LEGISLATIVE COUNCIL

Tuesday 14 March 1995

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

ASSENT TO BILLS

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

Corporations (South Australia) (Jurisdiction) Amendment,

Lottery and Gaming (Miscellaneous) Amendment,

Thomas Hutchinson Trust and Related Trusts (Winding Up).

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 53, 65, 66, 109, 131 and 133.

BASIC SKILLS TESTING

53. **The Hon. CAROLYN PICKLES:**

1. How many schools participated in trials during 1994 for the introduction of testing for year 3 and year 5 primary students?

2. What were the results of these trials and have individual schools and students been given results of the tests?

3. What assessment has the department made of the procedures and outcomes of the testing program?

The Hon. R.I. LUCAS: Forty-one South Australian schools participated in the trials of the Basic Skills Tests in August 1994.

The results of the tests are being sent to schools directly from the processing centre in NSW. The results were posted to our schools in the week beginning 21 November 1994.

The results sent to schools include:

- reports for parents, including level of achievement within specified bands
- individual reports for students, including performance on each test item
- a range of summary information of the students in the school.

DECS will receive summary information of the performance of all participating students in the state.

The purposes of the trials were to provide information on:

- how South Australian Year 3 and 5 children respond to test conditions and to test questions
- how teachers respond to the administration of the test and to identify concerns, issues and problems encountered
- parent perceptions of how their children respond to the test
- the training and development needs of teachers with respect to basic skills testing
- aspects of the tests that might need to be modified to meet the needs and priorities of South Australian students; and
- the school and student report and the interrogation of data, the storage of data and the future use of data and confidentiality issues.

During the administration of the tests in August, 80 observers gathered information about the activities of teacher and students in the classrooms. In addition to these observations, teachers, students, parents and principals were surveyed for their opinions on the testing procedure. A report of this assessment is being prepared for the Chief Executive.

A task group has been established to assess some further aspects of the trials. The joint DECS/Flinders University group is surveying teachers, students, parents and principals about their reactions to the reports and the results of the trials. The task group will also carry out analytical work on the items in the tests to determine their suitability for the range of students in our schools. A report from this task group will be prepared for the Chief Executive.

STATUTORY COMMITTEES

65. **The Hon. R.R. ROBERTS:**

1. Who has been appointed to statutory committees under the responsibility, or the shared responsibility, of the Minister for Primary Industries since 11 December 1993?
2. To which statutory committees have they been appointed?
3. When does their term expire?
4. What is the level of remuneration for each position?
5. What relevant expertise or experience does each appointee bring to the position?

The Hon. K.T. GRIFFIN:

I Appointees	II Committee	III Expiry Date(s)	IV Remuneration	V Experience etc
A M Pointon	Animal Ethics Committee	31 July 1996 (all)	Nil	BVSc, MSc, Govt officer.
D W Jones			Nil	BVSc, Grad Dip Ed, TAFE officer.
R Stevenson*			Nil	BSc, AIMLS, Govt officer. BVSc, Govt officer. Private citizen representing RSPCA.
D E Noonan			Nil	Private citizen representing Animal Liberation.
J H Compton*			$107 plus $6 (see footnote)	Private citizen and Lay Member.
G Russell*			As above	LLB, private citizen. Grad, Dip Ag, Govt officer.
P A Kean*			As above	
E K Craven*			As above	
A P J Cecil*			Nil	

I Appointees	II Committee	III Expiry Date(s)	IV Remuneration	V Experience etc
K Dingwall	Barley Marketing Consultative Committee	10 October 1996 (all)	$245 per day (Chair)	As provided by section 62, Barley Marketing Act 1993.
A Malcolm			$190 per day	
B Moloney			$190 per day	
R Smyth			$190 per day	
D Thomas			$190 per day	
L B Kidd*	Dog Fence Board	10 August 1998 (all)	Nil	As provided by section 6, Dog Fence Act 1946.
L P Lord*			$882 per annum	
AD McTaggart*			$882 per annum	
J R Morgan*			$882 per annum	
D A Nicholson*			$882 per annum	
G C Thompson	Phylloxera Board	18 March 1996	$110 per session	As provided by section 10, Phylloxera Act 1936.
C Etherton	Stock Medicines Board	3 November 1996	Nil	BVSc, Govt officer.
M H Stadter	South Eastern Water Conservation and Drainage Board	13 August 1996 (both)	Nil	Both are Govt officers with experience relative to section 9 of SEWCD Act 1992.
R B Wickes			Nil	R Wickes holds a MAgSc.
B J Mason	Veterinary Surgeons Board (VSB)	28 July 1997	$110 per session	BVSc, private practice. BVSc, Govt officer.
J W Tolson		16 February 97	Nil	RSPCA & similar activities.
H M Ward	Deputy Members of VSB	8 July 1997	$110 per session	BVSc, private practice. BVSc, Govt officer.
R J Clarke		28 July 1997	$110 per session	Public Rel Asst RSPCA
R Vandegraaff		16 February 97	Nil	
W White		8 July 1997	$110 per session	
S Gerlach	South Australian Timber Corporation	30 June 1996 (all)	See "Explanation", below	LLB.
G C Bolton			Nil	Accountancy qualifications.
M D Madigan				Degree in Engineering, Govt officer.
I D McLachlan (Deputy member)				Accountancy qualifications.
E J Roughana OAM (Deputy member)				

Footnote: $107 per session plus $6 for every application under the Act considered out of session.

*Signifies second, continuous term of office.

Explanation: Members other than M D Madigan are paid annual fees from moneys generated by Forwood Products Pty Ltd. Those fees are Chairman (S Gerlach) $29 000 p.a., Members $20 005 p.a. Messrs McLachlan and Roughana receive their fees as Directors of Forwood Products.

STATUTORY AUTHORITIES

66. **The Hon. R.R. ROBERTS:**

1. Who has been appointed to statutory authorities under the responsibility, or the shared responsibility, of the Minister for Primary Industries since 11 December 1993?
2. To which statutory authorities have they been appointed?
3. When does their term expire?
4. What is the level of remuneration for each position?
5. What relevant expertise or experience does each appointee bring to the position?

The Hon. K.T. GRIFFIN: No statutory authority under his direct or shared responsibility has undergone a membership change since 11 December 1993.

SCHOOL CHANGES

109. **The Hon. R.R. ROBERTS:** Since 1 January 1994 in the electorates of Frome, Goyder and Finniss—

1. How many schools have been closed or amalgamated?
2. How many support staff have been reduced from schools?
3. How many teaching positions have been reduced from schools?
4. What Education Department properties have been disposed of, or are being considered for disposal?

The Hon. R.I. LUCAS:

1. Since 1 January 1994 the following schools in the Frome, Goyder and Finniss electorates have been amalgamated/closed:

Frome:

Risdon Park High School and Port Pirie High School amalgamated on the Port Pirie High School site to become the John Pirie Secondary School

Redhill Primary School closed on 24 February 1995.

Goyder:

Corny Point Rural School closed December 1994.

Finniss:

No schools have closed or amalgamated.

2. The new school created by the amalgamation of two (or more) schools is staffed for the first year of amalgamation at the same level as the previous separate schools. Assuming that enrolments are maintained in 1995, then there will be no loss of teaching or support staff. This is the case at the John Pirie Secondary School.

In the recent Budget, there was a 1 per cent reduction in the provision of support staff to schools. To all schools in Frome, Goyder and Finniss, this equates to less than 5 hours a week.

3. I have already indicated the policy regarding the staffing of amalgamated schools. For other schools, if enrolments remain constant from 1994 to 1995, then changes in formula as outlined in the Budget will impact on approximately 25 per cent of schools in Frome, Goyder and Finniss.

As part of the normal staffing process, schools were required to identify staffing targets for 1995 based on a February estimate of student enrolments. Schools affected by these changes in the electorates of Frome, Goyder and Finniss have been advised.

4. The Risdon Park High School site has been declared surplus to requirements and it is my understanding that the Port Pirie Lutheran Church community has expressed an interest in purchasing this site.

The Redhill Primary School site will be declared surplus to requirements following closure.

The Corny Point Rural School has been declared surplus to requirements and officers from the Department for Education and Children's Services are investigating the feasibility of sale of part of the school grounds to the Warooka District Council with the remainder of the grounds becoming the property of the Corny Point Hall, Oval and Sports Committee.

I understand that many communities are discussing schools' restructure in the context of the future delivery of education within their district. These communities are not necessarily discussing closures or amalgamations but are exploring options to enhance the delivery of a range of curriculum choices to small schools and to make the best use of educational resources across the district.

RURAL WOMEN'S NETWORK

131. **The Hon. R.R. ROBERTS:** What financial or administrative support has the Minister for Primary Industries through Primary Industries S.A. (PISA) provided to establish the South Australian Rural Women's Network?

The Hon. K.T. GRIFFIN: No direct funding has been provided from my office or from Primary Industries SA for the establishment of the SA Rural Women's network concept recently initiated by my colleague the Hon. Caroline Schaefer. This does not denote disinterest from this portfolio however, as I would draw attention to the fact that officers of my department played a significant role in collaboration with the 'Women In Horticulture' from the Riverland during 1994 to consult widely with rural women about the opportunity for such a network.

VICTIMS OF CRIME

133. **The Hon. CAROLYN PICKLES:**

1. How many applications for *ex gratia* payments from victims of crime are presently awaiting a response from the Attorney-General?

2. How many of those applications have been outstanding for more than three months?

3. How many of those applications have been outstanding for more than six months?

4. What are the reasons for the delay in respect of each application which has been outstanding for 12 months or more?

5. What are the reasons for the delay in respect of each application which has been outstanding for six months or more?

6. How many applications for *ex gratia* payments from Victims of Crime have been authorised to be paid by the Attorney-General in the past 12 months?

7. In respect of successful applications for *ex gratia* payments, what were the particular circumstances which led to the Attorney-General exercising his discretion in favour of the applicants in each case?

The Hon. K.T. GRIFFIN:

1-4. There are no statistics currently being kept which would allow for an answer to these questions. However, where a report is required from the Director of Public Prosecutions, the request would usually take at least six weeks to reach me. If a police report is required, it is likely to take at least three months before the request can be forwarded on to me.

5. I am unable to identify any specific application which has been outstanding for six months or more.

6. As previously reported to the Legislative Review Committee which recently reported on the operation of the Criminal Injuries Compensation Act 1978, no separate statistics with respect to *ex gratia* payments are available. However, in the first 11 months of 1994 I approved *ex gratia* payments amounting to $113 211.00. In the last financial year of the term of the former Attorney-General, the total of *ex gratia* payments was $110 000.00. The computer program used by the Crown Solicitor's office to record this information was never programmed to include specifics with respect to *ex gratia* payments. The need for a new program is currently being evaluated. In the meantime, a manual system has been put in place, but has not yet been in operation for a sufficient time to provide any useful data.

7. The discretion relates to the individual facts of each application.

PAPERS TABLED

The following papers were laid on the table:

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

Reports, 1993-94—
- Aboriginal Lands Trust.
- National Road Transport Commission.

Administration of the Development Act—Report for period 15/1/94-30/6/94.

District Council By-laws—Strathalbyn—
- No. 1—Permits and Penalties.
- No. 2—Moveable Signs.

Response from Minister for Health to Public Works Committee Report—Upgrade of Accident and Emergency Facilities at Flinders Medical Centre.

ADELAIDE AIRPORT

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Premier today in another place on the subject of the Adelaide Airport development and leasing.

Leave granted.

STATE CHEMISTRY LABORATORIES

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made in another place by the Deputy Premier and Treasurer on the subject of the State Chemistry Laboratories.

Leave granted.

HOSPITALS DISPUTE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a statement made by the Minister for Industrial Affairs in another place on the subject of the hospitals dispute.

Leave granted.

QUESTION TIME

EDUCATION QUALITY ASSURANCE

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 the Quality Assurance Unit.

Leave granted.

The Hon. CAROLYN PICKLES: The Minister has announced that his department's new Quality Assurance Unit is now 'poised for action' after spending six months determining what it might do. The Minister has said that the unit will be responsible for producing independent reports on the work of the department, ranging from child-parent centres and schools to central office divisions. The first trial review will be to assist some 70 schools develop and publish their own statements of purpose.

The Opposition has been concerned for some time about the role and functions of this new unit and its cost of

operation. Last year we learnt from the Minister that the unit already has nine staff with five members of that staff being paid more than $67 000 a year. The Minister has been unable to provide details of the program to be carried out this year. Certainly the Minister's media statement did not provide that answer.

The Minister did announce that a framework for quality assurance was being prepared and on 22 February undertook to provide information on that document and the consultation process, and we still look forward to receiving that information. My questions to the Minister are:

1. Has the framework for quality assurance been completed and will the Minister table a copy?

2. Will the Minister table advice being given to schools on how to prepare a statement of purpose?

3. What areas will these statements of purpose cover and will they be required to comply with Government policy on matters including curriculum, the sharing of responsibility, behaviour management, selection and employment of staff and the development of maintenance programs?

4. Does the Minister's department have a statement of purpose and will the Minister table a copy?

The Hon. R.I. LUCAS: In relation to what seems to be of particular interest to the honourable member, namely, that there are five staff with an annual salary of $67 000 a year, I contrast that with the policy that she supported as part of the Labor Government. The Quality Assurance Unit replaces the Education Review Unit, which was costing $2 million a year. The Quality Assurance Unit (I am not sure whether the figures that the Leader of the Opposition is quoting are entirely accurate, although if they are from the Government they will be) costs $500 000.

The Hon. L.H. Davis: I bet you didn't write to him on Christmas Day.

The Hon. R.I. LUCAS: Exactly. In the interests of the State I was pouring over your correspondence.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: If one compares those figures (the $2 million under the Education Review Unit, the unit used by the Labor Government to look at matters of quality within Government schools, and the Quality Assurance Unit, which is $500 000), one sees that, as I indicated at the start of last year, the abolition of the Education Review Unit and its replacement with a new unit called the Quality Assurance Unit would save $1.5 million. That is what the Government has done. Whilst the Leader of the Opposition might want to continue to talk about five officers earning $67 000 a year—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: —and costing $500 000 (they do not all earn $67 000 a year: we do have some secretarial support), one can contrast that with the fact that the Education Review Unit cost $2 million. So, let us put that furphy to rest. The Government has outlined the broad framework of the work of the Quality Assurance Unit in the statement it made in the last week. I will be happy to gather information that was used to support that statement and provide whatever information might be available for the honourable member. I think she refers to a question that she asked I presume in the Council on 22 February. I assure her that we are working assiduously to get an answer—it is only two or three weeks ago. I also assure her that we in opposition waited much longer than three weeks to get answers to particular questions.

ROXBY DOWNS TO ANDAMOOKA ROAD

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Roxby Downs to Andamooka road.

Leave granted.

The Hon. R.R. ROBERTS: On 15 November last year, following a visit to Roxby Downs and Andamooka, I asked the Minister about the progress of sealing the road between these two towns. In the answer presented to this place on 17 November, the Minister said:

> So far nine kilometres of road have been sealed, starting at Roxby Downs. Another 10 kilometres will be completed during this financial year. Another 10 kilometres will be sealed early in the 1995-96 financial year. This will leave three kilometres of road through the town of Andamooka to be sealed.

I have been advised today by people associated with the Andamooka Progress Association that they have been informed by the Department of Road Transport that the final 10 kilometre section, which is scheduled for completion early in the 1995-96 financial year, will now not be completed until 1997. This is at odds with the Minister's statement in this place on 17 November last year. My questions are:

1. Will the 10 kilometres of road scheduled for completion in the 1994-95 financial year be completed in that year?

2. Will the final 10 kilometre stretch of the Roxby Downs to Andamooka road be completed early in the 1995-96 financial year as promised by the Minister? If not, why not?

3. If a decision has been taken to delay this section of road until 1997, will the Minister act immediately to overturn the decision?

The Hon. DIANA LAIDLAW: I have no knowledge of the letter that was sent by the department, and I did not authorise it. I am still of the belief that the commitments that I made to the people in the area and repeated in this Parliament stand. I have not been alerted to the fact that the budget situation has changed to a degree that these commitments could not be honoured at this time or next year. I will make inquiries this afternoon, because I believe that the undertakings that were made were made on the basis that we could honour them and that there has not been a change in the funding situation in the department that would suggest that they could not be honoured. I am most interested to find out what has sparked this letter, and I will do so this afternoon.

SOUTHERN REGION INFRASTRUCTURE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing Minister for the Environment and Natural Resources, a question about urban and environmental planning.

Leave granted.

The Hon. T.G. ROBERTS: On the weekend I attended two meetings in the southern region, the first at McLaren Vale concerning the problems associated with the depletion of the ground water supply and the drying up of the wash pool. There was a lot of concern about that issue, as well as about the retention of the Willunga scrublands. On the Sunday, I attended a meeting at the Port Noarlunga jetty when a number of concerned people questioned local members about the sewage outfall problem, and I accept that this is a long-term problem which has gone through successive Governments. The people were concerned about the applications for a solution that were being considered by the

Government. There were cross questions and very cross answers by the people in the crowd and the local members.

The inter-relationship of development, urban infrastructure and environmental planning is a vital and key issue in the southern region, and there appears to me to be a fragmented approach to the problems associated with the sewage outfall and the request that is being made by some of the vineyard owners for an increase in water allocation. They assume that, hopefully, that water will be returned from the sewage treatment program to their operations. The level of the ground water in the aquifer is dropping, and they are concerned that they will not be able to expand their programs. My question is: when will the Government release the details of the full environmental impact management plan for the southern region covering development, infrastructure (including sewage treatment), competitive land use, and management of the confined and unconfined aquifers?

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

DELFIN PROPERTY GROUP

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about developments of the Delfin Property Group.

Leave granted.

The Hon. SANDRA KANCK: In the last three editions of the *Adelaide Review*, a series of articles and letters was printed about the Golden Grove joint venture, including criticism that Delfin has made a great profit at the expense of the South Australian taxpayer. The Minister for Housing, Urban Development and Local Government Relations responded defensively to the criticism, despite the fact that it was a Labor Government which set up the project, albeit with support from the Liberal Opposition. Delfin, of course, was responsible for the West Lakes development, and a question was asked last week in this place about repairs to the West Lakes shore line.

In an interview last week with channel 10 journalist, Chris Kenny, the Minister admitted that the Golden Grove deal had been a poor one for taxpayers. He refused to say just how much money taxpayers had missed out on, but he failed to rule out a figure of $100 million or more. In the same interview, the Minister also refused to confirm or deny that the joint venture is still paying just $2 000 for undeveloped blocks after they have been developed and sold. The cost of developing a block by the joint venturers is approximately $16 000, yet Mr Bob Day, the Managing Director of Homestead Homes, stated in the March edition of the *Adelaide Review* that his company develops a block at an average cost of $10 000 to $12 000.

In that same edition of the *Adelaide Review*, Mr Alan Hickinbotham asserts that the Hickinbotham Group 'offered the South Australian Urban Land Trust and the Labor Government of the day. . . significantly more money than Delfin for the right to develop part of the Golden Grove land'. The Minister also admitted that, in respect of the Golden Grove joint venture, Government land was sold too cheaply and the Government failed to negotiate a reasonable share of the profits. However, he has refused to reveal whether other major Urban Land Trust joint ventures guarantee better returns for taxpayers' land. My questions to the Minister are:

1. How much money have taxpayers forgone through the development of Urban Land Trust land via the Golden Grove joint venture; at what price is land still being sold to the joint venturers; what is the current average price of a block of land for the consumer at Golden Grove; and is it true that some blocks of land recently were sold to the public for $90 000 or more?

2. Why is the cost of subdivision by Delfin at Golden Grove so much more than other housing developers estimate they could do it for?

3. Did the Hickinbotham Group offer more money for development of part of Golden Grove; and, if so, why was that offer rejected?

4. At what price is Government land being sold in the Seaford Rise and Regent Gardens joint ventures; and what share of joint venture profits from these developments goes to the Government through the Urban Land Trust?

5. In the light of the profits made by Delfin in South Australia, has an approach been made to Delfin Property Developments to contribute to the cost of repairing the shore line at West Lakes?

The Hon. DIANA LAIDLAW: I understand from the discussions I have had with the Minister on this matter that the joint venturers (Delfin and the Government) have shared equally in the proceeds from this development. However, I do not have any detailed information in response to the honourable member's questions, so I will seek a reply.

NATIVE TITLE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about native title.

Leave granted

The Hon. L.H. DAVIS: The issue of native title is a particularly complex one for the States and it has been a matter of ongoing public comment. One issue for the States is the cost of administering native title and any compensation that may be payable to the States as a result of the validation of past Acts which override native title. My questions to the Attorney-General are:

1. What is the position in South Australia with respect to compensation and any administration costs associated with the matter of native title?

2. Have there been any negotiations with the Commonwealth and, if so, could the Attorney-General advise of the result?

Members interjecting:

The Hon. K.T. GRIFFIN: It is interesting that people have time to listen to the ABC. I listen to it at 6 a.m. and then have to do other things in the morning. As members will know, there have been a lot of issues raised in relation to native title. Last year the Commonwealth proposed that it would pay a proportion of the administration costs of the States and Territories as well as a proportion of the compensation which States might be required to pay where, as a result of acts of validation, the native title has been extinguished. South Australia was very concerned, as were the other States, about the offer which the Commonwealth had made. We took the view that we ought to be endeavouring to crystallise, at least among the States and Territories, some more appropriate framework within which that compensation and those administration costs could be paid by the Commonwealth. We negotiated a position as between the States and Territories which would provide a basis for negotiation with

the Commonwealth of financial agreements in relation to native title.

Last week I wrote to the Special Minister of State indicating that this State had agreed with the principles which had finally been developed as the basis for negotiation of financial assistance agreements. They were much more favourable to the States than when they were first offered by the Commonwealth. We have taken the view that it is not satisfactory but we have no option but to accept what has now been finally negotiated, and that is the position which this State has taken. This State took the view that we ought to be in there trying to take a lead, and we did in fact lead the development of the principles upon which that financial compensation and administrative costs would be reimbursed to the States.

We also, in writing to the Special Minister of State, expressed one reservation which was that if, as a result of the Brandy case in the High Court, additional responsibilities had to be accepted by the States in relation to the determination of native title, because the Commonwealth Native Title Tribunal had lost any capacity to do more than act as an administrative body, then we would want to revisit the principles for the reimbursement of compensation and administration costs. That reservation has been placed on the acceptance by South Australia of that position. What the other States and Territories do is a matter for them—both for their Cabinets and for their members. In this State, as members know, we have passed three Bills which are now Acts relating to native title. We have the Mining (Native Title) Amendment Bill still to be resolved where there are some important issues relating to the development of this State. But they are issues which demonstrate that we have endeavoured to both bring our laws into line with the Commonwealth Racial Discrimination Act—or at least not to be inconsistent with the Commonwealth Racial Discrimination Act—and ensure that, as far as it was appropriate to do so, the principles of the Commonwealth Native Title Act were followed by this State.

We have always said that there are problems with the Commonwealth Act. It is uncertain, it is complex and some parts of it are beyond the power of the Commonwealth, but we recognise that they are issues that will be resolved by the High Court as a result of the Western Australian challenge to the validity of the whole of the Act. That decision must be due for publication by the High Court in the very near future. Of course, members will recall that, as part of that, we took the view—and we were the only other State to take this view—that there were important issues of principle and constitutional validity that had to be addressed in relation to at least part of the Commonwealth Native Title Act, so we took the step of intervening to argue our position quite forcefully. That is where it rests. The fact of the matter is that we have agreed, as I have said, to principles, subject to one reservation: those principles relating to issues of compensation and the reimbursement of administration costs.

ABORIGINES, DOCUMENTS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport a question about Hindmarsh Island bridge documents.

Leave granted.

The Hon. G. WEATHERILL: On 6 March Federal environment spokesperson Mr Ian McLachlan told the Federal Parliament and a subsequent conference that he made and sent copies of confidential material (mistakenly sent to his office from the Australian Government Solicitor) to lawyers acting for Tom and Wendy Chapman, to the *Advertiser* journalist and to other people. Has the Minister received any documents originating from the Australian Government Solicitor's office in relation to the Hindmarsh Island site; if so, what are these documents and what has the Minister done with them?

The Hon. DIANA LAIDLAW: No, I have received no such documents. I have not had to do anything with them.

CORNEAS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about the export of corneas.

Leave granted.

The Hon. BERNICE PFITZNER: A magazine called *The Medical Observer* in a recent issue alleged that thousands of Australians are waiting for up to two years for corneal grafts, and that such grafts are being sent overseas to such countries as Nepal, Malaysia, Bali and Indonesia. It should be noted that Professor Hirst of the Queensland Eye Bank confirmed that Australian corneas are being sent overseas but refused to elaborate because, as he says, the matter is a 'hot political issue'. Dr Thomson, the Chairman of the Transplanting Ophthalmologists in New South Wales, said:

> If we cannot supply our own needs and we are sending corneas overseas, it is an absolute outrage.

Professor Coster, Director of the South Australian Eye Bank, said:

> I have said all along this is a bag of worms; it really needs a lot of discussion. But there has been a lot done without too much consultation or community awareness.

The Australian Customs Service states that such transfers are covered by guidelines issued by the Federal Health Department. It is to be noted that South Australia has no waiting list for corneal grafts but, in principle, the position is untenable. My questions to the Minister are:

1. Have any of our South Australian corneas been sent overseas? If so, are the corneas being sold?

2. Will the Minister ask the Federal Minister of Health whether she knows of the situation and whether she can confirm that there is a two year waiting list in some States?

