LEGISLATIVE COUNCIL

Thursday 9 February 1995

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

CORONIAL INQUIRY

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement in respect of a coronial inquiry.

Leave granted.

The Hon. K.T. GRIFFIN: Following the tragic death of Nikki Robinson, the Government recognised that there was always to be a coronial inquiry. The Coroner is an independent statutory officer who is supported by a Coroner's Squad comprising seconded police officers. In respect of the current inquiry, it is supported by two police officers of the Major Crime Squad. The Minister for Health himself met with those officers two days ago and provided them with further information to assist them in their inquiries.

The Government recognises that the Coroner may require additional assistance because of the desire to expedite the inquiry. I have consulted with the Coroner and informed him that such resources as he requires to enable him to proceed expeditiously with the inquiry will be made available. The Coroner will inform me of his requirements when he has assessed them. Such resources may include counsel to assist the Coroner.

Public statements have been made which suggest that a coronial inquiry may take at least 18 months, and that the investigation by the Coroner may not be independent. The Coroner has informed me that the public statements are quire incorrect. He informs me that if a case requires a sufficiently urgent hearing arrangements could be made to conduct it virtually as soon as the investigation is complete, provided that he could be given the resources of an extra judicial officer to continue with the general work of the court. This occurred during the extensive Ash Wednesday bushfire inquests conducted by former Coroner, Mr Ahern. I repeat: the Government has agreed to provide those additional resources.

The Coroner also informs me that, even if this matter were not treated as such an urgent case, a hearing date can usually be found within three months or so of completion of the police investigation and the setting down. The Coroner has also said:

> I am disturbed by the implication that the investigation which has occurred to date is not independent. It is being carried out by officers of the Major Crime Squad of the Police Department, but I have given instructions through the Assistant Commissioner (Crime) that the investigation is to be thorough.

The Coroner will supervise the investigation as it proceeds, and any matters which have not been addressed will be drawn to the attention of the investigators by the Coroner. I assure the family of Nikki Robinson and the members of the public that they should have every confidence in the independence of the Coroner and his capacity to conduct a full and expeditious inquiry.

QUESTION TIME

TEACHER NUMBERS

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 teacher cuts.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday the Minister, in response to a question I asked, stated that 100 to 200 teachers would be cut because of falling enrolments. Today he issued a press release saying that in fact the number will be 260. Teacher cuts have already caused enormous concern in schools, and I will quote from correspondence to the Minister from the Highgate Primary School. A letter to the Minister dated 8 February, from the Chairperson of the Highgate School Council, states in part:

> I would like to record the disgust of the entire parent body at your plan to displace one of our primary school teachers. This policy is short sighted and will produce no educational benefits whatsoever. It will certainly not produce any political benefits. Your Government is accountable to the people of South Australia and a move such as this is not acceptable to parents, who make up the majority of the electorate. School is under way for the term and year and children are settling into their classes well. The disruption caused by a displacement is upsetting to students, parents and teachers. The slightly lower than anticipated enrolments, soon to be boosted by interstate arrivals and a contingent of Iranian children, produces an opportunity for enhanced educational outcomes and certainly closer child/teacher relationships. You are missing a chance to improve parent and teacher trust and satisfaction with the DECS and with Government policies. I urge you to take a longer term view on costs and benefits within the education system and to reconsider your directive concerning staffing levels.

I understand that there is to be an emergency meeting this evening and all school participants are requested to attend. I hope that the Minister for Education and Children's Services will also be attending. My questions to the Minister are:

1. Is the Minister aware of the wide opposition by schools and parents to his latest announcement that another 260 teachers will go?

2. Is the Minister listening to the concern of parents about the quality of education in South Australia, or is he simply doing what Treasury tells him to do?

The Hon. R.I. LUCAS: The policy of displacements that the Education Department is having to follow at the moment is exactly the same as that followed by the Labor Government for the past five to 10 years.

Members interjecting:

The Hon. R.I. LUCAS: No, not at all. It is a policy that has been agreed with the Institute of Teachers. The Institute of Teachers, in relation to the 1994-95 placement policy for teachers in schools, has agreed to that document, which includes a specific and definitive section which indicates what procedures the department should follow, with the agreement of the Institute of Teachers and the Labor Party as the previous Labor Government, in the circumstances where there is a decline in enrolments in the first term.

Otherwise, there would be no point at all in the Education Department's doing an enrolment audit at the start of the year. If we are to follow the procedures that the Leader of the Opposition conveniently now adopts—contrary to the policies that she supported under the Labor Government, the Leader would be suggesting that if nobody turned up at a school at the start of the year—

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —you do not do an enrolment audit and go through a displacement policy, even though in a neighbouring suburb more than the expected number of students turn up and you need extra teachers in that school. That is the policy position that the Leader of the Opposition is trying to suggest: that you do not do an enrolment audit and, where there are enrolment declines, you forget about those but where there are enrolment increases you do not worry about it. That is the position that the Leader of the Opposition—

Members interjecting:

The Hon. R.I. LUCAS: As the Hon. Mr Redford points out, what we have out there at the moment is the equivalent of 150 to 200 empty classrooms with no students. The Leader of the Opposition wants to maintain those positions. The procedures being followed by the department and the Government are not new procedures. They are not procedures which the new Government has thought up or which have been fought and opposed by the Institute of Teachers. They are placement policies that we discussed with the Institute of Teachers and with teachers and principals in relation to what the appropriate procedures should be if students did not turn up at the start of the year. So, we have an agreement with the Institute of Teachers as to the appropriate policy to be followed in these circumstances.

I acknowledge the concerns that parents will have in relation to what is a difficult circumstance. Why there is such a large discrepancy between the predictions made by principals late last year, the predictions done at the start of last week by principals and then the predictions done by principals at the start of this week in some circumstances is very difficult to understand.

The Hon. Carolyn Pickles: It certainly is.

The Hon. R.I. LUCAS: The Leader of the Opposition is being critical of principals, and that is her right.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No, it isn't. I will not go down that particular path because I will wait until the investigation. The Leader of the Opposition can criticise all the principals out there if she wishes, as she has just done. However, the information is provided by principals to the Education Department. We do not have an audit officer sitting in all of the 700 school sites in South Australia: we wait for information and the estimates to be made by the principals.

In terms of the reason for such large differences in relation to secondary schools, as I indicated, I think there is some explanation because of the improving economy and possibly because of increased numbers at TAFE, in particular, and perhaps at universities. However, the reason for such a discrepancy between the first and the second week, in particular in primary schools, is difficult to understand.

As I indicated in my press statement today, new departmental audit procedures that we have instituted within the department may well have had an effect. However, departmental officers will have to work with principals to try to work out the reasons for the discrepancies. Certainly, as a Government and as a Minister, I understand the concerns that some parents will have if they have to go through a displacement procedure. However, it is important again to stress, and I conclude by saying, that this is not a new policy on displacements by this Government; it is not a policy that has been opposed by the Institute of Teachers. It is a policy that has been implemented for many years under Labor Governments and supported by the Institute of Teachers. Again, the 1995 placement process has been supported by the Institute of Teachers.

SCHOOL ENROLMENTS

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 enrolment numbers.

Leave granted.

The Hon. CAROLYN PICKLES: Today the Minister said that enrolments of students in South Australian schools has fallen by 4 000. This decline in the number of students against an increase in population raises some very important issues on student retention, the adequacy of curriculum, pathways to tertiary education and resources in the Education Department. Between 1980 and 1990 school enrolments in South Australia declined each year from a total of 219 000 students to 181 000 students. Enrolments then fluctuated.

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: You go and have a good look at those employment figures. In 1991 there were 184 000 students.

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: In 1992 there were 186 000 students, in 1993 there were 184 000 and in 1994 there were 182 000. This year the number of students has declined for the third year in succession and it is critical that we understand why this has occurred, and the Minister acknowledges that fact. My questions to the Minister are as follows:

1. Can the Minister provide the numbers of primary and secondary students enrolled this year and how they compare with the number in 1992, 1993 and 1994?

2. Have retention rates at secondary schools fallen and how does the number of students in years 12 and 13 compare with the number last year?

3. Since the Minister cannot explain why enrolments have fallen this year, will he undertake an analysis and publish the results?

The Hon. R.I. LUCAS: I have already indicated that we will be looking at the reasons. It is not correct to say that we cannot explain the decline; we can explain part of the decline. As I have indicated already, there is general consensus that the reason for the decline in secondary enrolment is that fewer students are staying on to do year 12 and certainly fewer students are staying on to do year 13, and that this is occurring because of two factors: one is an improving State economy resulting in people going off to get jobs; and, secondly—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Davis points to the youth unemployment figures, which I am sure even for the Labor Opposition, which opposes everything the Government does or says—

Members interjecting:

The Hon. R.I. LUCAS: No, we were much more constructive as an Opposition than is this Opposition. Mr President, it has been very disappointing to see—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Exactly. It has been very disappointing to see—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It has been very disappointing to see that under the Leader of the Opposition, Mr Rann, and Ms Pickles—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Legh Davis, order!

The Hon. R.I. LUCAS: —we have such a negative, knocking, carping Opposition. We have seen this through the two Leaders, both in this Council and the other House. Never a word of support from the Hon. Ms Pickles. Never a word of support from the Hon. Mr Rann. Not a thing that this Government does is seen to be right by this negative, knocking, carping, critical Opposition we see across there. Sadly, that has been reflected in the level of support that the Opposition is experiencing.

As I said, the second reason relates to the potential increase in positions in TAFE institutes and university places. The third possible reason, which is being discussed in education circles, is that increased numbers of students are finding the rigour, in particular of the South Australian Certificate of Education, and the requirements such, that if they can get a job they are pursuing the employment line rather than continuing at school. The department is looking at that issue, and when it is in a position to provide further information I will be pleased to do so. In relation to the specific numbers of the decline in primary enrolments since 1992, I will be pleased to look at that for the honourable member and provide further information as soon as possible.

AGRICULTURAL ADVISORY COMMITTEES

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the future of agricultural advisory committees.

Leave granted.

