LEGISLATIVE COUNCIL

Thursday 9 March 1995

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

MINING (NATIVE TITLE) AMENDMENT BILL

In Committee.

(Continued from 8 March. Page 1415.)

Clause 29—'Insertion of Part 9B.'

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

Page 16, after line 31—Insert:

Limitation on powers of court

63PA.(1) The ERD Court cannot make a determination conferring a conjunctive authorisation[1] authorising mining operations under both an exploration authority and a production tenement unless the native title parties[2] are the registered holders of (rather than claimants to) native title in land, are represented in the proceedings and agree to the authorisation.

(2) The ERD Court cannot make a determination conferring an umbrella authorisation[1] unless the native title parties[2] are represented in the proceedings and agree to the authorisation.

1. See explanatory note to section 63I(1).
2. See explanatory note to section 63IA(1).

This amendment represents a significant limitation on the provisions in relation to conjunctive and umbrella authorisations. First, it removes the power of the ERD Court to make a determination imposing a conjunctive authorisation that covers both the exploration and mining phases on native title parties who are mere claimants. However, the court can make a determination conferring a conjunctive authorisation covering both the exploration and mining phases of a development on the registered native title holders, provided that the holders are represented in the proceedings and agree to the authorisation.

Also, it leaves open to the court to impose a conjunctive authorisation on mere claimants, provided that the authorisation is limited to activities in the exploration phase only, that is, activities conducted pursuant to an exploration authority, namely, a miner's right, a precious stones prospecting permit, the mineral claim and exploration licence or a retention lease. Secondly, it removes the power of the court to impose an umbrella authorisation on native title parties. A determination to conferring an umbrella authorisation can only be made if the native title parties are represented in the proceedings and agree to the authorisation.

The Hon. CAROLYN PICKLES: I move:

Page 16, after line 31—Insert:

63PA(1) The ERD Court cannot make a determination conferring a conjunctive authorisation[1] authorising mining operations under both an exploration authority and a production tenement unless the native title parties[2] are the registered holders of (rather than claimants to) native title in land, are represented in the proceedings and agree to the authorisation.

(2) The ERD Court cannot make a determination conferring an umbrella authorisation[1] unless the native title parties[2] are represented in the proceedings and agree to the authorisation.

Explanatory note—

- can only relate to prospecting or mining for precious stones in a precious stones field over an area of 100 square kilometres or less; and
- if the native title parties are claimants to (rather than registered holders of) native title land, cannot authorise mining operations for a period exceeding 10 years.

Section 63I(3) and (4) are to similar effect in relation to native title mining agreements.

1. See explanatory note to section 63I(1).
2. See explanatory note to section 63IA(1).

The Government and the Opposition have come to agree on the limits of the ERD Court in respect of a conjunctive agreement and umbrella authorisations. We believe our explanatory note goes further than the Government's provision because it picks up the limitations on umbrella agreements which were the subject of amendment to proposed section 63I. Therefore, we oppose the Government's amendment and urge the Committee to support our amendment.

The Hon. K.T. GRIFFIN: As the Hon. Carolyn Pickles has said, the Opposition's amendment is almost identical to the Government's proposed section 63PA. The difference is in the explanatory note in the Opposition's amendment. I suppose to some extent that is really consequential on matters already debated and on which I have been defeated. We have debated previously the umbrella authorisation proposed by the Opposition to be limited to a precious stones field and over an area up to 100 square kilometres. It also provides that, where the native title parties are mere claimants, the umbrella authorisation cannot authorise mining operations for a period exceeding 10 years. I indicated last night that our view is that there is no point in limiting umbrella authorisations to proclaim precious stones fields. For those reasons I oppose the amendment but I recognise that at least some aspects of it are consequential on earlier amendments. The point about precious stones is that our proposal is to limit umbrella authorisations to precious stones areas and not to precious stones fields. As I tried to make clear last night, that was one of the concerns we had, that there was that technical limitation, which we did not believe was appropriate.

The Hon. K.T. Griffin's amendment negatived; the Hon. Carolyn Pickles's amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 17, lines 14 and 15 (new section 63R)—Leave out 'If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Part' and insert 'If, on application by a party to proceedings in which a determination was made, the Minister considers it to be in the interests of the State to overrule the determination'.

We consider that the Minister should not have the power to overrule a decision of the ERD Court if both parties are happy with the agreement. We believe it would be a gross governmental interference with the judicial process and utterly unfair to the parties concerned. Therefore, we oppose the existing clause.

The Hon. K.T. GRIFFIN: The amendment is opposed. It is quite clear that section 42 of the Federal Native Title Act does not fetter the ministerial power in this way. What we were seeking to do was to reflect a similar approach in this State. Section 42 of the Commonwealth Native Title Act specifically provides:

> If a State Minister or a Territory Minister considers it to be in the interests of the State or Territory to overrule the determination of a recognised State--Territory body for the State or Territory, the State Minister or Territory Minister may, by writing given to the recognised State--Territory body, make a declaration in accordance with subsection (3).

Of course, a similar power is given to the Commonwealth Minister in relation to a determination of the National Native Title Tribunal, although of course that is under a bit of cloud at the moment in the light of the decision of the High Court in relation to Brandy's case. But, notwithstanding that, it is a provision in the Commonwealth Act. Subsection (3) provides:

The Minister concerned—

and that is either the State or Federal Minister as the case may be—

may make either of the following declarations:
(a) a declaration that the determination is overruled;
(b) a declaration that the determination is overruled subject to conditions to be complied with by any of the parties.

The Opposition's amendment proposes a significant fetter on the Minister's power to overrule a determination of the ERD Court by providing that he or she can do so only on application by a party to the proceedings. Our power is expressed to be exercisable by the Minister where the Minister considers it to be in the interests of the State to do so. In our view, it would be contrary to the public interest to provide that the power to overrule should only be exercised at the request of one of the parties where the interests of the State are at stake. They may have some cosy arrangement which is adverse to the interests of the State. It is important ultimately for the Minister to exercise an overriding responsibility. As I say, it is consistent with the Commonwealth Act. We do not want to put ourselves in any less advantageous position under the State legislation than the State Minister would otherwise be under the Federal Act, so we very strenuously oppose this amendment.

Amendment carried.

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

Page 17, lines 19 and 20 (new section 63R)—Leave out proposed subsection (2) and insert:

(2) However—
(a) the Minister cannot overrule a determination if more than two months have elapsed since the date of the determination; and
(b) the substituted determination cannot create a conjunctive or umbrella authorisation[1] if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

[1] See the explanatory note to section 63I(1).

This relates to the previous matter, but this amendment seeks to provide a two month time limit to the Minister's power to overrule. As amended, the provision would preclude the Minister from overruling a determination of the court and substituting a determination creating a conjunctive or umbrella authorisation if no such authorisation had been decided on by the court. It also precludes the Minister from expanding the scope of such an authorisation if one had been imposed. It should be borne in mind that conjunctive and umbrella authorisations can now be conferred only by the court in the very limited circumstances set out in the proposed section 63PA: it is important to recognise that.

The Government has been listening to the various submissions which have been made; it has consulted widely; it has sought to recognise the concerns which have been raised, particularly by Aboriginal interests; and it has made what it regards as some significant amendments accordingly more clearly to define the circumstances in which in this case the Minister can act.

The Hon. CAROLYN PICKLES: I move:

Page 17, lines 19 and 20 (new section 63R)—Leave out proposed subsection (2) and insert:

(2) However—
(a) The Minister cannot overrule a determination—
(i) if more than two months have elapsed since the date of the determination; or
(ii) if the Minister was a party to the proceedings in which the determination was made; and
(b) the substituted determination cannot create a conjunctive or umbrella authorisation[1] if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

[1] See the explanatory note to section 63I(1).

We oppose the Government's amendment because of a vital omission. The Government and Opposition agree that some limitation should be placed on the ministerial override power by placing a time limit of two months on the Minister and thus preventing the Minister from creating a conjunctive or umbrella authorisation if the original determination was only an individual authorisation for a current proposal. The Opposition sees terrible opportunities for abuse of the process if one of the parties to a judicial proceeding is able to rip up any decision with which the party is unhappy. If we must have a ministerial override—and I acknowledge that it is in the Commonwealth legislation—some basic limits must be placed upon it because of the obvious risk for abuse or behaviour which would be perceived as abuse; hence, our wording in proposed new subsection (2)(a).

The Hon. K.T. GRIFFIN: The Government opposes the amendment moved by the Leader of the Opposition. It is not in the public interest to fetter the Minister's discretion in this way. The overriding concern must be whether it is in the interests of the State to overrule or not. There is no fetter on the Federal or the State Minister's discretion under the Commonwealth Native Title Act and, therefore, there should not be any such fetter in the State legislation.

I suggest that it is unlikely that the Minister would exercise the power to overrule where the Minister has participated in the hearing which gives rise to the court determination, but there may be exceptional circumstances in which that might be necessary. The Government's very strong view is that, in the interests of the State, the power to overrule should be retained in the circumstances which we have proposed in our amendment rather than its being limited in the way in which the Opposition seeks to limit it.

The Hon. SANDRA KANCK: The Democrats will support the Opposition amendment, particularly because of the limitation that it will put on the power of the Minister. To use a sporting analogy, if we allowed the Government's view to prevail, it would be like an umpire giving a decision and the player overriding the umpire. It is an absurdity.

Hon. K.T. Griffin's amendment negatived; Hon. Carolyn Pickles's amendment carried.

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

Page 17, lines 32 and 33 (new section 63U)—Leave out 'the ERD Court or the Minister decides to authorise mining operations on native title land under this Part on conditions requiring the payment of compensation' and insert 'a determination under this Part authorises mining operations on conditions requiring payment of compensation'.

The effect of the amendment would mean that the proposed section 63U(1) would read:

If a determination under this Part authorises mining operations on conditions requiring payment of compensation—
(a) the ERD Court must decide the amount of compensation; and
(b) the compensation must be paid into the ERD Court to be held on trust and applied as required by this section.

The amendment is designed to make clear that the provision applies to compensation flowing from any determination that mining operations may go ahead. The Commonwealth actually suggested that the existing provision was unclear and this amendment is made to make our intentions clear to the Commonwealth.

The Hon. CAROLYN PICKLES: The Opposition has a similar amendment. We will not be proceeding with ours but will be supporting the Government amendment.

Amendment carried.

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

Page 18, after line 28—Insert:

Review of compensation

63VA.(1) If—

(a) mining operations are authorised by determination under this Part on conditions requiring the payment of compensation; and

(b) a native title declaration is later made establishing who are the holders of native title in the land,

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.

(2) The application must be made within three months after the date of the native title declaration.

(3) The Court may, on an application under this section—

(a) increase or reduce the amount of the compensation payable under the determination; and

(b) change the provisions of the determination for payment of compensation.

(4) In deciding whether to vary a determination and, if so, how, the Court must have regard to—

(a) the assumptions about the existence or nature of native title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions; and

(b) the need to ensure that the determination provides just compensation for, and only for, persons whose native title in land is affected by the mining operations;

(c) the need to provide a secure basis for mining investment in the State and the consequent need to refrain from unnecessary disturbance of the basis on which investment decisions might have been made.

This new clause 63VA allows for a review of compensation audit to be paid as a condition of allowing mining operations to proceed in circumstances where native title declaration is subsequently made. It recognises the possibility that persons claiming native title, who were the native title parties for the purposes of the initial determination, may be found subsequently not to be the holders of native title in the relevant land or indeed that they are not the exclusive holders of the native title in the land as another group may also have an interest.

This provision would allow the court, on application by the registered representative of the native titleholders, or on application by the person liable to pay compensation under the determination, that is the miner, to review the decision concerning compensation. A time limit of three months has been included in order to encourage native title holders and/or miners to make their application for review reasonably quickly. On an application for review, the court can increase or reduce the amount of compensation payable under the determination. It can also change the provisions of the determination for the payment of compensation.

Certain criteria have been stipulated in subclause (4). The court is required to have regard to these criteria in deciding whether or not to vary a determination. The criteria involve the court in considering the assumptions made about native title in the initial determination, and the extent to which the subsequent determination as to who holds the native title have confirmed or altered those assumptions, the need to compensate those whose native title is actually affected by the mining operations, and the need to provide certainty for the mining industry. This proposed provision is to the same effect as section 52(4) of the Native Title Act but the criteria for variation have been added for the assistance of the ERD Court. The Commonwealth requested that a provision to the same effect as its section 52(4) be included in the State legislation.

I think the debate on this issue will focus upon the criteria. They are not exclusive criteria. They are designed to send some signals to the court as to the matters to which they must have regard, whilst not excluding others in making a decision. It is the Government's view that that is a very important part of this clause where a review of compensation is required to be made.

The Hon. CAROLYN PICKLES: I move:

Page 18, after line 28—Insert:

Review of compensation

63VA.(1) If—

(a) mining operations are authorised by determination under this Part on conditions requiring the payment of compensation; and

(b) a native title declaration is later made establishing who are the holders of native title in the land,

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.

(2) The application must be made within three months after the date of the native title declaration.

(3) The Court may, on an application under this section—

(a) increase or reduce the amount of the compensation payable under the determination; and

(b) change the provisions of the determination for payment of compensation.

Where compensation is payable pursuant to an ERD Court determination which permits mining operations on native title land, this Government amendment allows the amount of compensation to be reconsidered upon application of either a native titleholder or the person liable to pay compensation under the determination. The Opposition believes this is an unusual provision relating to the jurisdiction and powers of the court. The amendment works against the principle of finality which is considered advantageous in respect of court proceedings. Still, for the sake of fairness, it is agreed by both Government and Opposition that the question of compensation should be revisited when the issue of identity of native titleholders is finally resolved in respect of particular land.

We reject the Government amendment, however, because of the uncertainties created in subclause (4). It is more trouble than it is worth. The sorts of factors which the Attorney would prefer to see enshrined in the legislation are no doubt the sorts of factors that will be considered anyway in proceedings brought under this section. But to try to categorise the relevant factors in this way will only lead to endless appeals about what the words mean and whether every factor has been fully and properly considered. I suggest we should let the court decide each case according to the justice and merits of the case—that is what courts do every day of the week, and I believe Parliament should not unduly restrict the considerations of the court. We therefore oppose the Government amendment. We trust that the Australian Democrats will support our amendment because I am confident it will do what the Government expects 63VA to do.

The Hon. K.T. GRIFFIN: I reject the assertions made that subclause (4) will lead to endless appeals and that we ought just to let the court look at each issue on its merits and make its decision on that basis. The fact of the matter is that the Government believes that the Parliament ought at least to identify some of the criteria which the court is to take into consideration and what is really behind the proposed section

63VA. We would have thought that from the point of view of native title claimants and holders as well as miners it would be important to seek to identify to the court some of the issues which should be taken into consideration, remembering that this is a new area, that the court does have a right to review under this provision, but that there ought to be at least some broad categories within which the court's attention is directed.

All political Parties—Federal Government, State Government and the Opposition at both Federal and State level—have periodically criticised the courts for making law and have said that Parliament ought to be spelling out what the law is. I think that that is a bit too simplistic in many respects but, notwithstanding that, it is the responsibility of the Parliament at least to try to crystallise some of the issues which it has in mind and to which the court should have regard when it is considering a review of the payment of compensation. So, we believe that there is a very strong, compelling reason why some signals ought to be given to the court so that it has some idea as to what the Parliament had in mind that should be taken into consideration. It is not limiting: it seeks to focus the mind of the court.

I would suggest it is not likely to lead to endless appeals. If one just reflects upon the criteria, the assumptions about the existence or nature of title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions seems to me to be quite clear. Some assumptions may be made which form the basis of the determination but which subsequently are shown to be erroneous or even fallacious; the need to ensure that the determination provides just compensation for and only for persons whose native title land is affected by the mining operations. Surely that is really the focus of the whole legislation, both State and Federal: it is to provide not only for native title but that, where there is a development, the compensation is just and that it relates only to those who have native title in land affected by the mining operations and whose native title will be affected by those mining operations.

The other criterion is the need to provide a secure basis for mining investment in the State and the consequent need to refrain from unnecessary disturbance of the basis on which investment decisions might have been made. There does have to be certainty in any proposal for substantial mining development in this State, not only for the miner and its shareholders but also for the miner and its financiers. Financiers will not lend on projects where there is uncertainty about the agreement. If the agreement has been negotiated or a determination has been made, except in very limited circumstances that ought to be final. What this amendment does on the Government's side is to provide a measure of comfort in that respect, without unnecessarily or unduly limiting the power of the ERD Court. I would urge members opposite to think again about the consequences of not putting in some criteria, and I would hope that they would reconsider sufficiently to be able to indicate support for the Government's amendment.

The Hon. SANDRA KANCK: The Democrats have an amendment on file which mirrors that of the Opposition. Obviously, the difference between that and the Government's amendment is the Government's subclause (4). All up, I probably spent about half an hour playing around with subclause (4). I have some sympathy with the Government's argument and I understand that need for certainty for the mining industry, but eventually I came to the point where, having spent half an hour on it and not coming up with words that I found suitable, I had to leave it because ultimately I had to get some amendments on file. So, it is not through any desire on my part to create any uncertainty. In principle I think that the ideas are good and I am sure that the court will have regard to them, anyway. If it did not I would be wondering about what the court was doing because, as the Attorney has said, this is the focus of the whole legislation, so if it is not considering it, there would have to be something wrong with the court. So, because it was difficult to come up with suitable wording, I would prefer not to include that subclause (4), and therefore I support the Opposition.

The Hon. K.T. GRIFFIN: This is a very important part of the Bill and I am disappointed to hear the Hon. Sandra Kanck's position, although I am encouraged somewhat by the ray of light that may be at the end of the tunnel as at least she is sympathetic to what we are trying to achieve. The fact is that it is for the Parliament to send some signals to the court as to the sorts of things it should take into consideration. It is not uncommon in legislation to provide some criteria which have to be taken into consideration in making decisions, whether it is by Ministers or by some other way. I think the Development Act probably has some criteria which have to be considered even for courts. Of course, the Development Act criteria will necessarily flow through to the court system if any decisions go on appeal.

I do not have at my finger tips other examples. It may be that, by the time this is reconsidered, I will be able to draw to the attention of members other examples where this may occur. The fact is that the Government is not seeking to limit the independence of the court or its power to make decisions. We are saying that the Government, and we hope the Parliament, would be seeking to focus upon these sorts of issues in relation to the review. It is not a power to review at large; we are saying that we would expect the court to take into consideration these primary considerations in making its decision, as between native title holders and claimants as well as between native title holders, claimants and miners. So, there is an even-handedness about the description of the criteria.

The Hon. CAROLYN PICKLES: I know that the Attorney is concerned about providing certainty in the court, but the Opposition still maintains that subclause (4) of the Attorney's amendment will create more uncertainties than he hopes to avoid.

The Hon. R.D. LAWSON: It seems to me that the danger of omitting to specify any criteria at all is an omission by this Parliament that will be remedied by the court in a number of cases, establishing criteria by reference to particular cases before the court but without necessary regard to the wider public interest. If the Parliament fails to specify some criteria there is a real danger that the whole area, not so much of legislation but of policy, would be abdicated by the Parliament and left entirely to the courts to determine on an *ad hoc* basis. It seems to me that it is appropriate that we have some general criteria that address the wider public interest, which we will not get, in all probability, in a case-by-case determination.

The Hon. K.T. GRIFFIN: The other point to make is that—and the Hon. Robert Lawson has touched upon this—I would have thought that there are more likely to be appeals through the court system if you do not have at least some signals to the ERD Court than if you do. If there are no criteria which should be taken into consideration I would think that, more than likely, if there is disagreement about the conclusions which have been reached by the court that the

appeal process might be invoked to endeavour to establish more clearly what the criteria may be in respect of this particular matter. Obviously, we do not have the numbers to carry the day on our amendment. It is, I can assure the Committee, a matter that is important to the Government and will be revisited.

Hon. K.T. Griffin's amendment negatived; Hon. Carolyn Pickles's amendment carried; clause as amended passed.

Clauses 30 to 32 passed.

New clause 32A—'Compliance orders.'

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

Page 19, after line 13—Insert:

Insertion of s.74A

32A. The following section is inserted after section 74 of the principal Act:

Compliance orders

74A.(1) If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director, make an order (a compliance order) requiring the person (the respondent)—

(a) to stop the operations; and

(b) if the operations have resulted in damage to land—to take specified action to rehabilitate land.

(2) Before the court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.

(3) A person against whom a compliance order is made must comply with the order.

Penalty:$100 000

This provision has been inserted in order to strengthen or beef up the enforcement provisions of the Act. It is intended to allay the concerns of Aboriginal groups and the Opposition, who have suggested that the scheme in part 9B will allow or encourage miners to enter on land potentially affected by native title without going through the proper procedures. It allows the Director of Mines to apply to the court for a compliance order where a person is carrying out mining operations without the authority required under the Act. A compliance order can require the miner to stop operations and take any specified action to rehabilitate the land.

The court must allow the respondent miner an opportunity to be heard before making such an order. The compliance order must be complied with. The penalty for non-compliance can be up to $100 000, and that will be a significant deterrent. I repeat: this amendment is the Government's response to concerns raised by Aboriginal groups and the Opposition. We believe it is appropriate for the Director of Mines to exercise the responsibility because of the significance of the action which could be taken. Quite obviously, the Director of Mines should be involved.

The Director of Mines has the general responsibility for the administration of the Mining Act and it is the Director of Mines who has statutory responsibilities to ensure that the provisions of the Mining Act are properly complied with. The Leader of the Opposition has an amendment, the terms and conditions of which I will address once she has moved it.

The Hon. CAROLYN PICKLES: I move:

Page 19, after line 13—Insert:

Insertion of s.74A

32A. The following section is inserted after section 74 of the principal Act:

Compliance orders

74A.(1) If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director or the owner of land on which the operations are carried out, make an order (a compliance order) requiring the person (the respondent)—

(a) to stop the operations; and

(b) if the operations have resulted in damage to land—to take specified action to rehabilitate the land.

(2) Before the Court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.

(3) A person against whom a compliance order is made must comply with the order.

Maximum Penalty: $100 000

The Government has set up a penalty of up to $100 000 for mining companies or individuals who disobey compliance orders, which would be, for example, not to go on to the land, not to pollute water on land, not to take vehicles of a certain weight on to land, and so on. We are pleased that there are some teeth in the legislation for mining operators who flout the negotiation principles set out in the Commonwealth and State legislation. Again, the Opposition finds itself agreeing with the principles put forward by the Government, yet the amendment is unacceptable in the form put forward.

It is unsatisfactory for the people most upset by unauthorised mining to be unable to apply to a court for an order that the Act be complied with. Many aggrieved people—farmers, Aboriginal groups, and others—will not want to wait for an inspector to come up from town and fill in reports for the Director to think about, when land is being irrevocably damaged by behaviour which should never have been commenced in the first place. In practice, many concerned land owners will probably contact the Director of Mines to take action on their behalf, anyway. But it is important to give citizens standing when their land, possibly land of significant cultural or spiritual significance, is at stake. We oppose the Government amendment and hope that the Australian Democrats will support ours.

The Hon. K.T. GRIFFIN: The Government opposes the Opposition amendment. We have a very strong view that the administration of the Act is the responsibility of the Director of Mines. If there are criticisms of the Director, then they can be made either at the political level or through the Ombudsman, for example, who is independent. But I do not think anyone can level complaints against the administrators of the Mining Act in respect of their conscientiousness in enforcing the provisions of the Mining Act. I would suggest that to allow owners to obtain these sorts of orders is open to abuse by owners.

They could use it as a device to obtain more compensation. It could be used as a stick by the land owner, and that includes native titleholders, against a miner without any measure of control at all. It could well lead to vexatious applications as well as requiring them to expend their own funds to have this particular provision enforced. We take a very strong view that the responsibility should be with the Director of Mines and not extended to owners. It is in the public interest for the matter to be left with the Director.

The Hon. SANDRA KANCK: I move:

Page 19, after line 13—Insert:

Insertion of s.74A

32A. The following section is inserted after section 74 of the principal Act:

Compliance orders

74A.(1) If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director or the owner of land on which the operations are carried out, make an order (a compliance order) requiring the person (the respondent)—

(a) to stop the operations; and

(b) if the operations have resulted in damage to land—to take specified action to rehabilitate the land.

(2) Before the Court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.

(3) A person against whom a compliance order is made must comply with the order.

Penalty: $100 000

The Democrats' amendment mirrors the Opposition's amendment, so we will be supporting the Opposition on this. At the heart of it is the issue of the owner of the land being able to make this application. It is both important and just that that should be included. I do not consider that it is a criticism of the way in which the Director of the department actually operates.

Hon. K.T. Griffin's new clause negatived; Hon. Carolyn Pickles's new clause inserted.

Clause 33—'Provision relating to certain minerals.'

The Hon. SANDRA KANCK: I move:

Page 19, lines 17 to 20—Leave out proposed subsection (1) and insert:

(1) A claim or lease cannot be validly pegged out or granted in respect of extractive minerals on land that has been granted in *fee simple*, or is subject to native title, except with the written consent of the owner[1] of the land.

[1] Owner of land is defined in section 6(1) to include a person who holds native title in land.

I moved an amendment along similar lines to clause 20. The issue relates to the use of the words 'native title', which confers exclusive possession. It is quite mischievous to use those words because it would mean that those people who have native title that does not grant exclusive possession or may not grant exclusive possession would be excluded by the current wording.