3. If there is a waiting list, what is she doing about it?

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

ABORIGINES, DOCUMENTS

The Hon. BARBARA WIESE: In view of the extraordinary admission by the Federal member for Barker, Ian McLachlan, that documents addressed to another person, including Aboriginal women's secret business documents, were opened and photocopied in his office and used by him for political purposes, and in view of the willingness in the past of Liberal members of the State Parliament to use illegally obtained documents for political purposes, can the Attorney-General assure the Parliament that neither he nor any other Minister or Minister's office has received copies of the Aboriginal women's secret papers wrongfully obtained by the Federal member for Barker?

The Hon. K.T. GRIFFIN: There is a presumption in that question that what Mr McLachlan has done is illegal. I have

made no comment on it and I am not privy to the facts. What I know about it is what I have read in the press. Members should know that lawyers are very cautious about making judgments on matters about which they do not have all the information in their possession. I am not in a position to make any judgment about the presumption that the Hon. Barbara Wiese has made in her statement that there is illegality, and I resent the imputation in the question that Liberal members have been prepared to use documents illegally obtained. The honourable member should make very clear what she has in mind, because I am not aware of occasions where Liberal members have been only too pleased rely upon documents that have been, so-called, illegally obtained.

As far as Mr McLachlan's actions are concerned, that matter is in the Federal Parliament and jurisdiction. From what I read in the press, all the documents related to a Federal Court matter and also to a decision of the Federal Minister for Aboriginal Affairs under Federal legislation. So—

Members interjecting:

The Hon. K.T. GRIFFIN: As I understand it, it all relates to Federal issues. I understand also from what is occurring in the Federal jurisdiction that some steps are being taken by the Federal Minister, Mr Tickner, to try to identify the true facts. I would have thought that that was where the responsibility firmly lay. So far as access to the documents is concerned, I certainly have not got them. I do not believe any of my agencies have received them, but it is certainly not the sort of information of which I am aware in terms of what might have happened across the rest of Government. I have not inquired of my other ministerial colleagues about it, but I would be very surprised if they had received any of those documents. However, I have not made inquiries to ascertain whether or not they have.

The Hon. Barbara Wiese: Will you?

The Hon. K.T. GRIFFIN: I don't have to. It is not for me; you can ask questions.

The Hon. Barbara Wiese interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I have said that I have no knowledge of who may or may not have received those documents. I certainly have not received them and I am not aware that anyone in any of my agencies has received them in the context to which the honourable member refers.

The Hon. BARBARA WIESE: As a supplementary question, I ask the Attorney-General if he will check with his ministerial colleagues whether any of those colleagues or their officers have received the documents to which my question referred?

The Hon. K.T. GRIFFIN: I will give consideration to the question that the honourable member has raised.

SECURITY GUARDS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General a question about private security guards.

Leave granted.

The Hon. CAROLINE SCHAEFER: A report in the *Advertiser* this morning suggested that there were growing concerns about the number of security guards in South Australia, their level of training and the ease with which individuals can enter the industry. The Government has been reviewing all State consumer protection legislation, including the Commercial and Private Agents Act under which security guards are licensed. Given that a high degree of honesty and propriety is required for employment as a security guard and given that the personal safety of the community may be at risk, my questions to the Attorney-General are:

1. What is the Government doing better to protect the community and to ensure that the right people enter the security industry?

2. Can the Attorney-General provide an update on the situation in relation to the review of the legislation?

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: I didn't write any dorothy dixer. You can ask those sorts of questions if you read the newspaper. I frequently read the newspaper each morning and try to second guess what the Opposition might raise by way of questions. I am happy to answer any of the questions. It is correct that we do have a review of all consumer legislation being undertaken by a legislative review team. One of the pieces of legislation is that which relates to commercial and private agents, because concerns have been expressed about the extent to which the activity of a few in that industry might be either unlawful or certainly undesirable. In addition, we wanted to ensure that the legislation did recognise modern processes in terms of registration as opposed to licensing or other regulatory frameworks.

The work of reviewing that legislation has not yet been completed. There have been a number of discussions with other agencies, including police, because as members, particularly former Ministers for Consumer Affairs, will know, under that Act any application in relation to licensing goes first to the police for checking on the past record of the applicant. So, there is an attempt, at least in that respect, to vet applications before they begin the process of licensing.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I have made that public before. Ms Jennifer Olsson from the Crown Solicitor's Office is chairing that group, which also comprises Ms Michelle Patterson, the manager of the Licensing Division; Tony Lawson, the Commissioner for Consumer Affairs; Mr Rob Surman, who used to be a commercial registrar; Ms Bronwyn Blake until she moved to Transport; Ms Susan Errington and one or two others, such as Steven Trenowden and Robert Sidford. We have tried to bring in people who have experience in both the tribunal and registration area and people who have some private sector broader experience. From that team's work we have had all the legislation that we have previously considered in this place and other legislation that is still on the Notice Paper.

We have tried to recognise that, in respect of commercial and private agents, there is a need to ensure proper protection of the community. We have some complaints about bouncers, for example, and it is important to try to ensure that there is both proper vetting and proper standards. One of the emphases of all this consumer legislation is to try to get industry to take a lot more responsibility for training. In relation to bouncers and inquiry agents generally, we think training needs to be given a very high profile as part of the registration process in order to protect the public.

I would expect that within the next couple of weeks we will be in a position to make some final decisions about the way in which that legislation is likely to be proposed for revamping. Quite obviously, if there are changes they will come before the Parliament and there I would expect them to undergo the same sort of rigorous scrutiny that all the other consumer-type legislation has undergone by all members of the Parliament. However, it is certainly a desire that I have that some of the issues that have been addressed publicly in

relation to the quality of work ought to be given greater attention in the new legislation.

The only other point to make is that I am not critical of the number of security agents that presently might have licences. Certainly the previous Government encouraged private security agents to be more actively involved in doing work which previously police undertook but which are not really the core functions of police and which do have a cost to them. I have no difficulty about the numbers of private security agents as opposed to the number of police in South Australia. The important thing is to maintain proper standards which ensure protection for the community.

ARTS, MULTICULTURAL

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the amalgamation of multicultural arts bodies.

Leave granted.

The Hon. ANNE LEVY: We have currently in this State quite a number of organisations concerned with the multicultural arts. We have the Multicultural Arts Trust, which is funded by the State Government through the Ethnic Affairs Commission; the Multicultural Art Workers Committee, which is funded through the Department for the Arts and Cultural Heritage but receives no Australia Council money; the arts program of the United Ethnic Communities, which receives no State Government funding but is funded through the Australia Council; and the Folkloric Society, which is funded through the Department for the Arts and Cultural Development.

A rumour is circulating that, as a result of inquires and discussions coordinated by the Hon. Julian Stefani, two or three of these bodies may be abolished and so-called rolled into another one, the MAC, but that the funding provided to the joint body will not equal the sum of the funding provided by the State Government to the currently existing bodies.

I understand that the MAC is not very receptive to this proposal, having, as many people would know, been through rather an upheaval in the latter part of last year and it certainly wants to get on with its job and not have further upheavals resulting from forced amalgamations. As the MAC and the Folkloric Society come under the responsibility of the Minister for the Arts, I ask the Minister:

1. Is she aware of this possibility of collapsing three or four multicultural arts bodies into one without the commensurate funding being maintained?

2. Does she feel that this would pose problems for the MAC, which is only now starting to function under its revised constitution and business plan and getting down to business?

3. Will she take up the matter with the Hon. Mr Stefani to see just what he is getting at?

The Hon. DIANA LAIDLAW: I do not need to take up any matter with the Hon. Mr Stefani with the urging of the honourable member: I talk with him on a regular basis about this and other matters. The Hon. Mr Stefani was appointed by the Premier, following discussion with me, to look at a number of options for funding multicultural arts activities in South Australia. One of the options he has been exploring is the rationalisation and/or merger of various multicultural arts organisations.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: There are a lot of things which you may not have wanted to do in life but which you might have been made to do. If it is public money, it is even more important that there be scrutiny of expenditure of public money, whether it be in multicultural arts activities, the MFP, ETSA or any field. Multicultural arts are not removed from the requirement of scrutiny. In fact, there was scrutiny last year, as the honourable member would know, and the Federal Government through the Australia Council withdrew funding altogether. At the State level we have continued to fund—

The Hon. Anne Levy: Not from the UEC.

The Hon. DIANA LAIDLAW: No, from MAC.

The Hon. Anne Levy: But not from the UEC.

The Hon. DIANA LAIDLAW: No, but in terms of multicultural arts certainly MAC has been an important contributor. The Federal Government through the Australia Council made a judgment that it was not performing and withdrew funds. We have continued to fund it, but certainly we have had some concerns, and that is one of the reasons the Hon. Mr Stefani, at the Premier's request and with my endorsement, is looking at these options, including rationalisation and merger of the various organisations.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: The honourable member talks about cutting money. I remember she did that pretty successfully in the arts herself when Arts Minister.

The Hon. Anne Levy: Not to the MAC.

The Hon. DIANA LAIDLAW: No, it was a protected body under you, wasn't it? You were not even concerned about performance or scrutiny, and that is one of the reasons why the Federal Government's withdrew its funds. The honourable member did not even question what was going on then when the Federal Government made a judgment and decided that it was not up to scratch. I thought it was interesting that the honourable member did not ask about the organisation when her friends were there. However, now that they are seeking to reform themselves, she is prepared to do so.

I have asked (not just in the general reports and discussions that the Hon. Mr Stefani and I have on a regular basis) for a prepared report, and the Premier and I anticipate receiving that in the next couple of weeks. An appointment has been made relating to this report with representatives of MAC to meet with me, I believe at the end of this month, and there certainly has been no discussion by the Premier or me about forced amalgamations and certainly there has been no need for us to discuss funding options. If there were to be a merger, I should think it would only be reasonable that the amount of money spent on all those various organisations would not be the same in a merged organisation because the administrative costs alone would not be as—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: If there was a merger or rationalisation why should there not be a cut because the administrative cost would not be as great? That is just sensible management, I would have thought. No decision has been made about those matters at this time.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: You have all those multicultural arts bodies not necessarily doing things that are all very different and, with the Federal Government having decided to cut funds through the Australia Council, it should have alerted any person concerned about multicultural arts that at the State level we should be looking at this field; it is the only responsible action to take.

PASTORAL ACT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Environment and Natural Resources, a question about proposed changes to the Pastoral Act.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Early in February, the Department of Environment and Natural Resources released to a few select few groups a discussion paper on proposed amendments to the Pastoral Land Management and Conservation Act 1989.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Although the proposals to the Pastoral Act seek wide-ranging changes, the few interest groups contacted for responses were given one month to supply indepth replies to the document. By contrast, I understand that the South Australian Farmers' Federation has been in continuous consultation with the Government about this matter since the last election. I found out about the release of this report only last week, when I received a copy of one of the group's responses to the Minister on the proposals.

The proposals being considered include offering unconditional permanent tenure over land, regardless of whether or not it is being sustainably managed; the granting of continuous pastoral leases; and changing the composition of the Pastoral Board. One of the groups contacted was the Conservation Council of South Australia. In its response it states:

> We are grateful to you for letting us see these documents, but at the same time concerned that a measure affecting over 40 per cent of the State is being prepared so hastily, and disappointed that we have been given so little time to respond. We must emphasise that an organisation such as ours, which in this matter depends entirely on the services of volunteers who have many other commitments, finds its very difficult to consider, discuss and report on a matter of great complexity in only three weeks.

A great deal of concern has been raised about the proposed changes from the few people who have been consulted. The Conservation Council is strongly opposed to the main objectives of the legislation. Also, concerns have been raised by the Nature Conservation Society of South Australia about the proposed changes and, in a letter to the Minister, it states:

> We believe that the Government's proposed changes to the Pastoral Land Management and Conservation Act 1989 represents a serious attack on both the purpose and spirit of the current Act, both of which have already been substantially undermined by the actions of Executive Government. . . These actions have never been the subject of public consultation or accountability and contravened the Act.

In the light of the limited amount of consultation about these proposals and the limited response time, the Minister cannot claim to have consulted fully with interest groups on this issue, except for the Farmers' Federation. My questions are:

1. Why was such limited time offered for comments on this important proposal, which covers 40 per cent of the State?

2. Will the Minister allow further time for interest groups to respond to the changes?

3. Will interest groups not contacted directly about the proposals be offered an opportunity to comment on the document?

The PRESIDENT: Before I call on the Minister for Transport, I remind the honourable member that there was a considerable amount of opinion in the preface to the questions.

The Hon. M.J. Elliott: Not mine.

The PRESIDENT: I am reminding you that there was a considerable amount of opinion. You read your questions tomorrow morning and you might find out. I have asked others to refrain from expressing opinion, and I am asking the honourable member to do the same.

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

ISLAND SEAWAY

The Hon. T.G. CAMERON: I seek leave to direct questions to the Minister for Transport regarding the *Island Seaway*.

Leave granted.

The Hon. T.G. CAMERON: Will the Minister assure the Council that farmers on Kangaroo Island will not be disadvantaged by the move to close the *Island Seaway* on 1 April? Will she ensure that the *Island Seaway* is not sold prematurely so that, if farmers and others on the island are clearly disadvantaged after 1 April, it can come back into service?

The Hon. DIANA LAIDLAW: I can provide that assurance. I have done so since I made the announcement about the new arrangements in September last year. The *Island Seaway* will cease to operate on 30 March, so it will not be operating services from 1 April. Because it has not been sold or leased at this time and it is unlikely that we will be able to complete any such arrangements by 30 March, the vessel will have a small contingent of people for security purposes, to maintain the engines and those sorts of things. We will be saving $3.2 million a year by keeping it in harbor and not operating a service—that is $250 000 a month. That amount will be used towards a freight subsidy scheme for operators who use the *Sealink* and have to make adjustments to their vehicles to do so. It will also be used as a contribution—and this is certainly needed—to the road funding in the area. That is also to the farmers' benefit.

There has been some concern expressed to me, but it has no foundation following all the investigations that I have undertaken on this matter. The concern relates to the fact that, if there were to be a bumper cereal season, the *Sealink* would not be able to cope with the demand. I am aware that the *Sealink* is able to operate at least six services a day to and from the island and that that would be more than three times the amount of cargo that it operates on at any time during the year on any day, and therefore it would be more than able to cater for any bumper crop or other major need in terms of fertiliser and the like.

The honourable member should be aware that there are prospects for another vessel to operate between Kingscote and Port Adelaide. That is a smaller vessel and would have the capacity for about six semi-trailers and two cars. It would be a private enterprise initiative. If such a service were to operate, the freight subsidy would not apply for operators who have made adjustments to go from the *Island Seaway* to the *Sealink*. However, we would be prepared to provide compensation to those operators for the expense that they

have incurred. In all senses, the needs of the farmers have been kept in mind. I have received strong and considered support from the local councils in the area, and they have accepted the situation. I spoke with them before and after the decisions were made. They see the wisdom of having a focus on transport.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: No, they did not just accept my decision. As I indicated, there was a lot of discussion before and afterwards, and we made a lot of adjustment to the arrangements that are to apply because of discussions with the council.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: They were not just delivered with a *fait accompli*. We discussed the matter at considerable length and, as I said, adjustments have been made under the scheme to accommodate the council concerns. Further, the freight subsidy and compensation scheme has been developed with the knowledge of Treasury and in active discussion with the transport operators. Farmers generally will benefit from the initiatives that we are undertaking. As I indicated, if we are not able to lease or sell the vessel by 1 April we will still incur $1.6 million on an annual basis in terms of leasing arrangements, but we will have $3.2 million for the freight subsidy or compensation scheme which will be of benefit to transport operators and farmers and we will have money to put into roads, which is certainly of benefit to farmers.

GOVERNMENT MANDATE

In reply to **Hon. T. CROTHERS** (15 February).

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

What the Federal Opposition decides to do in the Federal Parliament is its own business.

SCHOOL EXPULSIONS

In reply to **Hon. CAROLYN PICKLES** (15 February).

The Hon. R.I. LUCAS: The draft Procedures for Suspension, Exclusion and Expulsion of Students from Attendance at School will be finalised after an extensive consultation process.

1. Expulsion from a school is appropriate where the severity or the frequency of the behaviour warrants a stronger response than exclusion from school and the principal believes on reasonable grounds that one of the following is the case:

- the student has threatened or perpetrated violence
- the student has acted in a manner which threatens the safety or well being of a student or member of staff through sexual or racist harassment, verbal abuse or bullying
- the student is interfering with the rights of other students to learn and teachers to teach
- the student has acted illegally.

The process of expulsion from a single school is the responsibility of the principal or delegate.

When an incident requiring expulsion occurs the principal:

- notifies the student and parent/legal guardian by hand delivered or certified mail that the student is excluded pending a conference and that the likely outcome is expulsion from the school. Parents of students aged 18 years or over do not need to be notified.
- contacts any relevant school or support services personnel involved with the student and notifies them of the conference.
- convenes a conference involving the student, parents and relevant school and support service personnel within five school days.

The principal will use information presented at the conference to determine whether to proceed with the expulsion of the student from the school. If the principal decides not to proceed with the expulsion she/he may choose to exclude the student or to follow the procedures for suspension and re-entry.

In cases where the principal decides to proceed with the expulsion of the student, outcomes of the conference will determine the following:

- why expulsion is an appropriate response
- the length of time of the expulsion
- behavioural goals to be achieved prior to the student returning to the expelling school.

Appeal rights are explained at the expulsion conference. An appeal may be lodged with the Minister for Education and Children's Services within 10 school days of the conference.

Copies of the *Record of Expulsion from a School* are given to the student, parent/legal guardian (if the student is under 18 years of age), the Minister for Education and Children's Services, the Executive Director, School Operations, the District Superintendent of Education and the local Interagency Referral Manager.

A student expelled from a single school is able to approach any other school to seek enrolment.

A principal has the right to refuse the enrolment of a student expelled from another school. Conditions of an enrolment which is accepted will be made explicit in the form of a Behaviour Agreement negotiated between the school, student and parents/caregivers.

2. Alteration to the procedures for expulsion of students from school will require alteration of Regulation 124 under the Education Act.

Prior to expulsion of a student from a school, a principal may contact a Legal Officer from the Legal and Risk Management Unit of DECS for advice. This will not be obligatory.

3. It is not the intention of either the existing or new procedures that students should attend expulsion conferences with paid legal representatives.

A family member, friend, interpreter, social worker or other support provider may attend a conference to help the student and his/her parents.

Parents or legal guardians of a student under the age of 18 years will be informed of the principal's intention to expel and will meet with the principal at the expulsion conference. A student aged 18 years or older may choose to have the support of his/her family at the expulsion conference.

4. An explanation of the appeal process must be included as part of an expulsion conference.

The appeal is to the Minister for Education and Children's Services and must be lodged within 10 school days of the expulsion conference and may be activated by a student, parent/caregiver or another adult acting as an advocate at the family's request.

Notice of appeal is forwarded on an appeal proforma which must be handed to the student and/or legal guardians at the expulsion conference.

An appeal can be lodged on the following grounds:

- due process not being followed
- unjust use of exclusion or expulsion as a sanction
- inappropriate length of exclusion or expulsion
- inappropriate conditions/goals of exclusion or expulsion.

The outcome of an appeal may be

- to uphold the expulsion
- to vary the length of time of the expulsion
- to vary the conditions/goals of expulsion
- to overturn the expulsion.

Where a decision is made to overturn an expulsion, the Minister may recommend exclusion or may direct the school to accept the student's re-entry to school.

If the Minister directs the school to accept re-entry of the student, the District Superintendent of Education will assist the school, student and parents/caregivers to negotiate the re-entry process.

5. If a Principal believes on reasonable grounds that a student has acted illegally he/she may choose to expel that student from a single school. In such a case the principal may also have an obligation to inform the police of the illegal behaviour.

A decision to expel from a school is made to protect the school community from extreme behaviour. This decision is made independently of any police action.

6. No student suspended from school in the past year would have been expelled under the new procedures. If behaviour was such that a principal would consider expulsion under the new procedures, then he/she would have chosen to exclude the student or recommend expulsion from all DECS facilities under the existing procedures.

No data on exclusion of students over the age of compulsion was collected in 1994 as the existing procedures do not require principals to notify exclusions of students aged 15 years or over.

No student has been recommended for 'expulsion from all DECS facilities' since the introduction of existing procedures.

In term 3, 1993, when an audit of the use of suspension, exclusion and expulsion was undertaken there were 45 students over the age of compulsion excluded.

Ten were excluded for threatened or perpetrated violence and 12 for illegal activity.

Expulsion from a single school will formalise and simplify procedures to ensure safety of school communities, send a clear message to other students about school expectations and ensure that expelled students are not set adrift from support services.

7. Students expelled from a school may negotiate enrolment at another school or Open Access College or consider other post school options such as TAFE or employment.

The needs of young people who do not access productive pathways after expulsion have been discussed at State Interagency Committee, which comprises Executive members of DECS, FACS and SA Health Commission. Their needs will be considered in more detail before recommendations are presented to the relevant Ministers.

STUDENT SUSPENSIONS

In reply to **Hon. T.G. CAMERON** (21 February).

The Hon. R.I. LUCAS: In response to the 4 questions asked:

1. Data is available for term 3, 1994 only.

In that term there were 3085 suspensions involving 2281 students.

A break down of suspensions by year group is not available, as students were grouped in 3 year age brackets for the purposes of data collection.

Percentages of suspensions by age groupings are as follows:

4-6 yrs	1.0%
7-9 yrs	8.0%
10-12 yrs	15.9%
13-15 yrs	49.6%
>15 yrs.	25.5%

When compared with data from term 3, 1993, the most marked increase in suspensions was in the 13-15 year age group.

2. A summary of reasons for suspension by year group is not available.

A summary of reasons for all suspensions in term 3, 1994 is as follows:

Threatened or perpetrated violence	27.5%
Threatened the good order of the school	29.6%
Interfered with the ability of other students to learn or of teachers to teach	19.6%
Wilfully inattentive or indifferent to work	12.6%
Acted illegally	10.6%

3. An audit of the procedures for suspension, exclusion and expulsion of students from attendance at school was undertaken in term 3, 1993, six months after their introduction.

School communities generally responded favourably to the procedures and their success.

Difficulties identified related to the time involved in following through the procedures, the lack of facilities for excluded students, and the lack of clarity of procedures for students over the age of compulsion.

The time involved, although considerable, is generally regarded as worthwhile since an investment of time in meeting with parents, counselling students and engaging support agencies is often enough to curtail the problem.

Resource issues have been addressed through the recent 50 per cent increase in places in Learning Centres, support for school-based alternative education programs and expansion of Bowden Brompton Community School.

Difficulties in using the procedures for students over the age of compulsion have been addressed in the draft procedures recently released for consultation. Most notably, principals will have the flexibility to respond in a greater range of ways to inappropriate behaviour of these students.

4. There has been no student recommended for expulsion since the introduction of the current procedures at the beginning of 1993.

The new procedures will allow for expulsion from a single school. This will be a suitable response to some extreme forms of behaviour but will not totally deny a student access to an education within the Government system.

INFORMATION TECHNOLOGY

In reply to **Hon. M.J. ELLIOTT** (21 February).

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

1. The process of collecting all of the necessary data (called Due Diligence) is not yet complete nor is the checking and reconciliation of that data complete. Any discussion about the amount of work or number of people to be transferred to EDS is purely speculation. Final details of the value of work or number of people involved are not yet available.

2. I assume this question is a reference to the possibility of pressure being exerted by EDS. No pressure is being placed on the government to provide any incentive.

3. A number of internal and external financial advisers and other specialists have been retained as part of this contracting out process. There has not been any intention or action to exclude Treasury officials from appropriate parts of the process.

4. The final details of the arrangement are currently being negotiated. Furthermore the arrangement which is being negotiated is a sensitive commercial deal and as such, must retain a high level of commercial confidence. The process so far has involved external monitoring by the South Australian Auditor General.

The Deputy Premier has asked me to extend an offer to you, as leader of the Democrats, of a personal briefing on the project by Mr Ray Dundon, chief executive officer of the Office of Information Technology.

PUBLIC SECTOR MANAGEMENT BILL

In Committee.

(Continued from 7 March. Page 1368.)

Clause 21—'Functions of Commissioner.'

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

Page 11, line 17—Leave out 'personnel management' and insert 'directions and or'.

This amendment canvasses areas that we have already covered. I am advised that it is consequential.

The Hon. R.I. LUCAS: I agree that this amendment is consequential, and I support it.

Amendment carried.

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

Page 11, line 19—Leave out 'and appeals'.

This amendment revolves around discussions we have had, perhaps prematurely, about proposed new clause 56A. Consequently, based on a couple of earlier tests, I believe it is also consequential.

The Hon. R.I. LUCAS: I move:

Page 11—

Line 19—Leave out subparagraph (iii) and insert—

(iii) observance of the provisions governing the use of contracts relating to employment in non-executive positions under division 2 of part 7.

(and, if significant breaches or evasions of those standards, guidelines, directions or provisions are detected by or brought to the attention of the Commissioner, to report the breaches or evasions to the Minister responsible for the administrative unit concerned);

(ca) to monitor and review the resolution of grievances and appeals in respect of administrative decisions;.

After line 28—Insert subclause as follows:

(2) A direction of the Commissioner is binding on a chief executive, or a statutory office holder with the powers and functions of a chief executive to whom it is expressed to apply.