The Hon. R.R. ROBERTS: Some weeks ago I received representations from the Women's Agricultural Advisory Committee, which was very concerned about the future of the organisation and its funding. This organisation has been one of the support pillar groups of rural people in South Australia for many years. On Tuesday 7 February the Attorney-General tabled in this place the 1993-94 Annual Report of the Advisory Board of Agriculture, the body which has had an active, cooperative relationship with the State Government for over 106 years. The Advisory Board of Agriculture is the peak body of the Agricultural Bureau Movement in South Australia and represents 143 branches throughout this State.

However, the Liberal Government has decided that, at the end of this year, it will withdraw funding and administrative support for the Agricultural Bureau of South Australia, the Women's Agricultural Bureau and the Rural Youth Movement. I am advised that in its place (and this is in the report) that Mr Baker is proposing a peak advisory council. There is no alternative for these groups: either they do what Minister Baker instructs or they will be starved of funds and organisationally will die at the grassroots level. Under this new regime the Agricultural Bureau, the Women's Agricultural Bureau and the Rural Youth Movement will each be disfranchised, lose their individual identities and be swallowed up in the new advisory council.

The Hon. Anne Levy: Was the Minister for the Status of Women consulted?

The Hon. R.R. ROBERTS: I wrote to her for an opinion and I have not yet received a response, but I am certain that it is on its way. The social fabric of much of rural South Australia will disappear under this proposal. Rhetorically one may ask how a peak advisory council will operate if there are no constituent bodies below it to provide the grassroots input. My questions are:

1. Will funding for the Agricultural Bureau Movement, the Women's Agricultural Bureau and the Rural Youth Movement cease on 30 June 1995 unless they join the new advisory council?

2. What future do these bodies have if they choose not to join the new advisory council, and what level of support will they receive from the State Government to continue to operate as separate organisations?

3. What representations has the Minister received from his rural based Liberal colleagues in support of South Australia's community based rural organisations?

The Hon. K.T. GRIFFIN: I regret to say that the honourable member is not the answer to the prayer of country people, because he is two days behind the times—unless, of course, he has read the *Hansard* in the House of Assembly for Tuesday and identified that there was a question which was asked by the member for Flinders of the Hon. Minister for Primary Industries on this very subject. The honourable Minister gave a very comprehensive answer about the sorts of issues that were being addressed within the Department for Primary Industries in relation to advisory councils and agricultural bureaus and has set out a framework within which this very long established framework of bureaus, councils and bodies within DPI that have been in existence for quite a number of years should be the subject of some self-examination, as much as examination by the Government.

The fact of the matter is that all of these sorts of bodies do need from time to time to look at their focus, what community they are serving, the effectiveness of them. Of course, in many instances all that comes out very positively, and the discussions the Minister has had with the Women's Agricultural Bureau have led, as I under understand it, to a forum which is to be held in March. The bureau is very happy that this has been arranged, which will give them an opportunity to look at where they have been in the past, where they are at the moment, and what the future holds for them. Last Sunday there was a forum, again under the auspices of the Minister for Primary Industries, in relation to rural youth, and that was quite a productive forum on this issue. So, what I would suggest is that the honourable member, if he has not in fact read the *Hansard* of the other place of 7 February (pages 1 412 and 1 413) that he do so. He will find there a very comprehensive response to the sorts of issues to which he has referred. The only remaining question, by way of interjection more than anything else, is whether he has consulted with the Minister for the Status of Women, and I understand he has given her a briefing on the issues that were involved in a discussion of the subject.

The Hon. R.R. ROBERTS: As a supplementary question, what was the advice of the Advisory Board of Agriculture with respect to the future funding of these organisations?

The Hon. K.T. GRIFFIN: I will refer that to the Minister and I will bring back a reply. As I understand it from the *Hansard* of another place, and I am not entitled to read from it, the Advisory Board of Agriculture did make some proposals, but in respect of the detail of those I will refer them to the Minister and bring back a reply.

WORKERS COMPENSATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question about mental health and workers' compensation.

Leave granted.

The Hon. M.J. ELLIOTT: On 16 December last year, the Attorney-General, Trevor Griffin, released a report by Brian Martin, QC, examining the State's Equal Opportunity Act which recommends that laws be changed to protect people against discrimination on the basis of mental illness. It was released less than a month after I had called on the Attorney-General to make the report public.

The recommendation is particularly important in light of the Government's WorkCover legislation now before State Parliament, which seeks to entrench discrimination against workers with mental illness. The present Workers Rehabilitation and Compensation Act does not allow people with mental impairment arising from employment to receive the lump sum payments that are available to people with permanent physical impairment. The proposed WorkCover changes seek to discriminate further against workers with mental impairments by reducing their benefits after six months instead of the proposed 12 months for other types of injuries. The Martin report says:

> South Australia is the only jurisdiction in Australia which divides impairment into intellectual impairment and physical impairment. It is also the only jurisdiction to exclude discrimination on the ground of mental illness.

It recommends that the Equal Opportunity Act be amended to include mental illness as a ground of discrimination consistent with the Federal Disability Discrimination Act. The integrity of the workers compensation system can be maintained only if no distinction is made between compensation being paid for some injuries but not for others. My questions to the Minister are:

1. In light of the Martin report, will the Minister go ahead with legislative changes such as measures in the Workers Rehabilitation and Compensation (Benefits and Review) Amendment Bill now before the Parliament?

2. Will the Minister amend the Bill to ensure that workers with mental illness do not receive discriminatory treatment in benefit levels?

3. Will the Minister amend the current Act to remove the ability to discriminate against injured workers with a permanent mental illness when offering lump sum payouts?

4. Does the Minister intend to amend the State's Equal Opportunity Act in response to Brian Martin QC's report?

The Hon. K.T. GRIFFIN: I am very pleased to say that the honourable member gained the information from my office this morning, and I was pleased to make the information in respect of the Martin report available to his staff. I have indicated to all members on a number of occasions that, if there are issues such as this, I am very pleased to be able to provide information which is on the public record and, in some instances, information which may not be on the public record.

The Hon. R.I. Lucas: Did you give him the answer, as well?

The Hon. K.T. GRIFFIN: No, my office provided the background upon which the question is framed. I will deal with the last question first. I indicated by that press release of 16 December that the Government had determined that, because not only were there recommendations that dealt with specific amendments to the Equal Opportunity Act but also there were several issues in respect of a number of those recommendations which Brian Martin QC recommended should be the subject of further consultation, there should be no final decision on which amendments should be made or not made, until there had been that consultation. I have established a reference group within my office, chaired by Ms Julie Selth, who has just returned this week from maternity leave. She will have the responsibility for overseeing the evaluation and consultation in respect of the various matters raised in this report.

The Hon. M.J. Elliott: Is there a time frame on that?

The Hon. K.T. GRIFFIN: There is no final time frame on it because she returned only this week, on Tuesday, in fact and, because of the parliamentary sittings this week, I have not had an opportunity to discuss the issues with her at length. Certainly, I have indicated publicly that it is expected to be during this year that the final decisions are taken, but there is a significant body of consultation required as a result of the Martin report. Neither I nor the Government has indicated exactly which recommendations we agree with or, for that matter, whether we agree with the basis upon which Mr Martin QC came to his conclusions and made his recommendations.

The Hon. M.J. Elliott: Do you personally agree?

The Hon. K.T. GRIFFIN: Well, I have not made any final decision on that yet, but—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: We are not going to run through each of the recommendations and tick or cross some off. The fact is that Mr Martin QC has suggested that there be consultation on a number of the issues which he has highlighted—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: —in relation to racial discrimination. I might say to that interjection that, if the honourable member is going to start criticising me for delay in dealing with things, he ought to look at his own house first. We have had the retail tenancies legislation on the table since November. I have offered things on it to all members and the fact is—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. Elliott: You have got a whole department.

The Hon. K.T. GRIFFIN: Well, a whole department. If it is too hard do not get into the pond. The fact is that everyone has pressures on their time and no-one can criticise me for not being anxious to expedite a number of the issues which arise within my portfolio. In fact, honourable members will know that during the January break I had offered a number of briefings—and honourable members did take them up on a number of Bills—designed to facilitate deliberations on a number of complex issues before the Parliament. That offer remains in relation to a number of areas that are still to come before us.

The fact is that I determined, because of the workloads of my other legal officers, who were all legal officers under the previous Government and who are apolitical, that it was appropriate to await the return of Miss Julie Selth to give her the task of chairing the reference group. Miss Margaret Heylen and the Minister for the Status of Women are participating in that, and we hope that the consultation process will begin to gather a head of steam. That is all I can say in respect of that particular report. It is not good enough merely to criticise me for not having all this up and running when other people ought to look at their own houses.

In relation to the mental health discrimination aspect, again I do not accept what the honourable member is asserting in relation to workers' compensation or the conflict which he asserts might arise between that legislation and this. Certainly, I have no plans to address the particular issues which the honourable member has raised in relation to workers' compensation, but the honourable member is quite at liberty to raise them when we deal with the Bill when it comes to this Council.

In respect of the current workers' compensation legislation, again I do not accept that it necessarily follows from what Mr Martin QC has said that there is entrenched discrimination against mental impairment in the Workers' Compensation Act or in the Bill which we are likely to receive either today or early next week. I remind honourable members that whilst there has been a piece of legislation on the Notice Paper in relation to mental impairment, in so far as it affects the criminal justice system, a number of consultations have been held, and that was the intention once the Bill was introduced. In the next week or so I would expect some proposals in relation to that legislation which will deal with the issue of mental impairment in so far as it relates to the criminal justice system.

The Hon. M.J. ELLIOTT: As a supplementary question: will the Minister responsible for the State's Equal Opportunity Act explain to this House why he feels that the principles within the Martin report do not apply to the workers' compensation legislation?

The Hon. K.T. GRIFFIN: I will take the question on notice.

SHARES

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question on misleading offers for shares.

Leave granted.

The Hon. L.H. DAVIS: A company called Country Estate and Agency Co Pty Limited of 90 Roden Street West Melbourne has become notorious in Australia sharebroking circles for making offers to purchase shares at well below the price prevailing on the share market.

