANNE LEVY: With the Minister's consent, but the Minister said that the purpose is to enable these agreements with the REI to function. It seems to me that it is better to say that the power of delegation is to any person as specified in an agreement. The Government wants this power of delegation so as to be able to set up these agreements with the REI. We are saying that if that is the purpose, put it in the delegationary power, so the power can be delegated to someone under this agreement. It allows the agreement to go ahead but prevents any power being delegated to any person at any time, which is a bit broad.

The Hon. R.D. LAWSON: It seems to me that this amendment does not achieve the purpose stated by the Hon. Anne Levy but in fact contravenes the principle which she espouses. The power of delegation in clause 48 is only of the Commissioner's functions or powers under this Act and those functions and powers are limited and, of course, the power is qualified by the requirement that it be with the Minister's consent. That is quite a broad power of delegation. However, the power of delegation sought to be inserted by this amendment is even wider because the Commissioner may, with the approval of the Minister, make an agreement, an agreement which is actually not subject to parliamentary or other form of scrutiny.

The Hon. Anne Levy: You've not read my amendment.

The Hon. R.D. LAWSON: Well, it is not there presently but, even if it were, the agreement itself could contain very wide powers.

The Hon. Anne Levy: And be subject to scrutiny by Parliament.

The Hon. R.D. LAWSON: That is a different question, but the power of delegation in existing clause 48 is narrower than the power of delegation proposed in the amendment, which I oppose.

The Hon. ANNE LEVY: I refute that contention. The Hon. Robert Lawson has not read my amendments. If he looked further in clause 49, he would find that I am certainly suggesting that Parliament would be able to approve the agreement. These agreements should be subject to Parliamentary scrutiny. My amendments propose that they be treated rather like regulations, not that they come as amendments to Acts but that they are equivalent to regulations, would be examined by his Legislative Review Committee and could be disallowed by the Parliament but, if not so disallowed, come into force. It seems to me that agreements which involve delegation of powers and functions should be subject to the scrutiny of Parliament. The amendment currently before the Committee is that delegation certainly can be made as part of agreements but that these agreements will then be subject to parliamentary scrutiny so that the Parliament will be able to supervise what is being delegated and what the agreement contains. It is this supremacy of Parliament which the Opposition is strongly endorsing.

The Hon. K.T. GRIFFIN: I do not think we ought to make a decision on this based upon what might come later. I will certainly resist very strenuously a proposition that an agreement entered into cannot become effective until it has been through the disallowance process, and I will argue that when we get to that amendment. The Government intended that the Commissioner's functions or powers could be delegated, not necessarily only in the context of an agreement, but there may be other ways in which the Commissioner's functions or powers may be delegated. We had intended that, in accordance with proper Government responsibility, the Commissioner should not be entitled to do that other than with the consent of the Minister, so that the Minister ultimately had the responsibility and was held accountable for the delegation which was made.

We acknowledge that there is some sensitivity in the delegation as a concept and for that reason we felt that delegation to third parties should not be left only to the Commissioner but should be subject to approval by the Minister. Under the current draft of the Bill the Minister has the right to make a decision without first reaching an agreement with an organisation which represents the interests of land agents or sales representatives. So, we took the view that there was sufficient protection there. If the delegations occurred in the context of an agreement then the agreement would certainly be tabled. It is our view that this is quite consistent with good Government practice and enables appropriate delegations where the Minister has exercised his or her discretion and ministerial responsibility.

The Hon. ANNE LEVY: Well, it is news to me that the Minister wishes this power of delegation to third parties outside agreements. This most unusual provision was inserted to enable powers and functions to be delegated to anybody without any limitation whatsoever, and I had understood that the aim of this was to enable powers and functions to be delegated under these agreements with the REI, to which, as I indicated, the Opposition is not opposed. But we felt that such delegation should be restricted to being topics of the agreement. As I understood it, that was what the Minister wanted such power for. If now he is proposing to delegate to unnamed third persons not as part of an agreement, under what circumstances and to whom is he considering making

such delegations? I am sure the Parliament would very much wish to know what powers it is giving away.

The Hon. K.T. GRIFFIN: It is not giving anything away. The primary objective is in relation to agreements, but we wanted to provide some flexibility for anything which might develop out of the negotiation of agreements. It is not unusual; legislation was introduced by the previous Government which allowed for delegation to third parties. I do not have it at my fingertips, but—

The Hon. Anne Levy: Nor have I.