The Government's amendments address two issues. First, they address the issue to which the honourable member has referred and which I agree is consequential on earlier discussions. If the whole of the Government's amendment is successful, that amendment may have to be further amended as it raises a number of further issues. This package of amendments is meant to make clear that the Commissioner has a role to ensure that chief executives observe the provisions for the use of contracts for non-executive appointments outlined in clause 36 of this Bill. In addition, this amendment provides the Commissioner with the power to report breaches or evasions of standards, guidelines, directions or other provisions related to personnel management to the Ministers responsible for those administrative units.

I should have thought that the Hon. Mr Roberts and the Hon. Mr Elliott would see that that provision covers something different. It is consistent with part of their wish for the Commissioner to have greater authority or oversight over the powers and responsibilities of Ministers and chief executives. If this amendment were successful, it would mean that, if there were a significant breach or evasion of standards, guidelines, directions or provisions detected by or brought to the attention of the Commissioner, the Commissioner for Public Employment would report those breaches or evasions to the Minister responsible for the administrative units. As I indicated earlier, it also makes quite clear that the Commissioner has a role in observing the provisions governing the use of contracts, to which I will refer later. Basically, the Government's position is that contracts would be limited to the remuneration level of EL1 and above. I think that is a fair description.

I understand that the Hon. Mr Elliott has a view that there should be a specific percentage limitation on the use of contracts. I would be interested to hear his view but, irrespective of which provision is successful, this power or function of the Commissioner will probably fit comfortably with either amendment. I would like to hear the debate from the Hon. Mr Roberts and the Hon. Mr Elliott to see whether or not either of them are contemplating supporting the first part of this amendment. If either of them are contemplating it we will have to work out a procedure where we can actually test that. If both of them are rampantly against it then it is probably a matter of minor interest.

The Hon. R.R. ROBERTS: I am advised that the Opposition will be sticking with the amendment and we would urge the Hon. Mr Elliott to support our amendment. That would mean that we would leave in those words down to but not including the words 'and appeals'.

The Hon. M.J. ELLIOTT: I will be supporting the Opposition's amendments on this clause.

The Hon. R.I. LUCAS: I understand the Hon. Mr Elliott wants to support the Opposition's amendment, but the first part of the Government's amendment gives greater power to the Commissioner to report significant breaches of standards and guidelines, etc. to the Minister. Does the Hon. Mr Elliott oppose that amendment?

The Hon. M.J. ELLIOTT: At this stage, yes.

The Hon. R.I. LUCAS: I understand now that the Hon. Mr Elliott opposes this part of the amendment as does the Hon. Mr Roberts. This is an example where something has been discussed with the PSA and others who have expressed concerns about the lack of accountability. This is something the Government is putting in as a result of those submissions to try to increase the level of accountability of the Commissioner for Public Employment, in accordance with the general direction of the submissions. I know that the PSA wants to go further and can still do so further than this provision. But this in effect introduces a further level of accountability within the Bill, and my understanding of the position previously adopted by the Democrats and the Labor Party is that that has been what they have been seeking to introduce. I therefore find it difficult to understand why the Democrats and the Labor Party are now opposing something for which, as I said, the Government has been seeking to provide some further level of accountability. Given that it is highly likely that this Bill will end up in a couple of rounds between the Houses and possibly even a conference of managers, and should there be any attraction at all in increasing the level of accountability that the Commissioner for Public Employment has, the best prospect might be to at least try to keep it alive for a little bit longer. It still leaves the option open for the Democrats or the Labor Party at some stage further down the track to change their mind—I accept that.

I would have thought that if one or preferably both of them were prepared to support the amendment to keep it alive at this stage, bearing in mind that the Opposition amendment is not an either/or position at this stage, it would have to in some way be accommodated with the Government amendment as well. I am not saying, 'Let's just take the Government's amendment and not take the Opposition's amendment' because the Opposition's amendment is consequential on previous votes—I accept that. The Opposition and the Democrats want to see either a separate Appeals Tribunal or two separate Appeals Tribunals, so the Government acknowledges that that is a consequential vote. It is therefore not an attempt by the Government to again revisit that question. I acknowledge that we would have to be consistent with that decision, but these are issues that are in my judgment, anyway, separate from that previous vote on appeals.

The Hon. M.J. ELLIOTT: I understand that, whilst the Government may be able to argue that this amendment is in the direction of some discussions it had with the PSA, that is about all you can say—there was a package of things and that standing alone does not really achieve the sorts of things the Government was hoping to achieve in its discussions. It would also argue that in those circumstances the general package which is produced by the amendments of the Opposition and the Democrats more closely resembles the sort of position it prefers. It really touches on the fact that some of those discussions with the PSA perhaps started too late and were not concluded. That is something we do not take responsibility for. As far as we were concerned we were in a position late in December to proceed and amendments had been drafted then. To respond to some amendments which are a partial response to submissions that have been made by the PSA is inadequate. At the end of the day we are looking at what effect the package of amendments produces.

The Hon. R.I. LUCAS: I acknowledge that the Democrats and the Opposition will not support the amendment so I do not think I have to worry about the process. I acknowledge that this goes towards the directions that the PSA wanted, but the Opposition and the Democrats can have what the PSA wanted, which is the Appeals Tribunal, and in addition this extra level of accountability. It is not an either/or. I understand the advice the Hon. Mr Elliott would have had, but I think it is misguided because this could have been an additional level of accountability. It is not something instead of the Appeals Tribunal. The member has already won that argument because he has the Appeals Tribunal. The

Government was saying 'Here is something sensible in relation to the functions of the Commissioner.' You have won your Appeals Tribunal and you could have had this as well. The Democrats and the Labor Party, based on advice, will oppose it. I think that is sad but I accept the fact that they have the numbers.

The Hon. M.J. ELLIOTT: Without debating it further it seems to me that it will take some considerable time for us to go through the rest of the clauses, particularly if we maintain our current speed. The Government has another option if it is so committed to this, and that is to tell us what it sees the larger package of amendments would look like, rather than just this component here.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I do not believe that the PSA has been convinced of that and I have not been convinced of that at this stage, anyway. We will not take it further, but before we finally finish with the Committee stages of this Bill if the Government is in a position to show that there is a complete package which achieves the sorts of things that were being submitted then we can always revisit. I am not sure at this stage whether that is likely.

The Hon. R.R. Roberts's amendment carried; the Hon. R.I. Lucas's amendment negatived.

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

Page 11, line 23—After 'personnel management' insert 'or industrial relations'.

My briefing notes tell me that this is consequential on something we won earlier. I commend the amendment to the Committee.

Amendment carried.

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

Page 11, after line 28—Insert subclause as follows:

(2) The Commissioner's directions—

(a) may be expressed to apply to all employees or particular employees or classes of employees (including statutory office holders with the powers and functions of Chief Executive under this Act); and

(b) are binding on the persons to whom they are expressed to apply.

The purpose of this amendment is to clearly define who is affected by the Commissioner of Public Employment's directions. The directions are binding and are consistent with earlier amendments to this clause. This amendment provides for directions by the Commissioner to be applicable to either all or particular groups of employees. It also makes those directions binding. Both these changes are consistent with the existing GME Act and are necessary to provide the uniformity of the conditions. I commend the amendment to the Committee.

The Hon. R.I. LUCAS: There is a subtle but important difference in the Government's viewpoint in the two amendments, so I move:

Page 11, after line 28—Insert subclause as follows:

(2) A direction of the Commissioner is binding on a Chief Executive, or a statutory office holder with the powers and functions of a Chief Executive, to whom it is expressed to apply.

The Government's amendment is one of a series aimed at strengthening the powers of the Commissioner by enabling the Commissioner to issue directions to chief executives in relation to personnel management matters. This amendment makes such directions binding on chief executives but still recognises that chief executives have the responsibility and accountability for personnel management in their agencies. In contrast, the Labor and Democrat amendments, proposing to reinstate the GME Act provision that the Commissioner can direct chief executives and employees, reflects their proposed shift in power from the Minister and chief executives back to the Commissioner as under the GME Act.

So, subtly but importantly the difference is that the Government believes that the Commissioner should be able to direct the chief executive officer of the department, but in this whole scheme of arrangements we are talking about a vision for the future and we believe that we ought to have chief executive officers of departments who have some authority, responsibility and accountability, and that they should be responsible for the employees within their agencies, within broad frameworks, principles and directions, and that, if there is to be a direction, it should be a direction from the Commissioner to the chief executive officer.

The Labor and Democrat position is that the Commissioner can, in effect, bypass the chief executive officer if he or she chooses to issue directions to employees of agencies. If one is talking, as we were when we were a little more philosophical and had a little more time, perhaps, last time, about the future vision of a world competitive or efficient public sector in South Australia, it is the Government's view that chief executive officers are paid a reasonable sum of money to be the persons responsible for the direction and activity of their agencies and that we have the Commissioner for Public Employment, obviously, with a range of important functions and the power on occasions to direct chief executive officers.

But the notion that you have a chief executive officer of the Department for Education and Children's Services and, at the same time, that you have a Commissioner for Public Employment running around issuing directions to employees within the particular agency, is a recipe for confusion and not a recipe for an efficient or world competitive public sector. There ought to be a person responsible, by and large, for the operations of an agency, and that ought to be the chief executive officer, and the Commissioner ought to have the other functions. The Government has a strong view that the particular amendment that it is moving is more consistent with an efficient public sector or world competitive public sector and is, therefore, strongly of the view that the Government's amendment ought to be supported rather than the amendment moved by the Labor Party and the Democrats.

The Hon. R.R. ROBERTS: The amendment proposed by the Minister for Education and Children's Services is consistent with the philosophies of the Liberal Party, which have been expressed by the Government when talking about its vision of the Public Service. Our amendment picks up, as the Minister says, that you can have consistency across the number of departments. Clearly, the Government has a view that the chief executive officer ought to have every department acting as an island. Our amendment quite unashamedly talks about consistency across groups of employees. It is sad that this, as I understand it, was one of the areas where considerable discussion was taking place between people from the Public Service Association and members representing the Government, and some movement had been reached in this area.

However, as a consequence of a denial of an understanding given by the Premier that he was considering these matters, a decision was taken last week to pursue the Committee stages of this Bill. My instructions from the shadow Minister for Industrial Relations are quite clear at this stage. I understand that the Minister and his officers have tried to make some accommodation in this area, but I do not

believe it is satisfactory. I am advised that we are promoting something more acceptable and, therefore, I urge the Hon. Mr Elliott to support the amendment moved by Opposition and forgo the opportunity to support the amendment moved by the honourable Minister.

The Hon. M.J. ELLIOTT: I simply indicate that I had an amendment in an identical form to that of the Opposition and will, therefore, be supporting it.

The Hon. R.I. LUCAS: I will lay to rest once and will not revisit (because I am sure that I will hear it on a number of occasions from the Hon. Ron Roberts, and the Hon. Mr Elliott referred to it earlier) this furphy that considerable progress was being made and it was a shame that it was unable to be finalised. The position was—and I have now had a full explanation of it—that there had been considerable time for discussion with the Public Service Association and that the Public Service Association and a number of others had indicated broad acceptance of the fact that the Government was prepared to move a range of amendments to make the Bill from the Public Service Association's viewpoint more palatable and from the Government's viewpoint a Bill that still achieved the essential features of the Bill, the more efficient and competitive public sector, but without having, in effect, compromised too much on those important reforms that were needed.

The Hon. Mr Roberts referred to a letter from the Premier dated the last day we debated this Bill. He was indicating then that the Government was going to ram the Bill through that night and I indicated then that that was not the case. The fact that we are still here two weeks later is proof that I was right and he was wrong in relation to that issue. The Government had no intention of ramming the Bill through, contrary to the views of the Hon. Mr Roberts, the Hon. Mr Elliott or, indeed, Ms McMahon on behalf of the Public Service Association. But the Government had the discussions, had indicated its preparedness to move some amendments but said that was as far as the Government was prepared to go in the discussions with the Public Service Association.

The Government had a look at the position that the Public Service Association was putting and, in effect, said 'We are not prepared to go as far as the association wants the Government to go: this is as far as the Government is prepared to go.' So, it considered it and decided not to go any further. I was therefore advised by the Premier, who has responsibility for the Bill, that the Government—and the Premier in particular—was prepared to go no further in relation to further amendments.

Let us look at the position of the Public Service Association which, obviously, had the choice of the Democrats and the Labor Party, which were giving them everything they wanted, and the Government, which wanted to achieve a workable Bill, one that provided reform to the public sector and something that would provide a well competitive public sector. I have no doubt that the Public Service Association, given that choice, would have said 'The Democrats and Labor Party have signed on the dotted line for everything we want. The Government's moving in the right direction. However, they haven't come all the way over to our position, therefore, I am sorry, we will not go any further; we will stay with the Democrats and the Labor Party.'

I think we ought to put to rest this furphy that should there have been further discussion the PSA was ever going to move from the position of having everything it wanted as being represented by the Democrats and the Labor Party. Given the choice, I can understand the association's position. If you are negotiating a position and you have two people signed on the dotted line supporting your position, you will not negotiate a fall-back position when you have already won the first position. I would have thought that the Hon. Mr Roberts and his colleague, who perhaps has had a little more negotiating experience than he has had over the years, would well know that you start negotiating only if you have a bit of a problem. If you have someone signed on the dotted line you do not worry about negotiating fall-back positions because, as I said, the PSA already had the numbers in this Chamber, anyway, in relation to the amendments it wanted.

I do not intend to revisit this issue every time it is referred to by the Hon. Mr Elliott or the Hon. Mr Roberts; they have each had one go already and I resisted the temptation. However, I think I should put to rest the furphy that in some way the PSA was going to reach an agreement with the Government. If you have the numbers and people signed on the dotted line you do not worry about negotiating a fall-back position.

The Hon. M.J. ELLIOTT: Perhaps the Hon. Mr Lucas needs to be reminded about the undertaking that the Government gave to the public sector before the election. There was a very clear undertaking that the Government was not going to amend the Government Management and Employment Act at all, yet here we are debating a Bill that totally replaces it. We occasionally have to remind the Government of things like that. The election was only 14 months ago and the Liberal Party made a clear promise not to amend the legislation. However, the fact is that we are now looking at a rewrite.

I fail to see how the Hon. Mr Lucas can complain about any of the amendments because, essentially, they are restoring some parts of an Act that the Government said it was not going to amend. At the same time, however, it is still entertaining some significant change. I do not think the Government has any right whatsoever to complain in those circumstances because there is significant change as well as important protections, which I believe are appreciated not only by public servants but also by people in South Australia generally. These protections were in the old Government Management and Employment Act and are remaining.

If the Minister wants to talk about negotiations and, frankly, if he believes what he just said, why did the Government start those negotiations in the first place? If the Government felt that the Labor Party and the Democrats were giving the PSA everything that it wanted, why did it bother to waste time going through negotiations for some weeks if it were so patently obvious as the honourable member is now suggesting it is? The fact is that other matters, some of which have been raised today, were being considered that were not dealt with in our amendments. The Government decided, and it is its right to do so, to terminate that, but the Government accepts the responsibility.

The Hon. R.R. ROBERTS: We might as well get all the rhetoric out in one hit. I reject the assertion made by the Hon. Mr Lucas that the PSA was not negotiating in good faith. I had a number of discussions with the PSA and, indeed, it was quite happy about the way that negotiations were proceeding. This was progressing through the PSA and there was some prospect of reaching an agreement. We need to stop the slur and innuendo being directed at the PSA about the way that it was negotiating on this occasion. If there is any criticism to be levelled, it is not at the PSA. In fact, it relates to the point made by the Hon. Mr Elliott: if the association was not

serious in its negotiations or it thought it was correct in its initial stance, why was it negotiating?

In relation to the point made by the Hon. Mr Lucas that the Opposition, the Labor Party and the Democrats were giving the Public Service everything it wanted, that is not true. We were providing it with the opportunity to get what the Government promised, not what we promised. The Government promised that there would be no alterations to the GME Act. Whilst there is no prospect of proper negotiations being conducted in good faith, it is our position, consistent with that expressed numerous times by the Hon. Mr Elliott, that the promise that was given clearly and concisely to the PSA prior to the election ought to be honoured. That is all I want to say about the conduct of the negotiations last week.

The Hon. R.R. Roberts's amendment carried; clause as amended passed.

Clause 22—'Functions of Commissioner.'

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

Page 11, leave out this clause and insert:

22. (1) Subject to this section, the Commissioner is subject to direction by the Minister.

(2) No ministerial direction may be given to the Commissioner—

(a) relating to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person; or

(b) requiring that material be included in, or excluded from, a report that is to be laid before Parliament; or

(c) requiring the Commissioner to refrain from making a particular review or investigation; or

(d) requiring the Commissioner to declare, or refrain from declaring, a particular association to be a recognised organisation or to revoke, or refrain from revoking, such a declaration.

(3) A ministerial direction to the Commissioner—

(a) must be communicated to the Commissioner in writing; and

(b) must be included in the annual report of the Commissioner.

I addressed this argument earlier when I made some preliminary remarks. The amendment is necessary to spell out clearly in which areas the Commissioner is subject to direction. The problem with the Bill is that it gives the Commissioner for Public Employment no real powers, except those that are delegated. The sting in the tail is that any such delegated powers are subject to direction. The amendment is necessary to provide for the independence of the Commissioner for Public Employment from direct political interference. There has been a considerable amount of debate about this area. Clearly, we have taken the view that there should not be any political interference in the process and, therefore, we believe that objective is achieved by the insertion of this new clause.

The Hon. R.I. LUCAS: I have a question for the Hon. Mr Roberts. Under clause 22 the Commissioner is not subject to direction by the Minister except in some very limited circumstances. I am advised that one of those circumstances might be if the Commissioner were to be given extra responsibilities, for example, to run a redeployment unit. So, the Minister of the day may well delegate the responsibility to the Commissioner to run the redeployment unit—that is, give more power to the Commissioner in a particular area. The Government is saying that the Commissioner is not subject to the direction of the Minister.

The Labor Party and the Democrats are saying that they do not want to see political interference and then start off by providing that the 'Commissioner is subject to direction by the Minister'. They then list four areas where there is no ministerial direction. However, I ask the Hon. Mr Roberts and the Hon. Mr Elliott why they believe the Commissioner ought to be subject to direction by the Minister in all those areas other than the four mentioned? Can they indicate what they envisage the Minister will be directing the Commissioner to do under their scheme of arrangement? They give four specific exemptions, but in everything else I presume that the honourable members are supporting ministerial control over the Commissioner. I want to know from the Hon. Mr Roberts, first, why this has been drafted in that way and what particular intention they have in mind in relation to how the Minister should be directing the Commissioner for Public Employment?

The Hon. R.R. ROBERTS: This is a question for the shadow Minister. I understand that these areas have been subject to some controls in the past. The alternative question is whether the Minister for Education and Children's Services wants us to have no area in which the Minister can give any directions at all. I am happy to do it with the CPE.

The Hon. R.I. Lucas interjecting:

The Hon. R.R. ROBERTS: You are getting part of what you wanted. You wanted to have total direction. The Public Service Association has said, to its credit, that it understands some of what you are trying to do, and there are some clearly defined areas in which it believes that there should not be any ministerial interference in the system at all, and it has clearly laid them out. It has obviously convinced my colleague of its viewpoint; it is obviously happy with it and, if there is any difference between that and the GME Act (and I am certainly not in a position to say whether or not there is; I suspect it is almost identical), that position has been accepted and my colleague has been convinced. We have said that there are four areas in which the Minister cannot interfere and it can be assumed that there are some areas in which the Minister can have some direction. That is a judgment that others have made. I have been instructed that in these four areas there should be no ministerial or political interference or alleged interference at all. I am prepared to support the amendment as it is.

The Hon. R.I. LUCAS: The Hon. Mr Roberts spoke for two or three minutes and did not answer the question, so I presume that he does not have an answer. I put the same question to the Hon. Mr Elliott: why does he want ministerial control over the Commissioner, with the exception of these four specific areas?

The Hon. M.J. ELLIOTT: It is clear that this clause was drafted as it is in anticipation of other changes where it talks about delegated powers, for instance. Some of these provisions that the Government was hoping to get in the Bill either have not made it or will not be making it, subject to later amendments.

The Hon. R.I. Lucas: These are your amendments.

The Hon. M.J. ELLIOTT: Yes, but I am talking about the clause as it stands compared to the amendments. There are some aspects, even with the changes, of what the Government had in the initial Bill that may be attractive, but it still has some components missing. For instance, where a ministerial direction is given, the requirement for it to be communicated in writing and that it be included in the annual report of the Commissioner is an aspect that, no matter what happened to the rest of clause 22, would still seem to be important and, further, I would want it to occur. I want it to be plainly and publicly obvious when the Minister is directing the Commissioner, which everybody in this place acknow-

ledges should be a rare occurrence. If for no other reason at this stage than to guarantee that that occurs, the amendment must stand.

The Hon. R.I. LUCAS: A number of members of the Public Service have expressed grave concern to me about this amendment by the Democrats and the Labor Party being supported by the PSA.

The Hon. M.J. Elliott: How many?

The Hon. R.I. LUCAS: A number—a bit like the Democrats with their flood of telephone calls on any particular issue. These members of the Public Service have asked me to explain why the Democrats and the Labor Party are saying that they are trying, in effect, to remove the politicisation of the Public Service and ministerial control, yet they are moving an amendment to the Government's Bill to have the Commissioner subject to direction by the Minister? If I read the *Public Service Review*, as I do assiduously every two or three weeks when it comes out (and I always collect copies of it), I find that it waxes lyrical about what the Government is attempting to do in relation to ministerial direction and political control of the Public Service.

We now have a position being supported by the PSA, being moved by the Democrats and the Labor Party in this place, to make the Commissioner subject to direction by the Minister. Let us put that on the record. That is the position that the PSA, the Democrats and the Labor Party are supporting. The Government's position, as we have indicated under clause 22, is that the Commissioner is not subject to direction by the Minister except in the exercise of delegated powers. We have indicated there an example of why the Government has framed the clause as it did. The Government's position was that it believed that the Commissioner ought to be truly independent in his or her operations. Clause 29 of the current GME Act, which relates to the functions of the Commissioner, provides:

> . . . to carry out any other functions assigned to the Commissioner by or under this Act or by the Minister responsible for the administration of the Act.

The current GME Act has the Minister directing the Commissioner in relation to functions. We said that we want an independent Commissioner for Public Employment. We put that in the Bill, and we now find the Democrats and the Labor Party, supported by the PSA, saying that they want not an independent Commissioner but rather a Commissioner subject to the direction of the Minister, albeit with four exemptions where they say not to worry about those four exemptions. However, in all other areas the Minister can direct the Commissioner.

The number of public servants who have spoken to me have expressed great concern at, in effect, the Democrats, the Labor Party and the PSA (although they were not referring to the PSA at that stage), in their view selling them out in relation to this issue. Members of the Public Service will be very interested when they hear, as I am sure they will now that this is all on the record, that their association, together with the Democrats and the Labor Party, are, in effect, opposing what the Government wants by way of an independent Commissioner for Public Employment. Contrary to what they have been saying, Ms McMahon and various other spokespersons for the PSA want to make the Commissioner subject to ministerial direction again with these four specific exemptions. The Opposition and the Democrats have the numbers and I cannot do much about it, but I assure members that the Public Service will become well aware of this vote and position of the PSA.

The Hon. M.J. ELLIOTT: I do not think the Hon. Mr Lucas responded to what I said last time; I am not sure whether he was taking instructions at the time. The point I made was that some components of this amendment are not contained within the existing Government Bill, and those components I want to keep alive.

The Hon. R.I. Lucas: There is no subclause (3), there is a proposed subclause (2) by Labor—

The Hon. M.J. ELLIOTT: I thought these were being put as a whole.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: That is open to being suggested. What we have been debating is the whole of clause 22, and I said that components of it I would want to be in the Bill when it finally leaves this place. The last tirade did not take matters any further than we were before the Minister stood up, and that followed the comments I had made earlier. The other thing I need to be convinced of is that the four powers (which are referred to in the amendment to clause 22(2)) are powers that the Commissioner does have in his or her own right and are not powers that would be delegated. If I am convinced that that is the case, then I could be persuaded to accept clause 22 as it is, with the addition of subclause (3).

The Hon. R.I. LUCAS: If that is the position of the Hon. Mr Elliott, I think he would need to indicate whether that is his final position or whether he is wanting to leave it for another stage—at a conference or when it comes backs to us. I think it needs to be clear. The Hon. Mr Elliott has the same amendment. I think that the Democrats have seen the force of the Government's argument on this and it may well be that the Democrats can support the Government's position and oppose the Labor Party's position, which basically says there should be ministerial control over the Commissioner.

The Hon. R.R. ROBERTS: Despite the assurances given by the Minister that he was going to leave the rhetoric aside on the last clause that we considered, he has decided to engage in this. What he is suggesting is that it is the Government's view that, from now on (we assume from his statement), he will be supporting a proposition which says that no Minister will be looking to have any control over a public officer or the head of a public office.

The Hon. R.I. Lucas interjecting:

The Hon. R.R. ROBERTS: That is what you are saying here, that you want it completely independent. I am attracted to the theory that you propose. I understand what the Minister is on about. If that is his position and he wants to come back and espouse that clearly at another stage in the deliberations, and I am assured that there will be a recommittal, that is fine. If you want to make it clear that the Minister, in this case the Premier, does not wish to exercise any control whatsoever over the Commissioner for Public Employment, whether it be in the letterhead or the number of tea and biscuits they get on each occasion when they meet, that is fine. I am very happy with that.