In January, Country Estate and Agency made an offer to some, if not all, shareholders in Henry Walker, a successful contract miner headquartered in Adelaide. Shareholders received a letter from Country Estate and Agency offering to buy their shares at 90¢ per share with the promise that a bank cheque would be mailed to them on the same day as the share certificate and share transfer form were received by Country Estate and Agency. The offer was to remain open until 5 p.m. on Wednesday 2 February 1995. At the bottom of this letter, in 14 lines of close type, the following is stated:

> The offer price has been calculated by taking into consideration Country Estate's view of management performance, whether the price of the stock is expected to be more or less volatile than the market average, the expected degree of volatility of the market as a whole, the future uncertainties relating to the company, the market and otherwise and the costs of this offer. The offer price is 33¢ below the latest market price of $1.23* and it must be understood that if the market price prevails the offeree may obtain a better price if he/she sells his/her securities on the market through a stockbroker. . .

This letter from Country Estate and Agency may be legal, but its morality is highly questionable. The price of 90¢ for each Henry Walker share offered by Country Estate and Agency is over 37 per cent below the market price of $1.23 at the time the offer was made to Henry Walker shareholders.

Country Estate and Agency has made similar offers to shareholders in many other companies listed on the Australian Stock Exchange both in South Australia and interstate. The targeted companies are all profitable and their shares can be readily bought and sold on the Australian Stock Exchange. The fact that Country Estate and Agency continues to make these offers would strongly suggest that a large number of shareholders are persuaded to sell their shares for a much lower price to Country Estate and Agency without realising that they could obtain a much higher price on the share market.

The vulnerable group may include shareholders who have inherited their shares or who may be elderly. Some shareholders apparently believe there is some connection between Country Estate and Agency and the company whose shares they have targeted.

Today, I rang Country Estate and Agency, which confirmed that, although its offer for Henry Walker shares was meant to close at 5 p.m. on Wednesday 2 February, the company would still be happy to accept shares for 90¢. I bet they would, because the price today is $1.18! Country Estate and Agency's letter claims that the offer price has been calculated by taking into consideration Country Estate and Agency's view of management performance and future uncertainties relating to the company. The fact is that Henry Walker, as a most successful contract miner, has lifted its profit from $4.6 million in 1992-93 to $10.1 million in 1993-94—a hike of 122 per cent in net profit accompanied by a 36 per cent increase in dividend. A further increase in profit is forecast in the current year from its operations in Australia and Indonesia in association with large companies such as BHP and Mitsui.

Country Estate and Agency's activities force companies such as Henry Walker to incur unnecessary expense. Henry Walker felt obliged to protect its shareholders by writing to them, warning them of the offer and suggesting that they should consider the offer carefully and if in doubt consult their financial adviser. My question is: is the Attorney-General aware of the activities of Country Estate and Agency, and does he believe that there is any way in which this undesirable activity can be curbed?

The Hon. K.T. GRIFFIN: I am certainly aware of the matter. The issue, of course, involves not just the technical legality but whether the information which has been communicated to shareholders is appropriate in any event. There is a question whether or not the premises upon which the offer is made are defamatory. That is really a matter for the Henry Walker group, but what the honourable member has said suggests that, on the basis on which the offer is made, there are some uncertainties about the company.

I would have thought that in the ordinary commercial understanding of that it would suggest that there were some financial or other difficulties which might undermine its secure status. So, there is that issue of defamation.

Of course, the offer to shareholders is not unique. I have seen letters to other companies written in similar vein, more likely where a company is in liquidation but also in circumstances similar to that of the Henry Walker group. This matter has been drawn to my attention, and I have asked my officers to refer it to the Australian Securities Commission to ascertain whether in the light of its experience anything can be done to address it and, if not, whether it is appropriate to seek, through the Ministerial Council on Corporations, to have the matter taken further by way of amendment to the

Act if ultimately it is determined that these sorts of approaches identified by the honourable member are appropriate.

ORGANOCHLORINS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the overworked Attorney-General a question about the withdrawal of organochlorins.

Leave granted.

The Hon. T.G. ROBERTS: The Commonwealth and the States have been very slow to recognise the health problems associated with exposure to organochlorins, but they are now—

An honourable member interjecting:

The Hon. T.G. ROBERTS: Well, we have had problems in this Parliament associated with the exposure to organochlorins of children at the Streaky Bay school on the West Coast when the school was being built. The Opposition's questioning of Dr Cornwall—that is how long ago it was—was very stringent, and quite rightly so. I understand that a further notch in the belt of the then Leader, Martin Cameron's, reputation was cut by his close questioning of Dr Cornwall about the exposure of children to organochlorins. That was subsequently followed up by the department, and links were drawn between the health problems being experienced by children in that school and organochlorins. I think heptachlor was being used to prevent white ants from attacking the structure.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: White ants haven't worked; it has been attacks from the exterior that have plagued the ALP in recent years, but I think the termites are about to attack the Liberal Party.

At a recent meeting of the Agriculture and Resources Management Council of Australia and New Zealand in Hobart it was moved to phase out organochlorins in every State with the exception of the Northern Territory, which has a particularly ferocious little beast which needs heptachlor and chlordane to treat. Even so, the Commonwealth has given the Northern Territory a timeframe during which it should phase out the two dangerous organochlorins (heptachlor and chlordane) that are being used to treat termite infestation.

The council agreed to allow the continued use of the insecticide in the Northern Territory, but South Australia is one of those States in which it was agreed that the phase-out period would apply. The only State that had an exemption was the Northern Territory. I have since received information that the Minister is making an application through the council to exempt South Australia from the ban or the phase-out period.

There is no reason at all, in my view—I guess that could be called an opinion—and that of the council why South Australia needs to have an exemption. The council actually says that South Australia should be included. As you would understand, Mr President, Western Australia has a very bad problem associated with termites in a wide variety of areas in the west, but it has not been granted exemption, either.

My questions are: what case is the Government preparing to present to the council for an exemption for South Australia from the phase-out period and, if it is preparing a case, on what grounds will the Government argue to secure its cause?

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

UNCLAIMED MONEYS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General a question about unclaimed moneys.

Leave granted.

The Hon. R.D. LAWSON: Readers of the Government *Gazette* will be familiar with the long lists of unclaimed moneys, which appear in the *Gazette* each year. They are mostly for small amounts of unclaimed dividends and interest. However, members may be gratified to learn from the *Gazette* of 2 February that Austrust Limited holds $595 455.39 of unclaimed money for an estate called the Barton-Caulfield estate. The last claim on this money was made on 1 January 1988 and the amount is said to represent the distribution of an outstanding estate. The Unclaimed Moneys Act of 1891 requires companies that have been holding unclaimed moneys in an account which has not been operated upon for six years to enter particulars of unclaimed moneys in a register and to gazette the information annually during January. All unclaimed moneys not paid by the company to the owner within two years after first publication of the gazettal shall be paid to the Treasurer for the use of the public revenue. The true owner of such money may claim the same from the Treasurer.

Section 65 of the Administration and Probate Act provides that every administrator of an estate who is possessed of property of a person who is not of full legal status or not resident in the State shall transfer such property to the Public Trustee, who is required to deal with it in accordance with law. However, this section does not apply to trustee companies such as Austrust. The Attorney as the responsible Minister will be aware of the expertise of officers of the Public Trustee's Department in identifying and locating beneficiaries of estates. Having regard to the large amount apparently due to the Barton-Caulfield estate, and the long period since any claim was made upon it, my questions to the Attorney are:

1. Will he make inquiries to ascertain the circumstances of the payment?

2. Will he satisfy himself that appropriate steps have been taken to locate or identify the persons entitled to the estate?

3. Will he investigate whether the Administration and Probate Act ought to be amended to facilitate payment of such funds to the Public Trustee?

The Hon. K.T. GRIFFIN: Many people will be rushing out to check their ancestors in light of such a large amount being available.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Maybe some people cannot find their ancestors, or do not want to, but, seriously, there appear to be some differences in the processes that apply between unclaimed moneys held in respect of deceased estates by trustee companies and on the other hand by individual trustees. I will have that investigated. With respect to the proposed possible amendment to which the honourable member refers, I will have the matter examined and bring back replies on all those questions. At first view it seems appropriate that, where there is an interest in a deceased estate, whether held by a trustee company or an individual trustee, that it be transferred to the Public Trustee. I am not saying that it is a Government policy decision made on the run, but it certainly has some attraction from the viewpoint of the beneficiaries as much as anything else. I will take up

the issues that the honourable member raises and bring back some replies.

BLOOD TESTING KITS

The Hon. R.R. ROBERTS: I seek leave to make a short explanation before asking the Minister for Transport a question about blood testing kits.

Leave granted.

The Hon. R.R. ROBERTS: I have in my possession a copy of an article from the Port Pirie *Recorder* of 22 December 1994 by reporter Greg Mayfield headed, 'Judge quashes drink driving charge'. The matter concerned a person who was charged and indeed was shown to have a blood alcohol level of .198. However, the defendant was acquitted because his blood alcohol reading was obtained unwittingly and unlawfully. This was because police had issued the defendant with a blood test kit that was not at the time officially approved. Costs of $1 600 were awarded against the police and the blood alcohol test kit was shown to be not an approved kit. The defendant was found not guilty on both charges, despite the prosecution alleging a blood alcohol reading of .198. In his judgment, the magistrate, Jonathan Harry said:

> The blood alcohol reading would be excluded from the evidence in the charge of driving under the influence, since it had been obtained unwittingly and unlawfully. Police had failed to supply the defendant with a blood test kit in a form approved by the Minister for the taking of the analysis of the sample of the person's blood. This is an important safeguard and the only one available to the defendant in order to ensure that breath analysis test result is consistent with any later blood sample taken and analysed by another qualified person. The blood test kit provided by the police on the night had been in a form later approved by the Minister in a minute to the Emergency Services Minister, who was responsible for implementing the provision of the test kit.

The article continues:

> The minute in question was included in the exhibits before the court. In the minute the Minister for Transport, Diana Laidlaw, said the issue of whether there was an approved blood test kit as approved by the Road Traffic Act had been raised by a member of the South Australian Police Prosecution Branch.

The Minister is quoted as saying:

> While I understand that it is unlikely that the question of a formal approval would be raised or that a challenge on these grounds would be accepted by a court, I am advised that the issue should be put beyond doubt.

The article continues:

> Ms Laidlaw said she accordingly approved the blood test kit substantially conforming to the details which she set out in the minute. Mr Harry said that proof of approval in the form of the minute was strongly disputed by counsel.