The Hon. K.T. GRIFFIN: I oppose the amendment. We have probably lost the debate so far on this in relation to other provisions which have sought to extend the notice not only to the native titleholder who has a right similar or equivalent to exclusive possession but also to all native titleholders. We have argued strenuously that that makes a nonsense of the legislation, particularly this provision, and it makes it difficult to administer because of native title interests with mere transitory rights allowing Aboriginal people to travel or pass over particular land for particular purposes. It is quite unworkable to require the written consent of all those people who might otherwise have those rather nebulous rights. It is so uncertain that it will be difficult if not impossible to administer and I therefore oppose the amendment.

The Hon. CAROLYN PICKLES: The Opposition supports the Democrat amendment. The words 'a right to exclusive possession' are best avoided if it is intended that the term includes native title land. Land over which native title rights are held will not necessarily provide the right to exclusive possession to native titleholders. This is consistent with an amendment moved previously by the Democrats.

Amendment carried; clause as amended passed.

Clauses 34 and 35 passed.

New clause 35A—'Safety net.'

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

Page 19, after line 32—Insert:

35A. The following section is inserted in section 34 of the principal Act:

84A(1)The Minister may enter into an agreement with the holder of a mining tenement—

(a) that, if the tenement should at some future time be found to be wholly or partially invalid due to circumstances beyond the control of the holder of the tenement, the holder of the tenement will have a preferential right to the grant of a new tenement; and

(b) dealing with the terms and condition on which the new tenement will be provided.

(2)The Minister must consider any proposal by the holder of a mining tenement for an agreement under this section.

The provision is proposed to be inserted to address a concern raised by the mining industry arising out of the totality of the amendments being made to the Mining Act. To some extent we have debated it earlier in relation to public undertakings by the Minister, but this is just an additional part of the proposals to protect miners in relation to particular tenements. The provision allows the Minister to enter into an agreement with the holder of a mining tenement to the effect that, if the miner's tenement should subsequently be found to be invalid through no fault of the miner, the miner will have a preferential right to the grant of a new valid tenement. The agreement between the Minister and the miner can also provide for the terms and conditions on which the new tenement will be granted. Subclause (2) requires the Minister to consider any proposal put to him or her by the holder of a mining tenement who wants to enter into agreement under this provision.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment. We oppose the so--called safety net provision. We believe it is a nonsense because it tries to validate that which requires validation only if the High Court rules that validity cannot be given to a certain class of agreement. The mining lobby is after security, but it will not get it with this provision. The superficial security offered is illusory. We have already ensured priority for those miners who apply for tenements and then go through the negotiation provisions of the legislation. Given the background of the Commonwealth legislation and the constitutional framework, we believe that is the best protection that we can give miners.

The Hon. SANDRA KANCK: The Democrats oppose the amendment. I am wary of the concept of putting safety nets in. If we need safety nets, it means that we have not got the legislation right in the first place. Perhaps the Minister needs to look at the earlier provision and see why he is calling for a safety net now. The key is to get the legislation right.

The Hon. K.T. GRIFFIN: The honourable member does not understand the way in which the Mining Act operates. If a tenement is granted and is subsequently found to be wholly or partially invalid because of circumstances beyond the control of the holder of the tenement—there may have been an investment of funds into that—and if it is declared to be invalid, the holder of the tenement loses priority. It is quite likely that the honourable member's reference to gazumping would become pertinent.

I do not think the honourable member ought to be suspicious about the legislation and that we may not have got it right by virtue of the fact that we are trying to put in some safety net provision. We are trying to ensure a protection for the priority or preferential right of the holder of that tenement which has subsequently been held to be invalid where it is beyond the control of the holder of the tenement. I think it is a perfectly reasonable and proper approach to a very difficult issue, particularly in the context of native title where no--one really knows what the final outcome of all the native title legislation might be and its effect not only on the mining industry but also on other industries and property interests across Australia.

New clause negatived.

Clause 36 and title passed.

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

That this Bill be now read a third time.

I want to make only a brief observation. I appreciate the consideration that members have given to the Bill and I express some disappointment at the outcome of the Bill. I have no doubt that there will be further consultation with respect to amendments which have been made with a variety of both members and members of the community. I cannot predict what might be the outcome of those consultations. I want to put on the record, as I expressed in the Committee stage, that there are some aspects of the Bill which are quite unacceptable to the Government, and I would hope that, in the context of those discussions which I have foreshadowed and the deadlock conference (if it gets to that point), there might be a revisiting of some of those issues which, from the Government's perspective and from the perspective of the people of South Australia, are particularly important in the context of the development of the State.

The Hon. CAROLYN PICKLES (Leader of the Opposition): As the Attorney has indicated, the Opposition believes the Bill will pass this place and that it has put forward some sensible amendments and suggestions. We believe we have improved the Bill. It has to now go to another place and, as the Attorney has indicated, it is likely to be the subject of a deadlock conference, at which point in time the Opposition, as with other Bills, has been prepared to sit down and have further discussions, and it is prepared to do that again. Certainly, the Opposition is interested in having a Bill which it believes will mirror the Commonwealth legislation and which should be in the best interests of all South Australians, including Aboriginal South Australians.

The Hon. SANDRA KANCK: As a result of the High Court decision on Mabo and the subsequent Act passed by the Federal Government, an opportunity exists for some redress of the injustice to Aboriginal people in this country and in particular in this State. My concern with this Bill was that the Government's hunger for mining money might dominate. We have heard words in the debate, for instance, such as 'burdensome'—something will be burdensome for the mining industry. Perhaps it might have been burdensome for the Aboriginal people some 150 years ago to have had their land taken from them. I believe that the Committee debate has improved this Bill in a way that creates a greater sense of justice. I support the third reading.

Bill read a third time and passed.

DOG AND CAT MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1253.)

The Hon. M.J. ELLIOTT: I support the second reading of this Bill, which seeks to provide for the management of both dogs and cats. Although we are repealing and replacing the Dog Control Act and making some amendments to the Local Government Act as a consequence of that, the issues which surround dog control have been in the public arena for a long time and have been well debated over a long period. Consequently, I do not intend to make further comments, although I note that there may be some amendments during the Committee stages in relation to dogs and I will discuss those issues as the amendments come up.

The other part of the Bill in relation to cat management is new in South Australia: for the first time we will have legislation where cats will be treated. It is an issue which I first raised in this place about five years ago when I first introduced a private member's Bill in relation to cat management. While I have discussed it at great length on previous occasions, I will make a few passing comments now. I put on the record again that I am not anti cats—I have had pet cats and many of my friends have pet cats. They are excellent companion animals, and particularly for people living alone they can play a very important role in their life.

Having said that, though, I think it needs to be recognised that, aside from the cat that lives at home and is a wonderful companion animal, there are surrounding problems with cats. Unfortunately, there is a sector of the community who takes pet ownership lightly—and perhaps the ownership of a cat even more lightly—and as a consequence it creates a number of problems. First, I refer to the welfare issues: literally thousands of kittens and cats are being put down by RSPCA and Animal Welfare every year because they are unwanted. Uncounted numbers are simply dumped, drowned, chopped with an axe, or whatever, in circumstances even more upsetting than the kittens and cats that are given an injection at the animal welfare bodies—and -the people who work there find that extremely disturbing as well. Problems have occurred with regard to some people who own large numbers of cats. The cats invade the neighbourhood and become a significant public nuisance because, unlike dogs, they are nowhere near as easily confined.

Finally, there is the problem of the feral cats or the semi-wild cats that surround urban areas and the effects that they have upon native fauna. They, along with several other introduced pests, have played a significant role in decimating some of our native fauna. Some people wish to deny that but the scientific evidence exists. As a person with training in the area of ecology, I am convinced beyond any doubt that cats have been a major damaging influence on the environment.

I am pleased that the Government has picked up within this legislation the issue of cats and the need for their management, but I am gravely disappointed that it has gone nowhere near far enough nor, at this stage, confronted the most important single issue. If members talk to animal welfare groups such as the RSPCA and the Animal Welfare League, they will say that the single most important issue in relation to cats and their management is the question of desexing: if the desexing rates are high enough the unwanted cats and the problems that surround them in the metropolitan area and the impact they have in the peri-urban areas would be significantly reduced.

As I said, the Government has chosen not to tackle the question of desexing. I believe very strongly that the only way we will succeed in getting desexing rates—which are already quite high in South Australia, certainly higher than any other State—to a level where we can achieve the goals that I would be setting is by having a system of registration, and that with a system of registration we can provide incentives for people to desex their animals. As now happens with dogs, there is a differential fee and the differential can be made sufficient so that it provides incentives for people to desex their animals, except perhaps if they are cat breeders. The by--laws could make plain that where animals are being kept for breeding and are confined—which most breeders do, anyway—then the high registration fee charged for an entire animal would not be necessary.

Registration will also be a way of keeping tabs on the number of animals at any one residence and of tackling the nuisance problems created by owned cats. However, there are

cases of people who have tens of cats on the one property which they do not keep confined and which create a significant public nuisance for their neighbours.

Initially I drafted a large number of pages of amendments, which probably would have rivalled the amendments that I will be moving on WorkCover and that I moved on industrial relations Bills last year. However, I decided that at this stage it was more important that the need for cat management was recognised in legislation and if I could get through a few basic amendments to the Bill it would be better than nothing. I have some amendments on file, but I indicate that I will be withdrawing those amendments and circulating a further set. I shall try to get the desexing issue, in particular, on the agenda and I will be doing that by including desexing within the objects of the legislation. I shall move a clause which will set out objects for the legislation as a whole, and it will include encouragement for the desexing of cats.

I shall also move amendments which will allow councils to make bylaws in relation to cat and dog management. It will be optional, not compulsory, for them to have bylaws. However, it will be explicit in saying that they can have bylaws which facilitate the desexing of cats and dogs and which can allow registration programs and such things. Some councils have indicated that they are interested in doing it. If the State Government is not prepared to take State-wide responsibility for a registration program and individual councils are prepared to do so, we should not stand in their way.

My long-term hope is that when a number of councils have adopted such programs that will eventually lead to a State-wide scheme or, at the very least, pick up the major urban areas. I can understand that purely rural councils may not be very interested, but significant councils throughout the metropolitan area, the Riverland and the South-East, for example, Mount Gambier, where there are large urban concentrations and therefore large numbers of cats, may be interested in following that option. Indeed, I am confident that in time they will.

It is my intention that the board should have some sort of oversight. It should not be able to control or veto bylaws, but my intention is that at least it should be able to look at bylaws and try to encourage consistency. It would be nonsense if two adjoining councils had different bylaws in relation to curfew times or if they adopted a different system of registration. For example, if they both decided that they would register and use microchips but used a different brand of microchip, that would be quite foolish. If we can encourage consistency, we should be setting out to do that.

The membership of the board has been tackled in my amendments. Dog management is a fairly mature issue. The issues are fairly well resolved and routine, but that cannot be said about cat management at this stage. I was concerned that whilst the Local Government Association, which was to nominate five people, would put up five good and true people, in a contentious area like cat management, which needs a lot of thinking through and knowledge of issues other than purely local government, perhaps we should be giving a little more direction.

I originally put forward an amendment which looked at the Local Government Association putting up three nominees and having nominees from the Animal Welfare League, the RSPCA, the Canine Association and associations representing cat breeders. The Local Government Association reacted rather vigorously to that. It wanted the board to be comprised of its people, saying it was part of an agreement that it had reached with the State Government. My comment is that it was not an agreement that it reached with me or, I suppose, with the Opposition.

However, in a spirit of compromise, I am prepared to offer something which I think will accommodate its chief concern. I propose that five of the six would be nominees of the Local Government Association, but the amendment will be more specific by providing that one will be a person with veterinary experience and another will have knowledge of animal welfare issues. While the Local Government Association would still be appointing the board, at least we will be saying, 'When you nominate people, please think about this cross-section of experience, because we will need it as we set about tackling the task of cat management for the first time.' If we do not get the first board right, it could be quite disastrous and to nobody's benefit. It is a compromise: it gives direction to the LGA, but at the end of the day the LGA will have the decision making power in terms of membership.

I think that I have touched on the major issues. As it is a subject on which I have spoken on a number of occasions in this place, I do not intend to take up further time of the Council. The Democrats support the second reading of the Bill.

The Hon. R.D. LAWSON: I also support the second reading of this measure, which has been the subject of a great deal of community interest and, in some senses, unnecessary hysteria. In supporting the second reading, I wish only to draw attention to Part 6 of the Bill, which deals with civil actions relating to dogs. There is an amendment to clause 65 on file, which greatly expands the provisions in relation to this important subject. Civil actions for damage, injury and losses caused by dogs are not infrequent. Section 52 of the Dog Control Act has been the subject of a number of decisions in our courts. It should not be surprising to anybody to know that dogs can cause very serious injuries to people. One of the legal issues was explored in the case of *Downs v Secker* in 1989. This was an action on behalf of a girl aged five years who suffered injuries when she was attacked by a dog owned by a neighbour who was the defendant in the action. The dog had shown no prior vicious propensity and indeed it was suggested by the witnesses that it was not at all vicious but a tame dog.

The Hon. R.R. Roberts: Had it shown remorse afterwards?

The Hon. R.D. LAWSON: As its owner ultimately suffered a judgment of $20 000, I imagine it was forced to show remorse. The evidence was that the child was walking by and said to her mother, who was accompanying her, 'Mummy, look at the dog.' The mother said, 'Do not touch it because it might bite,' and the child said, 'I will just look at it.' However, the child did pat the dog which bit it. The child was hospitalised and quite seriously injured, as I suggested, but the child was heard to tell its mother, whilst in the ambulance on the way to the hospital, 'Mummy, why did you let me touch the dog?' That conversation was overheard by the defendant and, on that basis, the judge who heard the case said that really the mother was guilty of negligence herself and was the author of the child's harm and the action was dismissed. However, on appeal, the judges of the Full Court took a rather more realistic view of the matter and held that the dog owner was liable by reason of section 52 of the Dog Control Act, which provides that a person liable for the control of a dog shall be liable in damages for any injury caused by the dog.

Another case to which I make brief reference, and which is relevant to the amendments now proposed, was *Keeffe v McLean-Carr and Pacific Waste Management*, a case decided in February 1993. This was a case where the plaintiff was a young man employed by a garbage collection contractor. He was in fact a runner, operating off the back of a large collection truck. He himself owned a German shepherd dog which was trained as a security dog, but on the occasion in question, as the garbage truck was proceeding down a street, the dog made to attack this young man, or certainly addressed him in an aggressive manner. He climbed up the side of the compaction truck and the dog retreated. As he came down, the compactor, which was in operation, compressed his foot and he suffered very severe injuries. But it was claimed on behalf of the defendant in the action that in fact the dog had not caused the injury; it was rather the fact that the hydraulic mechanism on the compactor had been left operating, and it was also suggested that the young man was the author of his own misfortune.

That defence was dismissed and the judge held that the dog was in fact the cause of the injury and damages were assessed at some $370 000, so it is clear that the injuries were very severe. In that case, the judge held that the defence of contributory negligence was not available to a defendant in an action under section 52 of the Dog Control Act. In other words, the person having control of the dog and who is sued could not set up the negligent conduct of the plaintiff, either in whole or part defence of the action.

That does raise some difficulties in cases, if in fact it is a true statement of the law, and there is some doubt, with the greatest respect to the particular judge involved, that that was a correct interpretation of the Wrongs Act. Section 27A of the Wrongs Act does allow apportionment of liability in cases of contributory negligence. That section provides that when anyone suffers damage as a result partly of his own fault and partly the fault of some other person, a claim in respect of that damage shall not be defeated by reason of his own fault, but the damages recoverable in respect of the injury shall be reduced to such extent as the court thinks just and equitable having regard to the plaintiff's share and responsibility for the damage. The section does say, 'partly as a result of his own fault and partly as a result of the fault of another'. 'Fault' is defined in the section as meaning negligence, breach of statutory duty or other act which gives rise to a liability in tort. The basis of the decision in the case to which I was just referring, *Keeffe v McLean-Carr*, was that that section did not apply because it was inappropriate to describe the liability of the dog owner as arising under a breach of statutory duty, as I understand His Honour's decision.

However, the advantage of the proposed clause 65 of the Bill is that it will make it explicit that 'the keeper of the dog is liable in tort'—and that expression will enable the carry-over of the Wrongs Act apportionment of liability mechanism—'for injury damage caused by the dog.'

The Hon. T.G. Roberts: The owner is?

The Hon. R.D. LAWSON: It is actually described as the keeper, and the keeper is defined somewhat more widely than owner. But the keeper's liability will be subject to a number of qualifications. For example, if the injury results from provocation of the dog by the person, liability will be determined according to Wrongs Act principles, namely, there will be an apportionment. Similarly, if injury is caused to a trespasser on land on which the dog is kept, the keeper's liability will be decided according to Wrongs Act principles, and that is an important provision.

The Wrongs Act itself contains provisions relating to liability for animals generally. In section 17A of that Act, the court is required to have regard to matters such as the nature and disposition of the animal, determined according with the facts of the particular case and without regard to whether or not the animal is wild, tame, a fish, a fowl, a bird or whatever. These provisions apply to all animals, and those provisions will continue to apply in relation to injuries sustained by trespassers, as well as an attack by a person who has the custody of a dog but who is not in fact its keeper.

The provisions of clause 65 are reasonably extensive and will be of benefit in the not inconsiderable number of civil actions which arise in consequence of dogs. So, I commend the Minister for the amendments proposed in relation to this matter and I commend the Government for specifically including in the Dog and Cat Management Bill civil actions relating to dogs rather than leaving the issue merely to determination under Part 1A of the Wrongs Act. I commend the second reading.

The Hon. DIANA LAIDLAW (Minister for Transport): I thank all members who have contributed to this debate. There is no question that both in the community and in this place a lot of interest has been generated by this Bill over some period of time. I recall 15 years ago when I was working with the Hon. Murray Hill the Dog Control Act was just a nightmare to work with. It is a very emotive issue. I never thought that 15 years later I would be dealing with the management of cats as well as dogs.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Budgies next week and somebody suggested goldfish; things do come back to haunt you. Nevertheless, I appreciate the value and need for this legislation and thank all members for their considered contributions. The Hon. Caroline Schaefer commended Minister Wotton for adopting a middle of the road approach to this legislation and stated:

> There is goodwill in doing so and for seeking the opinions of a number of people in organisations prior to introducing this legislation.

She then raised several areas of concern. She pointed out that the legislation does not deal directly with feral cats. However, it does incidentally allow their destruction. Feral cats are a national issue and it is not the intent of this Bill to resolve the problem of feral cats on this scale. A threat abatement strategy for feral cats has been developed by the Australian Nature Conservation Agency in cooperation with all the States. However, it is likely to be 20 years before there is any real progress in this area, which seems a long time—too long. It is clear that, before anything can be done to reduce feral cats, the topping up of the population by stray and unwanted urban cats must be reduced. This legislation addresses that aim by encouraging responsible ownership and permitting the removal of unwanted cats without civil liability.

The theory that if cat numbers decline rabbit numbers may increase was postulated. There may be a correlation between high rabbit numbers and an increased population of feral cats. However, rabbit populations are controlled primarily by food supply and climatic conditions, not the predation of cats. Currently trials are being carried out on Wardang Island into the use of Calici virus to control rabbit populations. The effect of decreasing rabbits on the predation of foxes and cats on wildlife is being investigated by CSIRO and other researchers. The Hon. Caroline Schaefer expressed concern that people may kill their neighbours' cats. This legislation

provides cats with legal status; it affords owned, identified cats with a degree of protection which they have never had before. Identified cats are given legal recognition and to remove identification or to kill an identified cat would be an offence. Some people are concerned that cats may be hanged on collars. In fact, this is extremely rare. Collars are designed to stretch or break when strained. It is far more common for a cat to die because it is lost and the owner cannot be found because of a lack of identification and the cat is subsequently euthanased. It is noteworthy that only 1 per cent of cats taken to shelters are returned to their owners, and 75 per cent are euthanased. Identified cats are returned.

The Hon. Terry Roberts expressed support for the Bill in general and the Government thanks him for that support. He did, however, raise several issues and advised of the intention of the Opposition to move several amendments. The first of these amendments relates to the composition of the Dog and Cat Management Board. In its current form, section 11 of the Bill provides that the board consist of six members appointed by the Governor, of whom five will be persons nominated by the LGA. The proposed amendment would ensure that at least one of these persons nominated by the LGA must be a woman and at least one must be a man. This is entirely consistent with the equal opportunity policies of both State and local government and consequently the amendment is acceptable to the Government.

The Hon. Mr Roberts also suggested that a magistrate, not a justice, authorise warrants. In its current form, clause 29 of the Bill provides that a dog management officer cannot exercise the power to seize, search and enter, conferred by subclause (1)(a) except with landholder consent, a warrant from a justice in relation to a dog at large and urgent situations. This amendment would require that such a warrant be issued by a magistrate, not a justice. In general terms, justice warrants are required by many Acts for inspectorial functions in matters that are likely to occur frequently in all areas of the State and require immediate action. As such, magistrate warrants are inappropriate to address the issues that will be posed by this legislation. Justice warrants are more quickly obtained and do not impinge on the time of the courts. I can name a number of examples, but perhaps it is more appropriate to do so when debating the particular measure where there are justice warrants in similar situations in other Acts.

The difference between justice warrants and magistrate warrants is highlighted by the Public and Environmental Health Act 1987. Under section 31 a magistrate warrant is required to order a person suspected of having a notifiable disease to undergo a medical examination or to detain such a person in a quarantine situation. However, section 36 specifies that a justice warrant is required to inspect premises or seize goods to prevent the spread of infection. There are some exceptions to this general rule; for example, the Development Act 1993 demands a magistrate warrant to enter, search or seize. The Dog and Cat Management Bill relates to local issues rather than major offences and imprisonment. It would seem more appropriate to require a justice warrant than a magistrate warrant. Therefore, we will not support this amendment.

The final amendment highlighted by the Hon. Mr Roberts dealt with cats in national parks and sensitive areas, and we do not intend to support that amendment. I will outline that further when we debate the specific amendment. The Hon. Mr Roberts proceeded to give a brief summary of the provisions of the Bill. He also expressed his support for a review of the legislation 12 months after proclamation, and this had already been identified by the Minister in another place. The Hon. Angus Redford supported the Bill and the general thrust of the objectives it seeks to achieve. However, he sought my assurance on several issues and indicated his intention to move an amendment regarding the civil liability in the case of a dog attack. I was interested that this same issue was raised by the Hon. Robert Lawson when he made his contribution earlier today.

Contributory negligence is a matter that, because of their doorknocking experiences and so on, all members of Parliament would like to explore in terms of this debate. I am pleased that the Hons Angus Redford and Robert Lawson have highlighted this issue and it will now be addressed in amendments to be moved. I should indicate that, in relation to the amendment I will move in this matter, section 25 will maintain the strict liability of the current Act but include the following exemptions under which the Wrongs Act applies and must be considered by the courts. These cases are where the dog is provoked, the owner is not the person in control of the dog, the victim is trespassing or the dog is protecting the person or property of the owner at the time of the attack.

The Hon. Mr Redford questioned the use of the term 'vehicle' and sought clarification regarding the status of a dog owner if the dog is untethered in the back of a utility. I was asked whether such a dog would be effectively secured. It is expected that a dog untethered in the back of a utility would not be considered to be effectively secured, and it would not be under effective control. The definition of 'effective control' is aimed at requiring the dog to be controlled in such a way that it is unable to attack. A dog which is in the back of a utility but which is not secured could leave part of the utility and attack a person or animal.

However, it is recognised that it is unfair for a dog management officer to have the power to seize a dog that is in the back of a utility on the basis that it is wandering at large. Hence, clause 6(2)(c) is included in the Bill specifically to resolve this issue. It states that a dog will not be taken to be wandering at large while the dog is in a vehicle, despite the fact that it is not effectively secured. Indeed, a footnote is included in the clause, giving the example of a dog in the open tray of a utility.

A general exemption for Crown dogs provided by clause 8 was raised. This exemption applies to dogs owned by the Crown, only if used for security, emergency or law enforcement purposes. It has been expanded to afford protection to Crown dogs that may harass and harm an alleged offender in the course of their duty. Removal of this clause would mean that police and correctional services dogs could no longer be used for law enforcement. I am advised that in Britain an offender claimed he was harassed by two police dogs which apprehended him, and the dogs were euthanased. This clause is included to ensure that such an event does not occur here, and I think that all people would support our actions compared with those of the United Kingdom.

It does not exempt the handlers of Crown law enforcement dogs from being accused of undue force or harassment, and the normal channels can be used if a person wishes to lay a complaint against the police. I can assure members that this clause does not affect civil actions which may result from such an incident. The South Australian Canine Association has approached the Hon. Mr Redford and other members of this place seeking representation on the Dog and Cat Management Board. There are at least seven separate groups which have sought such representation, all of which offer the skills and knowledge that the board will need to function

successfully. However, there is provision for only two community representatives, although that may be the subject of amendment before this place. This and the potential conflict of interest of the groups make it unlikely that anyone specifically will be chosen to be directly represented on the board. The input all have made to date has been greatly appreciated, and I am assured by the LGA that the board will consult with the community and special interest groups on relevant issues.