I am reasonably confident that the Public Service Association will exercise its best endeavours and will do what it believes to be in the best interests of its members. Its members have an opportunity to judge the officers of the Public Service Association, which is responsible to its members. I believe that the Public Service Association is quite happy to take on that responsibility. At this stage, I am not persuaded by the persuasive Mr Lucas that we ought to withdraw this amendment, which has been put there for good and cogent reasons. However, I am prepared to be convinced

on another occasion, given the assurance by the Minister, speaking on behalf of the Premier, when we commit this at another stage, that not only does he not wish to instruct the Commissioner for Public Employment but he does not wish to do that to any other public officer.

The Committee divided on the clause:

AYES (10)

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

NOES (11)

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

Majority of 1 for the Noes.

Clause thus negatived; new clause inserted.

New clause 22A—'Recognised organisations and right to make representations to Commissioner.'

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

Page 12, before clause 23—Insert new clause as follows:

22A. (1) If the Commissioner is of the opinion that an association registered under the Industrial and Employee Relations Act 1994 or under the Industrial Relations Act 1988 of the Commonwealth represents the interests of a significant number of employees, the Commissioner must, by notice published in the *Gazette*, declare the association to be a recognised organisation for the purposes of this Act.

(2) If the Commissioner is of the opinion that a recognised organisation has ceased to represent the interests of a significant number of employees, the Commissioner must, by notice published in the *Gazette*, revoke a declaration under subsection (1).

(3) Before making a decision or determination, or taking action, that will affect a significant number of the members of a recognised organisation, the Commissioner must, so far as is practicable—

(a) notify the organisation of the proposed decision, determination or action; and

(b) hear any representations or argument that the organisation may wish to present in relation to the proposed decision, determination or action.

(4) Nothing in this section limits or restricts the carrying out of a function or exercise of a power by the Commissioner under this Act.

I have read into *Hansard* the outline regarding new clauses 15A and 22A. I do not intend to go over that detailed discussion. The amendment determines the process whereby organisations and their right to make representations are recognised. In a similar way to new clause 15A, it allows for recognised organisations and CEOs to consult. This amendment provides for consultation between recognised organisations and the Commissioner for Public Employment. It also spells out the process for recognition or revoking of such recognition via the *Gazette*. The requirement to consult is consistent with sound management processes.

The Hon. R.I. LUCAS: This amendment is consequential on a previous vote that the Government lost. I will not repeat the argument. The Government opposes it.

New clause inserted.

Clause 23—'Investigative powers of Commissioner.'

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

Page 12, line 4—After 'personnel' insert 'management or industrial relations'.

This clause contains the components which we discussed regarding clause 21, which the Opposition won. It seeks to limit the powers of the Commissioner for Public Employment to reviewing only personnel practice as provided for under the Bill. He is doing only half the job. In order genuinely to address workplace problems and concerns, the ability to review management and industrial relations practices is vital. Interrelationships between these areas are such that without this amendment the Commissioner for Public Employment's ability realistically to review concerns is quite limited. I submit that this was argued in respect of clause 21 and agreed to by the Committee. I suggest that it do so again.

Amendment carried.

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

Page 12, line 8—Leave out subparagraph (iv).

New clause 56A establishes the Public Service Appeals Tribunal. As a consequence, the powers of the Commissioner for Public Employment under clause 23(1)(a)(iv) are no longer necessary.

Amendment carried.

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

Page 12, line 10—Leave out 'or panel of persons'.

The purpose of this amendment is to prevent the delegation of investigative powers below CEO level. The Bill allows for the delegation of the Commissioner for Public Employment's investigative powers to anyone without limit or guidelines. This amendment has the effect of investigations being conducted by the Commissioner for Public Employment, CEOs or appeals tribunals of known composition. The amendment helps to maintain fairness and independence by specifying in advance who can investigate issues rather than introducing possible bias at the time of determining who shall investigate particular issues.

Amendment carried.

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

Page 12, line 11—Leave out ', inquiry or appeal' and insert 'or inquiry'.

This amendment is consequential upon the establishment of the Appeals Tribunal.

Amendment carried.

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

Page 12, line 17—After 'object' insert 'that is relevant to the subject matter of the review, investigation or inquiry'.

This is a matter of clarification. It does not need substantial debate.

Amendment carried.

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

Page 12, lines 18 and 19—Leave out 'questions truthfully' and insert 'truthfully questions that are relevant to the subject matter of the review, investigation or inquiry'.

This amendment is consequential on the previous amendment.

Amendment carried; clause as amended passed.

Clauses 24 and 25 passed.

Clause 26—'Annual Report.'

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

Page 13, line 26—After 'personnel management' insert 'and industrial relations.'

This amendment is consequential.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 13, lines 28 to 32—Leave out paragraphs (a) and (b) and insert—

(a) describe the extent of observance within the Public Service of—

(i) the personnel management standards contained in Part 2; and

(ii) the personnel management guidelines and directions issued by the Commissioner; and

(iii) the provisions governing the use of contracts relating to employment in non-executive positions under Division 2 of Part 7,

and measures taken to ensure observance of those standards, guidelines, directions and provisions;.

This amendment revisits part of the argument earlier, but it gives the Democrats and the Labor Party an opportunity to vote for this provision separately. The amendment will strengthen the reporting requirements of the Commissioner in line with previous amendments which propose that the Commissioner be able to issue directions to chief executives on personnel management matters and it will clarify the role of the Commission in relation to the use of contracts for executive appointments. It will enable, for example, as I indicated earlier, reference to measures taken to ensure observance of those standards, guidelines, directions and provisions. This amendment, in effect, outlines the areas of activity of the Commissioner for Public Employment upon which he or she will be required to report. He or she will still have some advised responsibility within the public sector for the observance of personnel management standards, personnel management guidance, personnel management guidelines and directions and also provisions governing the use of contracts. Therefore, this provision is a useful addition to the annual reporting requirement.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 14, lines 6 and 7—Leave out subclause (3).

I note that the Government obviously thinks as the Hon. Mr Elliott does with our amendments. We have 'at any time' in this amendment too. The Commissioner may at any time submit a special report. The amendment then outlines in greater detail the sorts of circumstances where a special report might be used. If the Commissioner becomes aware that there have been significant breaches or evasions of personnel management standards, guidelines and directions or provisions governing the use of contracts, then the Commissioner must make a special report to the Minister describing the breaches or evasions. On receipt of a special report the Minister must then obtain a special report from the Minister responsible for the administrative unit concerned dealing with the matters raised by the Commissioner and describing any corrective measures taken by the Chief Executive of the administrative unit. Then the Minister must within 12 sitting days after receipt of a special report under this section cause copies of the report together with any further report obtained under subsection (3) to be laid before each House of Parliament. This is an attempt by the Government to outline the circumstances of a special report and to also outline the accountability mechanisms that a Government and a Minister ought to follow in those circumstances.

The Hon. R.R. ROBERTS: I am reasonably confident that this is okay although it has some implications. I support the amendment.

Amendment carried; clause as amended passed.

New clause 26A—'Special reports.'

The Hon. R.I. LUCAS: I move:

Page 14, lines 6 and 7—Leave out subclause (3), and insert new clause as follows:

26A.(1) The Commissioner may at any time submit a special report to the Minister on matters relating to personnel management or industrial relations in the Public Service or a part of the Public Service.

(2) If the Commissioner becomes aware that significant breaches or evasions of—

(a) the personnel management standards contained in Part 2; or

(b) the personnel management guidelines or directions issued by the Commissioner; or

(c) the provisions governing the use of contracts relating to employment in non-executive positions under Division 2 of Part 7,

have occurred in an administrative unit, the Commissioner must make a special report to the Minister describing the breaches or evasions.

(3) On receipt of a special report under subsection (2), the Minister must obtain a report from the Minister responsible for the administrative unit dealing with the matters raised by the Commissioner and describing any corrective measures taken by the Chief Executive of the administrative unit.

(4) The Minister must, within 12 sitting days after receipt of a special report under this section, cause copies of the report (together with any further report obtained under subsection (3)) to be laid before each House of Parliament.

The Commissioner is able to look at personnel management and industrial relations matters and thus I have included reference to that, as suggested by the Hon. Ron Roberts, in the new clause.

New clause inserted.

Clause 27—'General employment determinations.'

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

Page 15, line 4—Leave out 'Minister' and insert 'Commissioner'.

This is one of the clauses we feel is a significant change, which allows the Commissioner for Public Employment, not the Minister, to make general employment determinations. Clause 27 of the Bill fundamentally changes the responsibility for the issuing of general employment determinations. It moves such authority from an independent statutory officer to a political level. This amendment provides for the independent statutory officer, that is, the Commissioner for Public Employment, to have the responsibility for employment conditions. It is a vital amendment to remove political involvement in what should remain an independent Public Service. Given the declaration by the Minister earlier in discussions and his avowed desire not to have the Minister interfere with the Commissioner for Public Employment, I am certain that he will be supporting this amendment, which reflects an amendment similar to that of the Hon. Mr Elliott. I believe we should have unanimity.

The CHAIRMAN (Hon. J.C. Irwin): I would like to recognise a delegation from Hong Kong in the gallery. On behalf of all members, I wish them well in South Australia and welcome them to the Legislative Council.

The Hon. R.I. LUCAS: The Government opposes this provision. The argument is going full circle in relation to this provision. The Government's view is that the Minister should be able to determine the structures in accordance with which remuneration levels may be fixed for positions in the Public Service, conditions of employment, the processes to be followed, and so on, classes of positions that are to be executive positions and allowances payable to employees and the circumstances obtaining.

It was quite clear in relation to the structure of the Government Bill that chief executive officers and Ministers had various responsibilities and the Commissioner for Public Employment had his or her separate responsibilities. So, in

their own particular areas, the Ministers and chief executive officers had the authority and the accountability, in effect, to undertake their particular tasks. The Commissioner for Public Employment, in his or her tasks, could not be directed by the Minister except in certain circumstances. That is the Government's position in relation to the separateness of the role of the Commissioner for Public Employment and that of the Minister. As I said, from the Government point of view clause 22 was to make it quite clear that, in the responsibilities which the Commissioner had, the Minister was unable to direct, except in those delegated circumstances. We talked earlier about the Commissioner's perhaps being put in charge of an extra function such as the redeployment unit or something along those lines.

The difficulty is whether or not this is consequential on votes that we have had before. We had a similar argument in relation to the definition clause. It is therefore difficult to know whether or not this is consequential on earlier issues. That is why I have been taking advice as to whether that is consequential on one of the first votes we had in relation to the definition clause last week or two weeks ago. It is not entirely clear whether or not it is consequential, and I am unsure whether the Hon. Mr Roberts was arguing that it is; he did not appear to be.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: But you weren't arguing that it was consequential. I thought there might have been an argument that it was consequential on an earlier debate. If that is not what the honourable member is claiming, let us have the debate again and perhaps repeat it. As I indicated two weeks ago, the essential feature of the Government's Bill is that there ought to be responsibility for the chief executive officer and the Minister in particular areas. The Commissioner for Public Employment will have certain responsibilities and, in the exercise of those responsibilities by the Commissioner, he or she should be independent. In the other areas it ought to be clear that it involves the Minister and chief executive officer. That is the Government's position. I acknowledge that, even though the Hon. Mr Roberts is not claiming that this is consequential, given the debate earlier and the positions put by the Hon. Mr Roberts and the Hon. Mr Elliott it is unlikely that the Government's position will be sustained in relation to clause 27.

Amendment carried.

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

Page 15, after line 13—Insert subclause as follows:

(1a) The Commissioner may not make a determination relating to the classes of positions that are to be executive positions if the determination would result in more than 2 per cent of all positions in the Public Service becoming executive positions.

This issue was discussed when last we looked at this Bill. As I indicated previously, I accept the notion of executive positions but have some concern about how many people in the public sector will be deemed to be executives, because their employment conditions will be different from those of the public sector generally. I said earlier that the efficiency of the public sector depends on the efficiency of the senior management, and we may employ them under different conditions from those of the general public servant. What we had in the old GME Act and what we are attempting to reinsert in this legislation is some significant protections for public servants, but recognising, at least in my view, some differences between those in executive positions and the majority of public servants.

I have chosen as a mechanism of limitation a position of 2 per cent of the Public Service. There may be another way of deriving a limitation, but 2 per cent is still quite a number. I recall the Minister, when last we debated the matter, asking, 'We want about 200 positions to be executive positions; what happens when 200 is more than 2 per cent?' For that to occur the public sector would have to be about a quarter of its current size, which really goes to show that the figure of 2 per cent was a very conservative one and gave a great deal of leeway, or that the Government has an agenda well beyond anything that has been made public so far. At the bottom of it all it is to provide some cut off between executive and other positions and that is the mechanism I have chosen to do it.

The Hon. R.I. LUCAS: We had some of this debate before, but it is important and the Government is not supporting it. Can the Hon. Mr Elliott define what he means, based on his advice, by 'all positions in the Public Service'?

The Hon. M.J. ELLIOTT: This was drafted on my instruction. I understood it to mean 'all the people that this Bill covers'. That was the intention and, if it does not do that, I can be persuaded to reword it. The drafting instruction I gave was that it was to cover all people covered by this Bill.

The Hon. R.I. LUCAS: Before the numbers are crunched on this, it is important to know exactly what we are talking about. I am advised that there is a considerable difference between what we would know as the public sector or Public Service and officers covered by the GME Act. The GME Act would cover about 14 000 employees, whereas when we were talking a couple of weeks ago we were talking about the public sector or Public Service (that is, Government departments), and about 40 000 employees. I am interested to know what the Hon. Mr Elliott intends with this amendment.

The Hon. M.J. Elliott: People covered by this Bill.

The Hon. R.I. LUCAS: So it is not meant to cover people in the Health Commission?

The Hon. M.J. Elliott: It can't. It can only cover the people covered by this Bill. That was all it was intended to do—that was the drafting instruction I gave.

The Hon. R.I. LUCAS: I am advised that this Bill covers more than just the public servants under the old GME Act. The principles refer to the Public Service, so some aspects of the Bill do refer to the Health Commission officers and others. That is why I am asking the Hon. Mr Elliott to what he is actually referring here.

The Hon. M.J. ELLIOTT: It was meant to refer to those public servants—and I suppose we can argue about what that means—who are covered by this Bill and who could be deemed to be executives if the Government so chose. It should be 2 per cent of those people. If it is intended that there will be executives right through the health and other sectors to which the Minister refers; indeed it is meant to give that coverage as well. It is meant to be as broad a coverage as executive positions.

The Hon. R.I. LUCAS: The Government opposes the provision and our position is clear. The position that the Government put in was a sensible one and this one will give rise to some significant problems. When we get further into the debate the Hon. Mr Elliott may be prepared to look at what I am about to say, namely, that if we are to look at notions of management of Government departments and talk about percentages of people who should be on executive positions, the notion ought to be, irrespective of what Act you are under, that if you have a Government agency with 20 000 or 30 000 employees, from the Hon. Mr Elliott's viewpoint,

a small percentage of those in management positions ought to be on contract.

That is the position that the Hon. Mr Elliott in the broad is seeking to see incorporated in the legislation. He does not want to see in the Education Department, for example, 20 000 people on contracts. He believes that there should be a small number (he has picked a figure of 2 per cent) on contracts in executive positions. The dilemma with the way it is drafted is that it refers only to the small number about which we are talking and therefore excludes large numbers of people whom we would understand to be in the public sector—the 40 000 figure about which we were talking a couple of weeks ago.

I am advised that, on the Hon. Mr Elliott's instructions, this refers only to the figure of 14 000, and that means that the Health Commission is not included, large numbers of daily paid within the EWS and other agencies are evidently not included, and the Education Act people within the department are not included. What it is doing is taking the total number across the public sector and saying that we will take 2 per cent of that number, which is a smaller number. As I said, that is why I do not expect the Hon. Mr Elliott to respond on the run here in the Chamber this afternoon, but I would have thought—and this is the point of view I put to the Hon. Mr Roberts—it would make more sense, if you are going to impose a percentage figure, that it be a percentage of what makes sense rather than a percentage of what does not make too much logical sense.

If you are a manager and have 20 000 or 30 000 people, you will need more people in executive positions to manage the department than if you have only 200 or 300 people. It may well be, if you have within your agency large numbers of people who are employed under other Acts, that this provision, when it averages out, will treat them roughly the same and restrict the number of people that you can appoint to executive positions and on contract.

I put that to the Hon. Mr Roberts as well, whether or not, on reflection, members might look at redefining this amendment so that, instead of it being 2 per cent of just those in the Public Service, it be 2 per cent of that broader figure of all the people who are currently employed in public sector agencies. I am not sure what the appropriate wording would be, and I am not suggesting that we seek to amend it on the run here; I guess I seek some indication as to whether or not either the Democrats or the Labor Party are prepared to consider further this provision.

What this provision will do is pretty much put a lid on it where it is at the moment. I think I indicated a couple of weeks ago that we have a few over 200 people in executive positions, and if the figure is to be 13 000 or 14 000 you are talking about a lid of 260 to 280 on the number of positions in the whole of the Public Service, which is not just this 13 000 or 14 000 but the Health Commission, Education Department, EWS and a whole range of other people who are in the public sector but who are not included in the Hon. Mr Elliott's definition of positions in the Public Service.

The Hon. M.J. Elliott: They may be included under other Acts, though. The executives will only be appointed in the Public Service.

The Hon. R.I. LUCAS: I do not know whether the Hon. Mr Elliott was able to listen to the whole point I was making, but what I said was that it really does not matter. If you have an agency of 20 000 or 30 000 people you will need a certain number of people in executive positions to help run that agency. For example, in our agency (and there might be other good examples) the vast number of people are not employed under this definition of positions in the Public Service but are employed under the Education Act principally. What you are talking about with this 2 per cent figure is 2 per cent of a very small part overall, but a very small part of the Department for Education and Children's Services. If you have an agency of 30 000 people you need more executive positions to run it than if you have an agency of 300 or 400 people. I would have thought that most members would acknowledge that. The problem with the provision as drafted is that it does not recognise that point and seeks to restrict, we think, in too limiting a way, too restrictive a way, the number of people who can be appointed to executive positions and on contract.

The other point I make—and this is not an issue that is of immediate concern to the Hon. Mr Elliott or the Labor Party, but in the future it might be an issue of concern to some of the members of the Labor Party who are young enough—is that we have a problem in South Australia with holding on to executive level officers in the Public Service. I know in our agency that head-hunters from other public sectors in other States and the private sector are offering much more to senior level public servants, to the executive level positions. Contract positions have been a way for officers to be appointed, sometimes at up to $10 000 a year more with negotiated conditions or something, so as to offer them a higher salary on the basis that they are not permanent, tenured public servants. Officers have been prepared to accept this, instead of being paid at EL2 level, which might be $72 000. That is all we are talking about in the public sector. Backbenchers' salaries are $67 000, and we are talking about EL2 salaries of $72 000 plus other benefits (but $72 000 is the salary), and you do not have too many of them in the whole of the public sector. We are trying to attract quality people at $72 000 at the moment into the public sector.

A number of officers who were appointed under the previous Government and under this Government at EL2 level were appointed on a contract for five years at around $82 000 on the basis that they have a five year contract but there is no permanency of tenure. The system does not have to carry them at the end of the five years if they do not want to stay or if the system does not want them to stay. For giving away their permanency, they can get paid up to $10 000 a year extra. This means that we are able to offer a little more to attract quality people.

Currently we have people in the Public Service who are at the EL2 level and who are being head-hunted by Government agencies interstate and the private sector. They are saying, 'I am a permanent public servant. I have enough confidence in my own ability to get a job, to stay valuable to this department, or, if I see a challenge somewhere else, get more money somewhere else, and I would like to be in a position of earning the same amount of money as the person sitting right next to me who has just come in from interstate, is paid $10 000 a year higher and is doing roughly the same amount of work but is on a contract.' People have come to Ministers and chief executive officers saying, 'We would like to trade this. Instead of having to take this job at $10 000 higher somewhere else, we would like to stay on.' I would have thought, in the interests of an efficient and competitive public sector, that that would appear to make some sense.

What this provision has the potential to do is prevent much of that occurring. I gave the example earlier of perhaps the Government wanting to put the receptionist on a contract and that argument being used against our position on this, but let us use an argument within the executive level. The view is that it is the Government or someone else wanting to force

executive level officers into contract positions with a gun held at their head saying, 'You must do this.' In the interests of a sensible and rational debate, what the Democrats and Labor members ought to realise—they can realise it and still vote the way they intend to vote, I guess—is that many public servants want to see this sort of flexibility. They might be prepared to consider some sort of position between where the Democrats are at the moment and where the Government was, but public servants want to see a freeing up so that they can be paid at a level which more fairly reflects their abilities and will allow them to continue serving the Public Service in South Australia.

The fear that I have, if the Democrats and Labor members continue to insist on this provision, interpreted very tightly as the Hon. Mr Elliott has indicated he has given instructions to do—that is, just the GME Act people—is that you may see a brain drain from the senior levels of the public sector. I know you have the numbers, but I hope that you reflect on that point of view and, should you see any value in what I have just said and if you think there is something in wanting to maintain some of these people who want to stay on at the senior levels of the Public Service, when we move to the other stages or perhaps to conference we might be able to look at some sort of compromise or alternative position.

The Hon. M.J. ELLIOTT: The amendment does precisely what was stated in my instructions. It was to apply to people who could be offered executive positions under this Bill. I indicated that there may be another way of determining this, but I wanted to make quite plain that there was to be a fixed number but not a fixed percentage of the very large number the Government might want to apply it to. That would be something of a nonsense, because the Government asks what would happen if the number of people in public employment decreased. The areas in which the Government is making most cuts are outside the Public Service anyway, so it might give short-term flexibility but I do not think it would give any further long-term flexibility.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Every department has been given a general instruction to cut their budget by 5 per cent to 10 per cent. Not one public servant has come to me and stated the case which the Minister now decides he wants to put forward on behalf of some public servants. A number have talked about their concerns and discussed why some people are not taking contract positions at this stage. Some of the most senior positions in a number of departments are not being taken up by people because they want to retain all the protections that are provided under the GME Act. Obviously, they are considered to be competent because the Government is offering them higher positions, but they are not prepared to take them at this stage because they consider their employment conditions under the GME Act to be superior, perhaps not in salary but in other ways, to what is being offered.

That is the reality. I have received directly a number of such reports, but I have not received any reports of what the Minister puts before this place. I argue strongly that, if you want a genuinely independent public sector, you cannot have large numbers of people on contracts subject to the whims of political pressure in a way in which an ordinary public servant would not be. It depends ultimately on whether or not you think the role of the public sector is to be an arm of Executive Government or to carry out what are largely legislative requirements allowing only for the discretion that legislation allows to Ministers, and that discretion should not be to bring political pressure to bear on individuals.

Amendment carried.

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

Page 15, line 14—Leave out 'Minister' and insert 'Commissioner'.

This amendment is consequential on previous discussion.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

ADELAIDE FESTIVAL CENTRE TRUST (TRUST MEMBERSHIP) AMENDMENT BILL

Returned from the House of Assembly without amendment.

MINING (NATIVE TITLE) AMENDMENT BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments.

Consideration in Committee.

The Hon. R.I. LUCAS: I move:

That the Legislative Council do not insist on its amendments.

I am advised that the Labor Party and the Australian Democrats moved a series of amendments in this Chamber to the native title legislation, which I am sure they thought made a wonderful improvement to it. I am advised that the Government's position, having carefully considered those amendments in another place, is that, on advice, it believes that the Labor Party and the Democrats have got it wrong. Therefore, on behalf of my colleague the Attorney-General who, I am sure members would agree, knows much more about the native title legislation and its intricacies than I do, as I said, I suggest that the Council do not insist on its amendments. I understand that the process we are about to go through will enable the Parliament to set up a conference of managers.

The Hon. R.R. ROBERTS: On behalf of my colleague, we insist on our amendments and will vote accordingly.

Motion negatived.

PUBLIC SECTOR MANAGEMENT BILL

In Committee (resumed on motion).

Clause 28—'Positions.'

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

Page 15, after line 26—Insert subclause as follows:

(4) No position may be abolished or have its remuneration level reduced while occupied by an employee.

What I am effectively seeking to address here is that a person who is in a substantive position will not be simply demoted either by having their position abolished or by having a remuneration level reduced. The position itself might be altered but what I am trying to indicate is that the person who occupies it should not be directly affected.

The Hon. R.I. LUCAS: The Government opposes the amendment. I am advised that this amendment obviously comes from the fact that the Democrats are concerned about the powers of a Chief Executive to abolish positions and reduce remuneration levels of positions whilst occupied by an employee. There appears to be some confusion about the entity of a position. Under the GME Act a position was a legal entity which needed to be created or abolished. The concept of abolishing a position, so I am told, does not exist under the Bill. It is unclear what is meant by the Democrats in relation to abolishing positions. It would have to ensure

that this did not impact on a Chief Executive's power to vary duties of an occupied position. Subclause (2) of the Bill provides that the remuneration level of a position may be varied at the initiative of the Chief Executive or an application by the employee. This amendment proposes to not allow the Chief Executive to reduce the remuneration level of an occupied position.

The second part of the amendment is actually in line with clause 38 of the Bill which provides that a Chief Executive may not assign an employee to a position with a lower remuneration level without the employee's consent. It is unclear what this amendment is trying to achieve. Under the Bill, positions are no longer legal identities to be created and abolished. Rather, they are jobs with duties, titles and remuneration levels. As working priorities change so these will change as well. It is appropriate that the Chief Executive have the power to fix and vary the duties, titles and remuneration levels of these jobs. It was foreseen that the power of a Chief Executive to vary the remuneration levels of occupied positions would be used to increase remuneration levels. However, it is recognised that there may be some concern about the power of Chief Executives to reduce the remuneration level of occupied positions. It must be recognised however that there are situations where such variations may be appropriate. The advice provided to me is that this notion of abolition of position really no longer exists within the Bill and the Government therefore, on the advice available to me, is unclear as to what is intended by this amendment.