My questions to the Minister are:

1. Will she outline the events that led to this debacle?

2. Will she outline what has been done to rectify the anomaly created by her failure to approve the kit?

3. How many kits have been issued?

4. How many other people were convicted on the basis of this illegal test kit?

5. Will those convicted illegally be advised of the illegality of the kit in question?

The Hon. DIANA LAIDLAW: I will have to get further information on some of the detailed questions that the honourable member has asked and, as the question raised was before the court and involves the Minister for Emergency Services, I will gain further information.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: I know, but the matter was before the courts. I do not have other than a report in the local paper. I would like to see the transcript and the judgment and have discussions with the Minister for Emergency Services. I will do all of those things and get back to the honourable member.

CHARITABLE ORGANISATIONS

The Hon. A.J. REDFORD: I seek leave to make a brief statement before asking the Leader of the Government, representing the Treasurer, a question about charitable organisations in South Australia and tax.

Leave granted.

The Hon. A.J. REDFORD: I and a number of other members have received correspondence from Resthaven and Eldercare on the findings of the draft report of the Industries Commission on charitable organisations in Australia. Eldercare is one of the largest providers of care to elderly in South Australia and Resthaven also provides aged care in our community. Included in the draft report are a group of recommendations relating to the tax exempt status of charitable organisations. It has been suggested that the loss of tax exempt status, particularly in the areas of FBT exemption and the like, have the potential to significantly reduce levels of funding and resources available in many areas in which charitable organisations serve. Whilst there was an emphasis on a cost neutral outcome for Government, it is suggested that the extensive bureaucratic reporting requirements would cause an overall benefit loss to the community. Further, there is also concern of potential flow-on effects that may be experienced at State and local government levels when the special significance and status given to the work of community social welfare organisations is no longer acknowledged in the community.

In other words, it may well have an effect on payroll tax, stamp duty and land tax. It has been suggested that there will be a loss of funding to the charitable sector in real dollar terms. Eldercare has also suggested that services such as dementia units at Payneham South, Glengowrie and Yorke Peninsula, subsidies for specialised dementia care and other services will be put at risk. It is suggested in the correspondence that Eldercare could lose as much as $818 000 should the Industries Commission recommendations be implemented.

In the light of the fact that many of these organisations are directly involved in areas that would normally be classified as State responsibilities, my questions to the Treasurer are as follows:

1. If the recommendations are implemented, what effect will they have on, first, the State budget and, secondly, services provided by these organisations to the South Australian public?

2. Will the Treasurer consider making submissions to the Industries Commission on its draft report and the effect that the recommendations are likely to have?

3. To what extent would the suggested bureaucratic reporting requirements have on the State budget and the ability of these organisations to continue to provide services at the level at which they currently provide them?

4. Was the State Government invited to provide submissions to the Industries Commission and did the Government provide any submissions to the commission on this topic?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Treasurer and bring back a reply as soon as possible.

The Hon. M.S. FELEPPA: As a supplementary question, will the Minister approach the Federal Treasurer supporting the retention of tax exemptions now benefiting charitable organisations so that their financial effectiveness can be maintained and to ensure that the State's finances will not feel the strain?

The Hon. R.I. LUCAS: Yes, I will be pleased to refer the honourable member's question to the Treasurer and bring back a reply to the Hon. Mr Feleppa as well.

BANK FEES AND CHARGES

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the PSA inquiry into bank fees and charges.

Leave granted.

The Hon. BARBARA WIESE: The Minister would be aware that late last month the Federal Treasurer, Mr Willis, announced an inquiry into bank fees and charges to be conducted by the Prices Surveillance Authority. Mr Willis ordered the inquiry following widespread community concern about the increasing incidence of banks applying charges for numerous purposes, often hitting those least able to pay, such as pensioners and even children.

Perhaps the straw that broke the camel's back in terms of community alarm over banking behaviour was the news that Westpac was conducting secret trials in which 9 000 customers in New South Wales were to be used as guinea pigs for testing a new range of fees. The PSA inquiry will have broad terms of reference and community organisations and individuals have been encouraged to make submissions.

It is my understanding that the inquiry will include an examination of the adequacy of disclosure of fees and interest rates and whether prices charged by different financial institutions are able to be compared easily by customers. The Australian Federation of Consumer Organisations and the Australian Pensioners and Superannuants Federation have indicated that they will be telling the inquiry that banks have an obligation to provide basic banking services to all Australians, including pensioners and low income earners. My questions to the Minister are:

1. In view of widespread community concern about banking practices in the area of fees and charges and the longstanding interest and involvement of Consumer Affairs Ministers in these matters, particularly in relation to consumer credit practices, is it the intention of the Minister and the Government to make a submission to the PSA inquiry on behalf of South Australian consumers and, if not, why not?

2. Does the Minister agree with the expressed view of consumer and pensioner peak bodies that banks have an obligation to provide basic banking services to all Australians?

The Hon. K.T. GRIFFIN: The answer to the first question is that the Government has not made a decision in respect of that matter.

The Hon. Barbara Wiese: Are you considering it?

The Hon. K.T. GRIFFIN: Some consideration is being given to it. However, the honourable member will have to recognise that banking is the responsibility of the Federal Government under the Commonwealth Constitution.

In addition, the Prices Surveillance Authority is undertaking the investigation and it has its own powers to require the production of information under the Commonwealth legislation. However, as I said, it is an issue to which the Government is giving consideration in respect of the matter of a submission but no decision has yet been taken. It may be that, whether or not the State makes a submission, the issue, because of its important nature to the public, will be fully examined by the Prices Surveillance Authority. I do not know whether other States and Territories are making submissions on the question. However, I will endeavour to ascertain whether or not they are doing so. In terms of the second question, the answer is 'Yes.'

LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General a question about the Legal Practitioners Complaints Committee.

Leave granted.

The Hon. SANDRA KANCK: I have been contacted by a constituent who made a complaint against a solicitor to the Legal Practitioners Complaints Committee. My constituent was concerned that, in writing his letter of complaint, he could be sued for defamation by his former solicitor on the basis of the wording of his letter. Given his experience with the legal profession the last thing he wanted to do was to employ the services of yet another solicitor to ensure his letter of complaint did not leave him liable to further litigation. In a reply to a letter from the constituent dated 25 January 1994, the Attorney's secretary said in part:

> The Government is committed to reviewing the procedures of the Legal Practitioners Complaints Committee with a view to making them more efficient and expeditious. In addition, the committee has reported that it supports amendments to the Legal Practitioners Act to provide immunity to complainants.

In a subsequent letter to my constituent dated 28 February 1994, the Attorney's secretary wrote:

> Certainly, the Attorney-General has noted your concerns and will keep them in mind when considering the review of the operation of the Legal Practitioners Complaints Committee, which is part of the Liberal election policy.

My questions to the Attorney-General are:

1. When will the Government fulfil its promise to review the operation of the Legal Practitioners Complaints Committee?

2. Would the Attorney intend that the review address the question of immunity of complainants?

The Hon. K.T. GRIFFIN: There has been an examination, particularly of the resourcing of the Legal Practitioners Complaints Committee, over the past few months. In fact, additional resources have been made available to enable it to restructure the way in which it undertakes its functions. That work is ongoing and the next stage is to examine the framework within which it undertakes its work. Certainly, there are now more resources. I was concerned in Opposition that there was considerable delay in dealing with complaints by members of the public. The complaints committee Chairman, Mr Greg Holland, was also very sensitive to the criticisms being made about delay. That, together with my own discussions with the members of the committee, has resulted in a streamlined approach to dealing with complaints.

In respect of the issue of defamation, I do not think there is a problem of the type suggested by the honourable member. I will make some inquiries about that within my office and bring back a reply. I would have thought that, in respect of defamation, there was at least qualified privilege for anyone who was making a complaint against a practitioner to the body which, by statute, is authorised to investigate those complaints. I do not think there is a particular problem, but I will have that matter examined and bring back a reply.

MEAT CONTAMINATION

In reply to **Hon. ANNE LEVY** (7 February).

The Hon. K.T. GRIFFIN: Inquiries relating to the labelling of ingredients in food products are directed to the South Australian Health Commission as it is regulated under the food standards code of the Food Act 1985 and the commission is best qualified to investigate this type of complaint.

The Commissioner for Consumer Affairs may take action against a person for breaches of the Fair Trading Act 1987 where a person in the course of trade or commerce has engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, or where the person falsely represents that goods are of a particular composition.

For example, failure to include the description of an ingredient may be considered deceptive or misleading if it can be proven the action is taken to gain an advantage in the sale of the product.

The Office of Consumer and Business Affairs to date has not received any complaints alleging the substitution of meat in Garibaldi products.

The Health Commission has instructed that detailed tests be carried out to determine the ingredients of the affected product.

THOMAS HUTCHINSON TRUST AND RELATED TRUSTS (WINDING UP) BILL

The Hon. K.T. GRIFFIN (Attorney-General) brought up the report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be printed.

Bill recommitted.

Clause 1—'Short title'—reconsidered.

The Hon. K.T. GRIFFIN: It is appropriate to make several observations about the select committee. It only had to meet twice. I might say that it was a particularly harmonious select committee. We did advertise in relation to the Bill. Two letters were received: one from the Adelaide Children's Hospital (or it is on that letterhead) in respect of the Bill, indicating that the hospital agrees that section 3, which deals with the winding up of the other related trust, is fair and reasonable. It agreed also in respect of the Hutchinson Trust that it is appropriate to deal with them in the way proposed by the Bill. One of the trustees, Mr B.D. Colton, responded that he has read the Bill and finds its form acceptable.

So there was no opposition to the Bill. As I say, it was advertised. We did communicate with the trustees, the Adelaide Women's and Children's Hospital and the Gawler Hospital Service and no-one raised any difficulty. However, the select committee recommended that the trust be recognised publicly by the Gawler Health Service. We felt, with the charity shown by the benefactors, that it was important to ensure that in taking the steps which this Bill proposes the generosity of those who have given money to the old Hutchinson Hospital, upon various trusts, should be recognised.

At one stage we gave consideration to the name of the hospital, but that is not something over which the select committee had any jurisdiction. However, we did have the power and did make a recommendation that the amounts in the trust and the generosity of the benefactors be recognised, and the secretary has been charged with the responsibility of drawing that to the attention of the Gawler Hospital in particular.

Clause passed.

Remaining clauses (2 to 4), preamble and title passed.

Bill read a third time and passed.