The Hon. K.T. GRIFFIN: That is all right; I am not saying you have. I am admitting that I do not have it at my fingertips. I will endeavour to undertake to do some research on that matter, particularly in relation to subsequent Bills that we will be considering. We wanted that flexibility; we did not think it was inappropriate. There is the authority proposed by the legislation and, ultimately, Ministers are accountable for the decisions which they take.

Amendment carried; clause as amended passed.

Clause 49—'Agreement with professional organisation.'

The Hon. ANNE LEVY: I move:

Page 21, line 17—Insert 'or sales representatives' after 'agents'.

This is consequential on an earlier amendment.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 21, line 18—Leave out 'or enforcement'.

We are dealing here with agreements with professional organisations. Subclause (1) states that the Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of agents under which the organisation undertakes a specified role in the administration or enforcement of this Act. My amendment is to leave out 'or enforcement'. The Opposition certainly has no quarrel with the Commissioner's making an agreement with the REI under which the REI will undertake certain functions.

However, we feel that, while it may be appropriate for the REI to take an administrative role, it is not proper for it to undertake any enforcement role. It is just not suitable for an organisation of land agents to be given or be delegated powers to apply fines, to discipline members and to undertake these enforcement roles which are properly the business of the State. It is the first step on the slippery road to vigilantism if one permits organisations separate from the State to take the law unto themselves—to take the law into their own hands—and have the authority to apply legally binding sanctions. That is not the function of a private organisation.

Legally binding sanctions can be applied only by the State through the organs of the State, and any book of political theory will indicate that that is the sole justification for the existence of the unit State. It is not a role which they should delegate to anyone. So, whilst we are very happy with the idea of agreements with the REI which give it a role to play in administrative matters, it is not proper to give it a role in enforcement which includes sanctions under this Act.

The Hon. K.T. GRIFFIN: I do not disagree with a lot of what the Hon. Anne Levy has said. I do not think it is appropriate either to give to the REI responsibilities in relation to the imposition of fines, but that is certainly not within the ambit of the provision as I understand it. What we were seeking to do mainly was to ensure that, if we reached an agreement with the REI to undertake spot auditing functions, for example, they would have the authority to go in and require the production of documents and papers relating to the audit. That is, their agent would have that power which we took to be an enforcement provision rather than merely an administrative one.

So, I can put it clearly on the record: there is no intention to allow the Real Estate Institute or any other body to exercise disciplinary power; there is no intention at all to do that. The only intention is in the monitoring of trust accounts, for example. If we can negotiate a suitable agreement, setting out the clear terms and conditions upon which they might exercise delegated responsibility, then that would necessarily involve the authority to require the production of records and papers in the conduct of the audit.

That, I would suggest, is enforcement. It may be in the context of further consideration of the Bill, after it has been considered in the House of Assembly, that that can be clarified to the satisfaction of the honourable member, and I am certainly prepared to give some further consideration to limiting that. If she has other areas of concern, I would welcome hearing about them now so that we can give some further consideration to that. However, there is no intention at all to give anybody other than the Commissioner, and now the tribunal, the power to deal with disciplinary matters, to conduct hearings and to deal with suspensions, fines and so on. There is just no intention at all of doing that, and that is not what was intended.

The Hon. ANNE LEVY: I am very pleased to hear the Attorney say this, but that is not what the Bill before us is saying. I still maintain that it would be best to pass my amendment, which removes all possibility of the REI being given a disciplinary or enforcement role. It may well be that some expansion to the word 'administration' is required to cover the type of situation which the Attorney is suggesting, but while he may not wish to use the enforcement powers as widely as the words say another Minister for Consumer Affairs may have quite different ideas. The current Minister will not be Minister forever, and it would seem to me that it is much safer to cut out the words 'or enforcement', and if at a later time the Minister wishes to expand on the role in administration, after consultation with the Crown Solicitor, other words can be put in. However, despite his intentions, including the words 'or enforcement' would enable a future Minister to give the REI power to carry out all sorts of disciplinary actions.

The Hon. K.T. GRIFFIN: With respect, that is not correct. If one looks at 'disciplinary action', for example, it could never be envisaged that any of the powers defined, etc., could ever be exercised other than by a court in what the Government proposed or now the tribunal, because that is a power that is not within the competence of the Commissioner or the Minister to delegate. They are powers and responsibilities vested in now the tribunal by way of amendment.

Rather than delay the matter, I have registered my concern about the amendment. If the majority want to put it in, then I can give some further consideration to it. I do not see anything sinister in it, but I am happy to have another look at it.

The Hon. SANDRA KANCK: Could the Attorney-General specify what he thinks the effect will be if the words 'or enforcement' are removed?