The Hon. M.J. ELLIOTT: Whilst the Minister says that positions do not exist, they certainly seem to in clause 38 where it talks about assigning people from a position to another position. Positions certainly seem to be evident in that clause. The terminology is still there and active. Even in subclause (3) of clause 28 it talks about the remuneration level of a position, as does subclause (2) of clause 28 which talks about the remuneration level a position. I understand perhaps the intent of what the Minister says is happening and I do not have problems with that, but there is a need for a little bit more flexibility in the public sector in terms of varying of duties and those sorts of things. I have not taken a position against it; in fact I support that general notion. The clause is entitled 'Positions,' and talks about the remuneration levels of positions, so I am a little confused when the Minister then says that the positions do not exist as such, because it makes a nonsense of the whole clause. Nevertheless, my major concern was that a person in the public sector could not find themselves in the position of being effectively demoted and having their remuneration level lowered, reduced or simply having their position abolished. That may or may not be addressed by clause 38, and I am having a closer look at that now.

The Hon. R.I. LUCAS: This is a very complicated matter, so I apologise to members for having to take some advice on the issue. This question about abolition of positions is a fine point. If I have understood my advice, I can best state it with examples. If I have a strategic planning position within my department and there is nobody in it because someone has left, been promoted or gone somewhere else, I can actually abolish that position because it is not occupied. Under current arrangements, if someone is in there I cannot abolish it. If I believe I do not need any more strategic planning, I can transfer the people out and then abolish it. We have to go through that particular procedure. So, the Hon. Mr Elliott's argument would seem to be, in effect, another way of saying potentially the same thing; that is the first part of it. No position may be abolished. You could still go through exactly the same arrangement, that is, you could move someone out of the position and then abolish the position. At least at this stage, it would appear that the Hon. Mr Elliott's amendment does not do much more than the current provisions, on the advice I have been able to take. I reserve my position on that, because it is pretty complicated.

The Hon. M.J. Elliott: On the existing subclauses?

The Hon. R.I. LUCAS: No, on the existing arrangements and under the proposed Bill, as I understand it. I understand that the position the Hon. Mr Elliott is putting, whilst I think he might have been looking for something else, is really just restating what the current provisions are and what the Bill would have done; that is, you move someone out of the position and then abolish the position. You are not actually abolishing the position whilst it is occupied.

The Hon. M.J. Elliott: It is not destroying the flexibility in any way?

The Hon. R.I. LUCAS: No, but I do not think it is achieving what the honourable member intends. The Government would argue that you have to have a position where, if you look at your department and decide you no longer need a position or unit, there must be some structure to be able to say 'We no longer perform this function.' I guess what I am saying, having taken advice, is that it would appear that what the Hon. Mr Elliott has said restates the current and the proposed arrangements, so we do not have the problem. The area where we do have a problem is in relation to 'or have its remuneration level reduced while occupied by an employee'.

I am advised that if, for example, there was a mistake, if a remuneration level for a position was gazetted but it was a mistake and the employee, his or her registered association representing him, the Government employer and all the other officers sitting next to them doing the same job and getting paid less knew that it was a mistake, there is currently a provision that allows the remuneration level to be adjusted with agreement, in the current Act and in the proposed Bill, I am told, whereas under this provision, if you read it as the Hon. Mr Elliott intends it, that sort of situation could not be catered for. If everyone agreed that it was a mistake and this person had to have the remuneration level reduced by way of another *Gazette* or whatever the administrative procedure was, with everyone's agreement, this particular provision the Hon. Mr Elliott is moving would prevent that. I do not think that is what the Hon. Mr Elliott would intend, therefore I wonder whether or not he might reconsider that.

The Hon. M.J. ELLIOTT: As I said, it certainly was not my intention to undermine what I saw as a need for some legitimate flexibility within the public sector. The Minister suggested that clause 38 might solve the problem. However, if one looks at subclause (5) one sees that it actually talks about an employee being assigned from a position to another position with a lower remuneration level. It does not actually distinctly stop the lowering of the remuneration level of an existing position. My immediate reaction is that we will need to report progress. I was certainly not seeking to undermine the flexibility—

The Hon. R.I. Lucas: That provision has 'with the employee's consent'.

The Hon. M.J. ELLIOTT: Yes, but it is talking about from a position to another position.

The Hon. R.I. Lucas: But I am saying that, in relation to your amendment, you might be able to talk to Parliamentary Counsel and weave something like that in there where there is consent.

The Hon. M.J. ELLIOTT: That's a possibility.

Progress reported; Committee to sit again.

SYMPHONY ORCHESTRAS

Adjourned debate on motion of Hon. Diana Laidlaw:

That this Council, following the release of the Commonwealth Government's Creative Nation Statement supporting divestment of the Sydney Symphony Orchestra—

1. Expresses alarm at the projected impact on all other ABC orchestras, most notably the Adelaide Symphony Orchestra.

2. Notes the devastating effect of any move to reduce the capacity of the Adelaide Symphony Orchestra by cutting ABC funding by some $700 000 per annum, which would mean a cut of 15 in the number of players to 50.

3. Recognises the invaluable role the Adelaide Symphony Orchestra plays in the artistic and cultural life of South Australia through its own major orchestral concert seasons including family concerts and country touring, plus the services it provides for the State Opera of South Australia, the Adelaide Festival, Come Out and the Australian Ballet,

which the Hon. Anne Levy had moved to amend by leaving out all words after 'Sydney Symphony Orchestra' and inserting:

1. Expresses alarm at the possible impact on all other ABC orchestras, most notably the Adelaide Symphony Orchestra.

2. Asserts forcefully that the Adelaide Symphony Orchestra must not be adversely affected financially by the divestment of the Sydney Symphony Orchestra from the ABC, and that the Commonwealth Government and the ABC should guarantee that such divestment will not affect other orchestras.

3. Recognises the invaluable role the Adelaide Symphony Orchestra plays in the artistic and cultural life of South Australia through its own major orchestral concert seasons, including family concerts and country touring, plus the services it provides for the State Opera of South Australia, the Adelaide Festival, Come Out and the Australian Ballet.

4. Requests the President to convey the above points to the Chairman of the ABC, the Federal Minister for Communications and the Arts and the Prime Minister forthwith on the understanding the ABC Board is to consider all options for the future orchestra funding by the end of March 1995.

Furthermore, this Council—

5. Notes the devastating effect on the Adelaide Symphony Orchestra if State funds to it are not increased, regardless of whether divestment of the Sydney Symphony Orchestra occurs or not.

6. Asks the State Government to urgently consider a Concert Hall for Adelaide, which would ensure the financial viability of the Adelaide Symphony Orchestra.

(Continued from 7 March. Page 1337.)

The Hon. SANDRA KANCK: I have a very soft spot for the Adelaide Symphony Orchestra because the very first orchestral concert I attended was given by the orchestra and conducted by Henry Kripps, who, of course, later became Sir Henry Kripps. I was 11 years old at the time and the orchestra was on tour at Broken Hill. The students in the fifth and six classes of the six primary schools were able to go along to hear the orchestra perform. Those members who have experienced Henry Kripps would know that he was both German and extremely Germanic. I remember that he would not begin conducting until all the children in what was the old Century Picture Theatre at Broken Hill were sitting, quiet and still. His presence was such that the children sat almost rigid and in fear, I think.

The Hon. R.D. Lawson interjecting:

The Hon. SANDRA KANCK: He was Austrian and very Germanic. On that day the Adelaide Symphony Orchestra played Elgar's *Pomp and Circumstance March*. That was the first time I heard it and I fell very much in love with it. As I discovered that day, recorded music can never match the sound of a live, full symphony orchestra, especially when even the floor vibrates with the sound. One of the sounds that I have grown to love over the years is that of an orchestra tuning up—reaching that crescendo and dying away. That is a sound that a chamber orchestra can never duplicate.

The Adelaide Symphony Orchestra has 69 members, which is small by international standards. A reduction of 15 members would render it, at best, a glorified chamber orchestra—of which Adelaide can already boast a very good one—or, at worst, an orchestra suitable only for studio recordings. I am afraid that the magnificent experience of a symphonic concert would be lost to today's young people and to future generations of South Australians if the Adelaide Symphony Orchestra was reduced in size as a result of its funds being cut. I could not imagine, for example, how the *1812 Overture* played a couple of weekends ago at the Symphony Under the Stars concert could have been anywhere near as special had the orchestra had 15 fewer musicians.

The announcer at that performance said jokingly, nonetheless poignantly, to a packed Elder Park audience that the Berlin Philharmonic was not invited to perform that evening because even though it also performs outdoor concerts it does not get as many people to its concerts as does the ASO and the organisers wanted to go with the more esteemed act.

What the Prime Minister did not tell us when he announced in his Creative Nation statement that the Sydney Symphony Orchestra is to be divested from the ABC was that the ABC could be responsible for the substantial costs that it would have to fund through its existing orchestra allocation. The Sydney Symphony Orchestra currently uses more than one-sixth of the total ABC funding for the six capital city orchestras and, while there is no final report on divestment of the Sydney Symphony Orchestra, preliminary findings show alarmingly for the Adelaide Symphony Orchestra that the cost to the ABC could be equivalent to its entire funding allocation to one of the other orchestras.

Several years ago a report into the capital city orchestras by Ken Tribe recommended that all the orchestras be removed from central ABC control. This recommendation was not adopted, in part because of the cost implications, but also because it was considered that his criticisms could be addressed adequately within the ABC. Now Federal Communications Minister Michael Lee is telling us that the ABC will have to bear the substantial cost of the Sydney Symphony Orchestra divestment, which must mean a cut to the funding of the smaller orchestras. I believe this sad predicament is a result of the snobby and elitist attitude of our current Prime Minister, who believes that Australia stops at Parramatta.

Unfortunately, neither the previous Labor Government nor the current Government has seriously addressed the issue of increased State funding for the Adelaide Symphony Orchestra. As the motion of the Hon. Miss Laidlaw and the amendment thereto moved by Ms Levy note, the contribution of the Adelaide Symphony Orchestra to the State through the Adelaide Festival, Come Out, State Opera, Adelaide performances by the Australian Ballet and the Australian Opera, annual country tours and free family concerts is an important one. Indeed, the Adelaide Symphony Orchestra cannot fit any more performances into its schedule.

The ASO currently operates on a budget of $5.6 million, of which the ABC contributes $3.3 million and the State Government $600 000. A comparable orchestra, the Western Australian Symphony Orchestra, receives $1.3 million in State Government funding. I say 'comparable' because the

Western Australian Symphony orchestra has a similar workload to that of the Adelaide Symphony Orchestra in that it is a multifunction orchestra, there being different performance duties and funding structures in other States. For these reasons, I believe that the State Government should contribute much more to the Adelaide Symphony Orchestra. I suggest that an annual contribution of $790 000, as recommended in a paper prepared for the ABC board and reported in the *Advertiser*, would be very modest.

The Adelaide Symphony Orchestra is the only mainland orchestra without a purpose-built concert venue. Because of the lack of a dedicated venue, Adelaide is an expensive place to put on concerts. I certainly support any moves to develop a concert hall for Adelaide, although the priority of maintaining the orchestra at full strength must come first.

A former pianist and world-renowned microsurgeon, Earl Owen, has conducted a study in which it was found that 60 per cent of concert musicians in Australia have some sort of complaint resulting from their occupation and that 90 per cent will suffer some form of medical complaint over their lifetime. It is also said that a two-hour concert puts the equivalent strain on a musician's small muscles as a marathon runner puts on his or her big muscles during a race. Even a reduction of eight to 10 players from the ASO, let alone 15, could result in increased repetitive strain injuries and stress, not to mention the effect on its artistic standards.

I am very concerned about the viability of a weakened Adelaide Symphony Orchestra. With the Government's commitment to keep in check employer contributions to WorkCover, it would make sense not to increase the strain on an already busy orchestra. I have circulated an amendment to the motion, which picks up the important points of both the Hon. Ms Laidlaw's motion and the Hon. Ms Levy's amendment. I move:

Leave out all words after 'Sydney Symphony Orchestra' in line 3 and insert the following:

1. Expresses alarm at the possible impact on all other ABC orchestras, most notably the Adelaide Symphony Orchestra.

2. Notes the devastating effect of any move to reduce the capacity of the Adelaide Symphony Orchestra by cutting ABC funding by some $700 000 per annum which would mean a cut of 15 in the number of players to 50.

3. Recognises the invaluable role the Adelaide Symphony Orchestra plays in the artistic and cultural life of South Australia through its own major orchestral concert seasons, including family concerts and country touring, plus the services it provides for the State Opera of South Australia, the Adelaide Festival, Come Out and the Australian Ballet.

4. Requests the President to convey the above points to the Chairman of the ABC, the Federal Minister for Communications and the Arts and the Prime Minister forthwith on the understanding the ABC Board is to consider all options for the future orchestra funding by the end of March 1995.

Furthermore, this Council—

5. Notes the devastating effect on the Adelaide Symphony Orchestra if State funds to it are not increased, regardless of whether divestment of the Sydney Symphony Orchestra occurs or not.

6. Asks the State Government to consider a Concert Hall for Adelaide, which would significantly contribute to the future viability of the Adelaide Symphony Orchestra, once the short term future of the orchestra is secured.

I congratulate the Minister for her initiative in formulating and moving the original motion. The survival of an intact Adelaide Symphony Orchestra is vital for South Australia's standing in the artistic field of endeavour in this country.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

SOUTH AUSTRALIAN HOUSING TRUST (WATER RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 March. Page 1422.)

The Hon. SANDRA KANCK: The Democrats support the thrust of this Bill, which seeks to make a housekeeping amendment to the South Australian Housing Trust Act to enable the Government legally to charge for water usage in the light of the redundancy of the concept of excess water in the EWS domestic water charging system. This represents a move in the direction of better water conservation policy, which I believe is imperative for a dry State like South Australia.

I note in the other place Labor's opposition to a regulation relating to the reduction of the limit of water to tenants subsidised by the trust from 200 kilolitres to the standard 136 kilolitres. As they say, it will cost these people up to $56 extra per year. From the briefing I received on this Bill from the EWS, I understand that it intends to continue to subsidise water to some homes as a way of preserving their capital values and that this practice will continue in some form, despite the changes in the water charging system.

Before I decide whether or not to oppose the Government's regulation relating to the scrapping of this subsidy, I would like to know the extent of the EWS subsidies that are designed to help preserve or enhance the capital value of Housing Trust properties and the total number of tenants likely to be affected. I am also interested to know if the EWS might be considering implementing some other strategies to help reduce water bills for these heavy consumers of water.

Despite the fact that the trust intends to pay for the first 136 kilolitres of water consumed by each household, I am still a little nervous about the social justice implications for the people living in the 21 000 Housing Trust homes that are not separately metered. The situation exists as it does with strata title units where the bill for each unit holder is averaged across the group. While I am informed that the average consumption for these groups is 116 kilolitres per annum, which is 20 kilolitres less than the amount to be subsidised by the Housing Trust, I am concerned for those consumers who conscientiously do everything they can to ensure that their total annual water consumption is below 136 kilolitres but who receive a bill from the EWS for part of the extra water consumed by other tenants in their group.

I do not believe that Housing Trust tenants who are conscientious in their consumption of water should be penalised, and the Housing Trust must develop a means for dealing with complaints from tenants along these lines. Perhaps one way would be to make it mandatory for the Housing Trust to install separate meters in homes where:

(a) the average water consumption in the relevant group is above the limit (currently 136 kilolitres per year);

(b) a complaint is made; and

(c) the trust has exhausted all possibilities (for example, the installation of water saving devices and education of tenants about water conservation) for reducing total group consumption below the limit.

I need to be assured that the trust will treat conscientious consumers fairly, and I reserve the right to introduce amendments along these lines in Committee. The Democrats support the second reading.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

[Sitting suspended from 6.1 to 7.45 p.m.]

PUBLIC SECTOR MANAGEMENT BILL

In Committee (resumed on motion).

(Continued from page 1491.)

The Hon. R.I. LUCAS: When we last discussed the Bill, I asked whether the Hon. Mr Elliott would consider the point I made about the remuneration level being reduced while the position was occupied by an employee. I highlighted problems that the Government had with the amendment and I outlined circumstances which, as I thought the Democrats, the Labor Party and the Government would agree, the Hon. Mr Elliott would not have intended his amendment to cover. I left him with an invitation to change his amendment, but I take it that the Hon. Mr Elliott is sticking with his amendment as moved. I have been unable to move him from his position.

The Hon. M.J. ELLIOTT: Without offering an alternative, the Leader is unable to move me from my position. The Minister suggested that clause 38 offered some protection. Clause 38(5) relates to people being assigned from one position to another with a lower remuneration level and nothing seems to cover the potential for the remuneration for a position to be reduced. My amendment addresses that problem. There may be another way of doing it, but I have not thought of it.

The Hon. R.I. LUCAS: I retire.

Amendment carried; clause as amended passed.

Clause 29 passed.

Clause 30—'Conditions of executive's employment.'

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

Page 16, lines 25 to 28—Leave out subclause (3).

This is consequential on other changes that I propose to make in other amendments. I am deleting an appeal right clause, but the question of appeals is handled by amendments elsewhere.

The Hon. R.I. LUCAS: What does the Hon. Mr Elliott intend with his subsequent amendments to this? The advice provided to me is that currently executive level appointments within the public sector do not have a right of appeal, whether it be against merit based appointment, process or termination, so that if your employment is terminated under the GME Act there is no appeal at the moment. The Government's Bill proposed to provide an internal right of appeal so that if you were an executive level appointment and your employment was terminated you could appeal to the Commissioner for Public Employment. The Hon. Mr Elliott is seeking to remove that right of appeal in this amendment. Is it his intention that executives have no right of appeal, or will he move a subsequent amendment to provide a right of appeal for members of the executive level of service in the public sector?

The Hon. M.J. ELLIOTT: It was my intention that they would have rights of appeal, as do other members of the public sector.

The Hon. R.I. LUCAS: I understand Mr Elliott's intention; what I am trying to find out is what his package of amendments does. If that is his intention, why is the Hon. Mr Elliott moving to delete this subclause?

The Hon. M.J. ELLIOTT: In particular, at the start it states that the contract 'may provide', so they may or may not have rights of appeal, depending upon the contract itself, and it is possible that all contracts could choose not to offer any right of appeal. In those circumstances that word 'may' is fairly important, and by deleting that I am seeking to offer rights of appeal generally to executives.

The Hon. R.I. LUCAS: The Hon. Mr Elliott is not seeking to change the word 'may': he is seeking to delete the whole subclause. I am advised that the subclause is that which provides a right for executives to appeal against termination. I am not sure why the Hon. Mr Elliott is opposing this provision.

The Hon. M.J. ELLIOTT: If the Minister, for example, looks at my amendment to clause 57—there are several appeals clauses—it starts off with the terminology, 'An employee. . . '. It does not distinguish between executives or any other employee. On page 13 of my amendments, it provides:

> An employee does not have a right of appeal under a section against a decision—
>
> (a) that is appealable under some other provision of this Act; or
>
> (b) that is of a class excluded by regulation. . .

If you look through grievance or disciplinary appeals, they simply talk about employees. Executives are employees. I am not taking anything away from them. When I say that, I am not denying them a right of appeal. In fact, automatically they have rights of appeal under my amendment, whereas subclause (3) simply says they may, and it totally depends upon their contract whether or not they have any appeal rights. The executives have not been neglected: they have been given appeal rights.

The Hon. R.I. LUCAS: If that is the scheme of arrangement from the Hon. Mr Elliott, clearly the Government has a problem. There has been an acceptance within the public sector and government management for a number of years now, even under a Labor Administration, that executive level appointments and other employees within the public sector were two different breeds of people. When the Labor Government sought in the last major re-write of the Government Management and Employment Act to rewrite the appeal provisions, it clearly distinguished between the appeal rights for an executive level appointment on a contract and anyone at the ASO level within the public sector.

Clearly, the Labor Government's position under the Act, which the Liberal Party supported, was that basically executive level appointments had no appeal rights at all, so there was a restriction that we implemented for everyone under the executive appointment level where the Labor Government came to us and said, 'Hold on, we have too many appeals within the public sector. The whole place is grinding to a halt. Will you lot help us resolve this issue by reducing the number of appeals within the public sector? Here's a Bill; take away the merit based appeals for people beneath the executive level and maintain the process appeals, those appeals on the basis of nepotism, patronage, and all those other dastardly sorts of things that occasionally people get up to in relation to selection procedures within the public sector.'

That was the arrangement that the Labor Government put to the Parliament. The Liberal Opposition and, I think, the Australian Democrats supported that position when we last debated it. I suspect the Hon. Mr Elliott, or maybe the Hon. Mr Gilfillan, was handling the Bill on behalf of the Democrats. That was the arrangement. We restricted the rights of appeal for non-executive level appointments, but we said, 'Look, you executive level appointments are getting closer to the real world and you do not have appeal rights within a

whole range of areas that people of non-executive level appointments have within the public sector.'

I am advised that the Government's position in this Bill was that we thought, in one particular area, if an executive had his or her appointment terminated, they ought to have some appeal right. We said that, under our scheme, there is an independent Commissioner and that person could not be directed in this area by the Minister of the day and there could be an appeal against a termination, so if you have a CEO who has it in for a particular executive, and terminates his appointment within the department, at least there would be that appeal to the independent Commissioner for Public Employment. That was, in effect, an additional right that the Government included in its Bill away from the previous position which was supported by the Labor Government, the Liberal Opposition and, I think, the Australian Democrats as well.

What the Hon. Mr Elliott is saying—and Labor Party members are now saying to me that they are contemplating supporting it (let me not lock them in at this stage)—is that we will now in effect go the complete full circle and say that executives are exactly the same as an ASO2 or ASO3 within the public sector and the executive level contract appointments will have those same appeal rights.

As the Hon. Mr Elliott has just outlined regarding grievance appeals under clause 57, 'employee' means an employee whether it be at the lower level, the non-executive level or the executive level. That seems to go full circle to the point that the Labor Government argued—and, as I said, the whole Parliament accepted—a couple of years ago. If we are talking about an efficient or world competitive public sector, that sort of arrangement regarding appeals processes does not make too much sense to me. I urge the Labor Party, if the Democrats are locked into this arrangement, to reconsider its position in the light of what it has said all along, that it wants to return to the previous arrangement and use the sort of line, 'You lot, the Liberal Government, said you wouldn't change anything.' If that were the case, employees would not have any appeal rights at all. The Government has said, 'Let's give them an appeal right on termination.' The Opposition is contemplating not returning to its former position, which is what Mr Elliott has said all along: 'We'll keep you to your promises; keep the GME Act as it was.' He is now again opening up a Pandora's box to allow appeal rights in respect of everything.

The Hon. R.R. ROBERTS: I suppose this comes back to an argument that we had in the industrial relations area regarding the cut-off point for accessing the Industrial Commission. During that argument we talked about unfair dismissal. It was the Government's view that a means test ought to be applied: in other words, no-one who received a remuneration of more than $65 000 could access an appeal before the Industrial Commission. The Opposition argued strongly against that, indicating that the common law definition of 'employee' ought to apply to anyone who is employed. Therefore, you have a situation where anyone who takes instructions from someone else is an employee. I understand the point that the Hon. Mr Lucas makes: that these people are contracted in some way that is different from the mainstream of the Public Service and that, therefore, within that contract arrangement there are special loadings—I think that is what he is suggesting—involving what we would call the seniority or natural elevation system. Given my philosophical position that every employee who feels disadvantaged ought to have some appeal mechanism, and given that my shadow Minister has given me an instruction to support this, I will support the amendment as proposed by the Hon. Mr Elliott on this occasion.

The Hon. Diana Laidlaw interjecting:

The Hon. R.R. ROBERTS: Well, there is 'employee'. The honourable member will not convince me that the loading takes away their rights to natural justice.

The Hon. M.J. ELLIOTT: If the Minister is insisting that there was a provision in the old Act relating to executives not having appeal rights, will he tell me which section it was in? My advice is that it works in exactly the same way as the amendment I will move to clause 57 which effectively provides that classes can be excluded by regulation. That is the way it was done in the previous legislation, and that is what my amendment achieves as well.

The Hon. R.I. LUCAS: I will take advice on which provision it is, but I well remember the debate in this Chamber which went for many hours and many days.

The Hon. M.J. ELLIOTT: I have had the opportunity to look closely at the old Act, and the provisions I am inserting in clause 57 are identical in form to those in clause 64 in the old Act. So, the Minister's suggestion that I was doing something contrary to the way things used to be is simply not accurate. I am doing exactly what was in the old Act. Of course, the Government needs to come back with new regulations, but what I was inserting into this Bill is exactly identical to what was in the old Act.

The Hon. R.I. LUCAS: I thank the honourable member for that and for the advice I have just received. The honourable member indicates that his package of amendments will, as he has just indicated, provide, so he says, for exactly the same provisions as exists under the current Act. The Government's position, obviously, was its preference of subclause (33), but clearly the numbers are not there for that position in this Chamber. We accept the position the honourable member outlines, that will come further down the track in relation to further amendments, will prevail, which will reinstate, as he says, exactly the same provisions in the current GME Act.

Amendment carried.

