LEGISLATIVE COUNCIL

Thursday 6 April 1995

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

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

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

That the sittings of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

That the sittings of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

MINING (NATIVE TITLE) AMENDMENT BILL

The Legislative Council agreed to a conference, to be held in the Legislative Council conference room at 6 p.m. today, at which it would be represented by the Hons. K.T. Griffin, Sandra Kanck, R.D. Lawson, Carolyn Pickles and T.G. Roberts.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

In Committee.

(Continued from 5 April. Page 1777.)

Clause 12—'Discontinuance of weekly payments.'

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

Page 8, line 12—Leave out 'capable of'.

I believe a further amendment to this clause is being circulated. The Government's proposition seeks to amend the discontinuance provisions of the Act. We are opposed to that and so we seek to make further amendment, which I will outline. The first amendment simply requires that workers must be demonstrated to be actually earning, as opposed to being capable of earning, when performing self-employed work as a contractor or as an employee. The Government's provision would act as a disincentive to self help. Our amendment seeks to allow workers to be out of the State, with the obvious proviso that permission is granted by the corporation or exempt employer. We further seek to clarify that compliance must refer only to an approved rehabilitation program. We further seek to excuse from a breach of mutuality a worker's selection or option for a different form of treatment from decisions to have surgery.

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

Page 8, lines 17 and 18—Leave out paragraph (g) and insert:

(g) the worker is, without the Corporation's consent—

(i) resident outside the State; or

(ii) absent from the State for more than two months in any continuous period of 12 months;

The Opposition is opposed to the Government's proposition in clause 12. This is an amendment to the discontinuance provisions of the Act which we have indicated that we propose. The first amendment simply requires that a worker must be demonstrated to have been actually earning as opposed to be capable of earning income when performing self-employed work as a contractor or employee. The Government provision would act as a disincentive for self help. Our amendment seeks to allow workers to be out of the State, with the obvious proviso that permission is granted by the corporation or the exempt employer. We also seek to clarify that compliance must refer only to an approved rehabilitation program. We further seek to excuse from a breach of mutuality a worker's selection or option for a different form of treatment and decisions not to have surgery.

The Hon. K.T. GRIFFIN: The Government does not accept that amendment. I think it is important for me to refresh members' minds on the reasons for the Government's position. The proposed amendments are designed to complement the Government's amendments to section 35, even though as a result of the Committee consideration last night there is a new section 35, but it does relate to the review of income maintenance entitlements and does not fall in consequence of the amendments moved to section 35 last evening.

The Government's proposed amendments provide additional specific criteria upon which WorkCover can discontinue weekly payments. Without these criteria the proposed second year review provisions would not be fully effective. The additional categories providing grounds for discontinuance of weekly payments proposed in the Government's amendments are set out in paragraphs (d), (e), (f), (g) and (h) of proposed section 36(1). They include the worker having obtained employment, the worker having been dismissed for serious and wilful misconduct, the worker being resident outside the State for more than two months or the worker having breached his or her obligation of mutuality.

The obligation of mutuality is defined in the proposed section 36(1)(a) as a non-exclusive series of categories which would also justify the discontinuance of weekly payments. These categories include the worker not having submitted to medical examinations or submitted medical certificates as required, the worker having refused to genuinely participate in rehabilitation or return to work plans and the worker having refused or failed to undertake work or to take reasonable steps to find work. The tightening up of the specific grounds of discontinuance will assist the administration of the scheme and minimise the capacity for abuse of the scheme.

Many submissions to the Government have emphasised that it is vital that section 36 be tightened up by the inclusion of specific categories of discontinuance rather than by generalised policy statements which practice has shown do not withstand the rigour of the legal processes. I make an aside here that I think that making the provisions more specific gives much more specific signals to the courts which will ultimately interpret. We have heard much lately about the courts making law, particularly the High Court, and one can understand that the courts are in a difficult position if they have only general policy statements which they have to interpret in the light of the evidence presented to them without having more specific guidance.

The Government is committed to ensuring that so far as is possible the tightening of section 36 will have real meaning and will not be undermined by the subsequent case by case

applications. As part of this intention to tighten up section 36 the Government also proposes that the period of notice to be given to workers for the discontinuance of weekly payments be reduced from 21 days to seven days. If the discontinuance provisions of section 36 are amended as proposed by the Government amendment, it is not essential to retain section 37, which provides the power to suspend weekly payments.

Workers under the Act will retain their rights to seek a review of decisions by WorkCover of any discontinuance. Review officers will retain the right to reinstate weekly payments on an interim or permanent basis, and I suggest that that process is adequate to deal with issues of suspension or restoration of entitlements. The Hon. Mr Roberts' amendment is opposed, very largely because it tends to narrow the provision much more than we would wish and, I think, raise its own difficulties in terms of trying to give some clarity to this legislation.

The Hon. M.J. ELLIOTT: Did the Attorney address the significance of the words 'capable of' and why they were necessary?

The Hon. K.T. GRIFFIN: The position is that if an injured worker is capable of working, say, 20 hours, and is offered 20 hours, under this provision the worker is required to work for 20 hours and not be in a position where he or she can make a choice of, say, working 10 hours but still receive full compensation up to the 20 hours capability. If you take the words 'capable of' out, you do give the worker at least an opportunity, even though capable of working 20 hours, for example, to work less yet retain compensation. The problem is that, if you take out the words 'capable of', it does then give that greater level of flexibility which, from the Government's perspective and personally, should not be available.

The Hon. M.J. ELLIOTT: With respect, that is really nonsense. The 'capable of' on my reading does not relate to what the worker is capable of doing but to what remuneration could be provided. You could have a worker who is able to work 10 hours a week because of a disability. You cannot argue that just because of the 10 hours they work they can earn a certain amount but the job is capable of paying them more if they worked 40, because the disability does not allow it. The 'capable of' does not apply to what the worker is capable of but to what the job itself could pay if the worker worked at it full time.

I would argue that the issue raised by the Minister would have been covered by new subsection (1A)(f)(i) where it refers to a worker refusing or failing to undertake work that the worker has been offered and is capable of performing. That is the appropriate provision that refers to the hours they are working and, if they can work more, they should. I think those two issues need to be separated. Unless the Minister has something more compelling, I will support the amendment.

The Hon. K.T. GRIFFIN: What I said is not nonsense. If the honourable member looks at the construction of the paragraph, he will see that it provides:

> Subject to this Act, weekly payments to a worker who has suffered a compensable disability must not be discontinued unless—
> . . .
> (d) the worker has obtained work as an employee, or as a self-employed contractor, that is capable of providing remuneration equal to or above the worker's notional weekly earnings;

You have to relate the capability to the obtaining of the work. As I understand it, if a clerk obtains work in a doctor's surgery, for example, and there is 20 hours a week available and the 20 hours is capable of providing remuneration equal to or above the worker's notional weekly earnings, but the worker decides, 'I only want to work 10 hours,' it seems to me that, unless you have the words 'capable of' in there, the worker is able to thumb his or her nose at the requirement to work for 20 hours. The worker has obtained the work, 20 hours are available, but the worker decides to work for 10. The work, if worked for the 20 hours, is capable of providing the appropriate remuneration, but if the employee says, 'I only want to work 10,' it avoids the consequences of this provision.