I am aware also from the contribution made by the Hon. Mr Elliott that amendments will be moved in relation to specific interests represented on the board and not necessarily specific interests representing organisations. The Hon. Mr Redford drew the attention of the Chamber to clause 32(5)(b)(viii) of the Bill, which contains exemptions for bodies that would not be required to register dogs. It has been suggested that the Sandy Creek Dog Sanctuary specifically ought to be exempted from this section. This is to be addressed in regulations. It is possible that various privately owned pounds may open or close during the life of this legislation, so it is more appropriate for them to be nominated in the regulations rather than in the body of the Act.

Also, it was suggested that there ought to be a requirement that, where the baits are laid, the local council should be notified. This also is to be addressed in regulations. Clause 50 provides in part that a council may, on its own initiative or on application, make a destruction order in relation to the dog if certain things occur. The Hon. Mr Redford sought my advice as to whether the council can delegate its authority in this respect. Councils can and do delegate such authorities. There is the ability of councils to form subcommittees to consider such cases if they wish. Section 41 of the Local Government Act applies, and one individual or committee can be delegated by several councils for this purpose.

It has been put to the Hon. Mr Redford that there had been difficulty proving whether or not an animal was a dog or some other species. I am advised that the common usage of the word 'dog' is sufficient to the courts, without a limitation on its meaning. Confusion may occur only if that dog were a dingo or a dingo cross, and these cannot be kept legally as pets in areas south of the dog fence.

All members will be familiar with the argument that de-sexing will reduce the cat population quicker than destruction. The Hon. Mr Redford has asked me to comment on the success of the cat sterilisation scheme in rural areas. CATS Incorporated has greatly assisted many people who have difficulty in affording the cost of de-sexing their cats, and the Government commends this. However, the suitability of the de-sex and release program must be questioned for several reasons, especially in remote areas.

CATS Incorporated do not de-sex and release cats in remote areas so I cannot comment on the likely success of such a plan. In fact, under the Prevention of Cruelty to Animals Act 1985 and the Animal and Plant Control (Agricultural and other Purposes) Act 1986 it would be illegal to abandon a cat, whether it is de-sexed or not, in such circumstances. Also, cats which are de-sexed and released are maintained in colonies. I am advised that these may become dumping grounds for unwanted cats. Consequently, the population is maintained at higher than normal levels. New cats are likely to be rejected from these territories, but the population remains artificially high and the rejected cats spread into other areas, creating problems of territorial behaviour and public nuisance.

The colonies are fed by humans. The Cat Protection Society of Victoria found that the people who feed cat colonies were often pensioners. When the pensioners died, the cats starved. They also found that if a cat had been trapped once, it became trap shy. Thus, if a cat is de-sexed and released it is more difficult to re-trap it should it require veterinary attention. Due to these and other factors, the Cat Protection Society has decided not to de-sex and release cats on animal welfare grounds. Some council officers report that such colonies generate considerable complaint from neighbours due to nuisance. Finally, de-sexed cats still hunt and, in some environmentally sensitive areas, any cat, whether de-sexed or not, is capable of having some significant impact.

The Hon. Legh Davis described the impact on wildlife caused by cats at Roxby Downs, Wilpena Pound and the Blue Mountains and referred to data reported in *New Scientist*. He stated:

> The feral cat is a major problem which cannot be ignored and which has to be addressed in association with addressing other predators of native fauna, including foxes and rabbits.

I will comment more on the contribution from the Hon. Michael Elliott when various amendments are moved to this Bill. In summary, this Bill provides a framework of legislation for the protection of responsibly owned and legally identified dogs and cats. It also gives councils and local communities the flexibility to address local problems in the light of their own social and environmental needs.

It does not resolve all the issues associated with irresponsibly owned pets, but no legislation can do that. Even Minister Wotton, who has tried extraordinarily hard, as have his officers, to walk through this minefield of emotion in relation to cats, has not been able to resolve all these issues, but this legislation is a compliment to them all.

The Government has undertaken to review the Act 12 months after it is proclaimed and determine if further amendments are required. The Dog and Cat Management Bill provides the community with the opportunity to care for their own cats and dogs and, in turn, reduce the incidence of injury and nuisance caused by irresponsibly owned stray cats and dogs. I commend the Bill to the Council.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

CONSUMER CREDIT (SOUTH AUSTRALIA) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to make provision for a uniform legislative scheme to regulate the provision of consumer credit; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

This Bill and the Credit Administration Bill 1995 are both essential to the introduction of the uniform Consumer Credit Code as law in South Australia. The Code has been the subject of many years of debate and negotiation between industry, consumer groups and Governments at both the State and Federal level. In the past two years the Code has undergone rapid development and changed significantly from previous early drafts. Such changes were largely the result of an extensive program of consultation with these differing groups, some of which had become alienated from the uniformity process. This was particularly the case with the representatives of the credit industry.

The Code, which is the subject of a uniformity agreement made at the Ministerial Council on Consumer Affairs, represents the final agreed form of the legislation. All other Australian States and Territories are in the process of introducing similar Bills to these two. The Consumer Credit Act (Queensland) 1994 passed through the Queensland Legislature in September 1994 and that Act now provides the template legislation which all other States and Territories are to adopt.

National uniform credit legislation will enable credit providers to adopt standard operating procedures, thereby reducing costs and, for the first time, the majority of credit providers, including banks, building societies and credit unions will be subject to the same credit laws for consumer lending. Representatives of the credit industry have had considerable input into the Code in order that common lending practices and procedures could be taken into account to reduce cost both to the lender and consumer.

Few areas are capable of impacting on consumers as significantly as credit. The family home and often the family car are usually purchased with funds borrowed through a lending institution. Many if not most persons have at least one credit card. Older members of the community often act as guarantors for younger ones where they are related to each other. Individuals and families will benefit from the Code's emphasis on disclosure of information, prior to entering into the credit contract and during its term, when they are making decisions about the management of personal finances.

The Code will apply to the provision of credit, including mortgages and guarantees to ordinary persons and strata corporations where the credit is provided wholly or predominantly for personal, domestic and household purposes, and where a charge is to be made for provision of the credit. Rural finance and business lending are not covered, and there are a number of other specific exemptions such as trustees of deceased estates and employee loans.

This Bill adopts the Code, which is essentially an Act of the Queensland Parliament, as a South Australian Act. The issue of the appropriate jurisdiction in which Code matters can be heard has been left as an individual decision for each State. Under the Consumer Credit (South Australia) Bill, it is proposed that the jurisdiction for the Code be determined as follows:

1. Matters relevant to contractual disputes between the lender and the consumer will be dealt with by the District Court. An example of this type of provision would be the reopening provisions under section 71. Bearing in mind the complex nature of many credit transactions and the fact that the prudential standing of the lender could be at risk, it is important for such matters to be heard by a judicial officer with some experience in commercial and credit law and, for this reason, the District Court should be preferred.

2. The provisions of Part 6 of the Code, which impose civil penalties, would be dealt with by the Administrative and Disciplinary Division of the District Court. Civil penalties are non-criminal sanctions imposed for breaches of the Code and have an effect akin to that of a disciplinary sanction.

3. Under the Code all criminal offences are dealt with summarily and would be heard in the Magistrate's Court.

Uniform national consumer credit laws will benefit members of the credit industry and consumers, as one piece of legislation will apply to all credit transactions, and national uniformity of procedures will reduce the risk of genuine error and loss by the credit provider. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Definitions

This clause defines various terms used in the Bill.

Clause 4: References to Queensland Acts

This clause provides that a reference to a Queensland Act includes a reference to that Act as amended from time to time and an Act passed in substitution for that Act.

PART 2

CONSUMER CREDIT (SOUTH AUSTRALIA) CODE AND CONSUMER CREDIT (SOUTH AUSTRALIA) REGULATIONS

Clause 5: Application in South Australia of the Consumer Credit Code

This clause provides that the *Consumer Credit Code* applies as a law of South Australia and may be referred to as the *Consumer Credit (South Australia) Code*.

Clause 6: Application of regulations

Subclause (1) provides that the regulations under Part 4 of the *Consumer Credit Act* apply as regulations in force for the purposes of the *Consumer Credit (South Australia) Code* and may be referred to as the *Consumer Credit (South Australia) Regulations*.

Where regulations under Part 4 of the *Consumer Credit Act* take effect from a specified day that is earlier than the day when they are notified in the Queensland Government Gazette subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the *Consumer Credit Act* from the specified day.

If a provision of the *Consumer Credit (South Australia) Regulations* is taken to have effect before the day of notification of the regulations the provision does not operate:

— so as to prejudicially affect the rights of a person (other than a Government authority) existing before its date of publication; or

— to impose liabilities on a person (other than a Government authority) in respect of anything done or omitted before the date of publication.

Clause 7: Interpretation of some expressions in the Code and Regulations

This clause defines various terms used in the *Consumer Credit (South Australia) Code* and the *Consumer Credit (South Australia) Regulations* and provides that the *Acts Interpretation Act 1915* does not apply to this Act, the *Consumer Credit (South Australia) Code* or the *Consumer Credit (South Australia) Regulations*.

PART 3

CONFERRAL OF JUDICIAL AND ADMINISTRATIVE FUNCTIONS

Clause 8: Conferral of judicial functions on courts and Commercial Tribunal

This clause confers jurisdiction under the *Consumer Credit (South Australia) Code* on the District Court of South Australia. In the case of an application under Part 6 of the Code, however, only the Administrative and Disciplinary Division of the District Court may determine the application.

Clause 9: Conferral of administrative functions

The Commissioner for Consumer Affairs has the functions of the State Consumer Agency under the Code and the regulations.

PART 4

GENERAL

Clause 10: Crown is bound

This clause provides that the scheme legislation of South Australia binds the Crown.

Clause 11: Amendment of certain provisions

If the Ministerial Council approves a proposed amendment of the *Consumer Credit Act* or regulations under that Act and approves regulations to be made under this Act in connection with the operation of the proposed amendment or regulations, the Governor may make regulations in accordance with the approval which vary the effect in South Australia of that Act or those regulations.

Clause 12: Special provision concerning offences

This clause is an interpretative provision which provides that a reference in the *Consumer Credit (South Australia) Code* to a court

of summary jurisdiction is a reference to the Magistrates Court of South Australia and if an offence against the *Consumer Credit (South Australia) Code* may be dealt with summarily, the offence may be dealt with by a Magistrate sitting alone according to the provisions of the *Magistrates Court Act 1991*.

Clause 13: Maximum annual percentage rate

This clause gives the Governor power to make regulations prescribing a maximum annual percentage rate for any credit contract or class of credit contract. Subclause (2) then provides that Division 2 of Part 2 of the Code (which limits the debtor's monetary obligations) applies in relation to a prescribed maximum annual percentage rate as if that rate had been prescribed by the Code.

SCHEDULE

Repeal and transitional

The schedule repeals the *Consumer Credit Act 1972* ("the repealed Act") and provides for transitional arrangements as follows:

— the Governor may make regulations of a transitional nature consequent on the enactment of the Act;

— the repealed Act applies (subject to any modifications prescribed by regulation) to contracts and securities entered into before the commencement date;

— the repealed Act applies (subject to any modifications prescribed by regulation) to credit provided on a revolving charge account established before the commencement date until the date of transition fixed in the regulations, but as from the date of transition the *Consumer Credit (South Australia) Code* applies to such credit, subject to any modifications prescribed by regulation.

The Hon. T. CROTHERS secured the adjournment of the debate.

CREDIT ADMINISTRATION BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate credit providers; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

This Bill is the companion legislation to the Consumer Credit (South Australia) Bill 1995. The code does not address matters pertaining to the licensing and discipline of credit providers but leaves this to the decision of individual States. As intimated in amendments to the existing credit laws, I have proposed that credit providers in South Australia be negatively licensed. As well as being the most sensible and effective form of regulation for this industry, negative licensing overcomes the constitutional difficulties which would be present in any licensing regime that attempted to license banks.

This Bill puts in place a disciplinary regime for credit providers along similar lines to that which presently exists. An additional ground for disciplinary action, that of breach of an assurance given to the Commissioner for Consumer Affairs under the Fair Trading Act, has been added. While the full range of sanctions, from reprimand to disqualification from the industry, will be available against most lenders, banks, again for constitutional reasons, could not be the subject of a disqualification order.

Where considered to be appropriate by the presiding judicial officer, the court may sit with assessors. These assessors will be persons whose background and expertise are relevant to area of consumer credit.

The Bill also establishes a fund, pursuant to section 106 of the code, into which money derived from the imposition of civil penalties will be paid. Moneys standing to the credit of the fund will be accessible for two purposes, namely, towards the cost of administering the fund and for any other purpose approved by the Minister.

I commend the Bill to the Council and seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause defines certain terms used in the Bill. In particular—

"Court" is defined to mean the Administrative and Disciplinary Division of the District Court of South Australia;

"credit" has the meaning given in the *Consumer Credit (South Australia) Code*;

"credit provider" means a person who provides credit and includes a prospective credit provider.

Clause 4: Commissioner to be responsible for administration of Act

The Commissioner for Consumer Affairs will be responsible for the administration of the Act, subject to the directions of the Minister.

PART 2

CONTROL OF CREDIT PROVIDERS

Clause 5: Basis of disciplinary action

This clause provides that disciplinary action may be taken against a credit provider if the credit provider has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987* or if the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider.

If disciplinary action can be taken against a corporate credit provider such action can also be taken against each of its directors, however, disciplinary action cannot be taken against a credit provider or a director for the act or default of another if the credit provider or director could not reasonably be expected to have prevented that act or default.

The section is expressed to apply to conduct occurring before or after the commencement of the Act.

Clause 6: Complaints

The Commissioner or any other person can lodge a complaint with the Court.

Clause 7: Hearing by Court

When a complaint is lodged the Court must conduct a hearing to determine if disciplinary action should be taken. The Court may adjourn the hearing to enable the Commissioner to further investigate the complaint and may allow modification of the complaint or may allow additional allegations to be included in the complaint, subject to any appropriate conditions.

Clause 8: Participation of assessors in disciplinary proceedings

This clause allows the Court, when determining a disciplinary matter, to sit with assessors who have been appointed in accordance with schedule 1.

Clause 9: Disciplinary action

After hearing a complaint the Court may make an order or orders—

— reprimanding the defendant; or

— imposing a fine not exceeding $8 000; or

— where it is constitutionally within the jurisdiction of the court, prohibiting the defendant from carrying on the business of a credit provider; or

— prohibiting the defendant from being employed or otherwise engaged in the business of a credit provider; or

— prohibiting the defendant from being a director of a corporate credit provider.

The Court may order that a prohibition is to apply permanently, for a specified period, until the fulfilment of conditions or until further order, or the Court may impose conditions about the conduct of the person or the person's business until a time fixed in the order.

Before making an order the Court must consider the effect the order would have on the prudential standing of the credit provider.

Subsection (4) prevents a person being penalised twice in respect of the same conduct.

Clause 10: Contravention of prohibition order

A person must not carry on the business of a credit provider in contravention of an order of the Court. The maximum penalty for this offence is $30 000 or imprisonment for six months.

If a person is employed, or otherwise engages, in the business of a credit provider or becomes a director of a corporate credit provider, in contravention of an order of the Court, that person and the credit provider are each guilty of an offence and are liable to a fine of $8 000.

Clause 11: Register of disciplinary action

The Commissioner must keep a register of disciplinary action taken under this Act and of any assurance given by a credit provider under the *Fair Trading Act 1987*. A person may inspect the register on payment of a fee fixed by regulation.

Clause 12: Commissioner and proceedings before Court

The Commissioner is entitled to be joined as a party to proceedings and may appear personally in the proceedings or may be represented at the proceedings by counsel or other representative.

Clause 13: Investigations

The Commissioner of Police must, at the request of the Commissioner, investigate matters that might constitute grounds for disciplinary action.

PART 3

THE FUND

Clause 14: Consumer Credit Fund

This clause establishes the *Consumer Credit Fund* for the purposes of section 106 of the *Consumer Credit (South Australia) Code*.

The Fund will be administered by the Commissioner and will consist of money paid as a civil penalty under the *Consumer Credit (South Australia) Code* and interest as well as any money required to be paid into the fund under this or any other Act.

The Commissioner may invest money constituting, or forming part of, the Fund in accordance with the regulations.

Money standing to the credit of the Fund is to be applied by the Commissioner in payment of the costs of administering the fund and in making any other payment authorised by the Minister.

PART 4

MISCELLANEOUS

Clause 15: Liability for act or default of officer, employee or agent

An act or default of an officer, employee or agent of a person will be taken to be an act or default of that person unless it is proved that the person could not be reasonably expected to have prevented the act or default.

Clause 16: Offences by bodies corporate

If a body corporate is guilty of an offence, each member of its governing body and the manager are guilty of an offence and liable to the same penalty on conviction unless it is proved that the person could not by the exercise of reasonable diligence have prevented the commission of that offence.

Clause 17: Prosecutions

Proceedings for an offence must be commenced within two years or, with the authorisation of the Minister, at a later time within five years after that date.

A prosecution for an offence against this Act cannot be commenced except by the Commissioner, an authorised officer under the *Fair Trading Act 1987* or a person who has the consent of the Minister to commence the prosecution.

In any proceedings, a document purporting to certify authorisation of, or consent to, a prosecution for an offence will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Clause 18: Annual Report

The Commissioner must, on or before the 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June and the Minister must, within six sitting days cause a copy of the report to be laid before each House of Parliament.

Clause 19: Regulations

The Governor may make regulations for the purposes of this Act.

SCHEDULE 1

Appointment and Selection of Assessors for Court

This schedule provides for the appointment of panels of persons who are representative of credit providers and persons who are representative of members of the public who deal with credit providers to act as assessors for the purposes of disciplinary proceedings under Part 2. In any proceeding in which it is considered appropriate to have assessors it is then up to the presiding judge to select one member from each representative panel to sit with the Court in the proceedings.

SCHEDULE 2

Transitional Provisions

If an order is in force under Part III of the *Consumer Credit Act 1972* immediately before the commencement of this Act suspending a person's licence as a credit provider, or disqualifying a person from holding a licence as a credit provider, the order has effect as if it were an order of the District Court under Part 2 of this Act.

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

[Sitting suspended from 12.57 to 2.15 p.m.]

POLICE COMPLAINTS AUTHORITY

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

Leave granted.

The Hon. K.T. GRIFFIN: As the Minister responsible for the Police (Complaints and Disciplinary Proceedings) Act 1985, I inform the Council that I have been provided with a media release issued by Peter Boyce, of the Police Complaints Authority, and the Commissioner of Police, Commissioner Hunt, in the following terms:

A complaint has been made to the Office of the Police Complaints Authority which raises serious allegations in respect of certain issues within the Prosecution Services Division of the South Australian Police Force.

Given the nature and extent of these allegations, the complaint has been given immediate priority by the authority and an independent investigation team has been formed which includes staff from the Office of the Director of Public Prosecutions, the Crown Solicitor's Office, the Anti-Corruption Branch of the South Australian Police and investigative personnel from within the Police Complaints Authority.

Due to the seriousness of the allegations, it has been considered necessary for the authority to request that the Commissioner of Police transfer several senior police officers from Prosecution Services to other duties whilst the investigation is carried out. These transfers are in no way to be taken as an inference that there has in fact been any misconduct on the part of any such police officer. However, such action is considered by the authority to be both necessary and prudent to ensure an unhindered, open and independent investigation.

At the request of the Police Complaints Authority, resources have been made available by the Crown Solicitor to undertake the investigation. The Police Complaints Authority informs me that the allegations relate to matters handled within Prosecution Services Division within the last several years. It would be inappropriate for me to make any other comment on the matter as it is within the statutory responsibility of the independent Police Complaints Authority.

HEMP CULTIVATION

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement issued today by the Minister for Health in relation to the granting of a permit for trial plantings of industrial hemp in South Australia.

Leave granted.

QUESTION TIME

SCHOOL FIRES

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 school fires.

Leave granted.

The Hon. CAROLYN PICKLES: On Sunday 5 January a major fire occurred at Enfield High School resulting in the destruction of four classrooms, which I understand were

valued at $100 000. Media reports indicate that the fire was deliberately lit. A spate of fires has occurred during the past 12 months at great cost not only to the Government but also to students and teachers who have suffered from disruption and trauma as a result of these fires and the loss of their personal work and teaching aids.

In April 1993 the Minister, who was then the shadow Minister for Education, said he would continue to call for spotters' fees of up to $500 as an incentive for members of the public to report crime on school grounds, and he advocated the spending of additional funds on fire prevention. Can the Minister provide a list of schools damaged and the cost of that damage or repairs at each school over a 12 month period? What is the number of persons charged for offences relating to those fires? What steps has the Minister taken since coming to office to upgrade fire prevention at schools, and does the Minister still support the payment of spotters' fees for the public to report crime on school grounds? Finally, when will this scheme be implemented and what are the details?

The Hon. R.I. LUCAS: I am pleased to be able to report that in the first eight months of the 1994-95 financial year the damage to Education Department property due to arson is $1.2 million: the figure for the previous 12 month period, 1993-94, was $4.5 million. Touch wood, because it only takes one good fire to change the figures overnight, but the work that the department has been doing and the range of programs look to have proved very effective for this particular financial year of 1994-95. I am sure all honourable members would acknowledge that loss of property to the value of $4.5 million in a year is significant and too high. So, two-thirds of the way through this financial year, the range of measures that the Government and others have introduced has reduced that figure to $1.2 million. A substantial proportion of that $1.2 million has been in the past six weeks with the last fire at Enfield potentially costing almost $500 000 of that $1.2 million.

The Government has implemented a range of initiatives. One of them has not been yet, the spotter's fee. The department is having a look at that. There are some problems with what was considered to be a very sensible suggestion by the then shadow Minister for Education in 1993. We are still considering that proposition, but the range of measures that are being implemented, including the new experiment with closed-circuit television in some high risk schools, alarm systems, patrols and School Watch, which of course was a program under the previous Government, and a range of other initiatives like that, together with some small amount of increased resources seem to have had the desired effect, at least so far this financial year.

The Hon. CAROLYN PICKLES: As a supplementary question: the Minister may not have the information with him but will he furnish me with the number of persons charged for offences relating to the fires?

The Hon. R.I. LUCAS: I will be pleased to try to get that information and bring back a reply.

GULF ST VINCENT FISHERY

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 fish licensing fees.

Leave granted.

The Hon. R.R. ROBERTS: Last year the Opposition asked a series of questions in relation to the management of Gulf St Vincent prawn fishery. In particular, questions were asked as to why the new Minister allowed breeding prawns to be removed from the fishery only five days after the election, despite the fact that surveys carried out by Primary Industries SA in June and November of that year confirmed that the fishery was in a worse state than when it had been closed two and a half years earlier. In response to the Opposition's—

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: Don't get yourself in the net again. In response the Opposition was told that the prawns had to be harvested or they would die before the next spawning season, even though 80 per cent were in spawn but had not, as yet, expelled their eggs. The Opposition called for an inquiry into the Gulf St Vincent prawn fishery only to be scoffed at by Ministers and some of their under-employed backbenchers. However, subsequent action by fishermen forced the Minister to establish an inquiry, which was carried out by the consultant Mr Gary Morgan. Mr Morgan's findings and recommendations, even though there were no terms of reference printed, were published in the middle of last year.

In September last year licence fees for the prawn fishery and a lot of other fishing licences were set which resulted in a requirement with the buy back contribution for Gulf St Vincent prawn fishermen to have an up-front fee of $50 000 to participate in the Gulf St Vincent prawn fishery. Gary Morgan also had a number of recommendations. One was that a bioeconomic study take place before fishing was to resume. Another one was that a proper catch strategy, including photos, ought to be established before fishing occurred. Since that time a new Gulf St Vincent management advisory committee has been set up by the Minister for Primary Industries to overcome some of the problems perceived with the old regime.

I am advised that on 25 February this year the first night of fishing took place, which is almost six months from the time of the setting of the fees. Given that fishermen have been required to pay the $50 000 for the right to fish, given that the Minister claimed that fishing was necessary in December 1993, given that there has been no fishing in Gulf St Vincent for almost half the season and given that the Minister in Opposition always supported the proposition, and in fact insisted, that when the fishery was closed the fishermen would not be required to pay fees, I ask the following question: will the Minister return half the fees to the Gulf St Vincent prawn licence holders in line with the precedent which has been established and which he has supported?

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

WEST LAKES SHORE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about the crumbling West Lakes shore.

Leave granted.

The Hon. T.G. ROBERTS: The Messenger *Weekly Times* has an article on the front page that indicates that a $6 million repair work job needs to be done on West Lakes. I acknowledge that the problem of the West Lakes shore (with strangers and familiar faces that stand on it) has been associated with numerous Governments over a long period.

The problem is now with the current Government and the problem is getting worse. There is concern by residents that if something is not done shortly injuries will occur due to the problems associated with the deteriorating pavement and area that is supposed to be designed to stop any erosion on people's foundations and yards.

The article goes on to state that the figure that the Marine and Harbors quoted on 1989 prices, which recommended $3 million to be spent. That figure is now double that—about $6 million is the estimate given by the Minister. As I said, I am not laying the problem at the doorstep of the current Government, but the current Government has to make provision for it. What provisions will be made in the next budget for maintenance works for the West Lakes foreshore; and is it true that the Government is considering a recommendation that all houses with West Lakes boundaries will be levied a particular amount to finance the maintenance required to prevent any further foundation breakdown?