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

Page 16, after line 34—Insert subclauses as follows:

(5) If—

(a) the executive is not reappointed to the position at the end of a term of employment; and

(b) the contract does not provide that he or she is entitled to some other specified appointment in that event; and

(c) immediately before the commencement of his or her first term of employment in the position, the executive occupied another position in the Public Service (the employee's 'former position'),

the executive is entitled to be appointed (without any requirement for selection processes to be conducted) to a position in the Public Service with a remuneration level the same as, or at least equivalent to, that of his or her former position.

(5a) If an employee is appointed as required by subsection (5) to a position that is an executive position, the conditions of his or her employment will not be required to be subject to a contract under this section (except in the event that he or she is appointed to another executive position).

In debate on an earlier clause, I made the comment that I was aware of a number of public servants who had been offered executive level promotional positions but who had turned down those positions. Quite plainly, the Government thought—or whoever was doing the promotions—that those people were competent to offer them the jobs. As I said, the

major reason those jobs were turned down was that, despite the supposed attractions of executive positions, there were some minuses as well. As a consequence, some very competent people are not filling important positions.

I am seeking to make it plain that where a person has been appointed to a non-executive position from a position already within the Public Service that, at the end of their contract, they can return to the Public Service, so that it is not a one-way street out. One would assume that by the time they get that far through the Public Service they will not be promoted unless they are competent. It will mean that some competent people will be taking positions that currently they are not taking up.

The Hon. R.I. LUCAS: The Government opposes this provision. The amendment seeks to provide rights to ongoing employment in the public sector at the end of contracts for executives who were already employees when they were appointed to executive positions on contract. At the end of their contracts, if not re-appointed, these executives will be entitled to be appointed to a position with a remuneration level equivalent to that of their previous position. This appointment would not be subject to the contract except if the employee was appointed to another executive position.

Such rights to ongoing employment would not be automatically available to executives on contract who were not previously employees of the Public Service. So, the problem the Government sees with this provision is that you may well have in one department two people appointed to an EL2 position, one from outside the public sector appointed on a five year contract and, as I said, possibly paid $82 000 instead of $72 000 plus benefits, with a clear indication that, at the end of the five year period if their performance was not up to it or if the Government decided that it did not want to continue with their particular services, there would be no ongoing commitment from the public sector to employ that person.

You would have sitting next to him someone who, as I read this amendment, was in the Public Service, took up a five year contract on a voluntary basis, the sort of example we were talking of through the dinner break, where someone says 'I do not like the fact that the person next to me is getting $82 000 and we are doing the same level job and I am earning only $72 000 because I am a permanent sector employee', so the person offers to take a contract at the EL2 position on the basis of a five year arrangement, receives the $82 000 a year on the basis that there is no ongoing permanency for that position and then, at the end of the five years, should that person not win another position, the public sector has to keep him on at the same remuneration level.

That would seem to defeat the whole purpose of the contract provisions, where you pay someone a higher level because they have lost their permanency but, through this provision, they get it back again. Potentially, as I understand this amendment, these people in the public sector would have their cake and eat it too.

The Hon. T.G. Roberts: They would only get a five year contract.

The Hon. R.I. LUCAS: Yes, but then they could be reappointed at the previous salary. So, they get their five years, or whatever the term of employment might be, at the higher level on the basis that others have given up their permanency to attract that additional salary or payment and then, at the end of the time, this provision says to them, 'You still have your permanency.' I would have thought that this amendment being moved by the Hon. Mr Elliott really defeats the purpose of those people in the public sector who—the Hon. Mr Elliott shakes his head, so he might explain how he sees that problem being resolved from a Government management viewpoint.

The Hon. R.R. ROBERTS: My memory of the advice given to me on this matter is that this provision actually provides the opportunity for the career public servant to take on positions that are for a five year tenure, in some cases. There seems to be a perception that all career public servants are somehow inferior. I reject that. There are some very capable people in the Public Service. In many cases they may well be the best person for the job but they do not wish to throw away the security of their service. However, that actually restricts the Government, in a sense, in that it does not necessarily get the best person to do the job.

The other aspect is that if that public servant did not take the position, albeit that he was the best person for the job, he would still remain in the Public Service at that level of payment and would just sit there and stagnate, and the Government would not have the opportunity to use the exceptional expertise which he may have and which may be appropriate for a short-term contract. Someone from the Government brought Mr Coldrake from Queensland to speak to the Hon. Ralph Clarke and me, and during those discussions he said that he believed that this was a reasonable proposition.

The Hon. R.I. Lucas: What was?

The Hon. R.R. ROBERTS: That you could have people going onto contracts while retaining tenure within the Public Service. I support the principle that career public servants, as they are commonly known, who have the best expertise ought to be able to provide that expertise to the Government and to provide world's best practice, if you like, and then be able to resume their careers in areas they wish to pursue. Not everyone likes to go into the high-flier status of the Public Service and become a contract employee: some of them are quite happy to serve for a five year period in specified areas but wish to maintain the security of their service within the Public Service. I believe that the Hon. Mr Elliott's proposal is not an impediment to the Government's best practice but is something which, in fact, enhances its selection process and provides it with a greater selection of expertise. So, the Opposition will support Mr Elliott.

The Hon. M.J. ELLIOTT: We will be looking at a public sector with two types of employees: the executives and the career public servants. The Government is providing a great deal of flexibility in this legislation in relation to who it appoints to the executive, how much they pay them and so on.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I think you still have it. The position is that many career public servants will not take promotions, and that is happening now in South Australia.

The Hon. R.I. Lucas: Why won't they?

The Hon. M.J. ELLIOTT: Because their first commitment often is to the public sector; that is, they believe in the concept of the Public Service, and they do their job extremely well and are not prepared to go into a contract knowing that, at the end of the contract, they are then out of the Public Service. We are talking about people who are considered good enough to be offered these executive positions, so why the Government should be reluctant to think they would go back to the sort of level where they clearly were performing so well that they deserved a promotion really has me beaten. The Government might be keen to bring in some people from

outside the public sector to instil some of its particular notions about how things should be run but, if you have a public sector run by people who do not understand its obligations and the role that it plays and who perhaps have not had a long career within it, I do not believe that the job would be done particularly well. I would hope that there would be a large number of career public servants in those executive positions. Having proven their capacity by rising through the public sector, why should they have to give up a right with a promotion? To say they are going to be paid extra for those years—

The Hon. R.R. Roberts: It will cost no more.

The Hon. M.J. ELLIOTT: Of course it will not cost any more. The executive who comes from outside the public sector is not a career public servant, has no particular commitment to the Public Service and is not giving up anything—

The Hon. R.I. Lucas: That is nonsense.

The Hon. M.J. ELLIOTT: They are not.

The Hon. R.I. LUCAS: I am not into generalisations and therefore I am not here, as the Hon. Mr Elliott probably dreams, to sledge career public servants. We have some terrific career public servants, if he talks of career public servants as being people who have served all of their service within the State Public Service in South Australia. I think it is enormously naive of the Hon. Mr Elliott, and it probably indicates his lack of experience with the senior levels of the public sector to say that anyone who is appointed from outside does not have any interest in it.

The Hon. M.J. Elliott: I didn't say that.

The Hon. R.I. LUCAS: That is what the Hon. Mr Elliott is saying. Basically, anyone who comes from outside the public sector is some sort of inferior class of person compared to the career public servant. I reject that position completely. It is nonsense to suggest that we have not had and continue to have some excellent career public servants—

The Hon. M.J. Elliott: You can't put words in my mouth, because that is not what I said.

The Hon. R.I. LUCAS: I don't have to, because they are there for everyone to read. We have had some excellent public servants who, under the widest definition of career public servants, have come from other Public Services, whether it be the Commonwealth, other public sector agencies or the private sector—but that is a different kettle of fish—to serve with great distinction in the Public Service here in South Australia. To be as dismissive as the honourable member has been about people coming from outside on a contract to serve in South Australia does him no good at all.

The Hon. L.H. Davis: Look where Lance Milne came from.

The Hon. R.I. LUCAS: I don't know whether that is the best argument, fine man that he was. I return to the issue of appointments. I ask the Hon. Mr Elliott to provide evidence of these or any examples—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott says he is telling lies. That comes from his mouth.

The Hon. M.J. Elliott: I'm making it up!

The Hon. R.I. LUCAS: He's making it all up, he says. Let *Hansard* record that. It came out of his mouth, not mine.

The Hon. R.R. Roberts: You made sure that it was recorded.

The Hon. R.I. LUCAS: Well, I did help to ensure that it was on the record. *Hansard* will record it. The Hon. Mr Elliott claims that he knows of people in the State Public Service who have refused to take promotion or go for promotion because of what he claims is a Government—

An honourable member: Do you want a list?

The Hon. R.I. LUCAS: I would love an example of someone who has refused to take a promotion.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, give us the position then—not the name of the person—where you claim that the Government is insisting—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Hold on. Let's just check it out. You are saying that these people did not take the position, so it will not identify them. Identify the position in the Public Service where the Government has said, 'If you are a permanent public servant, the only way you can get the job is if you give up your permanency; otherwise we will not accept you.' In relation to the Department for Education and Children's Services, when we advertise a position we have people from within the public sector—within the department—who apply. If they want to win the position, they can do so and maintain their permanency if they want to. If they want to argue, as some of them are, that they want to take a contract and get a higher wage, that is possible. In fact, the problem is that I do not think we can do that at the moment under the current Act.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I am saying that I have people who are permanent public servants and who want to relinquish their permanency and work under a contract.

The Hon. M.J. Elliott: Begging and pleading!

The Hon. R.I. LUCAS: Yes, because they can see the person next to them earning $10 000 a year more at the EL2 level position. There is an example. The Hon. Mr Elliott is saying that positions are being advertised but people are refusing to go for them or to take promotions on the basis that, before they go for such a position, the Government is forcing them to give up their permanency. I am inviting the honourable member to provide the information, because if there are examples they are unknown to my advisers. I would be interested to see them, certainly in relation to my agencies and a small number of other agencies with which I am familiar—I am not familiar with all of them, obviously. If the Hon. Mr Elliott has examples, then let us hear of them. It does not identify the person.

The Hon. M.J. Elliott: I think it does.

The Hon. R.I. LUCAS: No, it does not identify the person because, if the position is a strategic planning position in the Education Department and the person has not applied for it because they believe they are going to lose their permanency, it does not identify the person involved because they never applied for it. The honourable member is saying that there are these positions where people are being told they must give up their permanency. I am saying to the Hon. Mr Elliott, 'Give us the examples,' because the advice provided to me is that we cannot identify where the Government is forcing people to give up their permanency against their will to take a promotion.

As I said, I am not aware of all the public agencies and departments. If there are examples, then I will be pleased to hear them. If the Hon. Mr Elliott is using that as an argument in support of this particular provision, then the ball is in his court to provide some evidence. He says this has occurred, so he should name the position or positions. It does not identify anybody; it is just the position and the agency so that

we can check the *bona fides* of what the Hon. Mr Elliott is claiming.

The Hon. M.J. ELLIOTT: The cases of which I am aware are such that the people would be identifiable.

The Hon. R.I. Lucas: How?

The Hon. M.J. Elliott: If a person has been head-hunted for a position, for instance, and does not take it, they—

The Hon. R.I. Lucas: What is the position—I do not want the name of the person.

The Hon. M.J. ELLIOTT: If you name the position, then you have almost identified the person, anyway.

The Hon. R.I. LUCAS: I sometimes despair of the Hon. Mr Elliott. I do not mind a good logical argument on occasions, but when it reaches these levels it is almost hopeless thinking you could ever get anything through this Parliament at all. All I am asking for is an example of a position. You do not have to name the person. If Mr Elliott is somewhere at the ASO8 level of the Education Department and there is a position at EL2 in the Education Department for a strategic planning manager and someone allegedly is head-hunting him and saying, 'You should apply for this position,' the fact that you have rejected it because you do not want to give up your permanency—which is your argument—does not identify you.

I am not asking you to tell me who Elliott is. I am saying, 'What is the position?' The strategic planning manager is the position: it does not identify you—you might be in another agency. If someone is head-hunted generally, if those involved are looking in the private sector or in other agencies, it is because in that particular agency the CEO has looked at the field and thinks perhaps that there are not the quality candidates therein to fill the position. You do not head-hunt in your own agency, for heaven's sake, to find somebody to apply for a senior position. If you are head-hunting at all, normally you are head-hunting in the private sector or interstate. But, if you are head-hunting in South Australia, which is the Hon. Mr Elliott's story, then you are head-hunting in some other agency such as the Health Commission or somewhere else. No-one will link you with the strategic planning manager position of the Education Department. The argument that the Hon. Mr Elliott is advancing that he cannot mention the position because it might identify the person is illogical nonsense.

The Hon. R.R. ROBERTS: I come from the trade union movement whose whole theory is 'No names, no pack drill'. If you go across two agencies you may have a very well-qualified person working in one agency and, as I understand it, contract positions are being advertised from time to time. People just do not apply for appointment to another agency because they say, 'I do not want to give up my permanency to take that contract position over there.' The Hon. Mr Elliott's proposal provides that that person can go and work in another agency for five years and then go back at the same level—

The Hon. R.I. Lucas: That happens at the moment.

The Hon. R.R. ROBERTS: I understood from my briefing that people are not prepared to jeopardise—whether they are right or wrong—their permanency by taking those positions. This proposal provides the Government with the option of having the best qualified people to pick from. At the end of the day, if there is a contract the Government pays the contract price to someone from outside but, if the Government pays the same price to someone within the Public Service, it costs the Government nothing. I do not know that the schoolyard, 'You hit me or I will hit you first' routine is getting anywhere, Mr Chairman. We ought to put this motion and get on with it.

The Hon. R.I. LUCAS: That is what occurs at the moment. I have in my department officers who win positions in other departments at a higher level, go over there and work for three or four years and are protected in coming back at their original level. If they are an EL1 on $62 000, they win a promotion in another department—the Premier and Cabinet is a perfect example—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: They win it for a term—for five years. They are permanent public servants. They win a position for five years at EL2, and are paid an extra $10 000 a year for the five years, but at the end of the five years, if they do not win back the position or it does not exist (it might be a set position for five years), they then return to the EL1 level of $62 000 a year, either in the original agency—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That already occurs—it is already catered for.

The Hon. M.J. Elliott: Where else in the legislation is it catered for?

The Hon. R.I. LUCAS: Under clause 35.

The Hon. M.J. Elliott: That is other positions, not executive positions.

The Hon. R.I. LUCAS: It says 'executive', so I am told. That is what occurs at the moment.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No-one is stopping it. If anyone thinks that the Government is about stopping a permanent public servant in one department applying for promotion for a limited period in another—

The Hon. M.J. Elliott: Including executive positions?

The Hon. R.I. LUCAS: Yes, of course executive positions.

The Hon. M.J. Elliott: That is all this is doing.

The Hon. R.I. LUCAS: If anyone thinks we are stopping that, they have rocks in their head.

The Hon. M.J. Elliott: Well, sit down; that's all this is doing.

The Hon. R.I. LUCAS: It is not all that it is doing. It occurs every week of every year in the public sector. The Government is not wanting to stop a permanent public servant winning a position for five years or a term and then moving back. The honourable member is talking here about contracts.

Amendment carried; clause as amended passed.

Clause 31—'Contract overrides other provisions.'

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

Page 17, line 6—After 'other than' insert 'Part 2 and'.

This clause allows a contract to prevail over provisions of the Act other than those in this division. I am making plain that a contract should not override Part II of the Act, which talks about general public sector aims and standards. A contract should not in any way override the very basis upon which the public sector is set up.

The Hon. R.I. LUCAS: That was the intention of the Government's Bill, so we are prepared to support it.

Amendment carried; clause as amended passed.

Clause 32—'Termination of executive's employment by notice.'

The Hon. R.I. LUCAS: I move:

Page 17, line 10—Leave out 'four weeks' and insert 'three months'.

I am advised that currently the Bill provides that executives themselves must give not less than three months' notice in writing when resigning from his or her position. This amendment extends the period of notice that must be given to an executive whose appointment is terminated without cause from four weeks to a similar period of three months. With cause terminations would occur within the time frame specified under part 8 of the Bill or within contracts where appropriate following due process. A similar amendment was moved by the Government regarding chief executives which, I think, was passed. It is the Government's intention that the Bill provides for the fair treatment of all employees, including chief executives and executives. For this reason it is proposed to amend the Bill to provide for three months' notice to be given to an executive whose employment is terminated without cause.

Amendment carried.

The Hon. R.R. ROBERTS: I oppose this clause, and that is why I called against the amendment. The Minister is correct that the principle he espoused was agreed to in another part of the Bill concerning the extra time involved. However, I am advised that the clause is to be opposed because political independence is a vital factor for the Public Service. Just how politically independent can an executive be if employment can be terminated with four weeks' notice? We are talking about terminating without notice. We have argued previously tonight—

The Hon. R.I. Lucas: It's three months.

The Hon. R.R. ROBERTS: It was four weeks and you have just made it three months. We believe people should be treated even handedly. This goes back to the Hon. Mr Elliott's catch all clause and, if there was to be specific exemption, it had to be done by regulation. By removing the clause we will treat executives as we treat all other Public Service employees. The Hon. Mr Elliott has a similar amendment, and we are opposing the clause.

The Hon. M.J. ELLIOTT: It would be one thing if the clause provided that a contract cannot offer less than three months' notice and a guarantee of three months' pay or the like, but that is not what it does. The clause simply provides that employment can be terminated with three months' notice unless the contract says something different. To a large extent it appears to override some of the appeal provisions that the Minister said the Government was keen to give to people. Reasons do not have to be given for termination under clause 32; one can simply terminate. Why the Government was so keen to make appeal mechanisms available for some executives when it inserts a clause such as this, which originally was to provide for four weeks' notice but now provides for three months' notice, is beyond me. It might have been one thing if we had a clause saying that this is the minimum condition which will apply no matter what, but that is not the way that it works. It really provides that this condition applies unless a contract says something different.

The Hon. R.I. LUCAS: Again, I do not understand the Hon. Mr Elliott's argument. I am advised that the Bill was, in effect, to provide the power for termination and then an appeal against such termination if a person felt aggrieved. It was not inconsistent. My advice is that the Government was providing an appeal for an executive who felt that the employment had been unfairly terminated. I do not see what the inconsistency is. If we are providing an appeal against termination, I presume there must be some provision for termination in the Bill, otherwise an appeal against termination would not be provided.

The Hon. M.J. ELLIOTT: On my reading, this clause seems to stand alone: it does not relate to any other clause. It simply provides that the chief executive officer can terminate the executive's employment. I do not know whether or not it was intended to relate to some other clause but, in my view, it is not drafted to make it work that way.

The Hon. R.I. LUCAS: The advice provided to me is that, under the GME Act, technically if the Government did not have a no retrenchment policy—and if the former Government did not have a no retrenchment policy—the Government could terminate an executive's employment with two weeks' notice. The only thing that prevents it is that the former Labor Government had and the Liberal Government has a policy, not a legislative provision, of no retrenchment. In effect, the Government is seeking to strengthen or put protections in the legislation, as I understand it. Therefore, I am at a loss to understand the concerns of the PSA, the Democrats and the Labor Party.

The Hon. M.J. ELLIOTT: As I understand it, the position that the Minister has put forward is not correct. For a start, the Act does not recognise executive positions. Apparently CEOs can be terminated on that sort of notice, but that is apparently not the case in relation to people who are in executive positions now, because the Act simply does not recognise them.

The Hon. R.I. Lucas: You are saying that under the current Act executives cannot be terminated.

The Hon. M.J. ELLIOTT: Not at two weeks. You must have a reason, which would be appealable.

The Hon. R.I. Lucas: But you can terminate them and they can take you to the Industrial Court.

The Hon. M.J. ELLIOTT: Yes, but the other advice I have taken is that the position I put before is correct, namely, that clause 32 does not relate back to the Government's original clause 30(3), which has now been deleted.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: It does not; it stands in its own right. Legally you can read it alone; it is a right in itself to terminate without reason.

The Hon. R.I. Lucas: Once you are terminated you can appeal.

The Hon. M.J. ELLIOTT: This is not appealable.

The Hon. R.I. Lucas: That is what clause 30(3) was doing: if you are terminated you can appeal.

The Hon. M.J. ELLIOTT: Clause 30(3) gives you appeals only under subclauses (4), (5), (6) and (8), so you get appeals only if the reason was excess positions, mental or physical capacity, unsatisfactory performance or conduct and discipline, but the fact is that clause 32 does not require any reasons. Clause 32 allows you simply to terminate an executive's position. That may not have been the intention, but that is what it is does and that is the point I am making. If the Government were attempting to put some floor or minimum condition or minimum protection into the Act it would have my support, but that is not what this does. It really undermines even some of the supposed protections the Government itself said it was keen to restore for executive positions.

The Hon. R.I. LUCAS: We ought to try to agree on what the current Act provides. I understand that Mr Elliott is now agreeing with what I am saying, namely, that, if this Bill does not go through, the current provisions are that an executive can be terminated on two weeks' notice. He or she may be able to appeal.

The Hon. M.J. Elliott: There have to be grounds for termination.

The Hon. R.I. LUCAS: There do not have to be grounds. It may well be successfully appealed; there may not have been grounds and they can therefore appeal. You can sack someone in the private sector and get an unfair dismissal case against you; it does not stop you sacking them. I am trying to clarify whether Mr Elliott is now agreeing or disagreeing that under the current Act an executive can be terminated basically on two weeks' notice. They might then go to an Industrial Court and appeal on the basis of unfair dismissal or something along those lines and perhaps win the case, but my advice was that the current provision is that you can be terminated with as little as two weeks' notice. That is what the Act provides. What prevents that happening at the moment is the no-retrenchment policy of this and the previous Government but, if we are talking about the Act and the Bill, that is the advice that is provided to me.

The Hon. M.J. ELLIOTT: At the expense of sounding a bit like a cracked record, my advice is that this clause creates the grounds, and as such it would not be appealable. It establishes the right. It simply says that the chief executive can terminate the employment, and that is not appealable.

The Hon. R.I. Lucas: What is the current position?

The Hon. M.J. ELLIOTT: You cannot just take an executive and terminate their position now.

The Hon. R.I. LUCAS: Under what provision is the Hon. Mr Elliott saying under the current legislation that an executive cannot be terminated? Forget the fact there is a no retrenchment policy that this Government and the previous Government have had. Let us say that the Government got rid of the no retrenchment policy. What provision in the GME Act prevents—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: You are the one saying that a person cannot be terminated at the moment. The advice provided to me is the legislation does not provide for it so therefore they can be terminated. There is nothing that prevents it.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: That is fair enough. You might have an unfair dismissal, but you are arguing to me that we have to return this Bill to the GME provisions.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: You did. You have spent the whole two days arguing, 'You promised to keep the Act the same, and we will keep you to your promise.'

The Hon. M.J. ELLIOTT: The point that I am making is that the GME Act does not have a provision like this that explicitly allows termination.

The Hon. R.I. Lucas: Can you terminate at the moment? My advice is you can terminate at the moment.

The Hon. M.J. ELLIOTT: My advice is it is appealable. My advice also is that clause 32 here not only establishes a right to terminate but is not appealable. So, as such, it is different. More importantly, I got the impression that that was not the Government's intention. What is the Government's intention with this clause, so we can perhaps resolve it? I frankly think there is a problem with this clause.

The Hon. R.I. Lucas: You want to get rid of the whole clause.

The Hon. M.J. ELLIOTT: Yes, but I did say that, if the Government's intention was to provide a minimum protection as distinct from what is almost a maximum, it might have been different. I do not know what the intention of the Government is. I know how it reads and what the effect of it is. I had the impression that perhaps there was a different intention.

The Hon. R.I. LUCAS: We will not complete the Committee stage tonight. The Government will consider its position regarding a possible amendment to this provision, which the Democrats have indicated they might be prepared to consider. I acknowledge at this stage that the Labor Party and the Democrats are likely to knock the clause out, but I am advised that on recommittal we can suggest for further consideration by the Democrats and the Labor Party an alternative form for this termination clause. It would be the Government's intention to consider further how we might amend it to make it more palatable to the Hon. Mr Elliott, in particular, and test it again on recommittal.

Clause negatived.

Clause 33—'Executive's general responsibilities.'

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

Page 17, lines 29 and 30—Leave out paragraph (b).

The deletion of clause 33 removes the need to attain unspecified performance standards. Clause 33 already provides for executives to efficiently and effectively manage their areas. A requirement to achieve unspecified performance standards, we believe, is unnecessary, but also could lead to a situation where difficult or unrealistic standards are set by chief executive officers with the objective of removing unwanted executives. Negotiated and agreed performance standards, if appropriate, should be dealt with under enterprise bargaining and not necessarily be proposed in this particular Bill.

The Hon. R.I. LUCAS: The Government strongly opposes this amendment. It is a fact of life that in either public or private sector employment there are agreed performance standards to which senior executives are required to perform. The whole notion of modern public sector management is about saying, 'This is what you will set about trying to achieve over the next 12 months,' 'three years,' or whatever the term might be. 'These are the goals and objectives and the standards and achievements you will be expected to achieve over this particular period.' Chief executive officers will have agreed performance standards with either the Premier or the Minister.

Chief executives will have them with their senior executives as part of the contract arrangement. It is common in the private sector and also in other States. I know from personal experience in New South Wales and Victoria—and I suspect Western Australia too, but I do not have direct knowledge of that—that performance standards are a common and accepted practice of an efficient public sector, and that people, in effect, are required to meet those performance standards. That is occurring in the private sector. I do not know how we hope the public sector to be efficient or competitive, either with other public sector agencies which have performance standards or with the private sector which has performance standards, if what the Labor Party and the Democrats are potentially saying is that we will not be allowed to have those particular provisions.