The Hon. M.J. ELLIOTT: I really think the point has been missed. In terms of the worker who is capable of working longer hours, that is covered by (1A)(f)(i). We really do have the other person who would be caught if you tried to treat it under the clause the Minister is proposing. You would have a person who physically is not capable of working longer hours but the job is capable of delivering a wage above the notional weekly earnings if the worker worked it. That is the correct interpretation of paragraph (d), and it is clearly unfair.

The Hon. R.R. ROBERTS: I believe the Hon. Mr Elliott's synopsis is correct. The Attorney-General is being blinded by these accusations of rorting and the disgusting principle he introduced last night about injured workers on gravy trains, which is about as near to reality as this synopsis he has applied here. Clearly we have to talk about what is actually happening. If he is working and getting the money over and above it, he would then fall into the provision as it is supposed to apply. Mr Elliott is correct. If the worker is in a rorting situation, he is clearly covered under (1A)(f) which provides:

> . . . the worker refuses or fails—
> (i) to undertake work that the worker has been offered and is capable of performing;

That is the principle that covers the Attorney-General's concerns. He is saying that there might be 20 hours and the worker says, 'I will only work 10 hours so I can get 80 per cent of my average weekly earnings.' That is clearly not the reality of what actually happens out in the workplace. The Bill does provide that, under (1A)(f), if that situation did occur—and I would say it would be a minority of cases—it is covered and the loophole is closed by that provision. I ask the Committee to support the amendment moved by the Opposition.

The Hon. K.T. GRIFFIN: It is correct to say that to some extent (1A)(f) will help to accommodate the problem I am addressing, but it only deals with the worker. Clause (1)(d) also covers a self-employed contractor. If the Hon. Mr Elliott is prepared, in taking out the words 'capable of' in (1)(d), to insert a reference to self-employed contractor in (1A)(f), I think it will overcome the problem.

The Hon. M.J. ELLIOTT: I would not be prepared to accept that on the run because I would have thought that, even with a self-employed contractor, the same principles would apply. If they are capable of working hours, they are capable of working them and they should be—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I understand that, and we have also had arguments in this place on previous occasions about what contractors are. If a self-employed contractor is working certain hours and is capable of working more, and there is work available, I would have thought that person should still be covered by (1A)(f), so I am not attracted to it on the run. I am not sure whether farmers are seen as self-employed contractors, where in fact they work quite long hours and get very low wages. Whether you could argue they

are capable of getting more, could be another argument. I do not think they would be attracted by that, either. I know that farmers are rather concerned about some things that might happen in this legislation. I do not believe a case has been made for those words 'capable of'.

Amendment carried.

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

Page 8, lines 17 and 18—Leave out paragraph (g) and insert:
(g) the worker is, without the Corporation's consent—
(i) resident outside the State; or
(ii) absent from the State for more than two months in any continuous period of 12 months;

I believe that this is a fairer description of what ought to apply and it ought to be adopted by the Committee.

The Hon. K.T. GRIFFIN: On the face of it, it seems to be reasonable. I will not oppose it at this stage but reserve the right to review it in the context of the further run through this Bill once we have addressed a number of the other major issues.

The Hon. M.J. ELLIOTT: I support the amendment.

Amendment carried.

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

Page 8, lines 35 and 36—Leave out paragraph (e) and insert:
(e) the worker fails to comply with an obligation under an approved rehabilitation and return to work plan; or

This amendment seeks to insert the word 'approved' before 'rehabilitation and return to work plan'. This amendment impinges on some of the debate we had two amendments ago when we talked about an approved rehabilitation plan. Whether people are complying with their approved rehabilitation plan really picks up some of the concerns expressed by the Attorney about whether a worker is capable of doing 10 or 20 hours, etc. This is a minor but reasonable amendment.

The Hon. M.J. ELLIOTT: I agree with the sentiment. It could have been more appropriately worded so that it directly related back to plans under new section 28A, but that is really a matter of tidy up. In the absence of alternative wording, I support the amendment at this stage.

The Hon. K.T. GRIFFIN: I would not have thought there was any doubt about it in its current form. I take the point made by the Hons. Ron Roberts and Mr Elliott. I do not think the drafting is adequate but we will not oppose it. We will look at it as part of the general review of the drafting once we have been through this run of it.

Amendment carried.

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

Page 9, line 4—Leave out subparagraph (ii).

This amendment seeks to remove subparagraph (ii) from the Government's Bill, and I ask the Committee for its support.

The Hon. K.T. GRIFFIN: We oppose the amendment. As part of the whole package of legislation and the focus upon rehabilitation and return to work, we would have thought that it was not an unreasonable obligation upon an injured worker to be required to take some reasonable steps to find or obtain suitable employment rather than sitting around waiting for the job to fall into his or her lap. It would be a serious omission from this package if we did not have some basis upon which to act if a worker who is injured but able to return to work refuses or fails to take some reasonable steps to find or obtain suitable employment. It is for that reason, as a matter of principle, that I would indicate opposition to the amendment.

The Hon. M.J. ELLIOTT: I do not believe that a person being asked to take reasonable steps—and I understand that is interpreted reasonably generously—to find or obtain suitable employment is particularly onerous, and I will not support the amendment.

Amendment negatived.

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

Page 9, after line 8—Insert new subsection as follows:
(1B) However, a worker does not breach the obligation of mutuality—
(a) by reasonably refusing surgery or the administration of a drug; or
(b) where there is a difference of medical opinion about the appropriate treatment for the worker's condition, or the possibility of choice between a number of reasonable forms of treatment—by choosing one form of treatment in preference to another.

This amendment concerns the mutuality concept. In many cases—and we have talked about this in relation to protocols—different treatments are available, and it is our view that there ought to be some choice in respect of treatment and appropriate treatment.

The Hon. K.T. GRIFFIN: I indicate that we will not oppose the amendment at this stage, but we will look at it to see how it matches up with section 36(1A)(c), which provides that a worker breaches the obligation of mutuality if 'the worker refuses or fails to submit to proper medical treatment for the worker's condition'. It probably will be satisfactory but it is something we will need to look at further. It seems reasonable on the fact of it but, at this stage, I indicate no opposition.

The Hon. M.J. ELLIOTT: We support the amendment.

Amendment carried.

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

Page 9, line 9—Leave out paragraph (b) and insert:
(b) by inserting in subsection (3a)(a) after subparagraph (ii) the following subparagraphs:
(iii) the worker has been dismissed from employment for serious and wilful misconduct; or
(iv) the worker has breached the obligation of mutuality.