The Hon. DIANA LAIDLAW: I appreciate the honourable member's generosity in not laying the responsibility at my doorstep because it is one of a number of difficult funding issues that this Government has inherited. The honourable member did not comment on the fact that the former Government commissioned a report on the extent of the trouble around the shoreline of the West Lakes' lake. That was commissioned in 1988. The report, when released the following year, indicated that the cost would be at a minimum $3 million. It also recommended that the work be completed by 1994. As I recall, no money was spent on that during the last five years of the Labor Government. Certainly, from the correspondence that I have seen, the member at that time, Mr Hamilton, was very angry with the former Government and his colleagues for their lack of diligence on this matter, and with the developers.

I am not surprised, because, as he indicated, the extent of the problem has increased, and so has the cost for fixing it. During the period 1989-94, when the report recommended that all work be completed by 1994, the former Government, during the latter part of 1991, gave a sum of $380 000—far short of the $3 million plus that the report indicated was necessary.

An honourable member: What has Joe Rossi got to say about this?

The Hon. DIANA LAIDLAW: He also had a lot to say, just as the former member did. Both of them are justified, because the public liability concerns for the Government are enormous in this respect. I have been to the site, and the way that the cement is being eaten into and the reinforcing steel rods are being eroded is dramatic. The extent of the problem is dramatic. I am trying to recall the figure that was given last year. I think it was $1.2 million. The extent of the problem in the last report that I have received is that we are likely to be up for a further $17 million as the amount that would need to be spent over the next 14 years to reconstruct the original bank protection which is progressively failing. Since 1989, when the report was given to the former Government that there would be a minimum cost of $3 million, the estimated cost now is $17 million. Work has begun. Some problems were encountered when they started the work because of the soil. I believe that the estimate of $17 million that I was given before the most recent work started has probably escalated since because of the nature of the soil with which they are having to work and how to secure the embankment.

The Hon. T.G. ROBERTS: As a supplementary: in the second part of my question I asked: was a levy on residents being considered?

The Hon. DIANA LAIDLAW: No. I have seen reports that a levy has been considered. No options have been presented to me, and I have not considered it. It may be that some suggestion would be put to me in the context of the budget; but it has not been presented to me and I would wish to discuss it with the local council and it in turn with residents.

MODBURY HOSPITAL

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the privatisation of pathology services at Modbury Hospital.

Leave granted.

The Hon. SANDRA KANCK: In accordance with the Government's desire for the public hospital system to be run 'more efficiently', the pathology services at Modbury Hospital were put out to tender, with Gribbles Pathology being the ultimate winner. I have been informed that people within the industry are confused about the tender process. They understood that the tender was to provide the same, not a variant, service as the one that the IMVS had been providing. However, my informant tells me that Gribbles Pathology is operating with less than half the staff that IMVS employs and is sending all histopathology tests to its laboratories at Wayville. Furthermore, most of the microbiology and all complex non-profit tests are sent to IMVS or elsewhere, and, until recently, evening work was taxied to Wayville. My questions to the Minister are:

1. Can the Minister confirm that the tender put in by IMVS was on the same basis as the winning tenderer, Gribbles; that is, for a complete service?

2. If the tender was for a direct replacement service, on what basis was the decision made that a private pathology service, not IMVS, would provide the service at Modbury?

3. Can the Minister advise whether it is true that a lot of the microbiology and all complex non-profit tests are sent to IMVS for processing? If so, was this costed into the cost of Gribbles providing the service?

4. In an out-of-hours emergency, what time delays would the Minister expect could occur in getting the results of pathology tests, and does he consider that lives could be jeopardised by this delay?

5. Is Gribbles providing the same service, or merely a similar service, as IMVS previously provided at Modbury Hospital?

The Hon. DIANA LAIDLAW: I will refer those questions to my colleague in another place and bring back a reply. I suspect the answer may indicate that the services are better.

PAROLE BOARD

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about the Parole Board and its liability.

Leave granted.

The Hon. A.J. REDFORD: I draw members' attention to the decision of the South Australian Full Court in June 1994 in the case of *Swan v State of South Australia*. Briefly,

the facts were that Mr Swan, now aged 16, sued the State of South Australia and, in particular, the Parole Board and the Department for Correctional Services. He alleged that at various times he was assaulted and raped by a Mr Sincock between 1 March 1987 and 19 April 1988. At the time the boy was aged eight.

Mr Sincock had been convicted of a number of counts of unlawful sexual intercourse, indecent assault and the abduction of a male person of the age of 14 years in 1984. When he was released on parole, he had four years of his sentence to serve. A number of conditions were placed on his release on parole, including conditions that he not associate with children under the age of 14, except in the presence of another adult, and that there be a complete medical and psychiatric assessment and that a treatment program be undertaken by him. No assessment and treatment program was undertaken, despite the fact that the psychiatrist treating him in prison reported that Mr Sincock's paedophilic tendencies remained with him.

From March 1987 until April 1988 Mr Sincock associated with a number of children under the age of 14, contrary to his parole conditions. It was estimated that there were at least eight such children. The contact included staying overnight unsupervised at his flat premises. It was also found that from 17 September 1987, some four months after the activity had commenced, the Department for Correctional Services was aware of these associations, or at least was aware that they were likely to occur, from information received from Mr Sincock's associates. Despite that, no surveillance program was instituted. Mr Sincock's mere denial was accepted without checking. They accepted his word.

This failure allowed Mr Sincock to continue to associate with children under the age of 14 for some time. Numerous sexual assaults took place upon those boys, including several assaults upon the young Mr Swan. The assaults continued until Mr Sincock was arrested by the Port Adelaide CIB on 19 April 1988. When they searched his premises, they found paedophilic pornographic material, including pictures of naked children. It was alleged and subsequently upheld that the department had failed to supervise Mr Sincock adequately on his release and failed to provide resources and give such directions as would ensure his proper and adequate supervision. It was put to the court that there was no responsibility at law by the State, but that submission was rejected by the Full Court. Indeed, the court said that there was a duty of care owed by the Parole Board through its parole officers and the Department for Correctional Services in situations such as this. The court said:

> Here a convicted paedophile was released on stringent conditions of parole. He did not comply with the obligation to refrain from associations with children under the age of 14, except in the presence of another adult. He was blatant in his non-compliance. . . The defendant. . . learnt of the possible breach of conditions and knew that the children were associating with Sincock at his home. The defendant learnt of it from Sincock's associates. . . If an officer in charge of a prison knows that a prisoner has escaped, has a weapon and is moving towards his enemy's house, should not the officer come under a duty of care to do something to safeguard that enemy?

The court went on and said that the public policy would not deny a duty of care towards the plaintiff imposed on the defendant in these circumstances. Quite clearly the court felt that the department and parole officers in question had fallen down in their duties. In the light of that decision, my questions to the Minister are as follows:

1. What are the cost ramifications to the Department of Correctional Services and the Parole Board given that they owe a duty of care to ensure the protection of the public where they know that the public may be at risk when a person is released on parole?

2. Will the Parole Board take into account the safety of the public in future decisions by the Parole Board concerning the release of offenders?

3. Is it likely that prisoners will now be released from prison in the absence of prior psychiatric assessment and in cases similar to Sincock where they still have paedophilic tendencies?

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

TRAFFIC FINES

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Local Government, a question about council traffic fines.

Leave granted.

The Hon. M.S. FELEPPA: The Thebarton council seems fortunate to be able to raise 20 times more revenue through traffic fines per head of population than comparable councils. This has been made possible by retaining a security firm to issue summonses for the recovery of unpaid traffic fines. The arrangement with the security firm is imprecise, and lacks the more formal and documented arrangements required for contracts for outsourcing of services by a local government council.

The plot thickens when it is realised that the council's only parking inspector is a director of the security firm which has this casual arrangement with the Thebarton council. Between the parking inspector and the security firm, it is not so much a conflict of interest but an opportunity for a compact of interest to the mutual advantage of both. The more infringement notices, the more unpaid fines, the more summonses issued by the security firm. Business was booming for the security firm to the advantage of the parking inspector. The Thebarton council was also on a winner to the extent of a much higher level of income from parking fines.

The Sheppard Consulting Group has investigated the matter because of the number of complaints. As reported in the *Advertiser* of 18 February 1995, they say there is no evidence of impropriety, but it warned that the links between the council and Argus Security 'appeared too cosy' and that innuendo could develop. The *Advertiser* says that it is a damning report that concludes, amongst other things, that the council has been unwilling or unable to deal effectively with the concern relating to Argus Security.

Since the first reports, the council has acted by moving the parking inspector to alternative duties and discontinued its relationship with Argus Security. It has also brought a halt to the practice of issuing double fines, that is, fining people on the way in and the way out of a particular section of a road dedicated to buses. My question to the Minister is: now that the Thebarton council has changed its practice, will the Minister please assure this Council that there are no cases of this sort in any other council area? I also ask that the Minister give thought to the prospect of the council's refunding those people who were fined under the ludicrous system which was operating in Thebarton.

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

POWER OF ATTORNEY

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Attorney-General a series of questions on the subject of power of attorney in South Australia.

Leave granted.

The Hon. T. CROTHERS: In an article on page 4 of the *Advertiser* dated Monday 6 March this year, written by Jane Read and headed, 'Fears of fraud in legal kits,' the following appeared:

> Elderly people have been left wide open to financial abuse by the creation of 'do-it-yourself' power of attorney kits, industry experts have warned. The $10 kits available from the Lands Titles Office had trivialised the process of granting power of attorney and created the potential for gross fraud, a meeting of lawyers and landbrokers said last week.
>
> Power of attorney is the 'single most powerful document that anybody could be expected to sign', according to the President of the Australian Institute of Conveyancers, Mr Michael Psarros.
>
> 'The home kit has fooled people into thinking they are filling in nothing more serious than an application form. They are not being given any advice before signing power of attorney documents, and this has created an opportune environment for fraud.'

Further on the article states:

> Mr Andrew Warwick, an Adelaide conveyancer, said meetings of industry leaders had warned the Government of the dangers of the kits and had been ignored. Now cases of financial abuse of elderly people were highlighting just what they had foreshadowed, he said.

Indeed, he went on to cite the case of Ruth who, after signing a power of attorney, was left with nothing after her son had transferred all her assets into his name. The article continues:

> Mr Dale Carman, a solicitor who also fought the introduction of the kit, said the power of attorney process should be made harder, not easier, to prevent people signing forms without advice.

In fact, he went further and said:

> Power of attorney documents should also have to be registered.

In fairness to the Attorney, the same article states:

> . . . the Attorney-General, Mr Griffin, said there had always been some risk of fraud.

In view of the number of prominent people in this field in South Australia who have expressed mounting concern over this issue, I direct the following questions to the Attorney:

1. What guarantees will the Government give to people who are fooled by the nature of the $10 kit issued by the Lands Titles Office into giving power of attorney and, if no guarantee is forthcoming from the Government, why is that so?

2. Will the Attorney consider taking up the suggestion of Mr Dale Carman to have all South Australian executed power of attorney documents registered so as to prevent people presenting documents that have been revoked or changed? Finally, but by no means exhaustively, in respect of questions that could be developed—

Members interjecting:

The Hon. T. CROTHERS: The Government says 'Hear, hear!' and I am glad they agree with me, because since they introduced the second measure in respect of the WorkCover Bill, they have been looking in an exhausted and dazed state altogether, given the 9 000 or 10 000 people who assembled outside the Chamber in 100 degree heat. Finally, however, but by no means exhaustively, certainly from one member of the Opposition who is absolutely re-invigorated:

3. Given the levels of concern that are being expressed over present power of attorney documentation, will the Attorney give this Council an undertaking that he will re-visit the matter with a view to tightening up the procedures in so far as it is possible for him to do so; and, if not, why not?

The Hon. K.T. GRIFFIN: The answer to the first question is 'No'. The answer to the second question is 'No'. The answer to the third question is 'No'. Rather than just giving those bald answers, I think it is appropriate that I just expand a little.

The Hon. Anne Levy: Standing Orders prevent you from debating the reply.

The Hon. K.T. GRIFFIN: I am not debating it.

The PRESIDENT: Order! The Attorney-General.

The Hon. K.T. GRIFFIN: Notwithstanding the brevity of the answers to the questions, I think it is important to give a little information to establish the basis for those answers. The fact is that the kits available through the Lands Titles Office and the Legal Services Commission were prepared because the Lands Titles Office was concerned that an undue amount of time was being spent at that office in over the counter inquiries about how to fill in stationers' powers of attorney. Whilst the Lands Titles Office was prepared to give some information over the counter, it took the view that, if in conjunction with the Legal Services Commission, it could develop an appropriate kit which would provide all the information that was needed to enable all the forms to be completed, including the correct forms, that would be a service to the public. I agree with that. The fact is that, no matter how much one seeks to give people advice that there is a better way of doing it, they will always go to a stationery shop in order to obtain the stationers' powers of attorney or wills, for example.

When I was doing some private legal practice, one of the major causes of concern to those who were left to carry the burdens of a deceased estate—the relatives in particular—was that the stationers' forms in relation to wills had been inadequately prepared, and additional cost was imposed in trying to sort out the legal consequences of improperly completing stationers' forms of wills. But, with powers of attorney, on the basis that there will always be people who will want to do their own thing rather than getting legal advice, I was prepared to support the preparation of a comprehensive kit which drew attention to the concerns of the legal profession and others that inadequate information may be given to people who execute those documents.

The Government gives no guarantees in relation to the kits and I do not intend to give any. They are a service to the public, designed to assist members of the public to complete powers of attorney rather than providing no assistance when that is obviously sought from officers of the Lands Titles Office. The same might apply to the Legal Services Commission, where requests for advice are received on a fairly regular basis. I must say that the Legal Services Commission has a number of programs and brochures which involve a do-it-yourself approach—do-it-yourself divorce, for example—designed to save legal costs and also to provide some expert guidance to members of the public who either cannot afford or do not want to make arrangements to have themselves properly represented. I have no difficulties with the issuing of the kit. The price is $10.

The Law Society and the Australian Institute of Conveyancers are concerned about the availability of these kits. They argue for more stringent controls over the execution of powers of attorney. Short of banning stationers and others from selling or making available these sorts of forms, I do not believe it can be policed even if we wanted to police it. In any event, one has to remember that even when making a power

of attorney with a lawyer, whether it is an ordinary or enduring power of attorney, these powers of attorney last for years and, provided there is no evidence of revocation, they can be acted on 25 years hence. If they have been drawn by a lawyer the same consequences may well flow in 10 or 20 years time or whenever the person who is the grantee of the power of attorney comes to exercise the responsibilities of an attorney. So, I do not think it matters who prepares those sorts of documents. They can always be the subject of fraudulent action at some time in the future and I do not think there is anything one can do to avoid that possibility.

The Hon. T. Crothers: I am not in disagreement with that.

The Hon. K.T. GRIFFIN: Okay. The other issue is whether they should be registered. I have seen nothing that convinces me that we ought to impose upon all the citizens of this State an obligation to have their powers of attorney registered at the Lands Titles Office, whether or not they relate to real estate. The fact is that they can be deposited at the general registry office, which is a public registry, so that they are on the public record, but that does not mean that at some stage they will not be revoked, and people will forget to lodge a notice of revocation. That is the problem with registration: if you have a public or even a private registry (and who has access to this registry is another issue in itself), the fact is that people will always forget either to update changes by registration or to register revocations. So, with respect to those who are recommending registration, I do not think it is a workable course of action to pursue.

In relation to the last question, I do not think there are significant levels of concern within the wider community about powers of attorney. There are certainly concerns among the legal profession and the Institute of Conveyancers, but I would suggest that the level of inquiry about powers of attorney, the Lands Titles Office and the Legal Services Commission (and I do not have details of the levels specifically, but I am told that they are quite significant) would suggest that members of the public have welcomed at least some other information and advice other than having to go to a professional adviser and pay a large amount by way of costs to have a power of attorney prepared. I have noted the concerns which were referred to in the *Advertiser* of 6 March. I am not persuaded that the Government ought to be taking any initiative to make it more difficult for people to execute powers of attorney or to add additional costs to the preparation of documents to assist them to order their affairs in a proper manner.

BLOOD TESTS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about compulsory blood tests of injured persons, including water skiers, under section 74 of the Harbors and Navigation Act 1993.

Leave granted.

The Hon. T.G. CAMERON: This section of the Harbors and Navigation Act makes it compulsory to take blood from a person apparently over the age of 14 years who is injured in an accident involving a vessel. I am unable to find any definition of a vessel in the Act, but I will come back to that. I recently asked a question in relation to this matter regarding the Road Traffic Act and it would appear that again we could have a situation where if children or people injured on *Popeye*, for example, were taken to hospital they could be forced to undergo the invasive procedure of having to give blood. My questions to the Minister are:

1. Will the Minister review this section of the Act along the same lines as requested in my question about the Road Traffic Act?
2. Will the Minister tell the House what is the definition of a vessel?
3. Will the Minister examine why there is a need to take compulsory blood samples from skiers who are involved in an accident?

The Hon. DIANA LAIDLAW: The former Minister for Transport, who introduced this Bill in terms of a vessel, has indicated to me that she recalls that there is such a definition, and I will find it for the honourable member and bring back a reply on that matter next week. In the meantime, I will have the other matters to which the honourable member has referred investigated. I can assure him that work has commenced on the matters that he raised a couple of weeks ago in relation to younger people and blood alcohol testing, and I am keen to speak to him further on that shortly.

POISONOUS SUBSTANCES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about labelling of poisonous substances.

Leave granted.

The Hon. CAROLINE SCHAEFER: In recent years it has become obligatory under the Farmsafe code of practice instigated by the South Australian Farmers Federation for farmers to undertake chemical users courses. The aim of this is that they be better informed to use farm chemicals safely. On Eyre Peninsula a series of courses, which have been introduced recently, are available specifically for women in farming, and one of these women has raised her concerns with me on this issue. There is to be a change to the national labelling code phased in over five years, beginning in July 1995 and, although my constituent's concerns are specific to farm chemicals, apparently this change applies equally to all 'S' rated substances, including pharmaceutical drugs.

The changes will include the following: removal of all 'S' ratings on labels, and removal of all red warnings, so that words, such as 'poison', 'warning' and 'caution', which are normally labelled in red, will now be written in black, half the size of the largest writing on the label. A letter from my constituent states:

> The new warnings will be written in black and are very ambiguous. Many labels include a large percentage of black writing, and if warnings are to also be in black they will not be readily recognisable as warnings. I feel the labelling of all potentially hazardous substances should be made more noticeable to the consumer, not less.

My questions are:

1. Is the Minister aware of these imminent changes?
2. Is he aware of the reasons for their introduction?
3. Does this State concur with their introduction?
4. Is South Australia able to do anything to halt this seemingly pointless change to standards?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague and bring back a reply.

DEPARTMENTAL RESOURCING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the

Minister for the Environment and Natural Resources a question about the resourcing of both the department and the Environment Protection Authority.

Leave granted.

The Hon. M.J. ELLIOTT: The State Government's intensified push for public sector job cuts has failed to take into account the impact of cuts on a department's ability to fulfil its role in serving the community. I have been told that the Department of Environment and Natural Resources, which is already under-resourced for its large and important role, is in the process of looking at how it can achieve cuts of between 5 and 10 per cent. The joke going around is that it is now the 'Department of Environment and No Resources'.

One example of how this will impact on South Australians is the effect on our fledgling environmental watchdog, the Environment Protection Authority, which only officially begins operations on 1 May. By national standards the EPA is already the most under-resourced body of its kind in Australia. Already concerns have been raised about a number of issues with which the EPA has to deal. There are fears that the organisation is not going to cope with its workload with its current funding levels. Now there is concern that five of 80 EPA positions will be axed.

Many of the EPA's responsibilities have been in the spotlight in recent times, including issues such as waste management, with even the Environment Minister himself admitting that dumping practices in South Australia are appalling. Then we have the EPA's policing of environmental standards about which there has been ongoing complaints and concern that standards have never really been enforced. The copper chrome arsenate spill in the South-East and a number of road spills are only recent examples.

Satisfactory protocols have not been established to deal with contaminated soil sites. An example is the Australian National's contaminated Islington site, where there is evidence of asbestos, arsenic and other toxic materials on the site. I understand that the current EPA stance is not to force a proper clean-up but instead to dump a metre of clay-based soil on top of the contaminants. Again, contaminants from previous pesticide use have been found on the land at the Blackwood Forest reserve, and it is contaminated quite heavily, I understand. One current proposal is to locate a school there and cover the affected land with asphalt.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: That's right; the list goes on and on. Much work still has to be done to establish proper protocols for contaminated site clean-up, waste management and general enforcement of environmental standards. In the light of this heavy workload, there is grave concern at the allegations that the EPA will have funding cuts even before it officially begins operation. My questions are:

1. How will the Government's budget and public sector cuts impact on funding and resources for the Department of Environment and Natural Resources?

2. What plans does the Minister have regarding funding for and staffing levels of the Environment Protection Authority? Is it going to be a good law with no enforcement because there is no-one to do it?

3. Will the Minister assure the Council that the Environment Protection Authority will receive adequate resources to enable it properly to carry out all its functions?

The Hon. DIANA LAIDLAW: I will refer the questions to the Minister and bring back a reply.

GOVERNMENT ADVERTISEMENTS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about guidelines for Government advertisements.

Leave granted.

The Hon. ANNE LEVY: It has been drawn to my attention that the Minister for the Status of Women in New South Wales, who comes from the same political Party as the Minister, has introduced guidelines which apply to all State Government advertising placed by the Government of New South Wales as well as advertisements placed by any individual or company on Government property, which includes buses, trains and so on. The 10 guidelines, of which I have a copy, refer to such things as: does the advertisement contain suitable models for girls and young women; does it reflect the fact that girls may aspire to careers in trades, business and the professions; does it reflect contemporary family structures; does it take into account that women and girls are fearful of violence and concerned about the use of violent imagery; does it avoid overt violence; does it avoid using stereotyped images of beauty; does it reflect Australia's ethnic mix; does it show indigenous and non-indigenous Australians working together constructively; does it portray older women as active, confident and healthy; and does it show women as being informed and interested in financial matters?

As I say, these guidelines, of which I have given a brief precis, are to apply to all advertising placed by the New South Wales Government and to all advertising that is placed on Government property. The Advertising Federation of Australia has endorsed the guidelines and the Minister for Administrative Services, who will be ensuring that the guidelines are adhered to, has welcomed them and stated that it will ensure that money is not spent offending people. The two Ministers concerned in New South Wales are both women.

Has the Minister considered production of the same or similar guidelines in South Australia, both for Government advertising and for advertising on Government property, which would, of course, include the buses which, even under the tendering system, remain Government property? If the Minister has considered such guidelines, will they be implemented in South Australia and, if so, when? If the Minister has not yet considered it, will she do so as a matter of urgency?

The Hon. DIANA LAIDLAW: I am aware of the guidelines, and I have to acknowledge that I found many of them to be a very useful guide to people in the advertising industry, and to Government, in terms of conceiving the advertisement in the first place, and then by the agency that would ultimately have to accept the advertisement. I was pleased to learn from the honourable member that the guidelines have also been accepted by the Advertising Federation of Australia; of course, that would be a necessary prerequisite. Certainly, in my view, it shows greater maturity by that body. I have been upset in the past, and I know that some members opposite have also expressed concern, about the nature of advertising and the portrayal of women on buses.

In the past couple of years a great deal more discipline has been shown by the agent carrying out the work on behalf of TransAdelaide, formerly the STA. In terms of public transport, Buspak has been engaged in and has the responsi-

bility for accepting the advertising material on buses. Buspak has the guidelines that have been developed by TransAdelaide, and there is no controversy about the material on buses this time as there was a number of years ago.

I have not taken the matter further, in terms of exploring the issue with my colleagues, but I certainly will undertake to do so. We will look at the merits of all those guidelines. It may be that we will not accept all of the guidelines in South Australia; we may wish to add some other elements that we would consider important and relevant to our State. I understand that it would have to be discussed with a variety of people; my colleague's views would be important in that respect. Certainly, I will pursue it further.

HINDMARSH ISLAND BRIDGE

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Attorney-General a question about the Hindmarsh Island bridge.

Leave granted.

The Hon. BARBARA WIESE: As members will recall, some weeks ago the High Court brought down a decision which overturned the decision taken by the Federal Minister for Aboriginal Affairs to stop construction of the Hindmarsh Island bridge. A number of developments have occurred since that time, the most recent of which was the news this week that the shadow Minister for Aboriginal Affairs had taken documents relating to Aboriginal women's business and photocopied them. That has quite understandably led to considerable community outrage and concern and, just yesterday, at the International Women's Day luncheon a motion was put deploring this action and calling on the Federal shadow Minister to resign.

Also, the Federal Minister for Aboriginal Affairs has expressed an intention to appeal against the High Court decision. A couple of weeks ago, the Attorney-General also made a ministerial statement upon the release of the High Court decision in which he indicated a number of things.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Among the matters he addressed was the statement that the Crown Solicitor had been authorised to have discussions with the Westpac Banking Corporation to explore various options. He stated at the time that those discussions had not come to any conclusion pending the court case. The Attorney-General also indicated that, notwithstanding the High Court decision, there was still uncertainty because of the possibility of appeals and other steps that might be taken by the parties. My questions to the Attorney are:

1. Will he outline the matters discussed by the Crown Solicitor with representatives of Westpac?

2. What steps other than appeals does he envisage might be taken by relevant parties following the High Court decision?

3. Has the State Government now determined its own position and, if not, when can it be expected?

The Hon. K.T. GRIFFIN: One matter that does need to be corrected in the honourable member's explanation is that it was not a decision of the High Court; it has not reached the High Court. It was a decision of the Federal Court before Justice O'Loughlin. My understanding, at least from the media, is that the Federal Minister was proposing to appeal, and that would presumably go to the Full Federal Court. So, there is still a long way to go before that matter is finally through the court process.