The Hon. M.J. ELLIOTT: I am not supporting the amendment. I do not have problems with this subclause. I made comments earlier that I think an efficient public sector relies upon the efficiency of those at the top. What is contained within clause 33(b) does not seem unreasonable.

The Hon. R.R. ROBERTS: In his response in opposition to the amendment moved by the Opposition, the Minister said that it was a fact of life that agreed performance standards are

a part of the Public Service. This clause provides the attainment of performance standards set from time to time under the contract. The Minister is saying there should be agreed performance standards between the employer and the employee from time to time. This amendment provides that there will be some performance standards in the original contract. I understand what the Minister is saying and I understand that performance indexing is part and parcel of many areas, not just in the Public Service but in private industry as well. We are concerned about unspecified performance standards that may be set from time to time without agreement. I understand the numbers in this place—like the Hon. Mr Lucas I can count—but I would be happier if the clause was amended to 'the attainment of agreed performance standards as set from time to time'. However, obviously I will not be successful so I will have my comments recorded and will vote accordingly.

Amendment negatived.

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

Page 17, line 33—After 'objectives' insert 'consistently with legislative requirements'.

I have moved several amendments similar to this and the arguments do not need to be repeated.

Amendment carried; clause as amended passed.

Clauses 34 and 35 passed.

Clause 36—'Conditions of employment.'

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

Page 18, line 9—Leave out 'the directions of the Minister' and insert 'this section'.

The purpose of this amendment changes the authority for individual employment contracts from the Minister to specified conditions. Clause 36(b) allows for, subject to ministerial direction, individual employment contracts for any position below the chief executive officer. The further amendment to clause 36 as proposed, to insert a new paragraph (d) and new subclauses (4) to (6), specifies conditions under which individual contracts may apply, rather than having them applicable to the employee. Without this amendment no position in the Public Service is safe from interference. This clause introduces employment contracts even further: it provides for any such contracts to override this legislation.

The amendments related to this clause remove the involvement of the Minister in the process and also spell out the criteria to be applied in any situation where a contract is proposed. Government amendments to this clause offer no protection to public servants at executive level, nor do they define payment arrangements to apply in the event that a contract is terminated. The Opposition's amendment provides both these protections. If we also have public servants employed on contract, then it must be defined in limited circumstances. We recognise the need for some flexibility in employment arrangements. However, this flexibility cannot be allowed to affect the fundamental operation of the Public Service.

The Public Service cannot be made as casual as this Bill proposes. We need to recognise that, like other large organisations, continuity of staff and knowledge are important to efficient operations. The amendments to this clause, consistent with other amendments, ensure that the basic efficient operation of the Public Service is not jeopardised while allowing flexibility in specified circumstances. I commend the amendment.

The Hon. R.I. LUCAS: I am not sure what Government amendment the Hon. Ron Roberts is referring to because the Government amendment is exactly the same as his. So, the Government supports the amendment.

Amendment carried.

The Hon. R.R. ROBERTS: I understand that the Hon. Mr Elliott has an amendment to page 18, line 20 and I am advised that it better meets the concerns of my constituents. The Opposition will not pursue its amendment but will support the amendment proposed by the Hon. Mr Elliott.

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

Page 18, lines 20 to 23—Leave out paragraph (d).

I oppose the whole of paragraph (d) as I will be inserting appeal clauses in later amendments, and they will carry out the role proposed for paragraph (d) in the Government's Bill.

The Hon. R.I. LUCAS: The Labor Party had circulated an amendment that provided for the following:

In the case of employment for a term not less than 12 months, provide that the Chief Executive may, after consultation with the Commissioner, terminate the employee's employment by not less than four weeks notice in writing to the employee.

I am not sure how that is picked up under the Democrat's amendment. As I read the Labor Party's circulated amendment, I believe that it envisaged terminations with not less than four weeks notice. Can the Hon. Ron Roberts indicate how his amendment is picked up by the Hon. Mr Elliott's amendment? As I understand it, all the Hon. Mr Elliott's amendment does is provide appeal rights.

The Hon. R.R. ROBERTS: This amendment was put together last November, and there has been a great deal of consideration of many of these clauses by a whole range of people. My instructions from the shadow Minister are that we ought to support the position taken by the Hon. Mr Elliott on this occasion. I do not propose to expand beyond that point because I am not sufficiently briefed. However, my instructions are that we need to support this proposal at this stage.

The Hon. L.H. Davis: The Labor Party operates on the principle that ignorance is bliss.

The Hon. R.R. Roberts: You would be the happiest fellow in the Parliament.

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: My advice is that this is really the same argument that we had before. We lost a similar provision before—

The Hon. M.J. Elliott: It makes ordinary public servants executives.

The Hon. R.I. LUCAS: Yes, but it is a similar position. The Government's position remains the same, but we acknowledge the numbers.

Amendment carried.

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

Page 18, line 28—After 'Act' insert '(other than Part 2)'.

This amendment is similar to one which I moved earlier and which was passed.

Amendment carried.

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

Page 18, after line 28—Insert subclauses as follows:

(4) Subject to this section and any provision in a contract providing for an employee to be employed for a term not less than 12 months, if the employee's employment is terminated by the Chief Executive by not less than four weeks notice under the contract, the employee is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purposes of this subsection under the contract) for each uncompleted year of the term of employment (with a pro rata

adjustment in relation to part of a year) up to a maximum of 12 months remuneration (as so determined).

(5) An employee is not entitled to a termination payment under subsection (4) if the employee is appointed to some other position in the Public Service in accordance with the contract relating to his or her employment.

(6) Conditions of employment may not be made subject to a contract under this section except—

(a) in the case of a temporary or casual position; or

(b) with the Commissioner's approval—

(i) in the case of a position required for the carrying out of a project of limited duration; or

(ii) where special conditions need to be offered in respect of a position to secure or retain the services of a suitable person; or

(iii) in other cases of a special or exceptional kind prescribed by regulation.

The purpose of this amendment is to specify termination payments for contract employees and conditions under which contracts can be used. The Bill provides for individual employment contracts for any position, and this amendment importantly defines those conditions under which contracts may be used. These conditions are limited and provide safeguards against the ability to place an employee on a contract rather than recognising that permanency is an essential element of independence for the Public Service against direct political interference. We argued much of this earlier in terms of independence and permanency. I ask for the Committee's support.

The Hon. R.I. LUCAS: I move:

Page 18, after line 28—Insert subclauses as follows:

(4) Conditions of employment may not be made subject to a contract under this section except—

(a) in the case of a temporary or casual position; or

(b) in the case of a position required for the carrying out of a project of limited duration; or

(c) where special conditions need to be offered in respect of a position to secure or retain the services of a suitable person; or

(d) in other cases of a special or exceptional kind prescribed by regulation.

(5) A Chief Executive must, in accordance with the requirements of the Commissioner, make periodic reports to the Commissioner on the use made of contracts under this section.

This amendment attempts to cover a broadly similar area to that moved by the Hon. Mr Roberts. However, obviously the Government has a preference for its own amendment. I am told that the Labor amendment seeks to provide termination payments to all contract employees with contracts longer than 12 months, both executives and non-executives, whose appointments are terminated with four weeks notice. This is the same as the Bill's current provision for executives. Again, as with an earlier Labor amendment, the reasoning behind the extension of this provision to non-executives is not clear. However, it may be an attempt to override the termination provisions in Part VIII in relation to excess, unsatisfactory performance, mental or physical incapacity and misconduct.

The Labor amendment also provides that, other than for temporary or casual positions, people can be employed subject to contract only with the Commissioner's approval in specified circumstances. This part of the Labor amendment was supported by both the Democrats and the Government. The Government has proposed conditions for contract employment similar to those proposed by Labor without the requirement of the Commissioner's involvement. However, these conditions relate only to non-executive employees, whereas the Labor amendment is aimed at all employees, including executives.

It is not the Government's intention to allow the termination of non-executive contracts longer than 12 months except in the case of excess, mental or physical incapacity, unsatisfactory performance and misconduct. Issues such as the period of notice of termination payments related to terminations in such cases should be dealt with under the relevant clauses 44, 45, 46, 52 and 54. However, the Government believes that it should be possible to terminate the employment of executives with three months notice. We have had that debate and lost that one.

The Government has repeated on a number of occasions that most non-executive employees will continue to be employed on tenure. To ensure that this intention is clearer, the Government has proposed an amendment that outlines the circumstances under which employment of non-executives can be made subject to a contract. This amendment recognises the responsibilities of chief executives under the Bill and does not require the involvement of the Commissioner in what is a day-to-day personnel management issue. However, as an additional check and balance to these responsibilities, the Government's amendment will require chief executives to report regularly to the Commissioner on the use of contracts for non-executives. Previous amendments have also strengthened the Commissioner's powers in relation to making binding directions on such matters. Some of those areas have now been overtaken by previous amendments.

I am advised that subclauses (4) and (5) of this are consequential on the honourable member's previous amendment, which he has withdrawn. Since he has withdrawn the previous amendment, he really cannot proceed with this amendment in this form.

The Hon. R.R. ROBERTS: Mr Chairman, I am advised that because of a sequence of the previous events it is necessary, to make logistic sense, for me to move my amendment in an amended form by removing subclauses (4) and (5) and then we argue the very similar amendments as have been moved by the Minister. Therefore, I seek leave of the Committee to move my amendment by withdrawing subclauses (4) and (5) to make them consistent with clause 36, which has changed the structure of the Bill.

Leave granted; amendment withdrawn.

The Hon. R.I. LUCAS: Does the advice received by the Hon. Ron Roberts suggest that the remaining parts of his amendment are arguing a different position from that which the Government is arguing?

The Hon. R.R. ROBERTS: As I understand it, it is very close. We believe that the Opposition's amendment is better; it includes the words 'with the Commissioner's approval', whereas the Government's amendment does not. The intention is basically the same, but we have the added proviso that the Commissioner must approve.

The CHAIRMAN: There is a little confusion here. The Hon. Mr Roberts's amendment ought now to be subclause (4).

The Hon. R.I. Lucas's proposed new subclause (4) negatived; the Hon. R.R. Roberts's proposed new subclause (4) inserted.

The Hon. R.I. LUCAS: My advice is that our subclause (5) is inconsistent, given that our subclause (4) has been lost. Under Labor's subclause (4) and the Democrat's subclause (4), the Commissioner's approval was required to do these sorts of things, so there is not much point making periodic reports to the Commissioner as that should already have been done; if it had not been, those involved would have been

acting outside the Act. I therefore seek leave to withdraw that amendment.

Leave granted; amendment withdrawn.

Clause as amended passed.

Clause 37 passed.

New clauses 37A and 37B.

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

Page 19, after line 2—Insert new division as follows:

DIVISION 3—APPOINTMENT PROCEDURES AND PROMOTION APPEALS

Appointment procedures

37A. (1) This section applies to an appointment to a position that is required to be made as a consequence of selection procedures conducted on the basis of merit.

(2) A chief executive may, for the purpose of filling a position—

(a) cause applications to be sought and an applicant selected on the basis of merit in accordance with the regulations; or

(b) if a pool of applicants has been established under subsection (3) for the purpose of filling positions of a class to which the position belongs—cause an applicant to be selected on the basis of merit in accordance with the regulations from amongst applicants in the pool.

(3) A chief executive may, with the approval of the Commissioner, for the purpose of filling positions of a class prescribed by regulation—

(a) cause applications to be sought in accordance with the regulations; and

(b) cause selections to be made on the basis of merit in accordance with the regulations for the purpose of establishing a pool of applicants from which further selections may be made to fill positions of that class as from time to time required.

(4) If an applicant selected for a position is not an employee, the chief executive may proceed directly to appoint the person to the position.

(5) If an applicant selected for a position is an employee, then—

(a) in a case where no other employee applied for the position or the chief executive is authorised by the regulations to do so—the chief executive may proceed directly to appoint the person to the position;

(b) in any other case—the chief executive must first nominate the person for appointment to the position.

(6) The chief executive may withdraw a nomination for appointment to a position at any time before appointment of the nominee if—

(a) the nominee requests in writing that the nomination be withdrawn; or

(b) the Commissioner approves withdrawal of the nominations,

and, in the event of such withdrawal, another applicant may be selected for appointment to the position.

Promotion appeals

37B. (1) Where an employee has been nominated for appointment to a position, any other employee who applied for the position and is eligible for appointment to the position may, within seven days after the publication of the notice of nomination, appeal to the Promotion and Grievance Appeals Tribunal against the nomination.

(2) An appeal against a nomination may only be made on one or more of the following grounds:

(a) that the employee nominated is not eligible for appointment to the position; or

(b) that the selection processes leading to the nomination were affected by nepotism or patronage or were otherwise not properly based on assessment of the respective merits of the applicants; or

(c) that there was some other serious irregularity in the selection processes,

and may not be made merely on the basis that the tribunal should redetermine the respective merits of the appellant and the employee nominated.

(3) The tribunal may, if of the opinion that an appeal is frivolous or vexatious, decline to entertain the appeal.

(4) Where, on an appeal under this section, the tribunal is satisfied that there has been some serious irregularity in the selection processes leading to the nomination such that it would be unreasonable for the nomination to stand, the tribunal may—

(a) set aside the nomination; and

(b) order that the selection processes be recommenced from the beginning or some later stage specified by the tribunal.

(5) For the purposes of this section—

(a) a person is not eligible for appointment to a position if the person does not have qualifications determined by the Commissioner to be essential in respect of the position; and

(b) a determination by the chief executive seeking to fill a position that specific qualifications, experience or other attributes are essential or desirable in respect of the position will be binding on the tribunal.

(6) Where an employee has been nominated for appointment to a position and no other employee is entitled to appeal or successfully appeals against the nomination, the nominee must be appointed to the position.

(7) The regulations may make provision with respect to entitlement to appeal against a nomination under this section.

What I am doing here is reinstating the appointment procedures and promotion appeals which were in the old GME Act and which I flagged when we were debating this matter earlier.

The Hon. R.I. LUCAS: The Government opposes these new clauses. I accept that new clause 37B is consequential in part on the earlier discussions. The Government had a different appeal mechanism. We lost that and, therefore, we are obviously likely to lose this argument in relation to promotion appeals.

As regards appointment procedures, the Government's view is that it is unnecessary to have them laid down in statute. There are no great scares or scandals involved. As I said, the Government's view is that the appointment procedures ought not to be included in the legislation, but I understand the numbers in this Chamber and it is unlikely that we shall be able to defeat the insertion of this provision in the legislation.

The Hon. T.G. ROBERTS: Much as I should like to put some new weight and force behind a new argument, I cannot do that. I will rest on the argument that has been advanced by the Hon. Mr Elliott and support the new clauses.

New clauses inserted.

Clause 38—'Assignment.'

The Hon. T.G. ROBERTS: I move:

Page 20, line 8—Leave out 'jointly by' and 'by the Commissioner in consultation with'.

The Hon. R.I. LUCAS: This amendment takes the powers to assign employees between administrative units away from chief executive officers and gives them back to the Commissioner under the GME Act. It decreases the personnel management responsibilities of the chief executives. The Government believes that it is appropriate that the chief executives as decision makers should have the personnel management powers to enable them to carry out their responsibilities within an appropriate accountability framework. It is therefore appropriate that by joint agreement the chief executives have the power to assign employees between administrative units. An employee cannot be assigned to a

position of a lower remuneration level without their consent. We therefore believe it does not add anything useful by incorporating or inserting the Commissioner into this arrangement. I presume that if you now want to transfer someone you will have two chief executives and the Commissioner sitting down, having a pow-wow and agreeing with all this. The Government's provision makes more sense in terms of administrative convenience and flexibility.

Amendment carried.

The Hon. T.G. ROBERTS: On behalf of the Hon. Ron Roberts, I move:

Page 20, lines 9 to 11—Leave out subclause (3).

The Hon. R.I. LUCAS: If either of the Hon. Mr Roberts intend to delete subclause (3), how do they envisage resolution of disagreements being reached? I presume they see it as being resolved by the Commissioner. My advice is that the structure would be that the Commissioner would need to—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: As I understand the interjection from the Hon. Mr Elliott, this amendment is consequential on the previous one which we have just lost.

Amendment carried.

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

Page 20, lines 12 to 17—Leave out subclause (4) and insert—

(4) Promotion of an employee to a higher remuneration level through assignment under this section—

(a) may be made only subject to conditions determined by the Commissioner; and

(b) may continue only for up to 12 months or such longer period not exceeding three years as the Commissioner may allow in a particular case.

I am seeking to ensure that where assignment occurs it can happen only for a certain period of time. The appointment would be made for 12 months or it could be a longer period not exceeding three years, as the Commissioner may allow in a particular case. I understand that the current time available is three years, and my expectation would be that in many cases the Commissioner would allow it to go up to that time. I do think that where assignment occurs there has to be a limitation; otherwise one should go through the normal promotion procedures.

The Hon. R.I. LUCAS: Given that we have lost the pivotal position that the Minister and chief executives were to play in this whole arrangement, the Government's position at least in part has been determined by earlier amendments, so the Government will not oppose this amendment now.

Amendment carried; clause as amended passed.

Clause 39—'Remuneration.'

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

Page 20, line 32—Leave out 'Minister' and insert 'Commissioner'.

We will not argue this again. It is consequential.

The Hon. R.I. LUCAS: It is a different provision but I understand that the numbers again are not with the Government on this position of Minister versus the Commissioner. The Government's position is still to oppose but we accept the numbers.

Amendment carried; clause as amended passed.

Clause 40 passed.

Clause 41—'Reduction in salary arising from refusal or failure to carry out duties.'

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

Page 21, line 7—Leave out 'Minister' and insert 'Commissioner'.

This is the same principle as the previous amendment.

The Hon. R.I. LUCAS: The Government's position is the same.

Amendment carried; clause as amended passed.

Clause 42—'Payment of remuneration on death.'

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

Page 21, lines 14 and 15—Leave out 'Chief Executive of the administrative unit in which the employee was employed' and insert 'Commissioner'.

We have been having these arguments much of the night about who is the appropriate person. I am simply arguing that it is the Commissioner who should be making this decision.

The Hon. R.R. ROBERTS: We support it.

The Hon. R.I. LUCAS: The Government opposes it. The Government's view, particularly in relation to the tragic circumstances of the death of an employee, is that it is the chief executive officer of that particular unit who is more likely to be in the direct position to know the particular circumstances and be in the position to make these sorts of decisions. The Commissioner for Public Employment, who is far removed from the direct operations of all agencies, will not be in as good a position to make these sorts of decisions. We are talking here about a payment of remuneration on death. That is, if someone dies:

. . . the Chief Executive. . . may, if of the opinion that it is appropriate to do so, direct that an amount payable in respect of the employee's remuneration be paid to dependants of the employee and not to the personal representative.

In effect, we are talking about an additional benefit. It just makes more sense for the chief executive officer, someone who is in a position to know the particular circumstances of the employee, to make these sorts of judgments. Again, I think this is a 'baby out with the bathwater' example. The position of the Labor Party and the Democrats is that the chief executive officer cannot do any of these sorts of things; the Commissioner must do everything. They are not prepared to consider even the smallest, most minute example of actually giving the chief executive officer the authority to decide to make a payment if someone dies within the agency. What you are saying is we cannot trust the chief executive officer to do it; it has to be the Commissioner for Public Employment. This is just an example—

The Hon. T.G. Roberts: A bit of PR.

The Hon. R.I. LUCAS: PR for the Commissioner, do you think? Perhaps it should be PR for the chief executive officer, if that is the way you look at it. It just does not make sense. The Commissioner is going to rely on the chief executive officer. What is the wrong that you are seeking to right in relation to this? I understand that you do not want all these dastardly things that chief executive officers might do with all these other provisions, but what is wrong with this provision where the chief executive officer will be given this little tot of extra power to make a decision to pay a benefit to someone in the case of the tragic death of an employee? I do not understand why the extension of your argument is that chief executives cannot be trusted or given one ounce of additional power, that it must all remain in the Commissioner for Public Employment.

The Hon. Diana Laidlaw: Didn't the Hon. Terry Roberts say that they were living in the past?

The Hon. R.I. LUCAS: I think he put it very well. He was talking about returning to the 1950s rather than looking forward to the 1990s.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: The CEO would have probably collected it and delivered it, and that is the sort of service that

we are looking for in an efficient, world competitive public sector. It is just an example, and there are a number of examples where in this slavish adherence to going back to the 1950s and supporting the PSA—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Again, the Hon. Terry Roberts is being very reasonable. He is the first person to say that this might be able to be traded at the conference. I say again: if only we could have had the Hon. Terry Roberts handling this legislation.

Amendment carried; clause as amended passed.

Clause 43 passed.

Clause 44—'Excess positions.'

The Hon. R.R. ROBERTS: I will not proceed with my amendment to this clause; I will be supporting the Hon. Mr Elliott instead.

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

Pages 21 and 22—Leave out this clause and insert—

44 (1) If the Chief Executive of an administrative unit is satisfied—

(a) that—

(i) the services of an employee have become underutilised; or

(ii) an employee is no longer required to perform, or cannot perform, the duties of his or her position,

because of—

(iii) changes in technology or work methods or in the organisation or nature or extent of operations of the administrative unit; or

(iv) loss of a qualification that is necessary for the performance or proper performance of the duties; and

(b) that it is not practicable to assign the employee under division 1 to another position in the administrative unit,

the chief executive must refer the matter to the Commissioner.

(2) If a matter is referred to the Commissioner under subsection (1) and the Commissioner is satisfied—

(a) as to the matters referred to in subsection (1)(a); and

(b) that all reasonable endeavours have been made to assign the employee under division 1 to another position in the Public Service (whether in the same or another administrative unit) but that it is not practicable to do so in the circumstances of the case; and

(c) that reasonable consultations have taken place with the appropriate recognised organisation,

the Commissioner may—

(d) transfer the employee to another position in the Public Service with a lower remuneration level; or

(e) recommend to the Governor that the employee be retired from the Public Service.

(3) The Governor may, on the recommendation of the Commissioner under this section, retire an employee from the Public Service.

(4) If an employee is transferred under this section to a position with a lower remuneration level, the employee is entitled to supplementation of the employee's remuneration in accordance with the relevant provisions of an award or enterprise or industrial agreement or, if there is no award or enterprise or industrial agreement covering the matter, in accordance with a scheme prescribed by the regulations.

This reinserts part of the GME Act which the Government promised we could keep.

The Hon. R.I. LUCAS: The Government opposes the amendment. The amendment would mean that 'excess' would be defined rather than leaving it to the Chief Executive to determine. It should also be noted that the GME Act definition of 'excess' includes loss of a necessary qualification. This is now included under 'unsatisfactory performance' in the Bill. The powers of the Chief Executive and the Minister to transfer employees to another position and to terminate employment following consultation with the Commissioner have been moved to the Commissioner and the Governor as under the GME Act.

Employees transferred to a position with a lower remuneration are entitled to maintenance of remuneration in accordance with awards, etc., or with regulations as under the GME Act rather than in accordance with conditions determined by the Minister. Employees retired under these provisions would receive no termination payments under this amendment, in contrast to the termination payment provided in the Bill. Under both the amendment and the Bill, employees would be entitled to superannuation retrenchment benefits. The advice provided to me was that, under the very caring approach that the Government was to adopt, when we declared an 'excess' employee or person to be excess to requirements, the Government proposed to provide for a termination payment. Subclause (4) provides:

(4) An employee whose employment is terminated under this section is entitled to a termination payment of an amount determined by the Minister.

I am anxious to hear from the Hon. Mr Roberts and the Hon. Mr Elliott, because I am sure they will tell me that they are not the ogres but that the Government still is, but the advice I have is that in the Hon. Mr Elliott's provision he will not provide for any termination payment for a person declared to be excess, contrary to the very generous provision that the Government was trying to move. Perhaps if I am wrong, the Hon. Mr Elliott could explain to me where it is made available or, if it is not, why he is intending to change that.

The Hon. M.J. ELLIOTT: Questions of termination payments were not the driving force behind my amendments. In fact, I was looking at what else was happening within the Government's clause 44, where a great deal of discretion was residing in the hands of the Minister—far more discretion than the Commissioner had under the old Act, particularly in relation to the capacity to move people to positions on lower remuneration and maintaining people on the former remuneration level only for a period subject to the conditions determined by the Minister. That is just an example. The questions as to termination and what other impacts that may have was not my primary concern. My primary concern was the number of other significant increases in ministerial power in relation to ordinary members of the public sector.

The Hon. T.G. Roberts: You weren't fooled by the sweetener.

The Hon. M.J. ELLIOTT: No. If the Minister wants to put the sweetener into my amendment then this would be quite acceptable.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: That is blatantly not true. The Minister knows very well that there will be some quite significant increases in the power in the hands of the Minister that the Minister did not previously have. In fact, employees will be much more prone to demotion and probably to termination itself.