The Hon. K.T. GRIFFIN: I think it could mean that there may not then be the power, if we reached an agreement with the REI, for example, to undertake spot audits, even to appoint a manager where the spot audit had detected that there was a deficiency, and have the capacity to act quickly. They may not thereby have the power to do it because I do

not think that that is within the narrow description of 'administration'. I think it is enforcement. It is a matter of terminology, but it seems to me that if we are able to negotiate an efficient system with the Real Estate Institute, for example, which would enable it to undertake the spot audits and then to follow through the consequences of that, it would require the production of papers and records to enable that to be done. They may not do it themselves as the REI, but it would be done under the auspices of the REI, much as the Law Society now actually has a spot auditor on staff, as I recollect, who exercises the powers and authorities granted by the Legal Practitioners Act to the Law Society to undertake random audits, to appoint a manager of a practice, and so on, in order to preserve the assets and to take control of the trust fund.

I am concerned that, if enforcement is deleted, it will limit both the power of the delegate to act and to act quickly. Whatever happens, I will undertake to review it. Personally, I would like to see it left in, but if it is knocked out I indicate that I will be looking at it again before it passes through all stages in the House of Assembly or through a deadlock conference if we get to that point, because the Hon. Anne Levy has raised a concern. It is a legitimate concern in some respects, although I disagree with the basis upon which she puts the argument. However, I am happy to have another look at it.

The Hon. SANDRA KANCK: I indicate that I oppose the amendment at the present time, assuming that the Hon. Ms Levy's next amendment will get through. So there will be a degree of observation of what that enforcement will entail once we have that written agreement before the Committee.

The Hon. K.T. GRIFFIN: I hope that does not signal that the next amendment will get through. I would much rather lose this amendment than the next. I would not want the next amendment to be conditional upon the endorsement staying in. There are some very good arguments against the next amendment which do not depend upon what happens to this amendment.

Amendment negatived.

The Hon. ANNE LEVY: I move:

Page 22, lines 1 and 2—Leave out subclause (4) and insert:

(4) An agreement under this section must be laid before each House of Parliament and does not have effect—

(a) until 14 sitting days of each House of Parliament (which need not fall within the same session of Parliament) have elapsed after the agreement is laid before each House; and

(b) if, within those 14 days, a motion for disallowance of the agreement is moved in either House of Parliament—unless and until that motion is defeated or withdrawn or lapses.

This amendment deals with the agreements that the Commissioner is expected to make with the REI. As set out in the Bill, the Commissioner can make these agreements and, while they will be tabled in the House so that members will know what is in the agreement, members of Parliament, as set out here in the Bill, will have no chance whatsoever to comment on them, criticise them, approve them or disapprove of them. They could certainly make statements but that will not in any way affect the agreement.

We have never before, as far as I can recall, had a situation where part of public administration is to be performed by a private organisation under an agreement with the Minister. It seems to me that such an agreement, while I do not oppose such agreements in principle, should be subject to the scrutiny of Parliament and that, like regulations, Parliament should be able to disallow them. I am not suggesting that Parliament should have the power to debate and amend an agreement—I think that could be clumsy—but it should treat them like regulations, where the Parliament is not only aware of the existence of the agreement but also is able to approve or disapprove of the agreement. It is for this reason, I move this amendment. I am sure members will appreciate that it is not quite the same as regulations: it is more like development plans. They do not come into force until such time as the time for possible disallowance has passed.

So that the analogy is with supplementary development plans, or whatever they are now called. They go to the Legislative Review Committee but do not become operational until the opportunity has passed for Parliament to disallow them. I certainly maintain a very important principle that these agreements are totally unprecedented and Parliament should have the opportunity to scrutinise and disallow them.

The Hon. K.T. GRIFFIN: I vigorously refute those statements. This amendment will mean that no agreements will be entered into because it is totally unworkable and unreasonable. It is wrong to suggest that no agreements of this sort have ever been made by Government. I used earlier the example of the Legal Practitioners Act where, for at least 20 years, the Law Society has undertaken functions equivalent to some of those which may be delegated perhaps to the Real Estate Institute. It has undertaken the responsibility for the whole legal profession—not just those who are members—of monitoring the audit function, managing spot audits, managing the appointment of managers of legal practices, managing the conduct of those businesses and winding down those businesses that are under management.

It undertakes a public responsibility under the authority of a statute of this Parliament, and there are many other instances. For example, I refer to the audit that is undertaken on behalf of the Commissioner for Consumer Affairs. The Commissioner for Consumer Affairs contracted with KPMG Peat Marwick, under the previous Government, to undertake a public responsibility under an Act of Parliament. The contract governs the terms upon which KPMG Peat Marwick undertakes that random audit function, which is a statutory responsibility that the Commissioner has delegated.