REAL PROPERTY (WITNESSING AND LAND GRANTS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Real Property Act 1886. Read a first time.

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

That this Bill be now read a second time.

This Bill makes amendments to the Real Property Act to remove the current proof provisions and to replace them with a new system of witnessing documents. For many years the office of the Attorney-General, the Registrar General's Office and many electorate offices have received complaints that the short form of proof for Real Property documentation is causing considerable inconvenience and hardship to individuals who are not 'well known' to one of the functionaries authorised to witness such documentation in this State.

If a Real Property instrument is to be executed within South Australia only the following are authorised to witness the document; the Registrar-General, any Deputy Registrar-General, or a Notary Public, Justice of the Peace, Commissioner for taking Affidavits in the Supreme Court or Proclaimed Bank Manager. These people can only witness Real Property documents if the person whose signature they witness is well known to them.

Individuals who are not 'well known' to one of the above functionaries must be advised to execute the long form of proof pursuant to section 268 of the Real Property Act 1886. This section provides for the signature of a person to be witnessed by anyone to whom he or she is 'personally known', and for the witness to then appear before an authorised functionary who must certify that the witness is a person who is known to the authorised functionary and of good repute, and that the witness declared that the person whose signature had been witnessed was personally known to the witness. While this is a method of resolving the problem of getting a Real Property instrument witnessed, it is a complex process and it is unfortunately often the case that individuals have been inappropriately advised and are put to considerable inconvenience when trying to have documentation witnessed.

In Victoria since 1955, there have not been any special requirements for witnessing of instruments pursuant to the Transfer of Land Act, other than the witness is an adult and disinterested in the transaction. In New South Wales since 1979, the only requirements are that the witness be an adult, personally known to the signatory and not a party to the dealing.

The Registrar-General has been in contact with both the Lands Titles Offices in New South Wales and Victoria (where the volume of conveyancing transactions is considerably more than that in this State) and advice has been

received that cases of forgery or fraud are not of any greater number than in our own experience. Nor has there been an increase in fraud or forgery since the relaxation in witnessing requirements. The requirements in Western Australia are that the execution of documents must be witnessed by a person who is not a party to the transaction and the witness must provide his or her name, address and occupation. Tasmania also has a general witnessing requirement.

The Registrars of Title from all States and Territories agreed at their conference in October, 1991 that moves toward interstate uniformity would be appropriate, and the witnessing of documents is one area where this could be achieved. This Bill therefore provides for the replacement of the current proof provisions with provisions which allow any adult person to witness a signature where the party is known to or identifies himself/herself to the witness. The Bill does not specify the means by which evidence of identity may be obtained but such evidence could be obtained by reference to current passport, photo driver's licence or other identifying material. Such material would not of course be necessary where the witness personally knows the executing party. The witness must be an adult person who is not a party to the instrument. The witness is required to supply full name, address and daytime contact phone number to be printed legibly under the witness's signature.

Provision is made for the Registrar-General, at any time to require the witnessing of an instrument to be proved in such manner as the Registrar-General thinks fit. A substantial penalty is imposed on a witness for attesting an instrument without knowing the executing party personally, and having no reasonable grounds on which to be satisfied as to identity. The penalty also applies where the witness knows or has reasonable grounds for suspecting that the person signing is not a party to the instrument or does not have authority to sign on behalf of a party. The Bill also contains some technical provisions relating to the manner in which land grants are registered. These provisions will allow for the electronic registration of land grants under the Crown Land Act in the same way as ordinary titles are now registered electronically. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

This clause amends the definition of 'certificate' contained in the principal Act so that land grants issued under the *Crown Lands Act 1929* will not fall within that definition after commencement of the Bill. This means that land grants will no longer be subject to the requirements contained in section 49 of the Act relating to folios in the Register Book.

Clause 4: Insertion of s. 66A

This clause inserts a new section 66A in the principal Act requiring registration of title to land where a land grant has been lodged in the LTO. Because this section requires the Registrar-General to register title, the provisions of section 51b (allowing electronic registration of title) and 51c (requiring issue of a certificate of title) will also apply to land that is the subject of a land grant.

Clause 5: Amendment of s.112

This clause consequentially amends section 112 of the principal Act to remove references to registration of the grant and substitute references to registration of the certificate.

Clause 6: Substitution of ss. 267 to 269

Clause 6 repeals sections 267 to 269 of the principal Act and substitutes the following sections:

267. Witnessing of instruments

New section 267 provides that instruments must be witnessed by an independent adult who either knows, or is satisfied as to the identity of, the party executing the instrument. Subsection (4) allows the Registrar-General to require verification of the execution of an instrument whether or not there is reason to suspect that it has been improperly executed.

268. Improper witnessing

New section 268 provides an offence for improperly witnessing an instrument, punishable by a maximum fine of $2 000 or imprisonment for six months.

Clause 7: Repeal of eighteenth and nineteenth schedules

This clause is consequential to the repeal of sections 267 to 269.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 934.)

The Hon. T. CROTHERS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. R.R. ROBERTS: The Opposition will be supporting the second reading of this Bill to amend the Industrial Relations Bill. This Bill refers to a number of specific areas, and I note that the Leader of the Democrats, the Hon. Mike Elliott, does have some amendments on file, which I have had the opportunity to have a look at. Whilst I agree with most of the substance of those amendments, I intend to lodge amendments on behalf of the Opposition, with significant alterations in some areas and minor alterations in others.

The proposals in this Bill cover a couple of areas, and the general comment is that, whilst these issues are I understand being touted as relatively routine amendments designed to deal with procedural matters, upon their reading it is clear that this may be more than the case. For example, the issue of so-called greenfield sites and enterprise bargaining agreements can hardly be seen as necessary due to an oversight. The new Act is claimed to be designed specifically to encourage and facilitate bargaining. Greenfield sites have been the subject of considerable dissension over recent years in relation to the area of enterprise bargaining. The absence of reference to them in the original Bill is either a gross incompetence or a deliberate omission.

Likewise, the issue of further restriction to workers' rights to access unfair dismissal provisions is an unwarranted and unfair restriction of rights. Use of Federal legislation and a claimed desire for uniformity is no argument from a Government which sees no need to follow the Federal Act in a range of other areas. If it wishes to claim that such other variations make for a better Act, it must then accept that the variation in the area of unfair dismissals is also defendable on the same basis.

We will be looking at section 75 with respect to enterprise bargaining in particular. We note that section 75 is a rewrite of the existing provisions and still contains the problems found in the original. The problem is that the union appears to be required to obtain the majority of approval when a majority of the whole group may not be the members of that organisation. For example, the group may be all employees of the enterprise, comprising production workers, say, 75 per cent, clerical workers, 15 per cent, and sales staff, 10 per cent. Union X, for instance, covers sales staff who are 90 per cent unionised; union Y covers clerical staff who are 80 per

cent unionised; and union Z covers production staff who are 40 per cent unionised.

As the Act is currently worded, neither the clerks nor the sales people, of whom a significant majority are unionised, are able to have their union be a party to the agreement on their behalf without the formal consent of the majority of the entire work force, that is, the group. This is tantamount to a denial of legal representation of a party's choice. Likewise, the significant minority of the production people are denied the right of choice and are forced to accept that they must remain individually liable in spite of the Act's claim to encourage genuine freedom of association. It needs to be remembered that the involvement of a union does not of itself impose anything on a non-unionist, who remains a party to the agreement, along with all other non-unionists and any union which is authorised to be a party on behalf of the particular group of employees.

Logic supports a notion that a union should be a party to an agreement only when a majority of its members so authorise, as this prevents a union somehow binding non-members (section 139) whilst preventing non-unionists denying union members effective representation by their chosen representative. This is either the intent (but not effect) of the Act or, if it is not, then the Act simply serves as a device to frustrate workers' attempts to organise.

In summary, then, it can be said that freedom from association concepts require amendment to this provision. We will be moving an amendment to that area. Under section 75(3), again we find a provision the only real purpose of which can be to frustrate union attempts to represent their members. As the Act already makes more than adequate provision for agreements for those workers who choose not to be represented by a union, this sort of provision can best be described as bureaucratic harassment of unions and a further infringement of freedom of association concepts.

It may be argued that such an authority is needed on every occasion to ensure that members' authority is current, rather than some vague catch all the intent of which may have been lost in time. Such an argument (that the worker may not now wish the union's involvement) is negated by the fact that the members reaffirm their desire for representation each time they pay their membership fees. Those no longer wanting representation simply discontinue membership.

For a Government that argues for an increase in EBAs and a reduction in red tape and Government interference in the working of business, this provision stands as a contradiction of all of these. On one hand we have a claim that productivity and efficiency are to be promoted whilst, on the other, we have an Act that introduces structural delays in the reaching of an agreement, which not only delays implementation of change but also discourages involvement in the process. This change is counterproductive, unsupported by any evidence of the need for change (too few agreements exist to demonstrate anything other than the failure of the Government's attempts to promote bargaining) and contrary to the Government's own claims of providing for freedom of association. Since the Government appears to argue that the proposed amendment simply reflects its general intent, this is clearly unsatisfactory, and we will be moving amendments in this area also.

In relation to section 75(4), the proposed change brings into question several fundamental concepts already contained in the Act, including the right of workers to be involved in discussion of conditions of employment which vary from the award (section 76(1)); the independence of the Employee Ombudsman, an area of significant concern for us and the role it has been proposed that he plays (section 60); unions' ability to represent workers' interests in all stages of the negotiating process, as in section 76(3); the need for those bound by the agreement to have knowledge of what therein will bind them (section 77(1)(g)); workers' rights to choose their mode of representation; and coercion free involvement in change.

Irrespective of whether we accept that the absence of reference to the quite major issue of 'greenfield' sites was an oversight or deliberately withheld in order to avoid close scrutiny, it should be conceded that such circumstances require addressing. One of the dangers is that such agreements or arrangements provide a very real threat of back door abuse unless very carefully controlled. Of note is the absence of a definition of what is intended to be the possible scope of application. The naive may assume that we all know what is meant: some major new project of economic significance to the State involving an employer who does not currently have operations here. This concept will be sold as development-promoting, and opposition to it as anti-development.