The Hon. R.I. LUCAS: I live in the real world and I can tell members that if a public servant is declared excess he or she will not worry whether it is the Minister or the chief executive who has declared them excess. All they will be worried about are the dollars in their pocket. Whether or not it has been the Minister who has brought the chopper down

on their head or the chief executive officer is really a moot point. It does not matter who signed the bit of paper that says, 'For all the reasons outlined in clause 44, you are no longer required.' It does not matter whether it is signed Rob Lucas, Dennis Ralph, or anyone else. In the end, what will be of importance to the public servants—to the workers—will be the question of the termination payment, and obviously a range of other issues as well which might be of direct benefit to them. As I said, in the end who signs the form as to whether or not you are an excess employee is not important. The Government in its package of amendments, which the Democrats and the Labor Party are opposing, was looking after these workers within—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Terry Roberts is almost at the stage where he might be prepared to discuss this one in conference as well. I can assure the Chamber that I will be moving for him to be on the conference of managers. That is the Government's position. It is really up to the Democrats and the Labor Party: they have looked at this package of amendments and decided not to include the provision. It may well be that they have their own reasons for that, or they might be prepared to consider it at another stage. It is a judgment for them. The Government believes that the provisions in the Bill are consistent with moving a public sector into the 1990s and not, as the Hon. Terry Roberts so eloquently put it, retreating into the 1950s. It is important that we look at the reform of the public sector. It is disappointing that the provision in this subclause, which is seeking to look after the workers who are declared excess being deliberately excluded, will be crunched unmercifully in this Chamber by the Labor Party and the Democrats.

Clause negatived; new clause inserted.

Clause 45—'Mental or physical incapacity.'

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

Page 23, line 12 and 13—Leave out 'jointly by the Chief Executive and the Chief Executive of the other unit, or by the Minister' and insert 'by the Commissioner in consultation with the Chief Executive of the other unit'.

This amendment authorises the Commissioner for Public Employment rather than the chief executive officer or the Minister to downgrade staff. The Bill allows the Minister to transfer staff to lower level positions and, therefore, creates opportunities for political interference in the placement of individuals. Similarly, chief executive officers authorising such transfers need not take the benefit of the whole Public Service into account but only the effects upon their own agencies. The amendment gives the authority to the Commissioner for Public Employment, removing any suggestion of political interference and also allowing for consideration of service-wide issues, not just agency considerations.

The Hon. R.I. LUCAS: Again, this is a provision where the Government believes chief executive officers ought to be able to make a decision. Let us be clear about this provision: we are talking under the heading of mental or physical incapacity in certain circumstances, after all the relevant medical reports show that an employee is not performing the duties of his or her position satisfactorily, and the employee's unsatisfactory performance is caused by mental or physical illness or disability. We are saying that in those circumstances the chief executive officer, again, as the person closest to the person suffering from mental or physical incapacity, is the one who ought to be in the position to make these sorts of decisions, rather than inserting the Commissioner into the arrangement. I presume that the Labor Party and the Democrats will win the day on this, but this is just another example of where we think that, sensibly, chief executive officers could have been given a position of greater authority and responsibility.

Amendment carried.

The Hon. M.J. ELLIOTT: My amendment, at least in terms of the word 'retires', is not so important because the Minister has on file amendments to schedule 3 which will make it plain that 'termination' means retire for the purposes of the superannuation Acts. In those circumstances, the wording is really not so important any longer, and it might be a question of whether or not we want to maintain consistent terminology through the legislation. The word 'terminate' has been used quite a bit so far, so before I proceed with actually moving it—

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I could not recall it being used anywhere else. Just for the sake of consistency of terminology, since the Minister's proposed amendment to schedule 3 makes it plain that 'termination' means retrenchment on the ground of invalidity or whatever under the superannuation Acts, it is probably better that the Hon. Ron Roberts proceeds with his amendment rather than me proceed with mine.

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

Page 23, after lines 15 and 16—Leave out 'the Chief Executive may terminate the employee's employment in the Public Service' and insert 'the Commissioner may recommend to the Governor that the employee's employment in the Public Service be terminated'.

I do not think I need say any more about this amendment.

The Hon. R.I. LUCAS: The debate so far has just been about the words 'terminate' or 'retire', but let us look at what the amendment seeks to do. After you have been through all these provisions in relation to a person with mental and physical incapacity, if the Commissioner and the Chief Executive are satisfied that it is not practicable to transfer the employee, the Government says that the Chief Executive may terminate an employee's employment in the Public Service. You have tried everything; you have done everything but, in the end, it provides for termination. The Democrat and Labor Party amendments provide that, instead of the Chief Executive taking that decision about termination, it can still be taken but by a different process. It provides that the Commissioner may recommend to the Governor that the employee's employment be terminated.

In effect, that is saying that every termination has to go through the process of Cabinet and Executive Council and, believe me, one of the things that you realise when you sit in Cabinet for a short period as I have is that it really does not make sense that so many small decisions, such as this, have to go through all the formalities of Cabinet submissions and preparation, and then Executive Council in relation to particular issues. All those matters arise from decisions taken by the chief executive officer at that particular level, perhaps in discussions with the Commissioner under the current arrangements—I am not sure how that works—that a particular person should be terminated. I think the notion of having to insist, again retreating to the 1950s argument of the Hon. Terry Roberts—

The Hon. M.J. Elliott: It is a 1985 Act.

The Hon. R.I. LUCAS: It probably existed in the provisions in the 1950s and has been picked up.

The Hon. M.J. Elliott: At that time it was the leading legislation in Australia.

The Hon. R.I. LUCAS: How could it be leading when it has to go through Cabinet and Executive Council? What is the logic?

The Hon. M.J. Elliott interjecting:

The Hon. R.I. Lucas: What is the logic of, in effect, insisting that every provision go through the whole process of Cabinet and Executive Council and for the Governor to go through that process? Again, it just does not seem to make any sense at all that any attempt to introduce any degree of flexibility, change or reform in the Act has been crushed by the Labor Party and the Democrats. We saw that earlier in relation to the Chief Executive being able to make a payment to someone following the death of an employee. We were told, 'No; we won't allow it; we'll crush that reform.'

In relation to this we hear, 'No; we will crush that; we will insist that it go through the whole processes of Cabinet and Executive Council.' Again, I can only appeal to the Labor Party, and the Hon. Terry Roberts perhaps, to take up the cudgels within the Labor Party for just a little bit of reform when it goes back to the other place and into conference, so that the Labor Party at least can hold its head up and say, 'We are prepared to support a little bit of reform—not too much, but just a little bit' in relation to some of these minor provisions.

The Hon. R.R. ROBERTS: A very short time ago the Minister said that he lives in the real world, but it is a fleeting exercise with him; obviously he drifts in and out. The practical effect of this will be that they will go through CEOs and the Commissioner, determinations will be made and one would expect that at the end of the day agreement would be reached and once a month a batch of these people will be approved or not approved by the Governor. The real world situation is that there will be a system of efficient assessment, but at the end of the day the responsibility will reside with the Governor as the person who will make determinations on tenure, which is an extremely important consideration for Public Service employees. I support the amendment.

Amendment carried.

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

Page 23, after line 16—Insert subclause as follows:

(5a) The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

This is consequential. Most of the arguments relating to the previous amendment apply again.

Amendment carried; clause as amended passed.

Clause 46—'Unsatisfactory performance.'

The Hon. M.J. ELLIOTT: Apparently there is a need for a consequential amendment to clause 46 in respect of my proposed amendments to clause 64. Loss of qualification was one basis for an employee becoming excess. Accordingly, that ground for unsatisfactory performance has become redundant. Therefore, I move:

Page 23, lines 35 and 36—Leave out subparagraph (ii).

Those grounds are covered by the excess employee provision. Loss of qualifications was a basis for an employee being excess in clause 44. It is not a substantial amendment; it is simply consequential.

The Hon. R.R. ROBERTS: The Opposition supports the amendment.

Amendment carried.

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

Page 24, lines 13 and 14—Leave out 'jointly by the Chief Executive and the Chief Executive of the other unit, or by the Minister' and insert 'by the Commissioner in consultation with the Chief Executive of the other unit'.

This Bill allows the Minister to transfer staff to lower level positions and therefore creates opportunities again for political interference in the placement of individuals. Similarly, CEOs authorising such transfers need to take into account the benefit of the whole Public Service, and not just the effects on their own agencies. The amendment gives the authority to the Commissioner for Public Employment, removing any suggestion of political interference and also allowing for consideration of service wide issues, not just the agency considerations. The argument is consistent with those previously put in clauses 44 and 45. I understand that the Hon. Mr Elliott has a similar amendment on file.

Amendment carried.

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

Page 24, lines 16 and 17—Leave out 'The Chief Executive may terminate the employee's employment in the Public Service' and insert 'the Commissioner may recommend to the Governor that the employee's employment in the Public Service be terminated'.

The amendment provides for termination for unsatisfactory performance to be decided by the Governor and not by the chief executive officer and the Minister, in order to maintain the independence of the Public Service. This is similar to clauses 44 and 45 relating to termination for unsatisfactory performance. The amendment is important as it maintains a consistent process and authority for termination of public servants and places that authority away from the CEOs or the Minister.

Amendment carried.

The Hon. R.R. ROBERTS: I understand that the Hon. Mr Elliott has an amendment similar to ours and, as I am advised that it is superior, I will not therefore pursue my amendment. Rather, I will support the Hon. Mr Elliott's amendment.

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

Page 24, lines 22 and 23—Leave out subclause (4) and insert—

(4) An employee must be given not less than 14 days notice in writing of a decision to transfer the employee or recommend that the employee be terminated from the Public Service under this section.

(4a) If, within the period referred to in subsection (4), the employee appeals to the Promotion and Grievance Appeals Tribunal against the decision, the decision is suspended until the determination of the appeal.

Subclause (4) is the same as that which was on file from the Labor Party and makes clear that an employee must be given not less than 14 days in writing of a decision to transfer him or her or to recommend that his or her service be terminated.

The CHAIRMAN: There is a slight alteration to the procedure here. Will the Hon. Michael Elliott withdraw his proposed new subclause (4) and the Hon. Ron Roberts move his subclause (4)?

The Hon. R.R. ROBERTS: I now move the amendment which I previously said I would not proceed with, as follows:

Page 24, lines 22 and 23—Leave out subclause (4) and insert—

(4) An employee must be given not less than 14 days notice in writing of a decision to transfer the employee or recommend that the employee's employment in the Public Service be terminated under this section.

The CHAIRMAN: Will the Hon. Mr Elliott withdraw his proposed new subclause (4)?

The Hon. M.J. ELLIOTT: It appears that it is a matter of consistency of language and, as we have now set upon that path, we may as well continue. For that reason I seek leave

to withdraw my amendment and allow the Hon. Ron Roberts to resuscitate his.

Leave granted; proposed new subclause (4) withdrawn.

The Hon. R.R. Roberts's new subclause (4) inserted; the Hon. M.J. Elliott's new subclause (4a) inserted.

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

Page 24, after line 23—Insert subclause as follows:

(4b) The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 47 to 51 passed.

Clause 52—'Inquiries and disciplinary action.'

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

Page 26, line 33—After 'period' insert 'with or'.

As it reads at present it means that an employee could be suspended from duty for a specified period without remuneration. My amendment allows some discretion. Although I am speaking without notes, I recall that, when I was looking at the provision, there was a possibility of a person being accused of something and a suspension could be put into effect but there might be some lingering doubts. The amendment offers the CEO a discretion; it does not force the CEO to provide remuneration, but there might be some circumstances under which that might be deemed suitable. It simply makes an option available and does not force something.

The Hon. R.I. LUCAS: This is an excellent amendment and the Government supports it.

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

Page 27, line 3 to 7—Leave out paragraphs (e), (f) and (g) and insert—

(e) recommend to the Governor—

(i) that the employee be transferred to some other position in the Public Service with a lower remuneration level; or

(ii) that the employee's employment in the Public Service be terminated.

This amendment is consistent with changes to clauses 44, 45 and 46 in that the authority to transfer or terminate public servants rests with the Governor. In this case it is pending disciplinary action but the principle remains the same. I note again that the Hon. Mr Elliott and I are of a like mind.

The Hon. R.I. LUCAS: I again place the Government's position on the record, but with not much anticipation of winning. A person might be disciplined and demoted from AS03 base grade clerk to ASO2 and this amendment says that it has to go through Cabinet, Executive Council and the Governor—that we have to go through—

The Hon. R.R. Roberts: How was this handled under the GME Act?

The Hon. R.I. LUCAS: We are trying to move forward into the 1990s and not backwards into the 1950s.

The Hon. R.R. Roberts: Is it a problem?

The Hon. R.I. LUCAS: It is a problem.

The Hon. R.R. Roberts: How many times has it occurred?

The Hon. R.I. LUCAS: It does not matter how many times it occurs. As to the previous provision and people being retired for physical and mental incapacity, there have been some examples in my brief time that have gone through Cabinet, but it is the same principle. We are saying in effect that the processes of Government, Cabinet and Executive Council have to consider these issues involving a base grade clerk on a disciplinary matter. Perhaps instead of handling accounts as ASO3 they are put back onto the front desk as ASO2, or they might be demoted from ASO2 to ASO1; the amendment requires that the matter go through Cabinet and Executive Council.

I can understand some of the other arguments. The Government does not accept them, but at least there is some sort of logical basis. Should there ever be a callous, indifferent, right wing ideologically led Government in South Australia, there might be a problem with some of the provisions but, where one is being disciplined and demoted from ASO2 to ASO1, to involve the processes of Government, the Cabinet and Executive Council to consider it, approve it and to have the Governor in Executive Council sign it is unnecessary.

The Hon. R.R. Roberts: When you come back you can tell us how many times it was a problem.

The Hon. R.I. LUCAS: Some of us have a view to the future, but you have the numbers.

Amendment carried.

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

Page 27, lines 14 to 16—Leave out subclause (8).

This is consequential.

Amendment carried.

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

Page 27, line 17—After 'taking' insert 'or recommending'.

Again, this is consequential.

Amendment carried.

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

Page 27, line 19—After 'take' insert 'or recommend'.

This also is consequential.

Amendment carried.

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

Page 27, after line 22—Insert subclause as follows:

(11) The Governor may, on the recommendation of the Chief Executive under this section—

(a) transfer an employee to some other position in the Public Service with a lower remuneration level; or

(b) terminate an employee's employment in the Public Service.

Again, this is consequential.

Amendment carried; clause as amended passed.

Clause 53—'Suspension or transfer where disciplinary inquiry or serious offence charged.'

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

Page 27, lines 33 to 35—Leave out paragraph (e) and insert—

(e) recommend to the Commissioner that the employee be transferred to a position in another administrative unit with the same remuneration level;.

The purpose of this amendment is to authorise the Commissioner for Public Employment rather than the CEO to transfer employees where disciplinary inquiries or charges are involved. The amendment maintains the consistent approach to clauses 44, 45 and 46, which are about tenure, in that the authority to transfer employees between agencies rests with the Commissioner in cases where the employee's future is under some threat. I understand that the Hon. Mr Elliott has a similar amendment.

Amendment carried.

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

Page 28, lines 4 to 6—Leave out subclause (3) and insert—

(3) The Commissioner may, on the recommendation of the Chief Executive under this section, transfer an employee to a position in another administrative unit with the same remuneration level.

I believe this amendment to be consequential, and I understand that the Hon. Mr Elliott has a similar amendment.

Amendment carried.

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

Page 28, line 20—Leave out 'Minister' and insert 'Commissioner'.

This amendment is consistent with the direction in other amendments which do not allow the Minister to make final determinations in respect of individual public servants.

Amendment carried; clause as amended passed.

Clause 54—'Disciplinary action on conviction of serious offence.'

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

Page 28, lines 34 to 39—Leave out paragraphs (a), (b) and (c) and the passage 'may—' preceding those paragraphs and insert 'may recommend to the Governor—

(a) that the employee be transferred to some other position in the Public Service with a lower remuneration level; or

(b) that the employee's employment in the Public Service be terminated.'

This amendment moves the authority to transfer or terminate pending disciplinary action from the CEOs to the Governor. It is consistent with changes to clauses 44, 45 and 46 in that the authority to transfer or terminate public servants rests with the Governor. I understand that the Hon. Mr Elliott has a similar amendment.

Amendment carried.

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

Page 29, lines 1 to 3—Leave out subclause (2).

This amendment is consequential on previous amendments.

Amendment carried.

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

Page 29, line 4—Leave out 'taking' and insert 'recommending'.

This is also consequential. I note the Hon. Mr Elliott has a similar amendment.

Amendment carried.

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

Page 29, line 6—Leave out 'take' and insert 'recommend'.

I believe this to be consequential.

Amendment carried.

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

Page 29 after line 8—Insert subclause as follows:

(5) The Governor may, on the recommendation of the Chief Executive under this section—

(a) transfer an employee to some other position in the Public Service with a lower remuneration level; or

(b) terminate an employee's employment in the Public Service.

This embraces the same considerations, believed to be consequential.

Amendment carried; clause as amended passed.

New clause 54A—'Disciplinary appeals.'

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

Insert new clause as follows:

54A.(1) An employee may, within 14 days after receiving notice of a decision that the employee is liable to disciplinary action or a decision as to disciplinary action to be taken or recommended in respect of the employee under this Division, appeal to the Disciplinary Appeals Tribunal against the decision.

(2) The Tribunal may, on an appeal under this section—

(a) affirm the decision subject to the appeal;

(b) set aside the decision subject to the appeal and substitute a decision that should have been made in the first instance;

(c) make any consequential or ancillary orders.

(3) If an appellant succeeds in an appeal under this section, the Tribunal may order costs against the Crown.

(4) An employee does not have a right of appeal under this section against a decision recommending disciplinary action because the employee has been convicted of an indictable offence.

This amendment is in relation to disciplinary appeals and mirrors what was contained in the GME Act.

The Hon. R.I. LUCAS: This is an important provision, but it is consequential on earlier decisions which the Government has lost. We continue to oppose it.

New clause inserted.

Clauses 55 and 56 passed.

Clause 57—'Lodging of appeals.'

The Hon. R.R. ROBERTS: It was the intention of the Opposition to move a new clause. I see that the Australian Democrats have a new clause 57. It has two levels of appeal whereas ours has one. We believe it to be superior, so we will support the Hon. Mr Elliott and will not proceed with our amendment.

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

Pages 29 and 30—Leave out this clause and insert—

Grievance appeals

57.(1) An employee who is aggrieved by an administrative decision that directly affects the employee may appeal to the Promotion and Grievance Appeals Tribunal against the decision.

(2) Nothing in this section prevents a Chief Executive or the Commissioner from attempting to resolve by conciliation a matter the subject of an appeal under this section prior to the commencement of the hearing of the appeal.

(3) The Tribunal may, if of the opinion—

(a) that an appeal is frivolous or vexatious; or

(b) that an appellant has not fully explored avenues for review or redress available within the administrative unit in which the appellant is employed,

decline to entertain the appeal.

(4) The Tribunal may, on an appeal under this section—

(a) affirm the decision subject to the appeal; or

(b) give any directions that are, in the opinion of the Tribunal, necessary or desirable to redress the grievance.

(5) An employee does not have a right of appeal under this section against a decision—

(a) that is appealable under some other provision of this Act; or

(b) that is of a class excluded by regulation from appeal under this section.

This amendment is consequential on earlier discussions. It is a reinstatement of the grievance appeals process from the GME Act.

The Hon. R.I. LUCAS: It is consequential on earlier amendments.

Clause negatived; new clause inserted.

Clause 58—'Conciliation not prevented.'

The Hon. M.J. ELLIOTT: I oppose this clause. This is really all consequential on previous decisions. There will be a whole series of clauses that I will oppose.

The Hon. R.I. LUCAS: One of the problems with deleting this clause is that it is the Government's view that conciliation is an important aspect of trying to resolve certain issues. In the way in which the Government arranged the Bill, clause 58 would have included conciliation as an option for not just a grievance appeal but also, for example, a promotion appeal. I am advised that in certain circumstances the notion of trying to conciliate a problem that might be the subject of a promotion appeal would be part of good practice. In this package of amendments of the Democrats and the Labor Party the conciliation provision is to be removed completely. It has been partially restored as part of the grievance appeal procedure, which the Hon. Mr Elliott has just incorporated. That is fair enough, but I am advised that it is not incorporated in the area of promotion appeals and a range of

other appeals. The Government is attempting to provide conciliation in respect of a whole range of appeals. The Labor Party and Democrat package, in effect, removes conciliation from a range of areas but leaves it in grievance appeals.

This Government is always interested in conciliation and trying to work its way through problems rather than coming at people with a big stick. Therefore, it sees the conciliation provision as being a very important part of this Bill. We do not have the numbers, so the Democrats and the Labor Party can remove the conciliation provision, but upon recommittal we will take advice and see whether we can test the water and shame the Labor Party and the Democrats into supporting an appropriate conciliation provision in some other clauses of the Bill which deal with areas such as promotions and perhaps one or two others. In this spirit of goodwill and compromise, which is always evidenced by the Government, we will accept the numbers on this occasion but indicate—

The Hon. T. Crothers: I thought for a minute you were going to say 'comradeship'.

The Hon. R.I. LUCAS: Almost, but not quite. We will test this issue again during recommittal.

The Hon. M.J. ELLIOTT: It is quite clear that the Democrats do not have a problem with conciliation, and I would be happy to look at what the Government might come up with at the time of recommittal.

Clause negatived.

Clause 59—'Appellate authority.'

The Hon. M.J. ELLIOTT: The amendments to this clause will all be opposed.

The Hon. R.I. LUCAS: I know when I have been crushed so, rather than being defeated, I will gracefully withdraw the amendments to this clause.

The Hon. R.R. ROBERTS: The Opposition opposes this clause. It is consequential on discussions we had on 56A, and I see that we are in concert again with the Hon. Mr Elliott.

Clause negatived.

Clauses 60 to 66 negatived.

Clauses 67 to 69 passed.

Clause 70—'Transfers of employees within public sector.'

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

Page 34, lines 8 and 9—Leave out 'the Chief Executive of an administrative unit would be empowered under Part 8 to transfer an employee' and insert 'an employee is liable to be transferred under Part 8'.

This amendment is consequential. I note that the Hon. Mr Elliott has a similar amendment on file.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried; clause as amended passed.

Clause 71—'Appointment of Ministerial staff.'

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

Page 34, after line 31—Insert subclause as follows:

(2a) Appointments may not be made under this section so that at any time the number of persons so employed exceeds one per cent of all employees in the Public Service.

One concern I have about executive Government is the amount of growth that is occurring within ministerial offices. There are times when ministerial officers seem to take over the role which I would think is normally a public sector role. I am seeking to put some sort of limit on how large the ministerial staff overall would become as compared to the Public Service. The Government might want to argue that there is a better figure, but I do not think it is unreasonable in the circumstances to recognise that there really should be some sort of upper limit as to how large ministerial offices may become. I recall the Government, when in Opposition, quite frequently asking how many people were on Ministers' staffs, and various other such questions, and I hope they have not lost interest in those sorts of questions.

The Hon. R.I. LUCAS: The Government opposes this provision. We do not see it as serving a useful purpose in the Public Service Act. I am advised that ministerial staff are appointed under the Constitution Act, so I am not sure why all of a sudden ministerial staff appear within this amendment. The Government view is that 1 per cent in the end is, on my calculations, much more than currently exists. The Hon. Mr Elliott's fertile imagination probably has led him astray here. For all Ministers there are only three or four ministerial staff: the rest of the people appointed in ministerial offices are GME Act employees, generally, who are transferred there as administrative staff, administrative officers or whatever else it is.

If one looks at an average Minister's office, which might have about 11 officers within it, no more than four and on average three officers are appointed ministerial staff. The Hon. Mr Elliott talks about massive growth within ministerial offices as opposed to in the Public Service, and other phrases and suggestions like that. The Government does not support this provision of 1 per cent as, indeed, we did not support the 2 per cent provision for executive appointments.

Amendment carried.

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

Page 34, after line 34—Insert subclauses as follows:

(4) The Premier must cause a report to be prepared not less frequently than once every 12 months setting out with respect to each Minister—

(a) details of all appointments made to the Minister's personal staff under this section (other than those described in previous reports under this section); and

(b) the number of persons for the time being employed on the Minister's personal staff under this section; and

(c) the remuneration and other conditions of appointment of each person for the time being employed on the Minister's personal staff under this section.

(5) A report under subsection (4) must—

(a) be published in the *Gazette* next issued after preparation of the report; and

(b) be laid before each House of Parliament within six sitting days after preparation of the report.

It would probably save an awful lot of printing in *Hansard* and in the daily order of business if we could avoid these questions being asked repeatedly, which has been the case for many years. So, it is simply a way of getting some measure as to the current status of ministerial officers.

The Hon. R.I. LUCAS: When the Hon. Mr Elliott refers to the Minister's personal staff, is he referring to ministerial appointments as opposed to Public Service appointments?

The Hon. M.J. Elliott: That's right. It is within clause 71, which refers to ministerial staff.

The Hon. R.I. LUCAS: Again, the Government opposes this provision. Governments have generally reported in the Questions on Notice, and this notion of having a separate report published in the *Gazette* and then laid before each House of Parliament within six sitting days is just a touch of overkill. Questions have been answered by the Labor Government and the Liberal Government—

The Hon. M.J. Elliott: You probably asked them repeatedly.

The Hon. R.I. LUCAS: We probably did, but having to publish them in the *Gazette* is just a touch of overkill.

Amendment carried; clause as amended passed.

Clause 72—'Minister may approve arrangements for multiple appointments, etc.'

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

Page 34, line 36—Leave out 'Minister' (twice occurring) and insert, in each case, 'Commissioner'.

I note that the Democrats have a similar amendment. I assert that it is consequential.

Amendment carried; clause as amended passed.

Clause 73 passed.

Clause 74—'Operation of Industrial and Employee Relations Act.'

The Hon. R.I. LUCAS: This provision looks simple, but that is not necessarily the case. I therefore suggest we report progress.

Progress reported; Committee to sit again.

ADJOURNMENT

At 11.49 p.m. the Council adjourned until Wednesday 15 March at 2.15 p.m.