It may be (and I have not looked) that in fact the Commissioner is legally competent to delegate that responsibility, but the fact of the matter is that there is in existence a contract requiring KPMG Peat Marwick to undertake a statutory function on behalf of the Commissioner for Consumer Affairs. I would suggest that this is no different. This provides a framework—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: —within which—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I will fill it in in a minute—a legally binding agreement can be entered into, setting the terms and conditions upon which a function may be exercised by a body that is not a governmental agency. It does not matter whether it is KPMG, the Real Estate Institute, the Law Society of South Australia or some other body of a private or public nature. The fact of the matter is that there is no difference between the two. This amendment will stifle the capacity to enter into an agreement because it does not come into effect until the period specified in the amendment has expired. For example, if an agreement is entered into by the Commissioner with the approval of the Minister and, say, the Real Estate Institute to undertake work in April, and the session ends in early May, it is laid on the table as soon as it is entered into; then, under this provision, the 14 sitting days

will not expire until the following session and even then, at the end of the session—

The Hon. Anne Levy: Come off it. We are sitting in June next year. Haven't you read the timetable?

The Hon. K.T. GRIFFIN: You know the framework. Even in June next year the fact of the matter is—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: You have got—

The Hon. Anne Levy: We are sitting in June and July next year.

The Hon. K.T. GRIFFIN: So what? I am talking about the extent to which this can be delayed. The honourable member's amendment provides that the agreement does not have effect:

(a) until 14 sitting days of each House of Parliament (which need not fall within the same session of Parliament) have elapsed after the agreement is laid before each House;
(b) and if, within those 14 sitting days, a motion for disallowance of the agreement is moved in either House of Parliament—

unless and until that motion is defeated or withdrawn or lapses.

Let us take what happens under the new sitting.

The Hon. Anne Levy: It is the same as the SDPs.

The Hon. K.T. GRIFFIN: No; that is not correct; they are different from SDPs. But it does not matter whether they are the same as or different from SDPs. This is an agreement to perform a function, a contract which is laid on the table of the Parliament. We could have come in here and said, 'These are going to be secret to Government,' but that is nonsense. I took the decision that they ought to be open; if the Government is going to delegate and enter into agreements for other bodies to perform governmental functions, it ought to be in the public arena. So we agreed that they should be laid on the table; they can be the subject of discussion and members can move a motion to debate them. You cannot disallow it under our proposition, but at least it is subject to public scrutiny, and if there is something basically wrong with it there will be publicity about it. I can imagine what will happen.

The Hon. Anne Levy: You cannot alter the agreement.

The Hon. K.T. GRIFFIN: It is possible it will be altered.

The Hon. Anne Levy: It is a contract; you can't alter a contract.

The Hon. K.T. GRIFFIN: The Government cannot do that, but if there is such a furore about it and it is so basically contrary to the interests of Government and the people of South Australia, Governments and other parties are going to take notice of that furore. So it has the capacity to be debated and be the subject of public scrutiny. Let us say that this session commenced in August; it may be that, looking at it theoretically, the contract was entered into in April of this year or even a bit earlier, it was laid on the table, 14 sitting days had not elapsed—maybe it was 12 days—we started again in August—

The Hon. Anne Levy: But next year we are sitting in June.

The Hon. K.T. GRIFFIN: The same argument applies regardless of when you start.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: All right; I am giving you an example. Let us take the case of next year; we enter into an agreement in March or April and supposing that, when the session ends, which may be the end of April—I cannot remember the exact dates—the 14 sitting days have not elapsed. So, at the end of June, early July, before the 14 days expires, a motion is put on for disallowance. You know as well as I do that that has the capacity to drag on. The Government does not have a majority in this Council, and the matter has the capacity to drag on until the end of the session, which will be in May 1996.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It does; we are talking about the possibilities. We do not know whether something is going to be dealt with quickly or over a long period of time. It is unreasonable to expect that, having entered into an agreement, the other party is going to wait for 12 months for the matter to become binding, when a whole new range of circumstances may well have come into operation which will require the thing to be renegotiated.

What happens when there is a supplementary agreement, when you have to renegotiate parts of it because circumstances change. You may have a valid agreement, which has not been disallowed, and then you bring the other agreement in, and you may have another 12 months if an Opposition and Democrats—I am just supposing; I am not saying they will—decide that they want to hold it up and delay the debate on it. You might well have a perfectly legitimate supplementary agreement amending a principal agreement, and you cannot get it agreed because it does not come into effect until after the requisite time has expired, and that might be another year down the track.