What is to stop an employer getting an agreement via the proposed change and, having done so, closing down an existing operation and restarting it with a new name as a 'greenfield' site? Existing employees would be offered a new job, perhaps on terms they might have already refused to accept, on a take it or leave it basis. What then of claims of coercion free bargaining? For example, the Government intends to corporatise the EWS. Would this be claimed to be a 'greenfield' situation and the opportunity taken by the Government to try to avoid the obligations of the existing framework agreement covering public sector employees?

The use of the Employee Ombudsman as the bargaining agent raises a number of other problems, such as (a) the future employee gets no choice of bargaining agent; and, (b), the matter of potential compromising of the office of the Employee Ombudsman. There would appear to be a clear contradiction where the Employee Ombudsman had negotiated an agreement and was later asked to consider, say, in the case of the example already cited, a claim of coercion under section 62(1)(c); (c) where an agreement was subsequently to be considered by the new employees to be unsatisfactory, this would undermine confidence in the Employee Ombudsman.

Section 62(1)(d) requires that the Employee Ombudsman bring an independent judgment to bear, as a third party in review, prior to the ratification of an agreement. This valuable role would be made impossible by the involvement of the Employee Ombudsman as a primary party to negotiations. Whilst the Employee Ombudsman is by definition partisan in concept, one would hope that, where disputation did occur between worker and employee, conciliation would be the preferred method of resolution. Such a role is undermined by the specific involvement of the Employee Ombudsman in direct bargaining in the first instance. The proposal leaves in place an agreement to which no-one involved in negotiations has any legal obligations—surely a bizarre concept at common law.

In adequately dealing with this issue of 'greenfield' agreements, their existence needs to be limited to genuine cases to minimise such lack of involvement as is unavoidable, to ensure as far as is possible consistency of application of the principles of the Act, and to provide natural justice to unrepresented parties and, finally, some degree of accountability for the outcomes and redress to the workers who come

afterwards. If we get past the fundamental question, why cannot the new employer utilise existing award conditions for an interim period whilst an agreement is negotiated? The following seeks to address the issues that I have just raised.

In the absence of a specific decision by them to the contrary, negotiations on behalf of workers should be done by their natural representatives, that is, the trade unions. Logically, this should be the union to which the future workers are most likely to belong should they decide to become a member, that is, the union with coverage of that industry legally recognised by the union's rules.

Consistent with this principle, but one step removed and hence less desirable, negotiations could be handled through the UTLC. Such involvement provides the workers with reasonable redress upon employment should they be unhappy with the outcome. They may choose to affect union decisions about the future conduct of the agreement via internal processes or may choose subsequently to proceed to a non-union agreement at the end of the interim period. Involvement of the most relevant union in the process leaves the Employee Ombudsman free to exercise the full range of regulatory and advisory roles envisaged by the current Act.

An agreement entered into by the union would then not be left in limbo during the employment phase (which could see new employees joining the enterprise over several months), and the commission and the employer would have a representative body with which to negotiate over any difficulties that may very likely occur during the start up period. We will be moving some amendments in that area.

In relation to section 79(7)(b), a new definition is being proposed, and we envisage that it would be in the following terms:

> The agreement is to be renegotiated between the employer and the group of employees (or an association properly authorised to negotiate on the employee's behalf) within a period (not exceeding six months) the Commission considers appropriate in the circumstances and fixes on approving it.

Also, we will be addressing in some detail the very important area of unfair dismissals where there has been significant arguments and significant comparisons with what is happening federally. This item raises the problem posed by a series of concessions made to employers by the Federal Government some of which are already the subject of attempts to change the State regulations. These other issues also go to the question of exclusions from access to the provisions on unfair dismissal. We are still caught with the argument that Federal Labor agrees with these changes, notwithstanding their inherent unfairness.

Our defence, such as it is, still relies upon the fact that the State Government chooses only to follow the Federal Act when it suits it or is forced to do so, and hence we are under no obligation to agree to the change simply to provide consistency.

The Hon. K.T. Griffin: It was amended. When the Bill came before us it was specifically referred to as being consistent with the Commonwealth. It was giving additional benefits in line with the Commonwealth. The Commonwealth has now come back: the Opposition wants to come back.

The Hon. R.R. ROBERTS: The Attorney-General feels the law ought to be means tested. I find it quite surprising that the Attorney-General would be defending this particular proposal. What is being proposed by this arrangement is that we means test who will have access to the unfair dismissal processes in this country. If one earns more than $60 000, one is not going to be able to access the system of unfair dismissals, and if one does one gets $30 000, or six months, whichever is the lesser. I am yet to be convinced that this is not means testing the law and giving unequal access to resolution under a fair, equitable and even-handed dispute resolution system.

We will also be seeking to move amendments to sections 105 and 151. We have some concerns about the first schedule, and when the Bill is in Committee we will move amendments in those areas.

In conclusion, the Opposition intends to support the second reading. As I say, I am not in a position to lodge the amendments proposed. They are being drafted. I am in consultation with my colleague in another place, Mr Ralph Clarke, and we will be lodging those amendments. But, by and large, we are happy with the amendments indicated by the Hon. Mr Elliott that are on file, although we will be making some adjustments. We will be looking for the support of the Australian Democrats to provide fair conditions for people negotiating 'greenfield' agreements, in particular, and in the important area of access to the justice system, particularly with those provisions where we can get unfair dismissal claims judged on their merits, not on the value of the remuneration of the employee involved.

If the decision is that the dismissal was harsh, unjust or unreasonable, that should be the deciding factor as to whether or not compensation is required, not on the fact that one person is an executive and one person is a cleaner, a tradesman, or otherwise. We support the second reading and will seek to move amendments in the Committee stages.

The Hon. A.J. REDFORD secured the adjournment of the debate.

NATIONAL ENVIRONMENT PROTECTION COUNCIL (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 30 November. Page 1026.)

The Hon. T.G. ROBERTS: I rise to support the measures that are incorporated in the Bill before us. It was supported in the Lower House and we have agreed to support it here with no amendments. It is a State Bill that will complement the National Environment Protection Council Act and will set up and establish a council that will discuss issues which States have and which also have a Commonwealth background to them.

In this Council we have been talking for a long time about complementary legislation over a number of areas, and the environment is one of those that recognises no State boundaries in relation to the impact of certain actions on the environment.

The Bill sets forward a number of initiatives that need to take place. The objects of the inter-governmental agreement are to provide a cooperative national approach to the environment; a better definition of the roles of respective Governments; a reduction in the number of disputes between Commonwealth, States and Territories on environmental issues; greater certainty of Government and business decision-making; and, just as important, better environmental protection through the integration of environmental considerations in the decision-making processes of all Governments at the project, program and policy levels.

A number of objectives will be taken into account when the council is considering its objectives. For example, it will

make measures in relation to ambient air quality, ambient marine industry, and fresh water quality; noise related to protecting amenity where variations and measures would have an adverse effect on national markets for goods and services; general guidelines for the assessment of site contamination; the environmental impacts associated with hazardous waste and motor vehicle emissions; and the reuse and recycling of used materials.

Included in many of those measures and policies and protocols that are applied to those areas of the environment will be a lot of discussion and negotiation, so that the States will have a policy that is able to be maintained across the borders and so that everyone knows exactly where they stand in relation to the issues that are being discussed. There will be no major variations and the States will not be able to be played off against each other in the goals of some of the national investment decisions that are made in the setting up of businesses and industries. One State will not be able to be played against another to lower its standards so that costs can be cut. It will ensure protection for the whole of the Australian environment.

There is a little bit of a hiccup in relation to Western Australia's participation, but I think there is a reasonable chance that Western Australia may join as a full member later. I understand that it has signed the agreement but has not agreed to be bound automatically by many of the protocols. South Australia and all other States and Territories have signed and have agreed to introduce complementary legislation for the application of national environment protection measures to be made by the council. I hope that Western Australia will reconsider its position. Although it signed the inter-governmental agreement, it may join the council and become a full participating member at a later date.

There is, I guess, a clinical and philosophical argument that Western Australia will present in relation to template legislation that will be put forward by the Commonwealth. There has been a longstanding argument in favour of Western Australia standing alone in relation to many Commonwealth initiatives and determining its own position in relation to outcomes that it feels affect only the eastern States. To some extent, Tasmania has put forward the same argument, but Western Australia seems to stand out for much longer than other States from joining Commonwealth initiatives which bring about uniformity. This Council and the State Government will look at much more legislation that will be complementary to template legislation put forward by the Commonwealth as we draw together a single trading nation out of competing States. Although we have different brands of Government at Federal and State level, it is good to see some cooperation in some of the important issues that impact on the ability of smaller States uniformly or on their own to engage in negotiations that will ensure, particularly in this case, the protection of the environment.

As others have commented in another place, the water quality of the Murray River system on which we rely so heavily is one issue on which, under this Commonwealth Act, we can at least enforce and enact legislation that will provide for cleaning up and non-pollution policies to be drawn up in all other States that lie to the north of the catchment area from which we draw our water. So the water quality in Victoria, New South Wales and Queensland, which would impact on our quality of life, can be covered by Commonwealth legislation.

I think the River Murray Commission was a good step towards the establishment of uniform laws. An evolutionary period is going on in relation to clean water and the quality of water in the Murray. Over time there will be a lot more cooperation on many more issues to bring about a Commonwealth and single solution to many problems rather than a number of States having different legislative programs that make it difficult to coordinate, in this case, the environment. I recommend support of the Bill.

The Hon. DIANA LAIDLAW (Minister for Transport): I thank the Hon. Terry Roberts for his contribution to the debate. I agree with him that this is important legislation. It is legislation that the Minister for the Environment is keen to see passed so that the important measures in this Bill can be implemented promptly. It will be seen as landmark legislation not only because it passed the Commonwealth Parliament last year but because all States other than Western Australia will have mirror legislation. It is hoped that, in the not too distant future, Western Australia will see the wisdom of being involved in this important initiative. It is important legislation, I suppose, in the vein of the Corporations Act where we have essentially mirror legislation across the nation for business practice and regulation. This legislation relates to environmental practice and regulation as administered by the National Environment Protection Council. I thank the honourable member for his support of the legislation.

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

WORKERS REHABILITATION AND COMPENSATION (BENEFITS AND REVIEW) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

South Australia's workers rehabilitation and compensation system is at the crossroads. In the mid 1980's the architects of the current scheme held out high social and industrial goals for this scheme. Since the scheme commenced in September 1987 and until this State Government took office in December 1993 successive Labor Government's failed in their responsibility to reform the scheme and protect its capacity to meet those high ideals.