We are seeking to remove paragraph (b) from the Government's proposition that there be a reduction from 21 to seven days. We propose to insert in its place an amendment to the principal Act in the terms of the amendment that I have moved.

The Hon. K.T. GRIFFIN: I oppose the amendment. The Government's view is that there is a need to smarten up in relation to the period of notice. Section 36(3a) provides that notice of discontinuance or reduction of weekly payments must be given by the WorkCover Corporation to the worker at least 21 days before the decision is to take effect. It specifies various cases where the discontinuance of weekly payments is made without the consent of the worker—on the ground that the corporation is satisfied that the worker ceased to be incapacitated for work or the worker failed to submit to an examination by a recognised medical expert—and there are other provisions in paragraphs (b) and (c) of subsection (3a).

We say that it is unacceptable for the worker to stay on compensation effectively for three weeks after the decision has been taken and notice has been given. We believe that within seven days decisions can be taken by the injured worker to get advice, to apply to the review officer and to take any other necessary action which might enable the worker to dispute the discontinuance or the reduction. The amendment, apart from the issue of time, is outrageous. The Hon. Ron Roberts wants to insert some new circumstances in which 21 days' notice has to be given. This is how outrageous it is: if the worker has been dismissed from

employment for serious and wilful misconduct. If WorkCover has to give at least 21 days' notice of a decision to discontinue—

The Hon. R.R. Roberts: Unproven.

The Hon. K.T. GRIFFIN: It is not unproven. The amendment states, 'the worker has been dismissed from employment for serious and wilful misconduct'. The remedies under the Industrial—

The Hon. M.J. Elliott: What if misconduct has not been proved?

The Hon. K.T. GRIFFIN: There are remedies for wrongful dismissal.

The Hon. M.J. Elliott: What about wrongful withholding of payments?

The Hon. K.T. GRIFFIN: They are not wrongfully withholding them. If the worker believes it has not been serious and wilful misconduct, other remedies are available. The fact is that WorkCover must be able to establish that it is serious and wilful misconduct, so the obligation is on WorkCover. It cannot simply say, 'We are satisfied that it is serious and wilful misconduct, so we give this notice and we do not give a damn whether it is true or false.' WorkCover has to be satisfied before it can give this notice. If it is not, or if it is proved to be wrong, it is subject to challenge under this legislation and under the Industrial and Employee Relations Act. If the worker has breached the obligation of mutuality, a further notice has to be given. If the obligation of mutuality has been breached, notice need not be required to be given as proposed in this amendment.

The Hon. M.J. ELLIOTT: I shall be supporting this amendment. I can see some difficulties associated with it, and that is why I split section 36 into sections 36 and 37 and had quite a different method for handling the obligation of mutuality from other reasons for discontinuance. The Government chose not to follow that line and, as I see it, there is no real alternative other than for me to support this amendment. The potential is that payments would be terminated immediately without any notice and I am not convinced that the review mechanisms available in those circumstances are satisfactory. I find it unacceptable and accordingly will be supporting the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I gathered by the fact that the Opposition was moving amendments to the Government's proposed new section 36 that it was not intending to support my proposed new sections 36 and 37, so I will not speak at great length but I will at least discuss why it has taken the structure that it has. New section 36, as I propose it, does not relate in large part to the worker's behaviour but relates to all the other reasons why a discontinuance of weekly payments might occur. As I see it, we might want to treat questions of how a worker behaves differently from some of these other more mechanistic questions that are contained within my proposed new section 36.

Much of what I have included in new section 36 is similar to what the Government has in its new section 36(1) with the exception, in particular, of subsection (f) which deals with the issue of the obligation of mutuality. I have used that concept to underpin my proposed new section 37. The first obvious difference is that, while in early drafts I was using the term 'obligation of mutuality', when speaking with some legal people they said that the concept of obligation of mutuality is something which is understood in the courts and tends to relate to the employer/employee relationship, and some of the matters that have been covered by both the Government and by earlier amendments of mine and, in fact, the amendment I have before me, are not employer/employee matters: they are questions of involvement in rehabilitation, medical examinations and those sorts of things, which are not strictly speaking what people commonly understand to be the obligation of mutuality.

So the first distinction is that I have referred to them as 'recipient's obligations' as I think that more correctly reflects what we are talking about. I have argued very strongly that this Act is about ensuring that an injured worker has rights and that those rights relate to a right to rehabilitation, a right to income maintenance, and so on. I would also argue that along with those rights there are some obligations placed upon that person to actively participate in the rehabilitation and return to work programs, to actively seek work, to be available for work that is appropriate, and so on.

While I have been very angry with the Government's campaign in the media about people who allegedly are bludging on the system, which creates an impression that most people on WorkCover are rorting, any honest person would have to acknowledge that there is a small minority of those people who do play the system. The worst thing about them is not so much the cost that it creates but the bad reputation it earns for WorkCover and the fact that it gives the opportunity for Ministers to play some games with it, and that means that every person who is a recipient of WorkCover payments gets tarred by the brush. I make no apologies for saying that recipients have rights and obligations and that they should fulfil those obligations as long as they are reasonable. What I have sought to do in my structuring of new section 37 is to spell out what are the obligations and also to spell out their rights to check whether or not those obligations are reasonable.

Another important difference between my approach and the Government's approach is that under 'obligation of mutuality' the Government has simply listed a number of things which it says comprise obligation of mutuality, whereas I have sought in my new section 37(1) first to define it, as follows:

> (1) A worker who is entitled to weekly payments must comply with the recipient's obligation, that is to say, the worker must—
>
> (a) comply with requirements made by or under this Act; and
>
> (b) take all reasonable steps to maximise the worker's prospects of rehabilitation and return to work.

Having done that, I go on to say that a breach of the obligation includes an unreasonable refusal or failure to do a number of things, such as to submit to medical examinations, to submit to proper medical treatment, to comply with rehabilitation and return to work plans, to take steps to find or obtain suitable employment, and so on. That list is not meant to be exhaustive but it does show the matters which are included within the obligation.

I have also treated notification and so forth in different ways. For instance, under my proposal a worker would be notified by the corporation that they are in breach, and that is not present within the Government's Bill and not present in the amendments that the Opposition has now made. The worker will be notified and he or she will be required to take specified action, so it is clearly spelt out here that they are given the ability to remedy the breach. Their entitlement may be suspended. However, review rights and so on allow for the fact that, if a person does seek review, the suspension does not apply until the review officer has first looked at—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: I think every case should have a right to review.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: That is probably right. The alternative is that people do not get reviewed; they just get cut off. That is the alternative.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: Yes, and I agree that is the case. My further drafting to clause 12 includes a new section 37A, which spells out the way the review processes themselves work. The amendment picks up section 37 as originally circulated and then picks up a number of the subsections in section 36 that had been unintentionally left out during the drafting process. I want these other provisions to remain. It was not my intention to agree to a change in review, so a number of these other components are also important. Section 37A spells out how the review process works in relation to discontinuance under section 36 and suspension and potential cancellation of one's right to payments under my proposed section 37.