It is all very well to say that may not happen in reality, but the fact of the matter is that one has to look at what are the possibilities. And it is my submission to the Committee that this will mean effectively that no agency is going to enter into an agreement, which has the potential to be disallowed so far down the track or at all, and I would have thought that the Executive Government had the responsibility to govern: it is being perfectly open and is being required to be perfectly open about the arrangement that is entered into. You cannot have anything under the counter; it all has to be on the record and the agreement has to be laid on the table for public scrutiny, and I would have thought that was a perfectly legitimate approach to take in the interests of proper Government in South Australia. So, it is for those reasons that I very vigorously oppose this amendment, which will make the whole proposition totally unworkable.

The Hon. R.D. LAWSON: In addition to the reasons advanced so eloquently by the Attorney-General, I believe there are other grounds for opposing this amendment. The mover of the amendment contemplated that the agreement would come before the Legislative Review Committee in the same way as ordinary regulations and subordinate legislation comes before that committee. In fact, in the absence of some specific reference of this agreement to the Legislative Review Committee, there would be no process by which it could come before that or any other committee. The regulations come before the Legislative Review Committee by virtue of a reference in the Subordinate Legislation Act, which of course would not apply to an agreement of this kind. So, I also oppose the amendment.

The Hon. SANDRA KANCK: If an agreement is effectively stopped in the way that the Attorney-General is suggesting, does it not mean then that those functions will simply occur through the Commissioner, in which case what is the problem if it does not occur?

The Hon. K.T. GRIFFIN: That is correct; the fact of the matter is that, in the interests of proper management of Government and also, in this case, of the land agent industry, the Government is endeavouring to have a much closer

involvement of the professional or business organisation, which has a primary responsibility within that industry. The Government's view is that it is in the interests of consumers, in the interests of Government and in the interests of the community generally, as well as real estate agents, that the Government works more closely with professional and business organisations. I have indicated publicly that, if professional organisations can establish a dispute resolution process, which is something less than that required to go to the Commissioner for Consumer Affairs, to another commercial tribunal or the courts, we ought to put in place a mechanism for doing that. And I would think that, whether it is under a code of practice, a code of conduct or an agreement with that body under these provisions, it is in the interests of everybody to try to get industry and professions thinking more about how they can provide an effective service to consumers and how they can provide a better service in resolving disputes at an earlier stage so that they do not fester and develop into something which becomes very costly to resolve, not just in time but in personal anxiety. All of that is part of a broad scheme which we, as a Government, hope to implement and that will mean that Government becomes much more of a point of last resort for resolution of complaints and disputes rather than, as it has been frequently in the past, the point where there is a first call.

In the context of these agreements, for example with trust accounts, it is certainly our experience with various professions that members of those professions or businesses know at a much earlier stage that there is a bit of gossip around about someone spending an inordinate amount of time in the local hotel, or not paying his or her bills on time, or that there are delays in paying out deposit monies, or settlement monies in the case of the legal profession. If that sort of intelligence is gathered, it becomes obvious that there has to be a quick decision to send in a spot auditor to check the trust account in particular. That is one of the reasons why the Law Society has probably been more effective than the Government was in relation to the Hodby, Schiller and Winzor matters in getting in early when a problem had been signalled. As regards Hodby, people in the real estate and land broking industries were saying, 'This guy is not turning up on time for his settlements; he is delaying his settlements; we cannot get our money out of him.' That should have sent early warnings to send in an auditor. Under these sorts of agreements we expect to involve the professional organisations in a more proactive role within the industry or profession.

If an agreement is disallowed, the responsibility comes back to the Commissioner, but in our view it will be less effective because it will not involve so closely the various professional and business organisations, particularly in the surveillance area. That is the problem that we see. If there is potential for an agreement to be disallowed after the lapse of a long period of time, one has to ask: why bother to enter into it in the first place if that is a possibility?

The Hon. ANNE LEVY: The more the Attorney-General discusses the matter, the more I feel that my amendment is very important. He keeps raising extra matters which will be given to the REI.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: The Attorney-General speaks of the profession catching whispers that somebody may be spending too much time in the pub.

The Hon. K.T. Griffin: I have made that comment before in this place.