It also needs to be recognised that Justice O'Loughlin's decision related to the process and not to the merits of the case. So, it is in the nature of a preliminary issue rather than dealing with the substantive questions which arose out of the decision by the Federal Minister for Aboriginal Affairs.

So far as the first question is concerned my answer is: no, I will not outline the matters which the Crown Solicitor has discussed with Westpac; they are confidential and I am sure that the honourable member, if she were Minister and still dealing with this matter, would take a similar position. Of course, it follows the precedents that have been set by my predecessors—not just the immediate predecessor—that we do not table in the Parliament or make public the details of the Crown Solicitor's opinions; nor do we canvass in the public arena the basis upon which matters might be discussed with a view to resolving matters which are likely to be the subject of court action.

That, of course, is always the possibility with a matter as complex as the Hindmarsh Island bridge, whether it is in relation to the Federal Minister or the State's agreements entered into by the previous Government. There is quite obviously the potential for litigation by disenchanted parties.

As to the second question, the Government has not reached a final conclusion about the course of action it should pursue. They are matters which obviously are significantly affected by the actions of the Federal Minister and by the litigation that has ensued. The Government is still considering its position but it is a matter of some difficulty because, if one does recognise that the decision of the Federal Court relates to matters of process only, it leaves many other legal issues still up in the air and also it creates a significant problem if there is an appeal because no-one really knows what the outcome of the appeal may be. The honourable member must surely realise from her own involvement in this matter that it is not something that is now going to be easily resolved, largely because of the actions of the Federal Minister, but they will be issues that will be further explored and clarified in the public arena when the matter does finally get to the Federal Full Court.

PLUMBERS, GAS FITTERS AND ELECTRICIANS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate plumbers, gasfitters and electricians; to repeal the Electrical Workers and Contractors Licensing Act 1966; to amend the Gas Act 1988, the Sewerage Act 1929 and the Waterworks Act 1932; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

As part of the review of all consumer legislation, the Legislative Review Team reviewed the Builders Licensing Act 1986. The review team has identified a number of issues requiring resolution. These issues are discussed in a proposal paper which will be released for public comment over the next month. Concurrently with this review, the Government has made decisions with respect to the corporatisation of

EWS and ETSA and it was agreed that the responsibility for the licensing of plumbers, gasfitters and electricians be transferred to the Minister for Consumer Affairs. To achieve this, it was agreed that this matter would be considered by the Legislative Review Team as part of its review of occupational licensing; in particular, the suitability of the Builders Licensing Act as a vehicle for the future regulation of the occupations was to be examined.

In order to assist the review team, a short term working party was established to report on the need for continued regulation of the occupations and to examine the implications of accommodating the occupations under the Builders Licensing Act. The working party included representatives from all major industry parties and licensing authorities involved with these occupations. The Legislative Review Team considered the report of the Working Party for the Regulation of Electricians, Plumbers and Gasfitters and supported recommendations which involved the drafting of a new Bill as it was concluded that the existing Builders Licensing Act would not be able to accommodate these new jurisdictions in a workable format.

The review team proposed that—

- existing legislation relevant to the licensing of electricians, plumbers and gasfitters be repealed; and
- licensing of these occupations be continued under the new Bill which provides for a competency-based approach to occupational and business licensing and a streamlined administration vested with the Minister for Consumer Affairs (with the licensing authority to be the Commissioner for Consumer Affairs);

noting that the longer term objective of this approach is—

- to provide a comprehensive new framework for occupational and business licensing in the building industry encompassing these principles, following the completion of further consultation with the industry on outstanding issues relevant to the licensing of builders; and
- to repeal the Builders Licensing Act and incorporate the licensing and registration provisions under new legislation at some later date.

This Bill repeals the Electrical Workers and Contractors Licensing Act 1966 and amends the Gas Act 1988, the Sewerage Act 1929 and the Waterworks Act 1932.

A new system for the licensing of contractors and the registration of workers in the three occupations will be established. This means that persons carrying on the business of electrical, plumbing or gasfitting work, will be required to be fit and proper persons and will be assessed on their business knowledge, experience and financial resources before being granted a licence. The person performing the actual work will be required to hold the appropriate technical qualifications and be registered as a worker.

While this system is broadly similar to the existing builders licensing legislation, the new Bill establishes a much more flexible framework and significant opportunities for streamlining current regulatory imposts on business. For example, where a person requires a licence and registration, this will be able to be issued with one application form and fee.

If a person who proposes to carry on business as a contractor in a partnership applies for a contractor's licence, the entitlement to be licensed will be assessed on the basis of each of the partner's qualifications taken as a whole. In this situation, the licence will only be issued when the applicants are operating as a partnership, and only the partner with technical qualifications will be allowed to carry out the work.

It is not intended that the Commissioner for Consumer Affairs, in taking on the licensing function for the three occupations, will be carrying out the technical assessment or audit functions associated with maintaining standards of work performed by licensees. This functions will be more appropriately carried out by industry regulators under separate arrangements.

As with other new consumer legislation, the Bill provides for the Commissioner for Consumer Affairs to take action on complaints and lodge disciplinary proceedings with the Administrative and Disciplinary Division of the District Court of South Australia. The Commissioner for Consumer Affairs will perform the same role under this Bill as under the other licensing and registration jurisdictions currently administered by the Commissioner. Apart from the issuing of licences and registration (based on recommendations of the advisory panels), the Commissioner is involved in the assessment of business licences.

While assessment methods in all three occupations are currently competency-based to some degree, the industry training organisations associated with all three occupations have either developed, or are in the process of developing, national competency standards. When these are finalised, training courses based on the standards may be accredited through the new Accreditation and Registration Council which will also approve training providers.

The Bill anticipates this approach by removing the direct function of examination from the advisory/examination boards currently in existence. There are currently four advisory and examination boards established under the legislation which will be repealed with proclamation of the new Bill. These are—

- the Sanitary Plumbers Examination Board;
- the Plumbers Advisory Board;
- the Gasfitters Examining Board;
- the Electrical Advisory Committee.

Each of these boards performs functions related to the technical assessment of applicants for licences or registrations. The Bill proposes to streamline these four organisations into two advisory panels and to upgrade their role to ensure that they do not place artificial entry barriers to the occupation or business. The Bill provides the power to establish the panels by regulation and to define the functions further through this means. This process will allow for flexibility to alter the panel arrangements as more training providers, approved through the Accreditation and Registration Council, enter the field. In the meantime, the regulations will propose that the panels are given an overseeing role in the technical assessment process rather than the direct function of examining applicants. Both existing examination boards already delegate the examination role to TAFE or other organisations.

While the major direct impact of the proposal will be on existing and prospective licensees/registrants, the Bill will have the same direct and indirect benefits on the South Australian economy arising from the removal of an over-restrictive regulatory regime and the streamlining of requirements. Further, the relocation of the licensing function to the Commissioner for Consumer Affairs will reduce the administrative costs of three separate licensing bodies and provide significant opportunities for further streamlining in conjunction with the review of the Builders Licensing Act. I commend the Bill to honourable members, and seek leave

to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions or words and phrases used in the Bill. In particular, a **contractor** (whether a plumbing, gas fitting or electrical contractor) is defined as a person who carries on the business of performing plumbing, gas fitting or electrical work (as the case may be) for others. A **worker** (whether a plumbing, gas fitting or electrical worker) is defined as a person who personally carries out plumbing, gas fitting or electrical work (as the case may be) as a trade or occupation.

Clause 4: Non-derogation

The provisions of this proposed Act are in addition to and do not derogate from the provisions of any other Act.

Clause 5: Commissioner responsible for administration of Act

The Commissioner for Consumer Affairs is responsible, subject to the control and directions of the Minister, for the administration of this proposed Act.

PART 2

LICENSING OF CONTRACTORS

Clause 6: Obligation of contractors to be licensed

A person must not carry on business, or claim or purport to be entitled to carry on business, as a plumbing, gas fitting, or electrical, contractor except as authorised by a licence under this proposed Part. The penalty for being unlicensed is a division 4 fine ($15 000).

A person required to be licensed as a contractor is not entitled to any fee or other consideration in respect of work performed as a contractor unless authorised to perform the work under a licence or a court (hearing proceedings for recovery of the fee or other consideration) is satisfied that the person's failure to be so authorised resulted from inadvertence only.

Clause 7: Classes of licences

The four classes of licences for contractors are—

1. plumbing contractors licence;
2. gas fitting contractors licence;
3. electrical contractors licence;
4. restricted licence—

· plumbing contractors licence subject to conditions limiting the work that may be performed under the authority of the licence—

1. to water plumbing work;
2. to sanitary plumbing work;
3. to draining work;
4. in any other way;

· gas fitting contractors licence subject to conditions limiting (in any way) the work that may be performed under the authority of the licence;

· electrical contractors licence subject to conditions limiting (in any way) the work that may be performed under the authority of the licence.

Conditions limiting the work that may be performed under the authority of a licence may be imposed by the Commissioner on the grant of the licence.

Clause 8: Application for licence

An application for a licence must be made to the Commissioner in the manner and form approved by the Commissioner and be accompanied by the fee fixed by regulation.

Clause 9: Entitlement to be licensed

A natural person is entitled to be granted a licence if the person—

· has the qualifications and experience required by regulation for the kind of work authorised by the licence or equivalent qualifications and experience; and

· is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and

· is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and

· has not (during the period of five years preceding the application for the licence) been a director of a body corporate wound up for the benefit of creditors during a particular time frame; and

· has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on the business authorised by the licence; and

· is a fit and proper person to be the holder of a licence.

A body corporate is entitled to be granted a licence if—

(a) the body corporate—

· is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and

· is not being wound up and is not under official management or in receivership; and

(b) no director of the body corporate—

· is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or

· has, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors during a particular time frame; and

· the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business authorised by the licence; and

· the body corporate has sufficient financial resources for the purpose of properly carrying on the business authorised by the licence; and

· each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.

If the Commissioner is not satisfied that the applicant meets requirements as to qualifications, business knowledge, experience or financial resources but is satisfied that the applicant proposes to carry on business as a contractor in partnership with a person who does meet those requirements, the Commissioner may (subject to the other provisions of this proposed section) grant a licence to the applicant subject to the condition that the applicant not carry on business under the licence except in partnership with that person or some other person approved by the Commissioner.

Clause 10: Appeals

An applicant for a licence may appeal to the Administrative and Disciplinary Division of the District Court (Court) against a decision of the Commissioner refusing the application. Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or (if the Court determines) by affidavit.

The Court may, on the hearing of an appeal affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate and make any other order that the case requires.

Clause 11: Duration of licence and fee and return

A licence remains in force (except for any period for which it is suspended) until the licence is surrendered or cancelled or the licensed contractor dies or (in the case of a licensed body corporate) is dissolved.

A licensed contractor must, at intervals fixed by regulation pay the fee fixed by regulation and lodge a return in the manner and form required by the Commissioner.

Clause 12: Licensed contractor's work to be carried out by registered worker

A licensed contractor who does not ensure that plumbing, gas fitting or electrical work performed in the course of the contractor's business is personally carried out by a registered worker authorised to carry out such work is guilty of an offence and liable to a division 4 fine ($15 000).

PART 3

REGISTRATION OF WORKERS

Clause 13: Obligation of workers to be registered

A person must not act, or claim or purport to be entitled to act, as a plumbing, gas fitting, or electrical, worker except as authorised by registration under this Part.

The penalty for non-compliance is a division 7 fine ($2 000).

Clause 14: Classes of registration

The four classes of registration for workers are—

1. plumbing workers registration;
2. gas fitting workers registration;
3. electrical workers registration;
4. restricted registration—

· registration as a plumbing worker subject to conditions limiting the work that may be carried out under the authority of the registration—

1. to water plumbing work;

2. to sanitary plumbing work;
3. to draining work;
4. in any other way;

· registration as a gas fitting worker subject to conditions limiting (in any way) the work that may be carried out under the authority of the registration;

· registration as an electrical worker subject to conditions limiting (in any way) the work that may be carried out under the authority of the registration.

Conditions limiting the work that may be carried out under the authority of registration may be imposed by the Commissioner on the grant of the registration.

Clause 15: Application for registration

An application for registration must be made to the Commissioner in the manner and form approved by the Commissioner and be accompanied by the fee fixed by regulation.

Clause 16: Entitlement to be registered

A natural person is entitled to be registered if the person has the qualifications and experience required by regulation for the kind of work authorised by the registration or qualifications and experience that the Commissioner considers appropriate having regard to the kind of work authorised by the registration.

Clause 17: Appeals

An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application. Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or by affidavit. On the hearing of an appeal, the Court may affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate and make any other order that the case requires.

Clause 18: Duration of registration and fee and return

Registration remains in force (except for any period for which it is suspended) until the registration is surrendered or cancelled or the registered worker dies.

A registered worker must pay to the Commissioner the fee fixed by regulation and lodge with the Commissioner a return in the manner and form required by the Commissioner at intervals fixed by the regulations.

PART 4
DISCIPLINE

Clause 19: Interpretation of Part

In this proposed Part, contractor, director and worker are defined to include former contractors, directors and workers (as the case may be).

Clause 20: Cause for disciplinary action

There is proper cause for disciplinary action against a contractor if—

· licensing of the contractor was improperly obtained; or

· the contractor has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or

· the contractor or another person has acted contrary to this proposed Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the contractor; or

· events have occurred such that the contractor would not be entitled to be licensed as a contractor if he or she were to apply for a licence.

There is proper cause for disciplinary action against a worker if—

· registration of the worker was improperly obtained; or

· the worker has acted unlawfully, improperly, negligently or unfairly in the course of acting as a worker.

Disciplinary action may be taken against each director of a body corporate that is a contractor if there is proper cause for disciplinary action against the body corporate, but may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.

Clause 21: Complaints

The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this proposed Part.

Clause 22: Hearing by Court

The Court may conduct a hearing for the purpose of determining whether matters alleged in a complaint constitute grounds for disciplinary action under this proposed Part.

Without limiting the usual powers of the Court, the Court may, during the hearing—

· allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and

· allow modification of, or additional allegations to be included in, the complaint.

Clause 23: Participation of assessors in disciplinary proceedings

In any proceedings under this proposed Part, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with proposed schedule 1.

Clause 24: Disciplinary action

On the hearing of a complaint, the Court may by an order or orders do one or more of the following:

· reprimand the person;

· impose a fine not exceeding $8 000 on the person;

· in the case of a person who is licensed as a contractor or registered as a worker—impose conditions or further conditions on the licence or registration or suspend or cancel the licence or registration;

· disqualify the person from being licensed or registered;

· prohibit the person from being employed or otherwise engaged in the business of a contractor;

· prohibit the person from being a director of a body corporate that is a contractor.

If a person has been found guilty of an offence and the circumstances of the offence form (in whole or in part) the subject matter of the complaint, the person is not liable to a fine under this proposed section in respect of conduct giving rise to the offence.

Clause 25: Contravention of orders

A person who is employed or otherwise engages in the business of a contractor or who becomes a director of a body corporate that is a contractor in contravention of an order of the Court is guilty of an offence (as is the contractor).

Each is liable to a penalty of a division 3 fine ($30 000) or division 7 imprisonment (6 months).

PART 5
ADVISORY PANELS

Clause 26: Advisory panels

The Minister must establish an advisory panel for plumbing and gas fitting and an advisory panel for electrical work in accordance with the regulations.

An advisory panel established for plumbing and gas fitting will have the following functions:

· to advise the Commissioner in respect of licensing or registration;

· to advise the Minister or the Commissioner in respect of any other matter relating to plumbing or gas fitting or the administration of this proposed Act;

· any other functions prescribed by regulation or prescribed by or under any other Act.

An advisory panel established for electrical work will have the following functions:

· to advise the Commissioner in respect of licensing or registration;

· to advise the Minister or the Commissioner in respect of any other matter relating to electrical work or the administration of this proposed Act;

· any other functions prescribed by regulation or prescribed by or under any other Act.

PART 6
MISCELLANEOUS

Clause 27: Delegations

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

· to a person employed in the Public Service; or

· to the person for the time being holding a specified position in the Public Service; or

· to any other person under an agreement under this proposed Act between the Commissioner and an organisation representing the interests of contractors or workers.

The Minister may delegate any of the Minister's functions or powers under this proposed Act (except the power to direct the Commissioner).

Clause 28: Agreement with professional organisation

The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this proposed Act under which the organisation undertakes a specified role in the administration or enforcement of this proposed Act.

The Commissioner may not delegate any of the following for the purposes of such an agreement:

· functions or powers under proposed Part 2 or 3 (*ie:* licensing or registration of contractors or workers);

· power to request the Commissioner of Police to investigate and report on matters under this proposed Part;

· power to commence a prosecution for an offence against this proposed Act.

The Minister must, within six sitting days after the making of such agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

Clause 29: Exemptions

The Minister may, on application by a person, exempt the person from compliance with a specified provision of this proposed Act. Such an exemption is subject to the conditions (if any) imposed by the Minister (and may be varied or revoked by the Minister).

The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

Clause 30: Registers

The Commissioner must keep a register of persons licensed as contractors and a register of persons registered as workers. A person may inspect a register on payment of the fee fixed by regulation.

Clause 31: Commissioner and proceedings before Court

The Commissioner is entitled to be joined as a party to any proceedings of the Court under this proposed Act and may appear personally or may be represented at the proceedings by counsel or a person employed in the Public Service.

Clause 32: False or misleading information

A person must not make a statement that is false or misleading in a material particular in any information provided, or record kept, under this proposed Act.

The penalty for contravention of this proposed section is—

(a) if the person made the statement knowing that it was false or misleading—a division 5 fine ($8 000);

(b) in any other case—a division 7 fine ($2 000).

Clause 33: Name in which contractor may carry on business

A licensed contractor must not carry on business as a contractor except in the name in which the contractor is licensed or in a business name registered by the contractor under the *Business Names Act 1963* of which the Commissioner has been given prior notice in writing.

The penalty for contravention of this proposed section is a division 7 fine ($2 000).

Clause 34: Statutory declaration

Where a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration.

Clause 35: Investigations

The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to the determination of an application under this proposed Act or a matter that might constitute proper cause for disciplinary action.

Clause 36: General defence

It is a defence to a charge of an offence against this proposed Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 37: Liability for act or default of officer, employee or agent

For the purposes of this proposed Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Clause 38: Offences by bodies corporate

Where a body corporate is guilty of an offence against this proposed Act, each director of the body corporate is (subject to the general defence) guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 39: Continuing offence

A person convicted of an offence against a provision of this proposed Act in respect of a continuing act or omission is liable to an additional penalty as well as the penalty otherwise applicable to the offence and is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction.

Clause 40: Prosecutions

Proceedings for an offence against this proposed Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

A prosecution for an offence against this proposed Act cannot be commenced except by—

· the Commissioner; or

· an authorised officer under the *Fair Trading Act 1987*; or

· a person who has the consent of the Minister to commence the prosecution.

Clause 41: Evidence

In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying as to matters under the proposed Act will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

Clause 42: Service of documents

Service of a notice or document under the proposed Act may be effected either personally or by post.

Clause 43: Annual report

The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this proposed Act during the period of 12 months ending on the preceding 30 June which must be laid before Parliament.

Clause 44: Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this proposed Act.

The regulations—

· may be of general application or limited application;

· may make different provision according to the matters or circumstances to which they are expressed to apply;

· may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

SCHEDULE 1

Appointment and Selection of Assessors for Court

This schedule contains provision for the establishment (by the Minister) of a panel of persons consisting of persons representative of persons involved in work regulated under the proposed Act and a panel of persons consisting of persons representative of members of the public who deal with such persons who may sit as assessors. If assessors are to sit with the Court in proceedings under proposed Part 4 (Discipline), the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

However, a member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may (if the judicial officer so determines) continue and complete the proceedings.

SCHEDULE 2

Repeal and Transitional Provisions

The schedule repeals the following:

1. the *Electrical Workers and Contractors Licensing Act 1966*;
2. section 28 of the *Gas Act 1988*;
3. section 17B of the *Sewerage Act 1929*;
4. paragraph XIV of section 10(1) of the *Waterworks Act 1932*,

and contains other provisions of a transitional nature.

The Hon. ANNE LEVY secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 February. Page 1126.)

Bill read a second time.

In Committee.

Clause 1-'Short title.'

The Hon. R.R. ROBERTS: Since the introduction of this particular Bill there has been a great deal of discussion taking place between representatives of a number of differing points

of view and there has been a lot of discussion in respect of some of these matters. It is my intention to not proceed with some of these amendments that are on file in my name. What the Opposition intends to do is to support, in some instances, amendments by the Hon. Mr Elliott in particular and to which we will move further amendments. Hopefully, this ought to provide an opportunity to get through the Bill in a much more expeditious way.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Who may make enterprise agreement.'

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

Page 2, lines 8 to 21—Proposed new subsection (5)—

After 'employed by the employer' in paragraph (b)(i) insert 'or a related employer'.

After 'carried on by the employer' in paragraph (b)(ii) insert 'or a related employer'.

I do not have any difficulties with the intention of the Government's clause, but I have sought to finetune it to some extent. First, in subclause (2) as the clause stands currently, 'an association may enter an enterprise agreement', it seems to me there may be some occasions in a workplace where associations jointly may wish to enter an enterprise agreement. For instance, there are workplaces that may have a significant factory floor and a significant office component and they would be covered by two different associations. The associations may be happy to work together jointly and the majority of the employees may be happy for them to do it in that regard. So, I do not believe it is necessary to limit it to 'an association' as long as there is majority consent by the workers that more than one association be involved.

In relation to authorisation, it is unreasonable, in general, to ask an association to go to their members to obtain written authorisation to represent them. It seems to me you join an industrial organisation and, in so doing, that is part of the reason that you join, that you want them to be a representative for you. My amendment seeks to make it clear that being a member of an association is sufficient in itself to be deemed to be authorisation; however, an employee can, in writing, revoke an authorisation by that association. They will be deemed to have given consent unless, in writing, they revoke it.

In terms of any other person who has given consent to be represented by the association—in this case we are talking about a non-member of the association—it seems to me that they would grant that consent for the duration of a particular agreement. These agreements are negotiated every two years, and so I am placing a two year limitation on that consent. Of course, once again, that could be withdrawn at any time.

In terms of subclause (5), the Government was keen to amend this clause to tackle the issue of greenfield sites where someone is trying to bring a totally new industry/business into South Australia and as such there are no employee representatives in the first instance but it wants to get an enterprise agreement up for this greenfield site. I accept the notion that you might want to start off with an enterprise agreement on a greenfield site, but I want to put a series of protections into that. In subclause (5)(b) I am trying to make sure that we are talking about a greenfield site and that we are not talking about a company which is currently operating in South Australia or which has operated in South Australia and going through some sort of mechanism to try to escape existing agreements, where they already have an existing work force or whatever. But, so long as we are talking about a genuine greenfield site, which I am trying to define a little more closely, I do not have difficulties with the concept.

The Hon. R.R. ROBERTS: The original intention of the Opposition was to move a different amendment, which I will not pursue today, but I will take this opportunity to speak in support of the amendment moved by the Hon. Mr Elliott. The Government claims that it stands for freedom of association in the context of industrial relations, yet it knows full well that its proposed amendments to section 75 will greatly restrict true freedom of association. Time and again we see this Government trying to make things as difficult as possible for unions effectively to represent their members.

The difficulties with the Government's amendments are best and most simply illustrated by a work site where 60 per cent of the work force is non-unionised and the union represents the remaining 40 per cent. Under the Government's proposal, the union can only enter into an enterprise agreement on behalf of its members if non-union members permit it. In that situation, the union members have freedom of association in only the most technical sense as it is not the union but other non-union colleagues who have an effective say over the working conditions and wages of union members.

If unions are to be free to do the work that they have traditionally done, they must be permitted not only to negotiate on behalf of their members, but be party to enterprise agreements entered into on behalf of their members. There is no point in having a negotiating power if the union cannot be a party to the agreement and thereby represent union members in an Industrial Relations Commission in respect of an enterprise agreement. In that situation, the union's attempts at negotiation will be constantly undermined by the criticism that it cannot enter into an enterprise agreement on behalf of union workers.

The same problems apply if there are three unions, each with equal shares, covering an entire work force at a particular site. For one union fully and effectively to represent its members, the Government's amendments will require the union to get the agreement of members of one of the other unions. This is an absurd situation. It is not merely a question of a demarcation dispute. It would not be unusual for there to be clerical staff, storemen, packers and drivers together making up the work force for a trucking company, for example. The duties and conditions and the safety aspects of each type of work are very different for each of these types of employees, and it is quite proper that they should be represented by different unions. It is also right and proper that if the majority of members of a particular union wish their union to represent the members in negotiations in an Industrial Relations Commission proceeding in respect of enterprise agreements, that union should have an unfettered ability to represent its members. The Government's amendment seeks to restrict these rights.