I could go into this in more depth, but the indications from both the Government and the Opposition are that they will not support it. So, unless there are questions, I will not take time to argue it further. Section 36 as the Government now has it is a dog's breakfast. I tried to promote a provision of a similar nature but I did not think it worked. The previous Opposition amendment that I supported was necessary because of the current structure of section 36.

The Hon. K.T. GRIFFIN: The Government opposes the Hon. Mr Elliott's amendments. We have taken the view with the amendments which have been made to section 36, with a great deal more attention given to specific circumstances, that we have provided adequately for the variety of circumstances that might prevail where the obligation of mutuality might be breached or in other circumstances where weekly payments might be discontinued. Of course, we pick up from the existing provisions a number of those provisions in our amendment, which is currently the amended proposed section 36.

For that reason the Government does not believe that retaining section 37 is necessary, and the new section 37 proposed by the Hon. Mr Elliott does mean that a greater level of subjectivity is built into the system and, therefore, uncertainty and also opportunity for the tribunal to set the parameters when in fact it ought to be the Parliament that is endeavouring to do that.

As to proposed section 37A as moved in its amended form, we do not support it. It really brings the issue of suspension of payments back to what is largely presently in the Act. We have a concern about the continuation of benefits automatically when a notice is given. It is our view that the proposed amendments by the Hon. Mr Elliott to subsections (2), (3), (4) and (5) would be acceptable without the subsection (1) provision as amended. As a whole, with subsection (1) remaining, we are not prepared to support it.

Clause as amended passed.

Clause 13 passed.

New clause 13A—'Review of weekly payments.'

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

Page 9, after line 11—Insert new clause as follows:

13A. Section 38 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1A) If a period of incapacity continues for more than one year, the corporation must conduct a review under this section in the second year of incapacity and in each subsequent year of the incapacity.;

(b) by striking out subsection (3) and substituting the following subsections:

(3) Before the corporation begins a review under this section, the corporation must give the worker notice, in the form prescribed by regulation—

(a) informing the worker of the proposed review; and

(b) inviting the worker to make written representation to the corporation on the subject of the review within a reasonable time specified in the notice.

(4) If the corporation finds on a review under this section that the worker's entitlement to weekly payments has ceased, or has increased or decreased, the corporation must adjust or discontinue the weekly payments to reflect that finding.

Example—

For example, if the corporation finds on the review that there has been a change in the extent of the worker's incapacity with a consequent change in the amount the worker is earning or could earn in suitable employment, the corporation must adjust the weekly payments to reflect the change in entitlement.;

(c) by inserting after subsection (6) the following subsection:

(7) On completing the review, the corporation must give notice, in the prescribed form, setting out the corporation's decision on the review, and the rights of review that exist in respect of the decision, to—

(a) the worker; and

(b) the employer from whose employment the compensable disability arose.

I have quickly consulted with Parliamentary Counsel to check whether, as a consequence of what has happened to sections 36 and 37, the changes to section 38 have become redundant. I understand that they have not become redundant but, having lost my sections 36 and 37, I am trying to get the position back into context in my own mind.

Section 38 deals with review of weekly payments. I am not seeking to delete any parts of this section but I am seeking to expand it so that not only may the corporation of its own initiative carry out a review of the amount of weekly payments made to a worker who has suffered a compensable disability (which it also shall do if so requested by a worker or employer) but that also it will be done as a matter of course on an annual basis, requiring that before the corporation carries out such a review it should inform the worker of the proposed review and invite the worker to make written representation to the corporation on the subject of the review within a reasonable time specified in the notice.

We will later debate section 42A, relating to redemption. If a provision about redemption is passed in this place, I suggest that we may want to link it to this clause. If a person finds that they are on WorkCover for a long period, perhaps the time of the annual review might be that at which WorkCover would say, 'We might consider a redemption of some form.' It is a chance for a reanalysis of where things stand for the corporation to satisfy itself that perhaps the person's capacity is such that they are unlikely to return to work and, if both the worker and the corporation agree, a redemption of some form may occur. The form of that will take place in debate later today, and there may be a desire to link this clause with that; that was certainly an intention when I first had this new clause drafted.

One other matter which I will bring to people's attention is that I am talking about notice being given by the corporation in a prescribed form. I will move later a few amendments that will require notice to be given in a prescribed form. I understand the requirement for notice, but the fact that it does

not need to be in a prescribed form has led to a great deal of litigation and dispute about whether the notice has been adequate. It would seem to me that it is in the best interest of WorkCover and everyone else that there is a prescribed form in relation to notice, not just on this but on other matters as well, and in a form which will do all that is necessary to protect the rights of workers so that does not set itself up for some sort of challenge at review later on.

The Hon. R.R. ROBERTS: The Democrats' clause 13A proposes to amend section 38, which deals with regular review of the rate of weekly payments. We will support the Democrats' proposal at this time, but we will be subjecting that agreement to something which we would like to have looked at later on, simply because at this stage I have an amendment. I am prepared to outline it here so that it can be considered when we reconsider some of the other clauses in the Bill. We would propose an amendment to page 10, line 3, to amend subclause (7) by inserting '21 days' between the words 'give' and 'notice'. That is consistent with other debates that we have had. The purpose of this proposed ALP amendment is to ensure that the worker has reasonable notice of any imminent change to the rate of weekly payments so as to make any necessary financial adjustments and is consistent with the 21 days requirement that we discussed earlier. I indicate that we will support the amendment moved by the Hon. Mr Elliott and would seek to have this looked at again later by way of a formal amendment when we recommit.

The Hon. K.T. GRIFFIN: We will not oppose the insertion of this at this stage. We want to give attention to some drafting questions, particularly paragraph (a), which inserts a new subsection (1)(a) and which tends to suggest that there can be only one review, and that is in the second year of incapacity. We want to ensure that there could be a review at any time when circumstances suggested that it was appropriate to do that, and not just in the second year of incapacity. It may be that that is just an issue of drafting that we can resolve.

We have some concerns about aspects of the drafting in paragraph (b) in the translation of existing provisions in section 38(3) across to the example, but it would suggest that some additional strength is given to the review process by at least the approach but not necessarily all the detail in the amendments moved by the Hon. Mr Elliott. We will reserve the right, as all members seem to be doing, to look at this again once it has been through the first Committee consideration.

New clause 13A inserted.

New clause 13B—'Economic adjustment to weekly payments.'

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

Page 9—Insert new clause as follows:

Amendment of s.39—Economic adjustment to weekly payments

13B. Section 39 of the principal Act is amended by inserting after 'notice in writing' in subsection (3) ', in the form prescribed by regulation,'.

As I said in debate on a previous clause, where notice is required in writing it has become a matter of dispute on some occasions and it would be sensible and reasonable that where such notice is required it should be done in a form prescribed by regulation.