The Hon. ANNE LEVY: Yes, you have made that comment before. One might ask: why did they not suggest to the Commissioner of the time that a spot audit be undertaken? If they are so responsible and concerned, it seems to me that they would have passed this information on to the Government so that a spot audit could be conducted. I fail to see why, if they were aware of these things, they did not do that, but somehow they will institute spot audits themselves. The Attorney-General also raised the question suddenly that the agreement was not about spot audits but about complaints procedures.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: I ask for your protection, Ms Acting Chair. I did not interject while the Attorney was speaking and I wish he would do me the courtesy of reciprocating my courtesy. We now have the question of complaints procedures being handed over to the REI under an agreement. If a consumer has a complaint, which may or may not be justified but it may be a very grave complaint, against a real estate agent, he will be sent off to the Real Estate Institute to have it investigated. It seems absolutely crucial that the form of the agreement which is to be struck with the REI should be under parliamentary scrutiny. If the Attorney is not very keen on the procedure set out in the clause, which I repeat is similar to that which occurs in the Development Act, and would rather have something akin to the regulatory procedure, we can, at this conference that he keeps threatening, look into that and perhaps change it so that they become operative when signed but can be disallowed at a later stage. The number of possible things which can be handed over to the REI by agreement with the Government seems to grow, and it becomes crucial that Parliament has the right not only to know what is in the agreement but to be able to scrutinise it and, if it disapproves strongly, disallow it. I feel that this is absolutely essential. Parliament is supreme, not the Executive. Parliament is supreme and must have the ability to disallow these agreements.

The Hon. K.T. GRIFFIN: I am not threatening a conference; I expressed a fact of life. We would expect that there would have to be some consideration of the amendments with which we do not agree. The Hon. Anne Levy grossly misrepresents what I have said about complaint resolution. I am not saying that we are going to refer complaints to them; I am saying that as part of the process of getting more involvement of industry, consumers and individual business people in resolving their own disputes at a much earlier stage, we would be encouraging that a dispute resolution process be established at a much earlier stage. That makes sense from a business and consumers' point of view. If they have a problem with an agent and it is not a major problem at this stage, we would encourage them to talk to the agent first. However, if they do not want to talk to the agent and the REI can sort it out, as it does at present, that ought to be encouraged.

If there are complaints about an agent with regard to fraud or anything else, of course they will go to the police or to the Commissioner; they will not be delegated to the REI. As I have said on many occasions in this place, it is designed to develop a more responsive framework within which business, Government and consumers can work together if there are difficulties and, in respect of the conduct of an agent's business, to negotiate with the REI the sorts of functions that the REI can better perform because of its relationship with agents as a delegate of the Government. Ultimately the agreement which we seek to have authority to negotiate will

be on the public record when it is entered into. If the Opposition and the Democrats wish to stifle the possibility of developing some exciting new opportunities for the resolution of issues and getting industries more involved, this is the sort of amendment that they will support. I say that it is absolutely unworkable and that there ought to be an acceptance that laying it on the table puts it in the public arena and enables it to be the subject of public scrutiny, criticism if necessary and commendation if possible.

The Hon. ANNE LEVY: I reiterate that laying it on the table after it has been signed does not allow any public involvement or meaningful public comment. All people can do is to scream if they do not like it, but to no effect whatsoever. It is important that the public, through the Parliament which represents the public, should be involved in the content of these agreements. They are novel. This has not occurred before. A minute ago the Attorney used the word 'consumer'. It is the first time that he has done so in this entire discussion on agreements. The word 'consumer' does not occur anywhere in clauses 48 or 49, which are about delegation and the power which will be given to the REI. Where does the consumer come in?

The consumer is going to be presented with a *fait accompli*, something worked out between the Government and the REI, without any opportunity for Parliament to have an input, to criticise. We are being asked to sign blank cheques and I strongly oppose this idea of Parliament now being asked to sign a blank cheque. We are being asked to agree to delegations to agreements. We are being asked to agree to power to make agreements with the REI without any indication, other than talk of what is going to be in those agreements, what they are going to cover; discipline, complaints, audits, all sorts of things are being suggested without any detail and I, for one, oppose this blank cheque approach. I want Parliament to be able to scrutinise it.

The Hon. SANDRA KANCK: I want to put on record my respect for the REI within all this. I have met with them a couple of times over these Bills and they are an organisation that I see as operating with a great deal of integrity. So, I do not feel that going through this process would lead to huge delays at all. I am attracted to the amendment in the first place because I like to see accountability and that is what this amendment brings. I do not know another way of bringing that accountability into this Bill. For instance, I might consider a reduction in the number of sitting days to perhaps reduce some of the level of frustration, but the point that the Hon. Ms Levy made about the consumer is a valid one. It is only through Parliament that the consumer has any rights in this process and because of that I do not see that there is any alternative but to accept an amendment like this because there is no other way to bring in that accountability.