The Opposition's amendment would have been more appropriate, because it would have allowed the union to represent its members at the negotiation stage and at the formal stage of the creation of an enterprise agreement, provided that the majority of members of that union at that particular work site authorised the union to act on their behalf. It is up to the members to revoke the authorisation at any time if they so wish. This is the democratic way and it ought to be able to proceed in that way.

We agree with the Democrats on the revocability of an authorisation of association members, as reflected in subclauses (5) and (6) of our proposed clause 6A. Authorisation

should be indefinite, unless specifically revoked. I suggest that the Democrat amendment reflects agreement with our original proposal, and that is why we will support it.

In respect of so-called greenfield sites, the Opposition has taken the view that it will be sensible for provisional enterprise agreements to be entered into, but we also take the view that the most appropriate representative of the notional employees is the trade union or trade unions to which the respective employees are most likely to belong. The trade unions are likely to have the best idea of industry conditions and relevant local conditions which will be faced by workers on a new site. In contrast, it would be totally inappropriate for the Employee Ombudsman to be representing prospective employees in the creation of a provisional enterprise agreement. When the employees are eventually employed, if they have any problems or questions with regard to the provisional enterprise agreement which they find to be binding upon them, they may well require the help of the Employee Ombudsman in challenging inappropriate provisions of the provisional agreement. This would obviously be untenable if the Employee Ombudsman is being asked by employees to dispute provisions which the Employee Ombudsman has negotiated. There is a fundamental conflict of interest there which can easily be avoided.

The reason why we would wish the United Trades and Labor Council to be the potential representative of these notional employees—our preferred position—is that there will be some situations in which it will not be clear which union, if any, would be the appropriate one to cover the proposed employees. In most circumstances, the United Trades and Labor Council, with its resources and experience, is the body most likely to be able to represent effectively the interests of those notional employees.

If we are to have these provisional enterprise agreements, it is important that safeguards are built in to prevent abuse by unscrupulous employers. Therefore, we have stipulated that a provisional agreement cannot be made if substantially the same group of employees has been previously employed by the employer running the same sort of business as that which will be run by the supposedly new venture. In other words, we are preventing the situation where an employer can sell an enterprise to an associated company, where a technical transfer of the business creates a new enterprise on paper, but is in fact the same old business with a different company letterhead and logo on the front door. After all, the purpose of the provisional agreement is to have the framework in place where a completely new venture is being started up and the employer wants some sort of certainty as to the labour costs associated with such a venture. Hence, the other stipulations which have been picked up by the Democrat amendments to the effect that a provisional agreement would not be appropriate if the potential employees are of a class formerly employed by the employer or have been engaged in operations of a kind formerly carried on by that employer. The implication here is that where an employer simply wishes to expand a manufacturing or retail operation, for example, it would be more appropriate for new employees to be taken on under the same conditions as existing employees who are doing the same sort of work.

Basically, that outlines what we were proposing. It is a fact that most of our concerns have been picked up by the amendment moved by the Hon. Mr Elliott. We are being quite pragmatic about this. We take the view that we need some finality on this matter. We were concerned particularly about contrivances in respect of employers transferring from one name to another to get out of existing industrial arrangements and rope people in. We have a following amendment to the amendment moved by the Hon. Mr Elliott, which is basically a no contrivance clause, and we will be asking for the support of the Australian Democrats in respect of our amendments in that area. I support the amendment moved by the Hon. Mr Elliott.

The Hon. K.T. GRIFFIN: The Government opposes the amendments and the amendments to the amendments. Our view is that the amendments and the amendments to the amendments unduly restrict the freedom of choice of both employers and employees. The first amendment, in relation to subclause (2), proposes to allow two or more associations of employees to become a party to an enterprise agreement as distinct from representing their members in the negotiation of the agreement. I should say that possibility is not precluded by the current legislation or by the Government's amendments. The fact is that to incorporate such a provision in the Bill will unnecessarily restrict opportunities to make a choice and will, I suppose, feather bed the process of registered associations which will not have to ensure that they win the support of their members and win new members, but will be able to rely on the fact that they have a pre-emptive right within the legislation if this is passed.

The Hon. M.J. Elliott: There is no compulsory unionism around. There are no closed shops. They join of their own free will.

The Hon. K.T. GRIFFIN: Of course they join of their own free will. They ought to be able to leave of their own free will, too. That certainly was not the position taken by the PSA when they sought to sue people who decided not to renew their membership. If you build in to the legislation, it is in a sense a reverse onus. You are saying that the associations can enter into an enterprise agreement if the association is authorised by a majority of employees constituting the group, but then you go on to say that membership is effective for a term of two years. There is no attempt to modify that to ensure there is some flexibility and it extends only to the point at which the enterprise agreement ends, so there is an opportunity for the association to continue to act, even though the enterprise agreement has come to an end.

The Government's position in relation to subsections (3) and (4) is that there really should be recognised, as there is in the principal Act, a clear distinction between a union's role in representing its members in enterprise agreements on the one hand and a union's role in being a party to the enterprise agreement on the other. That distinction does have to be very clearly maintained. The Government has made it quite clear that it is not opposed to unions being parties to enterprise agreements. In fact, that is embodied within our own proposed subsection (2).

However, for a number of reasons the Government is opposed to unions having the ongoing authority of the group of employees to be that party. The first is that all groups change over time. Whilst it is appropriate to bind new members to the decisions of their predecessors for a short period of time which we say should be the life of the current agreement, it is not appropriate to bind them on an ongoing basis into the future without their having an opportunity to participate in the decision which binds them.

The second is that the authorisations are being given to an association by employees who may well not be members of the association and who may have no intention of becoming a member. In either case, when an employee authorises an association to be a party to an enterprise agreement, the

employee is not authorising the associations to be an agent acting on their behalf. These decisions should be kept separate with the former being determined each time a new agreement is reached in the context of that specific agreement. It seems to me it makes common sense for that to occur. If there is a concern to address the situation of an individual given an ongoing right of representation to an association, then I would suggest that is not necessary. There is currently no restriction to the giving of such an authorisation in section 87 of the Act.

If one turns to the amendments proposed by the Hon. Mr Roberts, the whole concept of related employer is quite misguided in the context of enterprise agreements and provisional enterprise agreements. The proposal by the Hon. Mr Roberts seeks to further restrict access by businesses wishing to start up operations in this State. The concept of related employer is nowhere else in the legislation. It does not apply to enterprise agreements and in the Government's view should not apply to provisional enterprise agreements.

The restrictions proposed in the definition of related employer contained in a consequential amendment I suggest are nonsensical or, at the very least, unreasonable. The Opposition proposes, for instance, that a business cannot apply to the Industrial Relations Commission for a provisional agreement to take on staff if the business has been taken over by an employer who has formerly employed employees of the class to be covered by the agreement. Again, I would suggest that that just does not acknowledge the facts in a real world. Likewise, the prevention of access for an employer who may have some distant and perhaps non-operational relationship under the Corporations Law with another employer who has formerly employed employees of the class to be covered by the agreement is again inappropriate.

I would suggest that the Corporations Law definition is just not appropriate for application in industrial law. There are many circumstances in which related companies do in fact carry out operations distinctly, one from the other, who have employees in completely separate industries under completely separate awards. The purpose of a definition such as that under the Corporations Law is really to deal with fundraising and similar issues of propriety in the conduct of the legal framework of the particular corporation or its related corporations. I would suggest that the sorts of restrictions proposed by the Hon. Mr Roberts will weaken the ability of employers to utilise benefits now available under the new Act and hinder new business investment.

The only other issue which I did not address is the subsection (5) amendment which does seek to replace the Employee Ombudsman with a registered association of employees. I would suggest that that is quite adverse to the interests of prospective employees. It certainly limits the opportunity of an employer to start on a greenfields site afresh, rather than being hindered by pre-existing arrangements which might not suit that particular venture and it seems both to me and to the Government to be quite inappropriate that it is only a registered association of employees that can enter into that provisional enterprise agreement. We have taken the view that the Employee Ombudsman is independent and should be the person or office enabled to enter into a provisional enterprise agreement. It then does not restrict the options of either employers or ultimately employees. It does give a privileged status to registered associations.

The other area of difficulty with the amendment is in reference to a provisional enterprise agreement being only for circumstances where employment or operations have not formerly been in existence. I suggest that will create problems for new businesses seeking to establish in South Australia. Such a test does have the potential to preclude an agreement being negotiated either for a business moving its operations from another State to South Australia or for a business which has previously operated in this State, closed or moved out, and which is now seeking to come back to South Australia. The proposals are excessively restrictive and put registered associations in a preferred position to the detriment of both the employer and the State.

The Hon. M.J. ELLIOTT: I must admit to being slightly mystified in that these amendments have been on file for some three weeks. I had had discussions with the Minister's advisers and I thought that, just as I accepted the general principles of the clause, so had they. I thought they understood, and I was somewhat under the impression that they had accepted some of the principles of the amendments I was seeking to introduce by my amendment.

If that was the case I guess I might expect that with three weeks having elapsed the Government would have done something along the lines of what the Opposition did and seek to amend the amendments rather than just take the line that, because there are a couple of things that the Government does not like, it will totally oppose it. I did not take that attitude to the clause, but that is the attitude that is being taken to the amendments to the clause. That is a pretty unsatisfactory way of working things, and it means that the working of this Parliament is nowhere near satisfactory because it will bounce backwards and forwards between the two Houses and we will be in conference again before we know it. I have never seen so many conferences as I have seen in the past couple of months, because the Government cannot get its legislative act together properly in terms of the way consultation works.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I can only assume that the Minister did not hear the first comments I made, because I said that I was of the understanding that at least the principles that I was trying to achieve in my amendments were not causing particular difficulty for the Government. I must have been under a misapprehension, but no information has come to me in past three weeks to suggest anything different from that.

I stand by the principles that I am seeking to introduce through these amendments. The Government is always welcome to fine tune, but the principles are important. What the Opposition is doing is further refining the definition of a greenfield site. I have no problems with provisional enterprise agreements at greenfield sites: I support the notion and was seeking to make sure that we were talking about a genuine greenfield site. However, the question of how we define that became a problem, which I tackled in subclause (5) and which the Hon. Mr Ron Roberts has tackled by way of amendments that he is moving to my amendment. I indicate at stage that I will support the Opposition's amendment to my amendment.

The Hon. R.R. ROBERTS: It is a bit unusual for me, because the position I am about to defend was not our original position. I said at the outset that we have taken a pragmatic point of view on this occasion. In refuting some of the arguments that have been put forward, the Attorney has overlooked a few things. We were proposing that any registered association ought to be able to represent an agreement and, after protracted negotiations with the Hon. Mr Elliott in particular, we were not able to convince him that,

because the registered organisation was a registered organisation and the employees, by being members of that organisation, had given an authority by the very fact of signing the membership document to that association, they ought to be able to proceed with that sort of authority and represent their members. That is my preferred position but, if the Attorney-General looks closely at this proposition, he will see that it means that two associations can represent their members in negotiations for an enterprise agreement. However, the Hon. Mr Elliott has not realised that it has to be with the majority of the group as a whole. So, whilst we can have the problems that I pointed out in my contribution explaining the 60/40 or 30/30/30 principle, the Hon. Mr Elliott has come closer to the Attorney-General's proposition in respect of that part of this matter by saying that it has to be a majority. I do not agree with Mr Elliott's point of view, but the reality is that unless we come to some accommodation here we will finish up with nothing at all in that respect.

The Attorney-General did make another rhetorical statement, which we have heard a number of times, about unions and joining members of unions and their not being able to resign, and all that sort of thing, and he actually made a reference to the PSA about resigning. Any member can resign from the PSA or any union at any time.

The Hon. M.J. Elliott: You can just remove your authorisation while remaining a member.

The Hon. R.R. ROBERTS: Precisely; I am just coming to that.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: The reverse of what the Hon. Mr Griffin is asserting is true. Not only can one resign but also one can resign at any time. But, with respect to this clause, whilst one's membership authorises the union to act on one's behalf, you can in fact lodge a discontinuance of that authorisation merely by writing a letter. With respect to the reference made to the PSA, when one resigns from any organisation one resigns under its rules, just as one joins under its rules and, if one has debts and liabilities and does not formally resign, one's obligations continue. So, we need to put that furphy aside. I thank the Attorney-General for making his contribution on the foreshadowed amendments to the Hon. Mr Elliott's amendment with respect to 'related employer' and the other proposed amendment (as the Attorney-General started the process I, too, will comment on it now) to clause 4(2), which we view as a non-contrivance clause, and both our amendments are in that area. That clause is a standard provision in the Long Service Leave Act which operates in this State so that contrivances cannot deny employees the rights and entitlements that they have earned during their employment. So, there is nothing new or unique about what we are doing; it is something over which great care has been taken in order to ensure that we are not introducing something bizarre or outlandish. This provision currently exists and again deals with the rights and entitlements of employees. It is purely there for non-contrivance reasons, and anyone who is not trying to contrive some impost or something illegal or inappropriate will not be affected by this whatsoever.

The Hon. M.J. Elliott: The Government wouldn't support that, anyway.

The Hon. R.R. ROBERTS: I am certain that the Hon. Mr Griffin would not do so in normal circumstances. I point out that, whilst this is not what we particularly wanted, we see it as the best we can get on the day and we ask not only for commonsense to prevail with respect to the Hon. Mr Elliott's amendments but also that when we put these related amendments they are considered favourably by the Committee.

The Hon. T. CROTHERS: I want to put to bed once and for all the type of rumour mongering and furphy peddling in which the Government engages when it talks about union membership and particularly with respect to the assertions made by the Attorney when he dealt with the matter in his recent contribution relative to the Public Service or any union. As I say, and will continue to say and assert, the rules of all industrial organisations are required by law—and if there are any changes they are also required by law—to be placed in front of the judicial body responsible for canvassing and determining whether or not the rules are fair and proper under the different Acts of the State and Commonwealth. In this respect, I refer to the Industrial Registrar or Deputy Industrial Registrar of the day, at both Federal and State levels.

The Attorney talks much with respect to compulsion versus conviction, but the trade union movement, of which I am still a member and of which I was an official, ought not to be ashamed of trying to ensure that people who operate or who are paid under a particular determination or award pay a small contribution towards the cost of securing that award.

I can well recall a number of occasions when so-called test cases were being held that, as union secretary, I had to pay out upwards of $3 000 a day in legal expenses because we had to match the employers, who were briefing QCs and high powered barristers in respect of defending cases against us. So, I have no reservations whatsoever in relation to that matter. It is significant to me that in authoritarian dictatorships of the Left and of the Right, such as was the case in Russia in the 1930s, most certainly the case in Germany from 1934 on and as has been the case in many other nations since—Guatemala and other nations spring to mind as examples—the poor and the downtrodden not only have been taken out of organisations but also have been shot and killed for their beliefs.

I am mindful that one of the first things Stalin did in Soviet Russia was to get rid of those trade union leaders who he thought were not supporters of his. I am equally mindful of what the Chancellor of Germany, Adolf Hitler, did to the trade union movement and indeed other elements of the population who he perceived were anti-National Socialism, and more importantly, anti the Adolf Hitler brand of National Socialism. So, I do not want any of these types of furphies put up by the Attorney; he is too intelligent a man for that, and I ask him to stop addressing an otherwise reasonable intellectual capacity to matters that are obviously false and designed as smokescreens.

I do not have a great deal more to say about that, but let us not kid ourselves that the trade union movement is the only body with compulsion from time to time. Compulsion is usually allowed by people to ensure that those people who benefit by way of the extent of award changes, conditions and wage increases pay a small cost towards securing the benefits derived therefrom because, by far and away, it has been my hands on experience that the bulk of refusals with respect to trade union membership are from people who are hit and pinched in the hip pocket nerve. There is no doubt whatsoever about that.

I put it to the Attorney that not too many people, if any, on his side of the Chamber would have had that practical hands on experience. I will take it even further and say that, if I live in the Campbelltown area or indeed in any council

area in South Australia, I have no redress in respect of whether or not I pay my council rates or my proportion of the cost of any extra curricula work that is done on or near my property. If I have gas installed on my property, I have no right to prevent the Gas Company and its employees coming in to switch my gas on and off. There are other examples (perhaps they are not all apples with apples but, if not, certainly they are nectarines with apples) that I could quote in respect of the fallacious and puerile assertions that the Attorney makes on behalf of his Government. Let us have done with that nonsense.

If this Parliament is to make any meaningful contribution to industrial relations in this State, for heaven's sake let us get away from the hidebound ideologies of the Liberal Government in respect of its detestation of the trade union movement and all that it represents. My father told me once, 'You know, son, the Almighty must have loved the little feller.' Being seven years of age, I looked up at him with my big eyes blinking and asked, 'Why dad?', and he said, 'Because he made so bloody many of us.' If the Attorney wants to nobble or inhibit—as the Government has been doing for the past 15 months—the capacity of the trade union movement in this State or indeed anywhere else that it is in power to represent people who otherwise would not be able to afford representation, he is sadly mistaken. Other people, such as Hitler, Stalin and others who have come before the Attorney (and the Tolpuddle martyrs before that) have tried but not succeeded, and he will not succeed in this, either. I hope that the Attorney's backbenchers in another place who are sitting in marginal seats will take the trouble of reading a copy of my modest contribution on this matter.

So have done with you; away with you; let us hear no more of the sort of drivel that you have been feeding out, because in my view it is ideologically-based drivel and cannot be sustained. In any case, even when unions have had closed shop agreements, there has always been an escape clause so that, if people did not want to belong to the union, they could pay an amount equivalent to their year's annual union fee to a charitable organisation of their own choice.

Let us not kid ourselves; let us get to the business of what this ought to be all about—and that is that we must reach out and touch fingers across the ideological divide in the hope that it is not only the Opposition and the Democrats in this place who defend the rights of the small, poor and impoverished, which is by far and away the majority of our population, but also members of the Government as representatives of all South Australians in this Chamber. I hope that the Government will get away from that hidebound, conservative, dry drivel that it has peddled both here and in another place, and get down to the brass tacks of trying to assist workers, trying to assist employers and of trying to assist the cause of employment, and not continue the position that it has sought to follow, and that is to maximise the profits of the people and big business to which the Government is so ideologically bound. Let us address the problem and see exactly what we can do.

The Hon. Mr Elliott and the Hon. Ron Roberts have said that they have endeavoured to hold discussions with the Government in order to try to reach a position which would be fitting in respect of all constituent elements in South Australia. After listening to this debate, my view is that the fault does not lie with the Opposition in this Chamber in respect of not being able to reach agreement: it lies with the Government which, because it is becoming so arrogant in its approach to this and other Bills because of the majority it possesses in another place, is failing to listen to reason. The people who turned out on the steps of Parliament House in 100 degree heat to protest against the Government's other Bill which it had introduced at that time and which is still before us ought to be enough to convince members opposite that people will take only so much. My father used to say, 'Son, it is permissible at all times to take too much.' I conclude my contribution by saying that I will be damned if I will take three much.

The Hon. K.T. GRIFFIN: I want to respond to a couple of points. The Hon. Mr Elliott made some observation about consultations. I have been aware that there have been consultations, but my understanding is that agreement has not been able to be achieved, and that there were some important issues of difference which could not be resolved. For example, on subsection (2) there was no major issue in relation to two or more associations entering into the enterprise agreement, but the advice that the Government had was that it was not necessary specifically to refer to that because the legislation did not preclude it.

In relation to subsection (3), the concern was the fixed term of two years, and, in a sense, the reversal of the onus—one might describe it as such—in relation to the authorisation, particularly considering that that authorisation might have been given by non-members of the association. Considering that enterprise agreements last for a maximum of two years, it seemed to the Government that it was quite inappropriate to seek to bind non-members to a period of two years unless that employee, by written notice, revokes the authorisation before the end of that term.

We also have the situation where persons who were not employees at the time they joined the particular enterprise would be bound by it, and, therefore, should not continue to be bound for an indeterminate or lengthy period, but only for the period of the agreement, because the enterprise agreement continues after its expiration until it has been superseded by another agreement. The fact of the matter is that there are people who, as employees, would have had no say in any renegotiation of that agreement after the expiration of that period. I have already indicated the concerns in relation to subsection (5) in the same context as subsection (3).

In relation to the Hon. Mr Roberts's proposed amendments to the amendments to introduce this concept of related employer, all that I can say in relation to that is that, whilst there may be a similar sort of provision in relation to the Long Service Leave Act, that is for a totally different reason, and that it is quite unreasonable in the context of enterprise agreements to impose the same sorts of constraints. In relation to greenfield sites we have a major concern about the exclusion of the Employee Ombudsman. There are important issues upon which agreement was not reached, and it is wrong to say that—although the honourable member may have been under the impression that there was some sense in which an agreement had been reached—there was a meeting of the minds on the principles, because there are important issues upon which there is disagreement.

The Hon. M.J. ELLIOTT: I certainly did not imply there had been an agreement on wording, or anything like that, but I did think at least there was a little more understanding on some of the issues behind it. I will not spend much more time on this because I have a feeling the Minister will not be convinced. Section 75(3) (in clause 4) provides that an authorisation must be specifically related to a particular proposal. I have had some reservations about what 'particular proposal' may be interpreted to mean. My intention, when I

put in the two years, was a recognition that that would be about the life of most enterprise agreements.

All I can say at this stage is that there may be a better way of expressing it; I was not at all happy with that term 'particular proposal'. Ongoing discussions may break down and then new discussions may start up. Are we talking about the same proposal, a different proposal, or whatever? I did not think there was sufficient definition around that to satisfy me, which is why I sought the two years. There may be another way of expressing that rather than the way I have gone about it. It appears that the Government is concerned about what will be the new section 75(2). There is not a major disagreement in so far as the Government says that it can happen already; I really wanted to make it explicit that, indeed, it was possible. In relation to union membership, I can only say again that, with freedom of association which the Industrial Relations Act clearly recognises, a person does not have to remain a member. In fact, under my amendments, even though they are a member, they are not forced to—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That is right, they can still withdraw their authorisation. I was trying to remove what seemed to me to be a huge amount of very pedantic paperwork and chasing around. If the employer wants to strike an agreement with employees via an association, and many employers will, why on earth would they want to make it more difficult for them. If an employer chose to get around the association and employees were agreeable to that, I suppose they have a right to put in a revocation anyway. It does not remove the flexibility for the employer or the employee. If a person takes the decision to join a union, one presumes he or she did not do it just to get discounts at the local shops; one would presume it would be largely for an industrial reason, and it is not unreasonable in the circumstances to assume in the first instance that the person has granted the right of representation to the union, a right which, of course, can be withdrawn at any time.

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

Page 2, lines 8 to 21—Proposed new subsection (5)—

After 'employed by the employer' in paragraph (b)(i) insert 'or a related employer'.

After 'carried on by the employer' in paragraph (b) (ii) insert 'or a related employer'.

I think we have had a fair enough discussion about the amendments, and I am happy to have them considered collectively.

The Hon. R.R. Roberts's amendment carried; the Hon. M.J. Elliott's amendment as amended carried.

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

Page 2, after line 24—Insert new subsection as follows:

(7) Employers are related for the purposes of this section if—

(a) one takes over or otherwise acquires the business or part of the business of the other; or

(b) they are corporations—

(i) that are related to each other for the purposes of the Corporations Law; or

(ii) that have substantially the same directors or are under substantially the same management; or

(c) a series of relationships can be traced between them under paragraph (a) or (b).

This is the no contrivance clause which we have also debated at some length. I have pointed out to the Committee that it is in the same terms as in the Long Service Leave Act to protect the accumulation of entitlements to workers, and I commend it to the Committee.

Amendment carried; clause amended passed.

Clause 5 passed.

Clause 6—'Approval of enterprise agreement.'

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

Page 3, lines 16 to 22—Leave out subparagraph (ii) and insert—

(ii) if, in the course of the renegotiation, the employer and the group[1] reach agreement (either in the same or on different terms), the agreement is, on its approval under this Part, to take the place of the provisional agreement and, if agreement is not reached, the provisional agreement lapses at the end of the period fixed for its renegotiation.

[1.] The group may, if the appropriate authorisation exists, be represented in the negotiations by an association or associations of employees—See section 75.

The amendment is consequential on matters discussed in clause 4.

The Hon. R.R. ROBERTS: I do not intend to pursue my amendment, which is similar and refers to section 87, but I will be supporting the Hon. Mr Elliott's amendment, because it is consequential, as was pointed out by the Attorney-General.

Amendment carried.

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

Page 3, lines 26 to 30—Leave out subsection (8).

Subsection (8) was inserted by the Minister in another place and provides:

The commission may approve an enterprise agreement that could not otherwise be approved if an undertaking is given to the commission by or on behalf of one or more persons who are to be bound by the agreement about how the agreement is to be interpreted or applied and the commission is satisfied that the undertaking adequately meets objections that might otherwise be properly made to the approval of the agreement.

The effect of the subclause is that if a matter was before the commission and there was a question of interpretation, the Commissioner could approve the enterprise agreement if one person was to say, 'I think that is what it means.' We think that is unacceptable and, given the distinct requirements of clause 4 as supported by the Government, that a majority of members must be consulted before an enterprise agreement is entered into or the majority of employees must be consulted or give authority for enterprise agreements to be negotiated, we believe it is thoroughly inconsistent to have a situation where one individual without adequate knowledge or understanding can have a document about which clearly there is concern about the detail. We believe that in those circumstances the matter should be taken back to the parties and the majority of employees affected by the agreement and exactly what is meant by the agreement should be defined precisely and taken back to the commission. The example that I have just outlined shows clearly that this is a dangerous proposition and ought to be avoided.