New clause 13B inserted.

Clause 14—'Weekly payments and leave entitlements.'

The Hon. R.R. ROBERTS: The Opposition supports this clause.

Clause passed.

New clause 14A—'Absence of worker from Australia.'

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

Page 9, after line 23—Insert new clause as follows:

Amendment of s.41—Absence of worker from Australia

14A. Section 41 of the principal Act is amended by inserting after '14 days notice' in subsection (2) (in the form prescribed by regulation)'.

This amends section 41 of the Act. Again, we are talking about 14 days notice, and I am arguing that the notice should be in a form prescribed by regulation.

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

New clause inserted.

Clause 15—'Substitution of s. 42.'

The Hon. M.J. ELLIOTT: I am not of a mind to support the repeal of section 42, which relates to commutation of liability, until I know clearly what is happening in relation to redemption.

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

That consideration of clause 15 be postponed and be taken into consideration by the Committee after clause 28.

Motion carried.

Clause 16—'Redemption of liabilities.'

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

Page 9, lines 30 to 33, page 10, lines 1 to 24—Leave out proposed section 42A and insert:

Redemption of liability for weekly payments in case of minor incapacities

42A.(1) If a disabled worker's earning capacity is reduced by the compensable disability by 10 per cent or less, the Corporation may, on application by the worker, redeem its liability to make weekly payments and to pay compensation for medical and related expenses by paying the worker $50 000 (indexed).

(2) Before the Corporation decides an application for a redemption payment under this section the Corporation must—

(a) give the employer out of whose employment the disability arose a written notice, in the prescribed form, informing the employer of the application and inviting the employer to make written representations to the Corporation on the application within a reasonable period stated in the notice; and

(b) if representations are made in response to the invitation—consider the representations.

(3) The Corporation has an absolute discretion to agree, or to refuse, an application for a redemption payment under this section (and the Corporation's decision is not subject to review).

(4) A redemption payment under this section discharges the Corporation from the liability to make weekly payments and to pay compensation for medical and related expenses.

(5) This section takes effect on the second anniversary of the commencement of the Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995.

This is where we will have the substantive debate about redemption. Having talked with both employee groups and employer groups, there is certainly support for the notion of redemption. The big question at this stage is what form it should take. I indicated last evening that the position I had taken on redemption was a fairly conservative one because I wanted to make sure that in general people's commutation rights were preserved to start off with, and that commutation is a full actuarially derived figure. The Government is proposing that in fact commutation be removed totally.

My view was that redemption, if not properly structured, could be susceptible to some significant abuse, and it was a question of getting a model which worked. The good thing about the old section 42 was that it was absolutely predictable because it was reliant upon actuarially derived figures. A person knew what their entitlements were and it was not open to any abuse. The reality was that WorkCover was not doing

a great deal of commutation except in relation to people with very minor disabilities, where the paperwork was costing them more than it was worth and it suited them to remove people from the system. If we go to a system where everybody is capable of redemption, you could have the position where people are offered a sum of money which on the surface sounds very attractive but, in reality, they have given up their rights to weekly payments. That money could be gone very quickly and they would find themselves, if they have a serious injury, simply on sickness benefit or whatever else.

In relation to a worker who perhaps had an entitlement much more than a sickness benefit, they could find themselves then being put at a significant disadvantage in the longer term. As I said, I took a fairly conservative position which suggested that redemption should only be offered to people on relatively lower levels of disability to start off with, people who will have a better—but still by no means guaranteed—chance of getting on with their lives, and people with more serious disabilities may not find that quite so easy. I did so, largely because I was unable to come up with a formula which I felt would give adequate protection to injured workers generally.

The Government had put forward a model. I note now that the Opposition is moving amendments to that, but I have not had a chance to look at what they might achieve. I certainly indicated last night that, if representatives of employees were satisfied with an alternative model to redemption, I would be certainly prepared to support it. My major concern was that the rights of employees in this important area were not undermined.

The Hon. K.T. GRIFFIN: I do not think we are fundamentally at odds on this, but there are quite obviously some disagreements on the detail. What we have tried to do is not do anything underhand in relation to calling it a redemption but to recognise that it will cover commutation and other calculations. Commutation has a specific connotation about it. It deals specifically with an actuarially calculated figure, and there may well be other figures which are not specifically actuarially calculated—there may be some give or take. We have tried to encompass that commutation strictly defined and the lump sums which may not be specifically actuarially calculated but which nevertheless are a fair and reasonable calculation of the net present value of the benefits which might ultimately be payable. So, we have tried to cover that all in one.

If the honourable member wants to cover it in two different provisions, one which deals with commutation which is the specific calculation, and the other with sort of redemption, we are happy to give some consideration to that. I will deal with the specific issues shortly, but one has to recognise that under our amendment an agreement for the redemption of a liability cannot be made unless a number of prerequisites or preconditions are satisfied. One is that the worker has received competent professional advice about the consequences of the redemption and also competent financial advice about the investment or use of the money to be received on redemption. So, there is that hurdle immediately. The corporation has to consult with the employer. There also has to be a recognised medical expert who gives a certificate that the extent of the worker's incapacity can be determined with a reasonable degree of confidence. Then the amount is to be fixed by agreement. So, if the worker decides not to accept it, there is no redemption.

Then we go to the next point where, either on the application of the worker or the corporation, a question about redemption can be referred to the tribunal, which appoints a conciliator, in the same way as if the question were a matter that could be referred to a conciliator under Division 8 of Part 6A. So, there is that review process which is at the highest level.

I come back to the points of disagreement now in relation to the limit. We do not agree with limiting the right to redeem to workers who only have up to 10 per cent disability. We disagree with the consequence of that, and that is the fixing of a sum of $50 000 as payable to workers eligible for the redemption. The view which I expressed last night and which I repeat today is that, if workers want to redeem or commute as the case may be, it does not matter what the disability: why should we not give them the choice to do it, provided there are adequate safeguards built into the system? That is an issue of choice. It is all very well to hold their hands and say, 'We do not trust you to make a decision' or 'You are vulnerable' or 'You are likely to be subject to undue influence from WorkCover or anybody else'.

If you want to put in some provisions which protect against that beyond those which we have in here, let us talk about that, too. The fact is that, in our view, there ought not to be a limit on the opportunities for injured workers to redeem or commute, as the case may be. It is, as I say, a matter of choice. You can build in safeguards. We believe we have built in adequate safeguards to protect against undue influence, but the fact is that people in the community who are injured have a right to make decisions about their future, and if it is in relation to an issue such as redemption or commutation it does not matter what the extent of a settlement might be, they ought to be able to do it. It is as simple as that.