The Hon. K.T. GRIFFIN: I make one final comment; that is, it has all got to be within the framework of the legislation. There is no reason to suggest that there will be powers and functions delegated which are not powers and functions within the operation of the Act. There is accountability. It depends whether the Parliament wants to get involved in what are effectively administrative matters or to set the legislative framework within which matters are dealt with. I would suggest that to get involved in determining under this process of review set out in the amendment, that somehow that brings greater accountability is very difficult to fathom. In fact, what I would suggest is that if the agreement is required to be the subject of this sort of scrutiny, and with the threat of disallowance hanging over its head, that there will just be no agreements and it will not facilitate a proper and fair Government.

The Committee divided on the amendment:

AYES (8)

Cameron, T.G.	Crothers, T.
Feleppa, M.S.	Kanck, S.M.
Levy, J.A.W.(teller)	Pickles, C.A.
Roberts, R.R.	Weatherill, G.

NOES (7)

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

PAIRS

Elliott, M.J.	Davis, L.H.
Roberts, T.G.	Laidlaw, D.V.
Wiese, B.J.	Stefani, J.F.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 50 passed.

Clause 51—'Register of agents.'

The Hon. ANNE LEVY: I move:

Page 22, line 10—Insert 'or sales representatives' after 'agents'.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 22, line 15—Leave out 'on payment of the fee fixed by regulation' and insert 'without charge'.

As clause 51 currently stands a consumer will be required to pay to find out whether or not the person that he or she thinks he is dealing with is really an agent. Given that clause 33 says that the consumer is not entitled to make a claim if she or he knew or ought to have known that the person was not registered or licensed, I believe it is very important that access to that register is freely available because if someone has not consulted the register it could be argued that they ought to have known that that person was not an agent. The only way that a consumer can find that out is through access to that register. I do not believe that it is just that they should have to pay on the off chance that they might get caught out later on in the process.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The payment of fees for the inspection of public registers has precedent in a number of Acts. One has only to look, for example, at section 32 of the Nurses Act 1984, section 23(5) of the Chiropractors Act 1991 and section 109(5) of the Environment Protection Act 1993 for a statutory precedent in this regard. They are all Acts passed at the instigation of the previous Labor Government. In addition, fees are presently payable to access the register at the Australian Securities Commission, for example, to search a company or business name, and they are also payable to the Registrar of Births Deaths and Marriages in relation to accessing information on public registers. You have to pay for a search at the Land Titles Office in relation to a title or other documentation, and there are many other registers such as the State Business Office in regard to business name searches; the Registrar of Motor Vehicles, in relation to the limited access available to that register, which is not publicly accessible, as I understand it, but nevertheless is accessible to insurance companies and individuals who might need to have information about a car that might have been involved in a motor vehicle accident.

Members will recognise that fees are a means of recovery of the administrative expenses involved in facilitating an

inspection and in the maintenance of the register. There is clerical involvement in the inspection process. As I recollect, there is no publicly accessible register in relation to real estate agents at present. This Government believes that there ought to be accessibility, and that is being provided, but there ought to be the capacity to charge a fee to access the register for the reasons that I have indicated.

The Hon. ANNE LEVY: I have no objection in principle to the Government's charging fees for access to registers. This has been a common practice for a long time, but the Attorney has not really answered the question posed by the Hon. Ms Kanck. Her concern relates to clause 33, which provides that a person will not be able to make a claim if they knew or ought to have known that the agent was not a registered agent. The Hon. Ms Kanck claims that the only way a person would be able to claim is if they had paid the fee to look at the register. I am not a lawyer, but if someone claimed to be an agent or has a sign up saying that they are a registered agent and advertises in the paper twice a week as being an agent, I would have thought that no court in the land would say that it was unreasonable for the person to have assumed that they were an agent, without having to pay the fee to look up the register. It is on this point that the Hon. Ms Kanck needs reassuring and the Attorney has not addressed that.

Is a court going to say, 'If it looks like a duck, walks like a duck and quacks like a duck, you can take it as being a duck, without having to look on a register to see if it is a duck?' This is the point of concern and, from my limited knowledge of the law, I would have thought that if someone proclaims himself to be an agent and gives every appearance of being an agent and of behaving like an agent, then it is not unreasonable for someone to take them as being a registered agent and a court would not disallow a claim on that basis, that they had not before answering the advertisement in the paper for L.J. Hooker gone and looked up the list of registered agents. That is where the assurance is required.