The Hon. K.T. GRIFFIN: I do not agree with the amendment and I oppose it. If we look at the wording, it is not a matter of one person getting up and saying, 'I think it means this.' Subsection (8) says that it is an undertaking given to the commission and an undertaking is more than just getting up and saying, 'I think it means this.' I understand that it is a reflection of what is already in the Federal Act.

The Hon. R.R. Roberts: But it says one person.

The Hon. K.T. GRIFFIN: If you understand the process, one person can give an undertaking on behalf of others and that happens all the time in courts in respect of the legal profession when they undertake to do certain things. I undertake in this Council to do certain things and that undertaking, if not legally binding, is certainly morally

binding but, in the context of the approval by the commission after agreement which might otherwise have some defect in it and which would have to be sent back to the drawing board, I understand at the Federal level that this is a mechanism by which the commission can get an undertaking by or on behalf of one or more persons who are to be bound by the agreement about how the agreement is to be interpreted. Presumably, that is by a party against whom the defect might be applied and in respect of which the undertaking should be given. My advice is that it is a reflection of what is in operation at the Federal level, designed to overcome particular problems with agreements. It is a mechanism used to avoid having to go back to the drawing board and redo at least part of the agreement before it can be formally approved.

The Hon. M.J. ELLIOTT: I understand the concerns of the Opposition because, on my reading, I had exactly the same concerns. If an agreement may have to stand for two years, it is not good enough for the Commissioner at a particular time to have some person standing in front of him saying, 'Yes, this is our understanding.' I am not sure what the implications of that could be during the next two years of the agreement but it is unsatisfactory. The sort of mechanism proposed in subclause (9) would have been an adequate mechanism to cope with what might be a small clarification but, if there is to be a clarification, it should be by way of oral communication before the Commissioner.

The Hon. R.R. ROBERTS: I take on board what the Attorney-General has said, but his argument is more an argument of convenience for his point of view. Subclause (8) provides:

> The Commission may approve. . . if an undertaking is given to the Commission by or on behalf of one or more persons. . .

He can give that undertaking on behalf of that one person and can be completely wrong. But, as the Hon. Mr Elliott has pointed out, if someone attempts to bind the working conditions of employees for two years and, if there is a misunderstanding as to what it is all about, this states the commission can go ahead on a mistaken belief, although the undertaking was given by somebody else. Quite clearly, this should not occur and it should go back to the majority of the employees. If the Attorney-General is not happy with the majority rules, which he insists on in every other instance in this area—and the majority of employees, not the majority of unions I might add—he will have no alternative but to support this amendment. What he does after that is up to him.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8—'Unfair dismissal.'

The Hon. R.R. ROBERTS: The Opposition opposes clause 8. We remain opposed to the concept of a cap on compensation payable in respect of unfair dismissals. If an employer has truly done the wrong thing by an employee, the employer should be responsible for compensating the employee in respect of the loss that is suffered. Beside from departing from the general principle that the person unfairly dismissed should be compensated in full for the extent of the losses, the Government's amendments produce two unfair situations.

First, an unfairly dismissed employee for whom reinstatement is not a realistic option is worse off financially than an employee who can be reinstated. When reinstatement is possible, even if takes over six months after dismissal before the Industrial Relations Commission to bring down an order for a reinstatement, such an order will generally be accompanied by an order for lost wages to be made up. In other words, orders can and usually will be given in that situation for payment to the employee for more than six months' wages to make up for loss suffered by the employee between dismissal and reinstatement. On the other hand, where an unfairly dismissed employee cannot be reinstated, for whatever reason, even if the employee can show that he or she is unlikely to get another job within 12 months, the maximum compensation is six months remuneration or a maximum of $30 000 in some cases: that is clearly unfair.

In a great many cases where reinstatement is not practicable it is very often the employer who creates the situation where reinstatement is not a real possibility. For example, the employer will often have filled the dismissed employee's position with someone else or, alternatively, the circumstances of the dismissal created such ill-feeling and bitterness between the parties that reinstatement would not be a realistic option. In the case of employees not covered by relevant awards or enterprise agreements the Government would prevent people earning $60 000 per year to come to the Industrial Commission at all for an unfair dismissal. For those people there is no point in capping possible compensation at six months remuneration or $30 000 (whichever is the lesser) because, of the people allowed to bring unfair dismissal actions at all within the State jurisdiction, none of them can earn more than $30 000 in a six month period, anyway. So, the $30 000 limit is a nonsense.

Of course, there is no good reason why employees earning over $60 000 per year should not have access to the Industrial Relations Commission for unfair dismissals, the same as anybody else. The expeditious procedure and the specialised experience of the Industrial Relations Commissioner should be available to all people. People earning $65 000 per year, for example, will not necessarily have the funds to take extra cost risks involved in a District Court action against an employer. The Government wishes to create an arbitrary cut-off point. Harsh cases will always be created near the borderline of any arbitrary point, such as a $60 000 cut off.

In relation to the unfair dismissal provisions, the Government suggests that we should follow the Federal legislation. That is gross hypocrisy. It is an argument that this Government trots out whenever it suits the employers. The Government has shown a willingness to pick and choose amongst the provisions of the Federal legislation to fabricate a State industrial relations system which barely provides an adequate remedy as defined in the Federal legislation. Yet the Government is quite happy to depart from the Federal legislation when it can get away with it. The point is that these unfair dismissal provisions will lead to harsh results and injustice in many cases. Therefore, we should not seek to include these provisions in our State legislation.

An employee, for the purposes of the legislation, is defined as someone who basically takes instructions. In most cases, whether they are covered by an award or not, people on contracts are employees for the purposes of this legislation. I point out that later amendments with respect to quantum, if successful, will mean that an employee who is earning $65 000 will receive a maximum of $30 000. If an employee who does not have the resources to go to the District Court wants to chance his arm in the Industrial Commission, as other employees are entitled to do, regardless of the rate of his remuneration we submit that he should be able to put his case and have it judged on the basis of equity and good conscience. Clearly, unfair dismissal cases should not be determined on the basis of how much an employee

earns per annum; such cases must be judged on the circumstances. If it is harsh, unjust or inappropriate, it ought to be able to be ruled upon.

As I said in my second reading speech, what the Attorney-General and the Government are proposing is a means test on access to the justice that is provided by the Industrial Relations Commission. We think that is inappropriate and believe there are just grounds for opposing this clause in the legislation. I ask the Committee to throw out this provision.

The Hon. M.J. ELLIOTT: I invite the Minister to explain what the Government is hoping to achieve with this amendment to its own legislation, which is less than 12 months old at this stage. Does it have a lot of people earning more than $60 000 coming in for unfair dismissal, or what is the problem that it feels it is trying to remedy by this amendment?

The Hon. K.T. GRIFFIN: I understand that the old Act had a limit of $60 000, and I recollect that that was the basis of an amendment proposed by the previous Government in the late 1980s or early 1990s.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No, it did not, because there were difficulties with regard to the Federal legislation, and we did not want our jurisdiction to be lost. At the time of the debate, I recall there was consideration of what would happen at Federal level. Since then the Federal Act has been amended to bring in these more restrictive provisions. This is an attempt to bring our legislation into line with the Federal legislation. Only in the past few weeks there was a case in New South Wales relating to its unfair dismissal jurisdiction and there was a question about inconsistency under section 109 of the Australian Constitution. There are very important issues in relation to unfair dismissal that we have sought to overcome by, in this case, bringing our legislation into line with the Federal legislation. What we are proposing here is on all fours, I am advised, with recent Federal amendments.

The Hon. R.R. ROBERTS: We are talking about employees having access to the commission. The Government refers to a situation where a worker's employment is not covered by an award, industrial agreement or enterprise agreement under this legislation or the Commonwealth Act and where the worker's remuneration immediately before the dismissal took effect was at a rate below $60 000. I point out that in the Industrial Commission you do not have to be under an award, an agreement or an enterprise agreement in order to access the Industrial Commission: you have to be an employee. These people are employees. Throughout industry and throughout every profession there is a scale of rates. Some people earn $20 000, some earn $30 000 and some earn $60 000. If we are talking about evenhandedness of treatment for all employees, and access to resolution in cases of dispute, we have to recognise that there will be different amounts of money in the final carve up of what is paid.

The decision in an unfair dismissal case is based on three things: harsh, unjust or unreasonable. If the Commissioner is persuaded that one of those three things has occurred, he will make an award. If he thinks that six months wages are involved, he gives six months wages and not something beyond which there would be a normal entitlement under an award, Act or private contract. This is not a question of whether an employee is under an award, agreement or enterprise agreement. We are really saying that, because they do not have an award or agreement, 15 per cent of the work force will be denied access to the agreement.

I return to the concept of freedom of association. Members opposite talk about freedom of association, to be in an agreement, to make an individual contract or to deregulate the industrial relations system. It is all right to espouse these so-called laudable principles but, if this clause is left in the Bill, we will deny a significant section of the employed work force in this State the right to not $30 000 or $60 000 but to have an unfair dismissal claim heard by an independent body at a reasonable cost. The figures come into play only if the decision is made against an employer on the basis that it is harsh, unjust or unreasonable. I believe this clause ought to be removed.

The Hon. K.T. GRIFFIN: It is important to recognise that those who are employees on much larger salaries than $60 000 still have the right to go to a civil court. Before the Labor Government's own amendments in 1991, which limited access, there were some claims of up to $180 000 annual salary in the commission. I am told that probably people have not woken up to the fact that that limit was removed less than 12 months ago. It is the Government's view that this limits the access but does not ultimately prevent people on higher salaries taking action under their contract of employment in the civil courts.

Clause passed.

Clause 9—'Remedies for unfair dismissal.'

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

Page 4, lines 8 to 17—Leave out subsection (2A) and insert—

(2A) The Commission cannot order the payment of compensation exceeding six months' remuneration at the rate applicable to the dismissed employee immediately before the dismissal took effect, or $30 000 (indexed), whichever is the greater.

This is not our preferred position, as I outlined in my contribution when we started this section of the discussions. This amendment provides for a different level of treatment for award employees and non-award employees. This clause provides a situation where award employees can get up to six months' remuneration and non-award employees up to $30 000. In this case it means six months wages or $30 000, whichever is the lesser. We could have an award employee on $30 000 and a non-award employee on $60 000, and at the end of the day we could have the same circumstances for dismissal being adjudicated on and one gets a different payment from the other.

Again, when we were having consultations, we were unable to reach agreement. Unlike the Government, if we cannot convince the other person of our view, we have looked for the compromise and not said that no consultations were possible because we could not get our own way. We have come back to this and have now consolidated our amendment to provide that the commission cannot order the payment of compensation exceeding six months' remuneration at the rate applicable to the dismissed employee's dismissal occurred, or $30 000 indexed, whichever is the greater.

I see that the Hon. Mr Elliott has an indicated amendment where he picks up the concept at least that it ought to be greater rather than lesser. I seek the support of the Hon. Mr Elliott in particular, and of course of the Attorney-General, in making an even-handed judgment for award employees and non-award employees, now that we have lost the previous vote, in relation to the amounts that are available as compensation for unfair dismissal. We believe that, in line with all the things that the Government has been trying to do, with the greatest amount of flexibility in industrial relations, this ought to apply so that those who want to be in awards, enterprise

agreements or have individual contracts can be treated even-handedly in the eyes of the Industrial Commission. I ask the Committee to support my amendment.

The Hon. K.T. GRIFFIN: I do not support the amendment. As I said earlier in relation to clause 8, what the Government was seeking to do was reflect what is now in the Federal Act as a result of recent Federal Government amendments. We think in this area it is important to maintain consistency because of questions of inconsistency under the Commonwealth Constitution. We have taken the view that, because the access level is a maximum of $60 000 annual salary, the maximum that can be awarded is six months remuneration if the employee is covered by an award, industrial agreement or enterprise agreement.

If a full six months were awarded, and if the salary is $60 000, that would in fact be $30 000. If there is no award, industrial agreement or enterprise agreement covering the employee, the Government has taken the view that the amount of $30 000, which is half the maximum of $60 000 in relation to award and other related employees, should be the maximum. If the employee is on a lesser rate than $60 000 a year, as for example a person covered by an award may be on less than $60 000 a year, it ought to be a maximum of six months of the rate which is applicable to the dismissed employee.

Whilst the Hon. Mr Elliott has an amendment to change the word 'lesser' to 'greater', I suggest that that introduces a greater level of inconsistency between award and non-award, agreement and non-agreement employees than leaving the word 'lesser' in there. I indicate that the Government does not support the Hon. Mr Roberts' amendment, and if the Hon. Mr Elliott persists with his amendment we will oppose that as well.

The Hon. M.J. ELLIOTT: I will not be moving my amendment because it is covered by the amendment that has been moved by the Hon. Mr Roberts. In relation to new subsection (2A)(a) of section 108 which is now being amended and which relates to award industrial agreements or enterprise agreements, some people may be earning amounts over $60 000. In those circumstances, $30 000 or whatever they earn over a six month period, whichever is the greater, would be relevant. It certainly offers slightly better protection to those who are on lower salaries—those below $60 000. I suggest that people in relatively low wage brackets are the ones who, having been dismissed (even if they substantiate an unfair dismissal), will have the greatest difficulty getting back into employment, etc. We have to be confident that we are offering them adequate protection.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I am not a proponent of the Federal legislation.

Members interjecting:

The Hon. M.J. ELLIOTT: I believe that six months' salary or $30 000, whichever is the greater, is more reasonable in the circumstances. It is putting in a ceiling when there was not one under the existing Act. I do not see any need for us exactly to mimic what is in the Federal legislation.

Amendment carried; clause as amended passed.

New clause 9A—'Freedom of association.'

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

Page 4, after clause 9 insert new clause as follows—

Amendment of s.115—Freedom of association

9A. Section 115 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A person must not—

(a) require another to become, or remain, a member of an association; or

(b) prevent another from becoming a member of an association of which the other person is, in accordance with the rules of the association, entitled to become a member; or

(c) induce another to enter into a contract or undertaking not to become or remain a member of an association.

Penalty: Division 4 fine.

(4) A contract or undertaking to become or remain, or not to become or remain, a member of an association is void.

When the Act was being debated last year, the Minister made a great deal about the need for freedom of association and right to choose. Since that time I have become aware that there appear to have been some attempts by employers to limit the right to choose in that some people are being asked to sign contracts which stipulate that they will not join an association. I had an opportunity to discuss this issue with the Minister for Industrial Affairs personally, and he made quite plain to me that it was not his intention when the Act was debated that that should happen. That pleased me greatly because, if he had not taken that stand, he would have been inconsistent. If you believe in freedom of association, that involves the right to associate or not to associate equally. You cannot have it one way and not the other. I am seeking to put beyond any doubt that a person does have the right of freedom of association and that they cannot be limited in any way, even by an employment contract, to give up the right of freedom of association.

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

Proposed new subsection (3)—

After 'becoming' in paragraph (b) insert 'or remaining'.

Leave out 'become' in paragraph (b) and insert 'be'.

We support the Democrats' amendment, but if it is to be effective the prohibition must be on preventing workers from remaining union members rather than simply preventing workers from joining unions. Without the Labor amendment, it will be too easy for unscrupulous employers to bully workers into leaving the unions of which they would otherwise be glad to be a member. Basically, our support is for the proposition put by the Hon. Mr Elliott but our amendment completes the provision by adding the words 'or remaining' after the word 'becoming' in paragraph (b).

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: As the Hon. Mr Elliott points out, it is probably an oversight in the drafting rather than an intentional omission. I believe it brings it all together and makes it consistent. We support the Democrat amendment, with our amendment.

The Hon. K.T. GRIFFIN: The Government does not see the need for it but I raise no major opposition to it.

Amendments carried; new clause as amended inserted.

Clause 10 passed.

Clause 11 'Representation.'

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

Page 4, line 31—Leave out paragraph (c).

This clause, substituting section 151, deals with representation and who may represent. Paragraph (c) deals with a person who provides representation gratuitously. The Opposition has grave concerns about that. This aspect of the Government's amendment to the representation provision makes a nonsense of the whole thing. You might as well simply say that a party can be represented in proceedings before the court or the commission by anyone at all. Allowing

open slather in respect of representation will not improve access to justice, because the quality of the representation will be dubious in many cases. It seems that the Government wants to tempt workers into using unqualified and inexperienced representatives when it knows full well that most employers are represented by lawyers and representatives from the Chamber of Commerce and Industry, and so on, people experienced in the law and the relevant procedures governing the issues at hand. It would be most inappropriate for parties to be represented by either a legal practitioner from a registered agency or an industrial officer from a relevant union. Proper representation will save time and lead to realistic negotiations taking place.

In conclusion, the Cabinet amendment will, in practice, be to the detriment of the average worker and not for his or her benefit. I urge the Democrats to join with the Opposition in opposing this particular aspect of the Government's amendments. I point out that I find it almost incomprehensible that industry and employers would support this provision. It is in everyone's best interests when negotiations take place about enterprise agreements and awards that that happens between persons who have a knowledge of the subject matter. This could provide a situation where someone acting gratuitously could attempt in a frivolous or vexatious manner to open up an award or agreement, and in many cases that could throw industrial relations into turmoil. The previous two clauses adequately cover the requirements of this part of the legislation, so I urge the Committee to delete paragraph (c).

The Hon. K.T. GRIFFIN: The Government's intention was to clarify whether a person or persons have the right to representation by an agent of their choosing who is acting gratuitously. The original policy intention of the Government was to enable representation by an agent without the formality of registration where the agent does not appear for fee or reward. The Government has addressed this issue in the regulations by reference to the common law right of representation. However, it is considered preferable that the Act be amended to clarify the general right of a person or persons to have a representative or agent of their choosing appear on their behalf without that agent requiring registration, provided such representation is made without fee or reward. I would have thought that, within the context of enterprise agreements where there may be employees who are not represented during the negotiations but who may be faced with some opposition by a registered association, they may want to have someone appear with them in the appropriate jurisdiction. I must confess that I cannot see what harm it does, because the—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, let's face it. The Law Society may have some objection to it, I do not know, but quite obviously the Hon. Ron Roberts wants to raise some objections because it intrudes into the club relationship that sometimes exists between associations of employers and associations of employees. The fact of the matter is that we must recognise that in, for example, small business there may be a party that just wants someone to come in and work beside them and support them in the process.

The whole object of this legislation is to free up the system and endeavour to give individual employees, small groups of employees and small business employers opportunities which previously they have not had unless they have had to go through the more complicated process of having legal practitioners, registered agents, officers or employees of an association represent them in proceedings. If they are complicated proceedings it may well be that they need someone who has more expertise but in the enterprise agreement process, for example, I see no harm in allowing this sort of representation.

The Hon. R.R. ROBERTS: I understand some of what the Attorney is saying. The Opposition would not have a great deal of concern if we were talking about the opportunity in an unfair dismissal case of a father representing his son, who is a junior person. However, this particular clause also talks about proceedings but it does not say at what level those proceedings can take place. You could have someone opening up awards and agreements on behalf of a small group of vexatious litigants in an enterprise bargaining agreement or other matters, and I do not think that that is going to be in the best interests of good industrial relations.

I understand that the Minister has his briefings and that he delivers them conscientiously. However, I would have asserted, without confirmation by the Attorney-General, that it is a concept that probably he would not agree with if left to his own devices. He has been a champion for proper representation and he has been a participant in arguments about registered agents in this Chamber in the past, where debates took place as to what the credentials ought to be of a registered agent or someone who acts as a representative of workers, and I would have thought this would have been consequential to previous debates and to the principles espoused. I do not intend to wax lyrical on this for the next two hours, but I ask for the support of the Committee.

The Hon. M.J. ELLIOTT: I do not understand—and I invite the Hon. Ron Roberts to wax lyrically, albeit briefly—who would be the people who would provide representation gratuitously, other than a relative, and cause him concern. You are not going to hang up your shingle and offer services for free; you cannot keep that up for very long, so who are these people?

The Hon. R.R. Roberts: Redundant bush lawyers.

The Hon. M.J. ELLIOTT: I would have to make the point that there is a significant amount of the work force, particularly among small business, which is not unionised so many people actually will not be members of an association. That might be their own silly fault, but they will not be. They will not be members of an association; they may not be able to afford a legal practitioner and a relative, even if unfortunately that relative is a bush lawyer, may be able to represent them. They may have someone more eloquent than themselves and, for instance, if they have language problems, such as a person from the ethnic community who does not speak English but who has someone from their community who is willing to help them, I would have thought that that would have been better than nothing. Paragraph (b) states that, if you are a member of a union, you can be represented by it. I cannot imagine the circumstances where, if a person is a member of an association, they would not choose to use the expertise that that association could offer to them.

The Hon. R.R. ROBERTS: In these circumstances, we tend to view these things in a situation we know. We have opened up the industrial relations system in South Australia to a whole new ball game. We tend to think of these things such that we have a union and an employer, and everybody knows what they are doing. The new deregulated industrial relations system enables all sorts of people and groupings in all sorts of funny ways to intervene, and small groups in one organisation have the ability to intervene in proceedings. The bush lawyer is a character who most people in industrial relations would know. There are people around who believe

that they know the law inside out. In many cases, what you find is—

Members interjecting:

The Hon. R.R. ROBERTS: No names, no pack drill! People in workplaces and groups, in isolated areas do not have ready access to registered agents or legal practitioners (I am having a bit of trouble here; I am actually advocating for legal practitioners), but an officer or an employee of the union is available. Because the group are not members of a union does not mean that they cannot go to a registered agent who is approved by the Industrial Commission as being worthy of being a registered agent who has certain skills and knowledge of the way the law works and who will not go around and make untested interventions on behalf of ill-informed people, regardless of whether he has the best or worst intentions.

The Hon. K.T. Griffin: He might have Romeyko or Gordon Howie representing him.

The Hon. R.R. ROBERTS: If I was the Attorney-General, I wouldn't get into a debate about Mr Gordon Howie representing him, because he has knocked the Government off quite a few times. That is probably a bad example.

Members interjecting:

The Hon. R.R. ROBERTS: Of all political persuasions. He is probably the worst example the Attorney-General could have raised. He has had more victories over the people in the transport division than he has had losses, by a long way. I do not know whether I need to go further into this. The example is quite clear. We have an orderly industrial relations system which provides for stability within the industrial relations system, and it provides for people with expertise so that people who are looking for relief are able to get expert relief. I do not think there is a necessity to put this in there. I have taken on board the point made by the Attorney-General. In some lower level proceedings, for example, a 16 year old might want his dad to go along and represent him, and there is some argument for that. But, it is a question of where they are going to get involved in the system. This clause opens it up for any proceedings, and there is a huge potential for vexatious or frivolous interventions. I do not believe it is in the best interests of the industrial relations system in South Australia, and I seek the Committee's support in removing it.

The Hon. M.J. ELLIOTT: Registered agents are defined under section 152 of the Industrial and Employee Relations Act and there are questions of qualification, satisfying the Registrar that they will comply with codes of conduct, etc. A whole lot of matters must be complied with before becoming a registered agent. The registered agent's only role in legislation really is under this clause. What is the point of having a register of agents if now anybody at all can go in and represent people in proceedings? What is the point of having registered agents in those circumstances?

The Hon. K.T. GRIFFIN: I am informed that people who charge no fees have always been able to represent citizens before these jurisdictions. Legal practitioners could go in; others could go in and represent. The category of registered agents was included, because one or two former legal practitioners, who were not entitled to practise as legal practitioners, were getting in and it was generally felt that they should not be allowed to because they were in fact getting in the back door to practise effectively as legal practitioners but having been disbarred. In addition, it was felt that there ought to at least be some measure of control over registered agents who charge.

The Legal Practitioners Act provides that you cannot give legal advice and representation if you charge. But, in the industrial jurisdiction, which is much freer in terms of the way it conducts its business and the nature of the issues which arise, it was felt that registered agents could be appropriately accommodated within that framework; they were not legal practitioners; they could be registered agents; they could charge. But, what the Bill seeks to do is to just allow what I understand has been the practice of allowing other people in who do not charge to assist and, in some cases, represent parties in the proceedings as set out.

There is a rationale for registered agents in the context to which I have referred. The Government takes the view that it is important to at least recognise what has applied, as I understand it, for a long time by default rather than by design. It is a relatively informal jurisdiction.

The Hon. M.J. ELLIOTT: I want to look at one possible distinction in all of this. When the Minister says that at present there are non-union, non-registered agents and non-legal practitioners appearing with parties before the commission and the court, are they appearing in the role of assisting, in so far as translation and those sorts of things are concerned, or are they in fact appearing in a role of representation, which is certainly what this particular clause seeks to provide?

The Hon. K.T. GRIFFIN: The advice I have received is that they do appear in both capacities, and the general rationale is that if they charge fees they ought to be registered, accountable and subject to some oversight as to their practices. If they do not, then it is not necessarily appropriate to have that sort of oversight.