We have taken a broad view, allowing significant flexibility and building in protections which we believe are adequate. It is for that reason that we believe our provisions in the Bill are more than adequate and appropriate to address the situation. I have spoken to injured workers and those who represent injured workers from the legal profession, trade unions and others, and many of them want the opportunity to redeem. The other factor is that if you can redeem then it will give an incentive to injured workers to then manage their lives in the future as they want to manage it, rather than being dependent upon periodic payments and someone who has a general oversight and is in the role of playing nursemaid to that injured worker. We must give the worker some, if not all, credit for being able to make decisions, provided some protections are built in. That is what we are doing: building in some protections.

The Hon. R.R. ROBERTS: I put on the record that the Opposition will be supporting the Government's proposition on this clause. We have some concerns with the Democrat amendment. I put on record that the ALP believes that the concept of enabling people with minor incapacities to be paid lump sums and thus remove themselves from the WorkCover system has much to recommend it. However, the ALP has some difficulties with the drafting of the new section 42A. Subsection (1) currently provides that the only payment that can be made is $50 000. Presumably there will be many situations where $50 000 is too high an amount to pay for a disability in question, but nonetheless a lump sum payment is advisable.

Presumably, there would be inserted before the figure '$50 000' the words 'the lump sum not exceeding'. It is noted

that the corporation has been given an absolute discretion with respect to the making of such a payment. The Opposition believes that the system is more likely to work effectively if workers have some enforceable rights to obtain lump sums for income maintenance. The difficulty the Opposition envisages is that if the choice is entirely left to WorkCover as to whether or not a lump sum payment is made then the lump sum payments will only ever be made where WorkCover can see that the lump sum payment is substantially less than WorkCover's future likely obligations.

The Opposition accepts in many cases such a deal being done, given that the worker will often be prepared to accept a lesser amount than his possible future entitlements so that he can be free of the WorkCover system. However, there will still be cases where workers would have had, on the basis of the original WorkCover legislation, a right to receive their full entitlements by way of lump sum payments and have so removed themselves from the WorkCover scheme. For example, a worker whose net weekly income maintenance amounts to $15 000 per year and who has only six years left of their working life would, after applying an actuarial discount and a further discount for contingencies, still have an entitlement of a lump sum payment of $80 000.

Such worker could now effectively be forced into accepting a settlement of $50 000, because WorkCover has an absolute discretion both in respect of commutations under section 42 and this lump sum payment under section 42A. The ALP also sees some difficulties in implementing the test of 10 per cent or less on a worker's earning capacity. It is not altogether clear how the corporation would be expected to make a calculation. Presumably this section is meant to act as protection for employees who would be too willing to sell out on their long-term entitlement for a lump sum of $50 000, which they then may waste or regret.

The Opposition suggests there may be a better way of protecting such people than with an arbitrary 10 per cent limit being applied. Moreover, many workers arguably would have a greater than 10 per cent loss of earning capacity and who would nonetheless, for good reasons, prefer to remove themselves from the WorkCover system. As at the time the assessment is made such a worker might have a 100 per cent loss of earning capacity but might have a reasonable prospect of that earning capacity reviving considerably in the future. Whilst no-one would guarantee such a result, a worker might be reasonably well advised to take a lump sum given the possible benefits for their health as well as their economic well-being. The Opposition does not understand why this section should only take effect on the second anniversary of the commencement of the Act.

I am advised that further discussions are taking place in respect of this redemption proposition, and probably we will be looking at this at a future time or in recommittal, but I indicate that we will be supporting the Government's position on this.

The Hon. M.J. ELLIOTT: I will not respond to all the comments made by the Hon. Mr Roberts about my amendment. He has clearly misunderstood some parts but I indicate that this morning I had a telephone conversation with the Minister and indicated to him that I believed that employers and employees seem to be keen on getting some model up, and that he might try to bring them together. I understand that since that telephone conversation he has done so. As I said, everyone seems to agree that there is a need for redemption. There is no doubt that it has the capacity to deliver quite significant savings to the scheme and take pressure off other benefits, and that will be a good thing as long as it is done in a fair and equitable fashion. I am pleased to see that the Minister has been able to get those people meeting, and I hope we come up with a model that works.

I note a couple of things within new section 42A as drafted which cause me a bit of concern. Subsection (4) appears to provide that not only can the worker go to the tribunal and seek redemption but that the corporation can go to the tribunal and say, 'We want to redeem this worker.' I do not know whether it is intended that way but that is the way it is structured. I suspect it was intended to allow the worker and the corporation to go to conciliation about matters of the quantum of the redemption.

The way the subsection is structured also means that the corporation could go to the tribunal and say, 'We want to redeem this worker's weekly payments.' I would not think that the Labor Party or the unions would support that option. I simply flag that concern. It is one thing for a worker who has entitlements to say, 'I would like to redeem them,' but it is quite another thing for the corporation to say, 'We want to redeem this worker's entitlements.'

A number of instances were brought to my attention under commutation, as it used to work, where WorkCover would make an offer, bring a person into discussions and, having made the offer, then start dropping it. That happened on a number of occasions, and we amended the commutation clause, which basically said that once an offer had been made you could not go back on it. Something like that should also be implicit within this. If a worker is to get less than what is a fair and actuarially derived figure, I do not think a person should be drawn into a discussion and told, 'We will give you such and such,' and then see the figure tumble away. Another situation is where an offer is made, and I do not think the subsection covers this properly. What happens if the worker and the corporation have some offers and go to conciliation? Is it absolutely certain that, the conciliator having set a figure, that figure must be adhered to? I do not think subclause (4) goes that far.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It appears that the conciliator can set the figure, but I do not think it says that, having set the figure, it must go through. What happens if the conciliator says, 'This is the figure,' and one of the parties says, 'We do not want to go ahead with it.'? It picks up the notion that I was putting before that an offer is made and a person is drawn in and they go to conciliation and still do not get anything that they think is reasonable. On the other hand, the corporation may say, 'That is more than we want to pay, so we will pull out of it.' I think that issue needs to be covered in some manner. I flag it as one of a number of issues that will need to be discussed within the next day or two.

The Hon. K.T. GRIFFIN: In relation to the proposed subclause (4), one has to recognise that it is a specific reference to conciliation. If the discussions get bogged down, I think that it would be quite reasonable for the corporation or the worker in those circumstances to ask the tribunal formally to appoint a conciliator.

The Hon. M.J. Elliott: There is no criticism of having a conciliator.

The Hon. K.T. GRIFFIN: This subclause refers to conciliation. I would not think that was a particular problem. Section 42(4) has created a lot of concern among workers. We have tried to face the criticisms and bring back to Parliament a proposition which provides more flexibility and a better opportunity for commutation or redemption, as the

case may be. As the honourable member said, this matter can be the subject of further consideration. However, as a matter of principle, I acknowledge what the Hon. Ron Roberts said about the need for some flexibility and the need to give workers as well as the corporation rights in relation to redemption and commutation. I take the view that if people can get a settlement, they are frequently much better off in the longer term, because they are free to do their own thing.

The Hon. R.R. Roberts: They may not be better off, but they are often happier.