The Hon. K.T. GRIFFIN: The fact is that there is no publicly accessible register.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: The provision here is exactly the same as in the present Act. We are making the register publicly accessible. Under the present Act there is no access to the public register—no access is granted by the Act.

The Hon. Anne Levy: Then under clause 33 the person could not be refused a claim.

The Hon. K.T. GRIFFIN: Why not? Because the person knew or ought to have known—the same provision applies in relation to the present Act.

The Hon. Anne Levy: At present they cannot go and check the register.

The Hon. K.T. GRIFFIN: They can ask the Commissioner. They do not have to check the register necessarily to know, or ought to have known, that the agent was not so registered or licensed.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: If it is Woodham Biggs, for example, or L.J. Hooker, which are conducting a public business and advertising every week, and you find that the agent is not on the register when it is subsequently investigated after a complaint is made, no-one can say that the person knew or ought to have known at the time of the default that the agent was not so registered or licensed.

The Hon. Anne Levy: It is on that that the Hon. Ms Kanck seeks reassurance, that a claim will not be disallowed because they did not look at the register.

The Hon. K.T. GRIFFIN: Let us not get locked in too deeply: I am wrong and I admit it. It has been drawn to my attention that the Commercial Tribunal Act provides that the Commercial Registrar 'shall keep registers of all persons licensed and registered under the relevant Acts and any person may, on payment of a prescribed fee, if any, inspect any of the registers kept under this section'. That is where it is at the moment. I am sorry I misled the Council. It was not intentional. The fact is that there are now public registers and they can be accessed only on the payment of a prescribed fee. The Land Agents, Brokers and Valuers Act provides the same provision as in this Bill, that is, that the person knew or ought to have known at the time of the default that the agent was not so registered or licensed. I apologise for the fact that, if I had given that information at the start, we would have got through this much quicker than we have. What happens now is what is proposed by the Government in this Bill and, in those circumstances and for those valid reasons, I oppose the amendment.

Amendment negatived; clause as amended passed.

Clause 52—'Commissioner and proceedings before court.'

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

Page 22, line 17—Insert 'entitled to be joined as' after 'is'.

This amendment is designed to ensure that the rights of the Commissioner are flexible but are clearly established. There is an argument that the wording in the Bill might require the Commissioner to appear at all proceedings commenced under the Bill, but that is not intended. The amendment gives the Commissioner an entitlement to be joined as a party and not make it mandatory that the Commissioner should be joined.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 22, line 17—Leave out 'court' and insert 'tribunal'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 53 to 56 passed.

Clause 57—'Liability for act or default of officer, employee or agent.'

The Hon. ANNE LEVY: I move:

Page 23, line 9—Leave out 'person could not be reasonably expected to have prevented the act or default' and insert 'officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority'.

Amendment carried; clause as amended passed.

Clauses 58 to 60 passed.

Clause 61—'Evidence.'

The Hon. ANNE LEVY: I move:

Page 24, line 3—Insert 'or sales representative' after 'agent'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 62—'Service of documents.'

The Hon. ANNE LEVY: I move:

Page 24—

Lines 15, 16, 21 and 22—Insert 'or sales representative' after 'agent'.

Line 22—Insert 'or sales representative's' after 'agent's'.

These amendments are all consequential.

Amendments carried; clause as amended passed.

Clause 63 passed.

Clause 64—'Regulations.'

The Hon. ANNE LEVY: I move:

Page 24, line 35—Insert ‘or sales representatives’ after ‘agents’.

This amendment is consequential.

Amendment carried; clause as amended passed.

Schedule.

The Hon. ANNE LEVY: I move:

Clause 2, page 26, after line 11—Insert:

(2a) A person who was registered as a sales representative under the Land Agents, Brokers and Valuers Act 1973 immediately before the commencement of this Act will be taken to have been registered as a sales representative under this Act.

This amendment is consequential on the registration of sales representatives.

Amendment carried.

The Hon. ANNE LEVY: I move:

Clause 2, lines 13, 15 and 16—Insert ‘or sales representative’ after ‘agent’ wherever occurring.

This amendment is consequential.

Amendment carried; schedule as amended passed.

Long title.

The Hon. ANNE LEVY: I move:

Insert ‘and their sales representatives’ after ‘land agents’.

This amendment is consequential.

Amendment carried; long title as amended passed.

Bill reported with amendments; Committee’s report adopted.

ADJOURNMENT

At 11.9 p.m. the Council adjourned until Wednesday 12 October at 2.15 p.m.