The result is that this Government inherited a workers rehabilitation and compensation scheme in need of structural reform to protect its viability and return to employees, employers and the community the benefits of a fair and affordable State based rehabilitation and compensation system.

The first phase of this reform package has been implemented with the establishment of new structures designed to enhance the operation and administration of WorkCover and address a number of specific legislative reforms. Those changes came into operation from 1 July 1994 and the new WorkCover Board, Occupational Health and Safety Division and policy Advisory Committees are already playing a significant role in the restructured system.

This Bill represents a central element in the second phase of the State Government's reform agenda.

Importantly, this second phase of reform is multi-dimensional. There are three broad areas of reform which will see the re-vitalisation of our workers rehabilitation and compensation scheme.

Firstly, the State Government is implementing industry based occupational health safety and welfare initiatives designed to promote best practice by employers and employees and prioritise injury prevention.

Secondly, the WorkCover Board is moving towards the restructuring of administrative arrangements and in particular implementing the necessary measures designed to permit private

sector bodies to be involved in the management of claims and other specified functions in accordance with statutory powers of delegation.

These health and safety prevention initiatives and administrative reforms are vital reforms. They are however inadequate without the necessary ingredient of legislative changes to the structure of the rehabilitation and compensation scheme provided for in the current Act.

On 18 October 1994 the Parliament was informed that an independent actuarial assessment of WorkCover's outstanding claims liabilities for the year ending 30 June 1994 showed that the scheme has an unfunded liability of approximately $111 million. This means that the scheme is only 86.6 per cent funded. The independent actuarial report also forecast a further increase in the outstanding claims liability of 2.5 per cent per year, taking the level to $898 million in 5 years unless the scheme's costs are curtailed.

The savings which may be achieved through improved workplace prevention practices and the outsourcing of claims management and other functions cannot alone restore financial viability to the scheme. At a practical level, the financial vulnerability of the scheme has grave implications for employees and employers. If the scheme continues to lurch into higher and higher unfunded liabilities, it will ultimately have no capacity to provide any level of realistic pension or lump sum support, let alone the unaffordable benefit levels currently provided for by the current South Australian scheme.

Importantly, the scheme's unfunded liability cannot be rectified by simply calling upon the employer tax payer to inject more income by way of higher levy rates. Already the average levy rate in South Australia of 2.86 per cent is nationally uncompetitive to the tune of $90 million every year. The State Government's objective is to achieve a nationally competitive average levy rate of 1.8 per cent. That objective is important to this State. It was an objective stated to this Parliament by the then Minister of Labour in 1986 and repeated publicly by the then Premier Bannon. Successive State Labor Governments failed to meet this policy objective because they were either unwilling or incapable of implementing structural changes to the legislative scheme.

Under the current structure of the scheme, that target of a 1.8 per cent average levy rate is unachievable. In fact, the WorkCover Board advised on 12 October 1994 that the gravity of the unfunded liability situation must be brought to the attention of Parliament and that unless claims costs reduce dramatically the Board will have no alternative but to increase average levy rates in 1995/96 to 3.1 per cent or 3.3 per cent. That increase would represent an additional $25-$30 million of employer levies per year from South Australian industry. This is on top of the already $240 million per year paid in WorkCover levies by industry in this State.

This second phase of reform to the WorkCover scheme in South Australia is not an optional extra. It is essential if this Government and this Parliament are to meet their responsibilities to employees, employers and act in the public interest.

Whilst these financial and economic imperatives are powerful, the State Government has designed this Bill in a manner which recognises and respects the social and industrial policy objectives underpinning the WorkCover scheme. This Bill does not dismantle the framework of the 1986 Act. Indeed, in some respects it re-introduces or reinforces the policy intention of the original architects of the scheme. Rehabilitation and return to work incentives remain as key policy principles.

In designing this Bill the Government has balanced economic, social and industrial objectives. The State Government has sought to maintain and enhance comprehensive statutory arrangements which embody strong safety incentives, are fair to those who suffer work related injury or illness but which do not at the same time impose an unreasonable burden on business or taxpayers. These are the proper policy objectives for Governments as noted by the Industry Commission in its February 1994 report on workers compensation in Australia, and the State Government concurs with those principles.

The Bill establishes a new statutory framework for the payment of compensation benefits to injured workers. The changes must be seen in both a national and an international context. The benefit levels prescribed in the current South Australian workers rehabilitation and compensation scheme are the most generous of any scheme in Australia, and at least equal to the highest statutory benefit levels in any Western economy. The consequence of these unaffordable benefit levels, paid in the context of a pension based no fault scheme has been to reduce the incentive for rehabilitation and return to work and to guarantee uncompetitive levy rates. As an Industry Commission Report has noted, high compensation payouts mean high workers compensation premiums.

In restructuring the benefit levels proposed by this Bill the State Government estimates that savings in the order of $80 million per year will accrue to the scheme. These savings, together with estimated savings arising from reforms to the administration of claims management and improved prevention practices are designed to bring the scheme back to a fully funded basis and enable the WorkCover Board to reduce levy rates to a nationally competitive level.

Equally the social objective of creating greater incentives for early returns to work by injured workers will ease the negative impact on those workers and their families from being pensioned for life on the WorkCover scheme.

The restructuring of worker benefits in this Bill has been designed in a manner which creates a fairer benefit scheme. Benefits for all workers for the first six months on the scheme remain at the maximum 100 per cent level. Between 6 and 12 months those benefits reduce to 85 per cent of pre-injury earnings. After 12 months this Bill proposes that benefits payable to long term seriously injured workers be increased from their current 80 per cent of pre-injury earnings to 85 per cent. In doing so the Government has recognised the hardship accruing to seriously long term injured workers whose incapacity renders them unable to return to gainful employment. Benefit levels for less seriously injured workers beyond 12 months continue to be payable under the WorkCover system, but at a level which will be equated with Federal social security payments. These workers will also have greater access to lump sum payouts as an alternative to WorkCover pension entitlements. No worker with a continuing incapacity will be unilaterally removed from the WorkCover system as the integrity of a pension based scheme until retirement age is retained.

Significantly, the restructured benefit provisions reintroduce a limited concept of partial incapacity being deemed as a total incapacity and give effect to the second year review principle which was intended in 1986 to act as a counterbalance to full life long pension entitlements. The 1992 interpretation by the Supreme Court of the current Act in the James Case fundamentally undermined the policy balance contained in the 1986 Act with respect to workers benefits. Quite irresponsibly, the then State Labor Government failed to amend the Act to return it to its 1986 intent. Had that been done, the scheme may not be at the crossroads which now confront it. No fair minded policy can justify the payment of life long weekly pensions at current levels with no second year review given that more than half of the existing workers receiving pensions long term have disabilities of less than 10 per cent.

Reform to the South Australian scheme cannot await the outcomes of proposals for nationally consistent benefit levels, which are on current indications unlikely to be achievable in any event. However, in designing this benefit structure the State Government has had regard to views expressed by the Industry Commission in its February 1994 report. The Industry Commission Report clearly indicates that a scheme based upon full compensation to be paid for lost income through to notional retirement age provides little incentive for employees to undertake rehabilitation programs and return to work. Yet that is the exact outcome which past State Government's have allowed to exist with their failure to rectify the partial deemed total and second year review consequences of the 1992 Supreme Court interpretation.

The benefit levels proposed in this Bill will maintain a fair benefit structure which will continue to be the most generous of any State statutory workers compensation scheme in Australia. Indeed, the scheme of benefit levels proposed are more than favourable when compared to the benefit structure contemplated by the Industry Commission in its February 1994 report. The Industry Commission Report proposed a staggering down of benefit entitlements after 26 weeks to a social security pension level for partially incapacitated workers, with an 85 per cent pension level for totally incapacitated workers.

The State Government has not proposed in this Bill any direct cost transference to the Federal social security system, despite this being the practice in most other Australian schemes. To do so would have unilaterally forced workers off the WorkCover system at an arbitrary date. Interestingly, the 1984 agreement between unions and employers in South Australia (which acted as the precursor to the 1986 Act) proposed that the Commonwealth Government should contribute towards the cost of the South Australian scheme. Whilst the legislative structure proposed by this Bill does not do so directly, the Bill provides greater opportunities for workers to leave the South

Australian scheme with lump sum payments and then maintain pension entitlements under the Federal social security system.

The Bill also makes important changes to the manner in which disabilities are assessed, and reintroduces the concept of an independent medical panel for the purposes of assessing worker disabilities. Other important reforms proposed in the Bill concern a tightening of the definition of average weekly earnings, use of Federal Comcare guides to assess impairment, tightening the test for compensability of disabilities, allowing more flexibility in the redetermination of claims, limiting the current open-ended reemployment obligations of employers, providing more certainty in the territorial operation of the Act, placing greater emphasis on employer involvement in the determination of claims and rehabilitation, and providing flexibility for the deferment of levy rate payments in cases of serious economic difficulties.

The Bill also reforms the manner in which disputes concerning compensation entitlements are resolved. The existing scheme of dispute resolution has proven to be costly and cumbersome. This Bill proposes to implement a two tiered review mechanism, firstly an administrative review by independent review officers, with appeals from administrative reviews to the Workers Compensation Appeal Tribunal, together with a compulsory conciliation process under the auspices of that Tribunal. In implementing these structural reforms, the Bill again gives fuller recognition to the original intent of the 1986 legislation and the agreed position of unions and employers whereby WorkCover would provide "an administrative procedure for settling claims and disputes in lieu of the current legal adversary system" and "establish and use medical panels to advise the Corporation in respect of medical assessments". This proposed dispute resolution system is also consistent with the recommendations of the Industry Commission report which expressed a preference for non-adversarial dispute resolution procedures with emphasis on both conciliation and arbitration and "a prompt initial decision subject to non-judicial review by an independent internal arbitrator in the first instance, before appeal to external arbitration and/or resort to the courts".