The Hon. K.T. GRIFFIN: In terms of their attitude of mind, they are frequently better off. They may ultimately be better off financially, too, and be free to do other things so that they are not dependent on periodic payments. I do not think there is any disagreement in respect of that matter. It is a question of some of the details.

Amendment negatived; clause passed.

Progress reported; Committee to sit again.

STATUTES AMENDMENT (CORRECTIONAL SERVICES) BILL

Adjourned debate on second reading.

(Continued from 5 April. Page 1780.)

The Hon. T.G. ROBERTS: This is not a complicated or long Bill. I have had discussions about it with the Minister. The Bill sets out to amend the Correctional Services Act 1982 and to change some of the operating procedures within the prison system. I have spoken to the PSA. I was concerned that the PSA had not been notified of the Government's intention to change the Act in a way which would affect correctional services officers, although discussions may have been taking place with the officers *in situ*.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: On this occasion they have not had confirmation of any changes. The Bill changes the way in which urine samples are taken and assigned, specified and identified so that proof can be obtained that the samples are the correct samples from the correct prisoners. Another change to the Act is that when a prisoner signs a parole form the conditions are understood by the prisoner. The third intention is to get correctional services officers to serve warrants in prison to avoid the inconvenience to police officers of coming into the correctional services area and serving them. The intentions of the three changes are to facilitate better management, to have a more streamlined process and to ensure that parolees understand their parole conditions. They are all positive moves which the Opposition supports.

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

[Sitting suspended from 12.50 to 2.15 p.m.]

QUESTION TIME

SCHOOL MANAGEMENT

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

Leave granted.

The Hon. CAROLYN PICKLES: On 22 March, the Minister informed the Council that he had funded Miss Pat Thompson, President of the School Principals' Association, to work as a project officer to put together a package of propositions for the Government on shared responsibility. The Minister offered to provide a copy of a paper prepared by Miss Thompson on shared responsibility and I would be very pleased to receive this information. The Minister said that pilot programs were under way, with a number of schools taking greater responsibility in areas, such as maintenance, minor works and other small areas of responsibility. My questions are:

1. How are the pilot programs on transferring responsibilities to schools being managed?
2. Which schools are involved in these programs?
3. Is there any connection between the Minister's decision to fund a project on the devolution of administrative functions to schools and proposals before the Minister to outsource school management?

The Hon. R.I. LUCAS: I would be pleased to get some information and bring back a reply. There is a variety of different programs that have been going on in South Australian schools for at least five or six years I think. Certainly former Minister Greg Crafter was supporting a number of pilot programs and Minister Susan Lenehan supported the continuation of some programs. Indeed, one of the more adventurous groups of schools is located in the southern suburbs in the Port Noarlunga area. I visited those schools as a shadow Minister. That group remains at the forefront of wanting to have greater responsibility and accountability for decisions taken at the local level.

We have continued with a number of those programs, in encouraging those schools that want to take on those responsibilities to do so, to see what sorts of outcomes might be achieved for the system. Miss Pat Thompson, who is the project officer to whom the Hon. Ms Pickles refers, has been the President of the South Australian Secondary Principals' Association, and it is fair to say that principals also have been at the forefront of wanting to push the Government down the path of shared responsibility or devolution in a good number of areas. Principals in a number of areas are wanting to take on increased responsibilities. The Government, as always, is cautious about this. It wants to see guarantees of improvement in student learning outcomes. The Government is not solely ideologically driven; all it is concerned about is improvements in student learning outcomes.

Whilst the Government can understand that principals and parents are very keen to have these responsibilities in a good number of schools devolved to the local school level, as I said, we are cautious and certainly want to work with principals and parents to see how, if we do it, we can do it sensibly and to see whether we can guarantee improvements in student learning outcomes. So one of the models that I understand Miss Thompson's paper and others have raised has been a notion, for example, of clusters of schools joining together and employing a business manager to help manage the administrative side of those clusters of schools.

In some respects, that proposal by the principals to the Government is similar to the Serco proposal. As I said, as a Minister I am very cautious about some aspects of the Serco proposal. The difference in this respect is that the schools themselves would control the particular officer that might have been employed but nevertheless the principle of having a business manager in effect helping to take some of the—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I am just explaining to you what they are supporting, and I am saying that there are some similarities because if you are, for example, a group of principals wanting to put your money together to employ a business manager, then at least that element of the proposition is similar to one element of the outsourcing proposal of Serco. The difference is that with the Serco proposal an outside company or agency would control that particular person, although Serco perhaps will argue that it does not have to happen. One of the principals' propositions in relation to the business manager would have the principal or groups of principals controlling that particular business manager.

However, the essential core of what they are talking about is to try to take some of the administrative load off the work of principals and allow them to get on with the task of educational leadership of students and teachers within their schools, for the betterment of students. Again, we can understand what the principals are saying. We are continuing to consider the propositions the principals are putting to us on this particular issue. We certainly are not going to react in a knee jerk fashion and reject these sorts of propositions. Elements of them are consistent with the policy the Liberal Party took to the last election, so we are interested in exploring shared responsibility in a number of areas, but only if we can guarantee improvements in student learning outcomes.

MINISTERIAL RESPONSIBILITY AND CONDUCT

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Leader of the Government in the Council, representing the Premier, a question about ministerial responsibility and conduct.

Leave granted.

Members interjecting:

The Hon. R.R. ROBERTS: Just wait a minute; you might want to reduce it. I have received a copy of a short letter sent to the Premier and the Opposition by the Secretary of the Injured Workers Alliance, Ms Suzanne Ellis, complaining about the language used by Minister Ingerson ranging from 'that's (expletive deleted)' and 'this is (expletive deleted) ridiculous'. I seek leave to table a copy of the letter rather than quoting it at length.

Leave granted.

The Hon. R.R. ROBERTS: This person had nothing but praise for the Minister's Chief of Staff, Mr Anderson, about whom she stated:

> Although Mr Anderson endeavoured to answer and address our questions and concerns in a rational, logical and constructive manner, I found Mr Ingerson's manner to be obtuse, rude and offensive.

The Liberal code of conduct issued before the last election states:

> In the discharge of his or her public duties a Minister shall not dishonestly or wantonly and recklessly attack the reputation of any other person.

I have sought and obtained leave to table the letter in question. My questions to the Leader of the Opposition, representing the Premier are—

An honourable member interjecting:

The Hon. R.R. ROBERTS: Well, the Leader of the Government. What action will the Premier be taking in relation to the vulgar, offensive and abusive language which the Minister for Industrial Affairs used in an official meeting with two members of the Injured Workers Alliance? Will the Premier insist on an apology from his Minister to Ms Ellis and Mr Barnes?

The Hon. R.I. LUCAS: I will refer the honourable member's questions to the Premier and have a reply brought back. Let me just say, first, before one just assumes that because a complainant writes to the shadow Minister for Industrial Affairs, Mr Ralph Clark, and complains—

The Hon. R.R. Roberts: The Premier.