The Hon. R.R. ROBERTS: I believe that we are talking mostly about individual grievances. I do not want to lead the Attorney too far away, but I would suggest that there are other methods of providing opportunities for individual grievances on a one-to-one basis, which would cover the situation where a father represents the son. As I said, this is far too wide. There are ways and means of accommodating, at certain levels, that type of occurrence, but I do not think that this legislation and the clause with which we are dealing allow us to do that here today. I believe that we should knock it out, and the Attorney-General has enough advisers to advise him how he can accommodate individual grievance situations in another way.

The Hon. K.T. GRIFFIN: I am not sure that I can really take it any further than I have already indicated. I understand the position that the Hon. Ron Roberts is putting and the issues that the Hon. Michael Elliott has put. However, it really comes down to whether one is prepared to allow the sort of flexibility that this envisages or wants more rigidly to control the representation. I am sorry that I missed it, but the Hon. Michael Elliott raised a question about interpreters.

The Hon. M.J. ELLIOTT: I was asking whether or not the people who were appearing were at present actually representing or appearing in an assisting role, interpreting or whatever else.

The Hon. K.T. GRIFFIN: I suppose, technically, that sort of assistance may not necessarily be representation. You then get into a technical argument about what is representation.

The Hon. M.J. ELLIOTT: This is saying that the people concerned can represent, and I think that means something different. I want clarified what is actually happening at the moment.

The Hon. K.T. GRIFFIN: My view would be that 'representation' means speaking for a person. The difficulty will be that if you use the description 'assisting' a person before the commission or the court, you then get into an issue about what is 'assistance'. It is then a question of removing the argument to another point of the issue. It may be appropriate to talk about 'assisting', but from the way in which this has been put together—and I am not in a position now on the run to say that 'representation' should be changed to 'assistance'—it seems to me that 'representation' covers 'assistance' as well as someone going into the commission, for example, and representing and putting a point of view. There may be someone who is dead scared of the whole process and says, 'I can't possibly get onto my feet and make these points. Can you come and do it for me?' I guess there is a variety of circumstances in which representation for no fee might occur. It is very difficult to put them into a clearly defined category other than to use the general description 'representative'.

The Hon. R.R. ROBERTS: We can do this on an individual grievance basis, although I personally prefer to discuss that in another forum. There are cases involving one of the inquiries raised by the Hon. Mr Elliott, involving people at the Working Women's Centre who are registered agents and who still act for nothing. They have levels of expertise to provide proper advice to people in trouble and they meet the criteria that are generally accepted as the minimum standard to act as an agent in the Industrial Commission.

For a whole range of reasons it is probably better that we knock this out, and I am certain that the Attorney-General and the Minister in another place can overcome those problems. I think the position is very clear. With those words in the clause as it presently stands I think it is too dangerous. I think it is capable of being redefined somewhere else and I think it ought to be.

The Hon. M.J. ELLIOTT: I was about to say that up until this time there has not really been any compelling reason given why the change is necessary.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: You have the compelling reason right now, have you? I will give you your last chance before I finish my remarks.

The Hon. K.T. GRIFFIN: I am not sure whether it is a compelling reason, but it is good precedent. Section 34 of the 1972 Act says that subject to this section a party or intervener may be represented in proceedings before the commission by a legal practitioner or agent. I am informed that it has been established by court cases that there is a general right of representation, but not necessarily by a legal practitioner.

The Hon. M.J. Elliott: You say in common law they are represented?

The Hon. K.T. GRIFFIN: Yes, by a 1916 case.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: In this jurisdiction. The 1972 Industrial Relations Act SA, as I said, allows the party or intervener to be represented in proceedings before the commission by a legal practitioner or agent. The reference to 'agent' allowed both those who are paid and those who are not paid. I understand that about three years ago the previous Government brought in the concept of registered agent because there were advocates—not lawyers, but advocates, perhaps those who had been in the trade union movement or employer associations—who were setting up their own businesses in a corporate sense to provide representation in the industrial field, and the previous Government set up the concept of registered agent to endeavour, as well as the other examples I gave, to bring some structure to the system and some controls over registered agents.

What do undertakings mean, for example, when given by a registered agent? How should they charge? All those sorts of issues are encompassed by the previous Government's decision to register agents. But the fact is that under the 1972 Act, and even up to now, it is recognised in the regulations that people have a right to be represented by someone who does not charge. That representation covers a broad spectrum, and what we want to do is put the issue beyond doubt.

The Hon. M.J. ELLIOTT: If the Minister is saying that a common law right exists, I presume that this legislation is not going to remove that common law right.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: That is what the Attorney is saying it does, but I am saying that in its absence the common law right remains. I was really looking for a compelling reason why it needs to happen, and I think what the Minister is saying—and the Hon. Ron Roberts should respond to this point—is that if the common law right exists in any case, then all it is doing—

The Hon. K.T. Griffin: There was some doubt that, because there was no specific reference in this Act, the common law might have been superseded, and what we wanted to do was put the issue beyond doubt.

The Hon. M.J. ELLIOTT: I suppose the argument is that what you would be doing is continuing what was the legal position before this Act was promulgated last year. So, while it could be argued that this is changing the *status quo* in relation to the Act over the last 12 months, your argument is that the *status quo* prior to the Act going through was that representation could have been offered gratuitously in any case.

The Hon. K.T. Griffin: That is correct.

The Hon. M.J. ELLIOTT: If that is the case, and I am not sure whether the Hon. Ron Roberts will argue differently, then the Minister may have provided the reasons that up till then I thought were absent.

The Hon. R.R. ROBERTS: I am advised by people much wiser than I that agents under the 1972 Act were employees of the employer or union groupings. In explaining the 1972 Act the Attorney said that we amended it later because of problems involved in that system and we introduced the system of registered agents whereby people who were going to be engaged in this activity had to have certain skills and knowledge to provide orderly and consistent approaches to industrial relations in South Australia. Although the clause looks simple, this is proving to be an arduous task.

The Hon. K.T. GRIFFIN: It may be that some agents were employed by the union movement. In the 1972 Act the law did not define 'agent'. It did not limit the categories of persons who could be agents. There may have been registered associations that employed people who acted as agents and they were entitled to do that but there was no definition in the 1972 Act. We have spent an hour debating the question of an agent. I know it is important, but there are other issues that are equally important and all we want to do is put beyond doubt the fact that your mother, father, brother, sister, cousin or anyone else who does not charge can represent you in one form or another in the Industrial Relations Commission or court. It is something that affects you personally and, in respect of which, you cannot go by yourself because you might feel intimidated or lack confidence or the like.

Amendment negatived.

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

Page 5, line 4—Leave out 'be' and insert 'by'.

This corrects a typographical error.

Amendment carried.

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

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

I believe that this amendment is consequential on amendments made to clause 4. It is no longer a case where one union has exclusive rights. That was the premise of the argument. Given that our amendments have succeeded, my advice is that there will not necessarily be any particular association given the exclusive right to represent the group of employees to which the enterprise agreement relates and, therefore, this paragraph becomes redundant.

The Hon. K.T. GRIFFIN: The amendment is not consequential and is a matter of substance. I do not understand why the honourable member wants to leave out the paragraph. It is the Government's view that, notwithstanding other amendments that have been passed, it is important to retain it in the legislation. It deals with the issue of representation. Under section 77(1)(d), if the proceedings relate to an enterprise agreement and a particular association has been given exclusive rights to represent the group of employees to which the enterprise agreement relates, a person who is a member of the group cannot be represented in the proceedings by an officer or an employee of another association or a legal practitioner or registered agent instructed by another association. I thought it was commonsense.

The Hon. R.R. ROBERTS: If the Attorney-General is going to argue this case, I point out to him that he just gave a long rendition of the right of people to be represented either freely or otherwise. Every citizen has the right to be represented. The Attorney is saying that an employee does not have the right to be represented by an officer or an employee of an association, a registered agent, or a legal practitioner. The Attorney-General is saying that you can be represented by a fool but you cannot be represented by a lawyer in proceedings before the same commission where we have just established a principle whereby anybody can represent anybody in the same commission. The Attorney-General cannot have it both ways.

The Hon. K.T. GRIFFIN: The fact is that it relates to an enterprise agreement. Section 77(1) provides:

An enterprise agreement—

Then paragraph (d) provides:

if a majority of at least two thirds of the total number of employees to be covered by the agreement agree—may include a provision giving an association of employees that is able to represent the industrial interests of the employees' rights to represent the industrial interests of those employees to the exclusion of another association of employees.

If only for the sake of consistency this provision needs to be there. It relates solely to section 77(1)(d).

The Hon. M.J. ELLIOTT: I require some clarification because what we are talking about is proceedings that relate to an enterprise agreement. I may have misunderstood, but I presumed this could have related to an enterprise agreement that had been decided and agreed to and them some issue has arisen later which may affect an individual, in that they feel they are being affected contrary to the enterprise agreement and they may wish to enforce their rights. In those circumstances we are not talking about the negotiation of an agreement. The agreement is in place and the person is seeking to be represented because they feel that whatever rights were established under that agreement are being breached.

If that is the case, I do not understand why they should not be able to choose who represents them in proceedings which enforce rights which have been established under the agreement. I understand why the Government was keen to streamline the enterprise agreement process in the way it is negotiated. However, we are not discussing the negotiation of an enterprise agreement; we are discussing an individual enforcing their rights as established under an agreement. If I have understood this correctly, that is a different issue. The right to representation by another person, in those circumstances, does not affect the processes of the agreement determination itself.

The Hon. K.T. GRIFFIN: I am advised that it is essentially a drafting matter. It makes it complementary to section 77(1)(d). It is in the Bill because a question was raised concerning the position where you might have an agreement under section 77(1)(d) for exclusive representation and there are proceedings relating to the enterprise agreement. In a group where a two thirds majority must agree to be covered by the agreement, what happens to the others? I am informed that the Government's advisers were of the view that, for the sake of consistency of approach in drafting, the position ought to be put beyond doubt in relation to section 77(1)(d).

The Hon. M.J. ELLIOTT: I am not sure that the Minister heard my question. I suggested that the proceedings may relate not to the drawing up and reaching of an enterprise agreement but to whether or not an individual feels that something which has been established under the agreement is being breached and they wish to appear before the commission. In those circumstances, why do they not have a broader right to be represented by a person of their choosing? Why does it have to be the group which was given sole rights to negotiate the agreement under section 77(1)(d)? That is one thing, but we are not talking about the negotiation of an agreement.

The Hon. K.T. GRIFFIN: Section 77(1)(d), in respect of an enterprise agreement, provides:

. . . may include a provision giving an association of employees that is able to represent the industrial interests of the employees' rights to represent the industrial interests of those employees to the exclusion of another association of employees.

It relates to an association being granted exclusive rights to represent the group. This puts beyond doubt, in the circumstances to which I have referred, that one third, who perhaps voted differently or did not vote at all, can still be represented by an agent of their choice. However, this limits the right of an officer or employee of another association or a legal practitioner or registered agent instructed by another association to get into the fray. Under an enterprise agreement two-thirds of the employees may say, 'We want X association to represent us,' and there may be proceedings that relate to that. There may also be another association that wants to get into the act when in fact two-thirds of the employees under section 77(1)(d) have already agreed that one association will represent the interests of employees. It is a matter as between associations how we maintain the focus on the one which has the right to representation. It does not preclude other employees, as the Hon. Ron Roberts suggested earlier, from being represented, but not by another association.

The Hon. T.G. CAMERON: I have not been here for the entire debate, but I understand that under section 115 of the

Act there is a freedom of association clause. I am concerned about some of the practical implications of paragraph (c), which would preclude an officer or employee of another association. Many unionists will have had a long historical association with a particular union in an area where two unions might have joint coverage, and I can relate to the fact that most of the employees would have voted to have one particular union to negotiate their enterprise agreement.

However, there might be a particular body of members at that establishment who for a whole host of reasons, usually historical—they might have grown up with or been represented by the union for a long time—wish to continue with it. There are a lot of workshops and places where two unions have a constitutional right to cover the employees of that organisation. This clause would be saying to those people in that minority group, even though they belonged to union A and were in the minority, and over two-thirds of the work force belonged to union B and wanted it to represent them, 'You do not have the right to allow your union to come along and speak on your behalf or represent you.' That is what the practical effect of that clause would be.

From my own experience, when I looked after the Local Government Employees SA Award, the Australian Workers Union covered 95 per cent of the employees. But there were workshops at a number of councils where, historically, they would always belong to the Metal Workers Union. The Australian Workers Union was comfortable about that, as was the Metal Workers Union, and, on most occasions, the latter union would be more than happy for me as the advocate at the time to represent the members' interests. However, occasions arose when employees—members of the Metal Workers Union at that workshop—felt aggrieved about a particular matter and wanted a representative from their own union, to which some of them had belonged for 20 or 30 years, to join in the proceedings.

On most occasions we were the principal union and put forward the principal arguments, but the union, at the request of its members, would come along and put forward its union members' concerns. As I understand the effect of this clause, it would deny the rights of those unionists, who have had a long and historical relationship with their union, to have the union to which they belong come along and speak for them. If that is the practical effect of the clause, it is quite discriminatory and unfair.

Eventually this situation will be tidied up through union amalgamations, and so on, but there are still hundreds of jobs out there where the unions, the employees and employers are quite comfortable with the situation. Of all the situations I had on this matter, I never once got an objection from the employer, the Employers Federation or the Chamber of Commerce. They never stood up and said that the metal workers were not allowed to be represented here: that never occurred because there was a general agreement that this little workshop and these people had always belonged to the Metal Workers Union, even though the AWU might have covered 90 per cent of the workshops. Everyone was comfortable and happy with it.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. CAMERON: The same thing will apply with enterprise agreements. Nothing will change. Members will not switch from a union with which they have had a long association to another union. These people will still say that they will stay with their union, and I think they have that right and it is respected within the trade union movement and by the employers. The Minister would be denying those people that right, and that would be discriminatory and unfair.

The Hon. J.F. STEFANI: I must endorse some of the comments that the Hon. Terry Cameron has uttered. I have had some experience as an employer in these matters, and I know that some unions do not have the strength of others. I can recall clearly that the Plumbers Union was not a bigger union representing a greater number of employees, whether it be on a building site or in a workshop situation.

I can relate to the very points that the Hon. Terry Cameron has raised in terms of a small workshop where two, three or five plumbers are doing maintenance in a bigger place, and the bigger workshop arrangement is covered by another union. I am sure there are many examples of that. The question remains whether that union will be available for the smaller group of employees to represent them in enterprise bargaining negotiations. If that were the intention of the legislation, I do not see that employees should be disadvantaged by changing their union coverage and allowing another union to represent them. If it is the intention of the legislation to ensure that employees have the benefit of unions to assist them in enterprise bargaining negotiations, I do not see any difficulty in accommodating two unions on one site to do that work.

The Hon. R.R. ROBERTS: Does the individual have the right to intervene personally in proceedings before the commission without representation? It may not be in the negotiation of an enterprise agreement, but a matter related to an enterprise agreement.

The Hon. K.T. GRIFFIN: My understanding is that if there is, for example, a hearing in relation to an approval of the commission, individual members can appear. I want to address a couple of issues. The Hon. Mr Cameron is raising an issue that was lost, if it was ever debated at length, with respect to section 77(1)(d). The fact is that that is in the principal Act. It does enable an employer to work with employees in the sense that, if two thirds of the employees—not those who vote but the total number of employees to be covered by a particular agreement—agree, there can be that provision which gives an association of employees the right to represent the industrial interests of those employees. It does not prevent members on the shop floor belonging to other associations.

I would expect that, if there was an objection about exclusive coverage which is provided in section 77(1)(d), that would be an issue that would be fought out at the time of the enterprise agreement being negotiated. But, once it is negotiated and that provision is in there, it is a question of who then has the right, as an association, to represent the interests of employees in proceedings.

The Hon. R.R. ROBERTS: I thank the honourable Attorney-General for his answer, because he gave me the answer I thought I was going to get: that an individual has the right to intervene in the proceedings. I return to my original argument. The Attorney-General said it is all right for the mum, dad or anybody else to represent him, but when it comes to a member of an association or someone who wants actually to get a lawyer, it is a different matter. The Attorney expounded at great length the rights of people to have proper representation.

The Attorney contended to me that it was okay to have the mother, the father or someone acting gratuitously (regardless of his qualifications) to represent a person in proceedings before the commission. If someone wants to use a registered agent who may be employed by another association, the

Attorney says that that ought to be denied. I put to the Attorney that that is absolutely inconsistent. It is a fundamental thing. You cannot be right on the one hand and wrong on the other hand. It is the same thing.

If an individual has the right to intervene, according to the Attorney's proposition as outlined to me, he has the right to be represented by an agent, a lawyer, an officer of the union, or Mum or Dad. Yet, when it comes to this clause, the Attorney says he cannot be represented by an officer or an employee of another association or a legal practitioner. It is inherent in what the Attorney is saying that he cannot be represented by an officer or an employee of an association, a legal practitioner or a registered agent but he can be represented by his Mum. That is the import of what the Attorney is saying. That clause has to go.

The Hon. M.J. ELLIOTT: I do not know whether or not I have misunderstood what section 77(1)(d) concerned, but I took it to mean that, when an association of employees is given the right to represent the industrial interests of the employees, the industrial rights of employees are represented in the collective sense rather than in the individual sense. That might have been my misunderstanding at the time and I do not know what the legal interpretation is. My understanding was that it referred to employees in the collective rather than the individual sense.

Whilst it is likely that in many workplaces one or perhaps two unions may be responsible for the negotiation of an enterprise agreement, there may be relatively small groups of employees who still remain members of another union. If, for instance, there was an unfair dismissal case or something like that, why could they not be represented by the union to which they belong and the advocates of which they trust rather than having to rely upon this other union that, as I understood, has the collective interests of the employees as a responsibility?

Amendment carried; clause as amended passed.

New clause 11A—'Assignment of Commissioner to deal with dispute resolution.'

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

Page 5, after line 12—Insert new clause as follows:

11A. Section 198 of the principal Act is amended by striking out from subsection (2) 'between the parties to' and substituting 'arising under.'

This new clause seeks to clarify the Government's original intention in that section of the Act which prescribes the arrangements for the assignment of commissioners to deal with industrial disputes. It is considered that the current wording of this section could potentially lead to a challenge as to the assignment of a Commissioner in the case where a dispute occurs between parties to an enterprise agreement but is over matters which have nothing to do with the agreement itself. Such a situation would be disruptive to the operation of the commission.

The Hon. R.R. ROBERTS: I am not familiar with this provision. Is this an administrative arrangement?

The Hon. K.T. Griffin: Yes.

The Hon. R.R. ROBERTS: We will not oppose it at this stage, but I have to confess I am not familiar with the amendment. As it appears that it deals administratively with the way that people are appointed to look at disputes, I do not think it is sinister. Whilst we support it at this time, we will have to look at it more closely, and it may be subject to further discussion at a later time.

New clause inserted.

Clause 12—'Repeal and transitional provisions.'

The Hon. R.R. ROBERTS: The Opposition is opposed to this provision. The Minister in the other place maintains that this clause was meant to cover the long service leave factor in an enterprise agreement negotiation. I query whether the Attorney or the Minister have discovered any other relevant legislation entrenching conditions of employment in industrial agreements other than the Long Service Leave Act. In any case, the primary issue I am concerned about is the long service leave minimum standards, which have rightly been entrenched in employment contracts throughout the State for many decades under the 1987 Long Service Leave Act and the previous Long Service Leave Act. The principle is therefore well established that employees who have served at least 10 years with an employer should be entitled to a substantial period of paid leave. I suppose it is partly a reward for loyal service to the employer over that period, but it is also an essential opportunity for many workers to rest and recuperate.

The principles of long service leave have been well argued and established. This is one of those minimum standards that should not be up for grabs in the context of enterprise bargaining. The problem is that many workers, more so these days than ever before, will see themselves as unlikely to see out the 10 years required before the long service leave entitlement arises, whether it be due to individual workers' plans to move on or because of the insecurity of employment in the industries concerned. Thus, there is a real danger that the majority of employees in a workplace might take the opportunity to grab some money up front without fully realising that they are not only doing themselves a disservice but also having a negative impact on those workers who may truly benefit from the statutory three months paid leave requirement under the Act.

It is not sufficient to say that there are safeguards in section 9 of the Long Service Leave Act which deals with exemptions. The commission would be hard pressed to rule that there is no disadvantage to workers when a deal is done and long service leave is forgone when a fair majority of the workers might front up to the commission and say that the workers in that workplace do not want long service leave.

We believe that the only real safeguard in respect to long service leave is to retain the existing system, whereby industrial agreements or awards can bury statutory entitlements only upon obtaining the commission's approval, the point being that industrial agreements and awards are the subject of widespread negotiation throughout industry, as opposed to the decisions of a small group of workers. We say that long service leave should not be on the bargaining table. If the Government's amendment was passed, it would be the beginning of the end for long service leave, as employers in increasing numbers forced workers to make long service leave concessions in the context of enterprise bargaining, so that long service leave became ultimately unobtainable in a practical or realistic sense. I am glad to note the Australian Democrats will oppose this clause. I ask for the Committee's opposition to the clause.

The Hon. K.T. GRIFFIN: I am puzzled by the honourable member's reaction to this. There is no intention to reduce standards. What puzzles me is that he suggests that this will in some way or other undermine the Long Service Leave Act. That is not correct. The amendment ensures—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, it doesn't undermine the Long Service Leave Act.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Let me tell you what the position is, as I understand it. The amendment ensures that references in all Acts and statutory instruments to the term 'industrial agreement' extends to include enterprise agreements under this Act. It does not limit it, it extends the cover. The matter was initially raised by the Government (the Crown Solicitor's Office) in the context of the provisions of the Long Service Leave Act to allow the long service leave provisions to be varied by awards or industrial agreements. An intended consequence of the new Act which effectively replaces the old industrial agreements with the new enterprise agreement provisions is that those provisions of the Long Service Leave Act would not apply automatically to enterprise agreements. The amendment clarifies the Government's intention in relation to all legislation and subordinate legislation. There are a number of Acts and regulations in which industrial agreements are referred to, such as, the Workers Rehabilitation and Compensation Act 1986, the Construction Industry Long Service Leave Act 1987, the State Long Service Leave Act 1987, and the Industrial and Commercial Training Act 1981.

The important point to remember is that not only are industrial agreements no longer being created under the new Act but in accordance with these transitional provisions existing industrial agreements have a limited life not exceeding two years from the date of proclamation (August 1994). So, as a consequence, these instruments under the Act are soon to become obsolete. Section 9 of the Long Service Leave Act deals with exemptions. It provides:

(1) Subject to this section, the Industrial Commission may on the application of—
  (a) an employer;
  (b) a party to an award, agreement or scheme relating to long service leave; or
  (c) a registered association that has a proper interest in the matter,
  determine that the long service leave entitlements of a particular class of workers will be determined by reference to a particular award, agreement or scheme rather than by reference to this Act.
(2) An application may be made under subsection (1) in anticipation of the making of an award, agreement or scheme.
(3) A determination under subsection (1) has effect in accordance with its terms.
(4) A determination will not be made under this section if the determination will disadvantage any class of present or future workers.
(5) Long service leave entitlements arising under an award, agreement or scheme to which a determination under this section relates are enforceable as if they had arisen under this Act.

So, I suggest there are protections. It is not the Government's intention by way of this amendment to undermine the provisions of the Long Service Leave Act or any other Act. What it is saying is that industrial agreements are superseded, and they will be obsolete. The Government seeks to ensure that enterprise agreements, which in many respects are akin to industrial agreements, are put in the same position. They have to be approved anyway. There are minimum standards which are prescribed for enterprise agreements under this Act.

The Hon. R.R. ROBERTS: In his explanation, the Attorney-General said that, in the making of the award, the understandings of the Long Service Leave Act flow into the new agreement or the new award, and that they shall not disadvantage. However, that applies only at the beginning; once a condition appears on the enterprise bargaining agreement, it may proceed in that form but it can be negotiated to a lower standard. It becomes a question of whether the Commissioner can be convinced that there is no disadvantage in relation to the employees in that enterprise, collectively. For instance, if 90 per cent of the employees were itinerant workers and two or three employees were long-term employees, and enterprise bargaining came up and the employer said, 'I will give you extra money for long service leave, and you will get an increase' it would have the effect of the itinerant worker getting a payment up-front and the permanent employee losing his entitlement some time down the track.

You may say that the long service leave provisions would ensure no disadvantage, but when we talk about the enterprise agreement we must realise that it happens in another forum and the Enterprise Commissioner has to be convinced that there is no disadvantage. In normal circumstances in these forums, if 90 per cent of the employees say that it is okay, the Commissioner is entitled, and likely I would suggest, to say that there is no disadvantage, and it takes away the non-negotiability of what is a standard. I am aware of the time, as is the Attorney-General, and I suggest that what we have put to the Committee and also what has been promoted by the Hon. Mr Elliott on behalf of the Democrats is the safest way to go on this particular matter. I ask the Committee to support us in opposing the clause.

The Hon. M.J. ELLIOTT: Certainly there is some complexity within the industrial area which is being explored in this Chamber and which is outside my life experience, and I must say that I have not been convinced strongly either way about the ramifications of this clause. The Minister already has been threatening a conference, which seems to be an unfortunate way of handling every piece of legislation in this place but, if that is the way it is going to be handled, rather than spend further time on this now I will support the Opposition, and perhaps it will be sorted out between now and when the House of Assembly handles it next week.

Clause negatived.

Title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6.25 p.m. the Council adjourned until Tuesday 14 March at 2.15 p.m.