In developing this Bill the State Government has also been conscious of the need to consult widely with the affected parties. When introducing the first phase of legislative change to the WorkCover scheme into this Parliament in March 1994 the Government foreshadowed that amendments with respect to many of these matters would be introduced in this Parliamentary session. In August 1994 WorkCover released a discussion paper on the scheme and options for future reform. The State Government has received a wide variety of submissions from employers, employees, employer associations, unions, the medical profession, the rehabilitation profession and other service providers with respect to that options paper. These submissions have been fully taken into account in the development of this Bill. A draft Bill was publicly and preliminary advice sought and received from the Workers Rehabilitation and Compensation Advisory Committee. The Government thanks those organisations and persons for their contribution to this process and look forward to continuing the consultative process during the period that this Bill is before this Parliament.

This State Government not only has the vision and strength to implement this second phase of reform, but has the social and industrial responsibility to do so. It is now for this Parliament to recognise the serious context in which this Bill is brought before the Parliament and to assist the State Government in returning the WorkCover scheme to a sound financial and equitable footing, and ensure that South Australia's workers rehabilitation and compensation system can become and remain one which employers and employees in this State can be proud of as a viable ongoing concern. I commend the Bill to this House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on a day or days to be fixed by proclamation.

Clause 3: Amendment of s. 2—Objects of Act

It is necessary to amend section 2(2) of the Act to extend the operation of this section to persons exercising administrative powers, especially in view of proposed reforms relating to Review Officers.

Clause 4: Amendment of s. 3—Interpretation

This clause relates to new definitions required on account of this Bill. The definition of "suitable employment" is an adaptation of current section 35(2) of the Act and allows the concept of suitable employment for a partially incapacitated worker to include an assessment of employment or other remunerative work that the worker could reasonably be expected to undertake (on the basis that such employment or work is available), having regard to various factors relevant to the circumstances of the particular worker.

Clause 5: Substitution of s. 4

This clause relates to four matters. Firstly, it is intended to revise the provision relating to average weekly earnings. The key concept is basically to provide that a disabled worker's average weekly earnings will be worked out by dividing gross earnings for the last 12 months (the "relevant period") by the number of weeks for that period. However, an adjustment will be made if a worker's earnings have been affected by the relevant disability, or if the worker is an apprentice or under the age of 21 years (with an expectation of increasing remuneration). Various contributions and payments made for the benefit of a worker will be disregarded. It is also intended to retain a prescribed maximum and a prescribed minimum, as defined under the new section. A relevant consideration under the definition of "prescribed maximum" will be the number of ordinary hours of work fixed by a relevant award or enterprise agreement. If there is no relevant award or agreement, the prescribed maximum will be ascertained by multiplying the worker's average hourly rate of remuneration by 38. However, the prescribed maximum for a worker will not be able to exceed 1.5 State average weekly earnings in any event. Secondly, new section 4A will provide that the extent of a permanent impairment will be worked out, and expressed as a percentage, on the basis of the approved principles. Furthermore, if a worker who has a permanent impairment also has a related non-economic loss, the extent of that non-economic loss will be worked out, and expressed as a percentage, on the basis of the approved principles. The approved principles will be approved by regulation or, if no regulations are made, will be the "Comcare principles". Thirdly, it is necessary to provide for the appointment of a panel of medical experts under the proposed new provisions. Fourthly, it is intended to establish a new scheme for the assessment of a permanent impairment or a degree of non-economic loss. The new scheme will rely on assessments from two medical experts. If the experts cannot agree on an assessment, an independent adjudicator will be appointed and he or she will be required to report on which of the two assessments should be preferred. An assessment that is finalised under this provision will not be subject to review or appeal under the Act.

Clause 6: Substitution of s. 6

This clause will revise the rules as to the territorial application of the Act. The key will be whether or not there is a nexus between the worker's employment and the State. There will be a nexus if *(a)* the worker is usually employed in this State and not in any other State; *(b)* the worker is usually employed in two or more States, but is based in this State; or *(c)* the worker is not usually employed in any State (as defined), but is employed (for some time) in this State or has a base in this State and is not covered by a corresponding law. A worker will be usually employed in a particular State if 10 per cent or more of his or her time in employment is (or is to be) spent working in the State.

Clause 7: Amendment of s. 30—Compensability of disabilities

This amendment relates to the key concept that a disability is compensable under the Act if it arises from employment. A disability will now be taken to arise from employment if it arises out of or in the course of employment, and the employment is the sole cause of the disability, or a significant contributing factor.

Clause 8: Amendment of s. 35—Weekly payments

These amendments relate to the benefits paid to a worker who is incapacitated for work. Benefits will initially be paid according to 100 per cent of notional weekly earnings for total incapacity, or 100 per cent of the difference between notional weekly earnings and the weekly earnings that the worker is earning, or could be earning in suitable employment for partial incapacity. Partial incapacity will be treated as total incapacity for the first year unless the Corporation establishes that suitable employment is reasonably available to the worker. The payment of benefits at the 100 per cent level will be reduced to 85 per cent after 26 weeks. Furthermore, a prescribed maximum will apply from the end of the "relevant period" for disabilities that consist of an illness or disorder of the mind caused by stress, or for workers who have an impairment not exceeding 40 per cent. The relevant period for stress-related disabilities will be 26 weeks, and in other cases will be 1 year, subject to a requirement as to stabilisation.

Clause 9: Amendment of s. 36—Discontinuance of weekly payments

It is intended to replace subsection (3a) of the Act so that a decision to discontinue or reduce weekly payments can take effect without delay (in all cases). Notice will still need to be given (as soon as practicable after the relevant decision is made).

Clause 10: Amendment of s. 37—Suspension of weekly payments
This clause amends section 37 in a manner consistent with the amendments to be made to section 36.

Clause 11: Substitution of s. 42
It is intended to simplify the ability to commute a liability to make weekly payments under section 42 of the Act. It is intended to allow a commutation in any case where the Corporation and the worker agree. The capital amount will be fixed by the agreement. A decision on whether or not to enter into an agreement, or about the amount fixed by agreement, is not reviewable. An agreement under new section 42 will discharge the liability to make the weekly payments.

Clause 12: Amendment of s. 42A—Loss of earning capacity
This clause makes various amendments to section 42A of the Act, relating to assessments on the basis of loss of future earning capacity. The Corporation will be able to make an assessment after one year (not 2 years as is currently the case), subject to two exceptions identified below. A projection will be made over a relevant period, as defined (which may be limited to the duration of the period of incapacity if the incapacity is not permanent). The new provisions give recognition to the concept of "presumptive" earnings in a case of partial incapacity, taking into account earnings, or potential earnings, in suitable employment. An assessment of capital loss will be taken to be 85 per cent of the present value of the loss that is indicated by the relevant projections (the Act currently prescribes that the loss is 80 per cent of present value).

Clause 13: Insertion of s. 42C
It is appropriate to prescribe two exceptions to the ability to undertake a capital assessment under section 42A, namely if the worker has a stress-related disability, or if an impairment is 40 per cent or less. This is consistent with the policy that appears in the amendments to section 35.

Clause 14: Substitution of s. 43
This clause revises the provision for the assessment of lump sum compensation for non-economic loss. The new provision will set out a formula for the calculation of the sum. The assessment will include components relevant both to permanent impairment and non-economic loss. A limitation will apply if the extent of permanent impairment is less than 10 per cent, subject to specified exceptions.

Clause 15: Amendment of s. 46—Incidence of liability
This clause repeals various provisions relating to payments of compensation by employers on behalf of the Corporation. These provisions have never been applied.

Clause 16: Amendment of s. 53—Determination of claim
A new provision to be inserted in section 53 of the Act will require the Corporation to investigate a matter raised by an employer when a claim is lodged under the Act.

Clause 17: Substitution of s. 58B
It is intended to revise section 58B of the Act relating to an employer's duty to provide work to a worker who has been disabled in his or her employment. The provision will only operate if the worker wants to return to work. The concept of suitable employment is retained (in greater detail). Certain exceptions will apply to the operation of the provision. New section 58C will require an employer to give 28 days notice of a proposed termination of employment of a worker who has suffered a compensable disability. Certain exceptions will apply, including that the termination is on the ground of serious and wilful misconduct, or that the worker's rights to compensation have been exhausted.

Clause 18: Insertion of s. 62A
This clause effectively transfers existing section 98A of the Act so that it will now appear as section 62A (consequential on later amendments).

Clause 19: Insertion of s. 69A
This will allow the Corporation to defer the payment of a levy by an employer in certain cases.

Clause 20: Repeal and substitution of Part 6
This clause provides for the repeal of Part 6 of the Act, and the substitution of new Parts dealing with reviews and appeals. New Part 6 is concerned with a new form of administrative reviews to be undertaken by Review Officers. A panel of Review Officers (the "Review Panel") will be established by the new Part. New section 81 will provide that proceedings before a Review officer will be in the nature of an administrative review of an administrative act or omission. There will be no automatic right of representation before a Review Officer. It is proposed that the Corporation will, on receiving an application for review, give notice to any person who is directly affected by the relevant decision. The person will be invited to make written submissions within seven days after the date of the notice. The Corporation will be required to attempt to resolve the matter by agreement. If a resolution is not achieved, the application must be referred to a Review Officer (together with all relevant material). The Review Officer will not conduct a formal hearing. The Review Officer will be required to resolve the matter within a certain time period. An award of costs will still be available (other than where a party has acted unreasonably). Now Part 6A relates to appeals. The Workers Compensation Appeal Tribunal will continue. New conciliation proceedings will be available. The Tribunal will be required to call a conference of the parties before a matter proceeds to hearing with a view to determining the matter by agreement.

Clause 21: Insertion of s. 107A
The Corporation will be required to provide an employer with reports on request. A request will need to be accompanied by the prescribed fee.

Clause 22: Worker to be supplied with copy of medical report
The Corporation or an employer must forward reports from a medical expert to the worker. It is intended to require that the report be so forwarded within seven days.

Clause 23: Repeal of Schedule 3
This is a consequential amendment on account of the proposed enactment of new section 43.

Clause 24: Transitional provisions
This clause sets out the transitional provisions that are to apply on account of the enactment of this measure.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

LOTTERY AND GAMING (MISCELLANEOUS) AMENDMENT BILL

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

GOVERNMENT FINANCING AUTHORITY (AUTHORITY AND ADVISORY BOARD) AMENDMENT BILL

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

ADJOURNMENT

At 4.12 p.m. the Council adjourned until Tuesday 14 February at 2.15 p.m.