The Hon. R.I. LUCAS: —or to the Premier or anyone else—about language that might have been used (the use of some colloquial expressions or what this person refers to as a vulgar expression), the honourable member at least ought to do the Minister the courtesy of awaiting a reply before he asks whether or not any action might be taken by the Premier about some sort of conduct code. It may be that the Minister firmly rejects, together with others in the room, the suggestion that he used the language attributed to him. Obviously, I am not in a position to make a judgment about that now.

As to the use of some of these colloquial expressions that this person has found offensive, there have been a number of recent court cases and people have had differing views about the outcome of court cases in relation to whether a particular word is, or words are, offensive to the greater number of people in the South Australian community.

I have to say that I would have a chuckle to myself if Mr Ralph Clark is complaining about the use of these phrases and words and believes that anyone who uses a phrase or a word—or indeed if the Hon. Ron Roberts is suggesting—

Members interjecting:

The Hon. R.I. LUCAS: Well, this issue has been raised in this Chamber by the Hon. Ron Roberts and Mr Ralph Clark on the basis that these words obviously have perhaps offended this person—

Members interjecting:

The Hon. R.I. LUCAS: Obviously, the Hon. Ron Roberts agrees with the constituent, who says that these words are offensive and should not be used by a Minister, if indeed the Minister used them, and that, if the Minister uses those words, some sort of disciplinary action should be taken by the Premier in relation to it. I must say that I will certainly check with the Minister. From quickly reading the letter, I understand that this person is not alleging that the Minister said this directly to whomever these people were but that he was muttering in the background whilst another conversation was going on. That is the extent of the complaint.

I can remember in this Chamber when the Hon. Barbara Wiese, in full view of a number of other people, used insensitive language to her parliamentary Leader who, in effect, blushed and went red. Whilst I would not repeat the particular language—

Members interjecting:

The Hon. R.I. LUCAS: I am just saying that the Hon. Ron Roberts is complaining about this particular language which has evidently been used by someone. All I am suggesting—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —is that members should be careful about the pot calling the kettle black in relation to any sort of complaint along these lines, because that language was recorded, as the former Minister knows—

The Hon. Barbara Wiese: It was not.

The Hon. R.I. LUCAS: It was recorded and it has been replayed in a good number of places around here, much to the

merriment of a number of members of the Labor Party who have heard the conversation.

The Hon. Carolyn Pickles: It was a private—

The Hon. R.I. LUCAS: It was not private, because it was in here: everyone heard it and it was recorded.

Members interjecting:

The Hon. R.I. LUCAS: All I am saying is that what we are getting from the Hon. Ron Roberts in relation to this issue is an alleged complaint in relation to the use of language by a particular Minister allegedly muttering in the background while some other meeting or discussion was going on between other people. If in the end the Minister indicates that he uttered a swear word—to use that phrase—or used a colloquial expression, I presume that he would not be the first Minister or member of Parliament who on occasion might have done so, whether it be in a meeting, a public place or on occasion in this Parliament.

RADIOACTIVE MATERIAL

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about nuclear waste in the Lake Eyre region.

Leave granted.

The Hon. T.G. ROBERTS: On 11 January the Federal Environmental Protection Agency sent a fax to the Department of Housing and Urban Development detailing radioactive waste shipments and stating that it included plutonium traces. I refer to this morning's *Advertiser* front page references to the timeframe, although I have asked a question about the timeframe and the carriage of important information but as yet I have not received a reply. It states:

> On 20 February the Urban Development Minister, Mr Oswald, responds, stating an environmental impact statement or public environmental report were not required, effectively approving the shipment.

That was from the Urban Development Minister. One of the time blocks on the front page of today's *Advertiser* states:

> February 28: The Premier, Mr Brown, writes to the Prime Minister, Mr Keating, saying South Australia will not accept the waste until certain assurances are given.

I refer to the letter of 28 February 1995 to the Prime Minister, in which the Premier states:

> Dear Paul—

it is a warm and friendly relationship that the Premier has with the Prime Minister—

> I refer to the Commonwealth Government's decision to move, in about late April or early May, an amount of radioactive waste from St Mary's in Sydney to Rangehead at Woomera for storage.

The letter goes on to say:

> The South Australian Government has considered the proposed method of transport and storage of the St Mary's waste. My Government does not accept the Commonwealth's decision to store the waste at Woomera Rangehead until certain assurances are given and uncertainties clarified. The Commonwealth must clarify the period of time that this, and the Lucas Heights material, will remain in 'temporary storage' pending permanent disposal.

The letter congratulated the Premier for that in another question. The letter further states:

> In addition, the South Australian Government wishes to discuss with the Commonwealth the possibility of transferring to the bunker at Woomera Rangehead some radioactive waste that is presently held in temporary storage sites in South Australia. Initially we request that officials discuss the types and quantities of waste which could be accepted for storage at the Woomera Rangehead facility.

The letter continues:

> Finally, the South Australian Government believes the prerequisite for establishing radioactive waste storage sites or repositories in the Woomera region is that the adjacent Lake Eyre region should not be considered for world heritage listing. It therefore seeks agreement with the Commonwealth that it will not proceed with the world heritage listing of the Lake Eyre region on the grounds that such a listing is inconsistent with the location of storage sites for radioactive waste on the edge of the region.

I do not think anybody could disagree with that position, but certainly members would not be arguing for that trade- off. The letter continues:

> If the Commonwealth Government is able to give these assurances to the satisfaction of the State Government, then the State Government will reconsider its position.

The letter clearly outlines that the Premier was suggesting the trade of the world heritage listing of the Lake Eyre Basin for the final repository for the nuclear waste to be at Woomera. In a Department of Defence notice of intention dated November 1994, the description of the Commonwealth radioactive waste that was to be stored at St Marys included not just the waste that has been advertised as being low level waste coming from the Lucas Heights reactor and from medical equipment for which most of us would agree storage space would have to be found and responsibilities picked up. It has been the Opposition's position that the treatment of those wastes be as close as possible to the St Marys dump rather than in South Australia.

The description of the radioactive waste also includes in its list of contaminants traces of plutonium. It is quite clear that South Australia will be the repository not only of low level nuclear wastes from our nation's programs but also of high level wastes, including plutonium. My questions are: how will the Government balance the competitive use programs of environmental protection, agriculture, mining, tourism and world heritage? Has the Government decided to trade nuclear waste dumps for the world heritage listing of the Lake Eyre region as that letter indicates?

The Hon. R.I. LUCAS: I will be pleased to refer the honourable member's letter to the Premier and bring back a reply. My best guess would be that the response would be an unequivocal 'No'. We are not into direct trades along the lines that the Hon. Mr Roberts is trying to outline to this Chamber. There are much more complex issues than that. I will refer the questions and bring back a reply.

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about the role of the Minister for Housing, Urban Development and Local Government Relations in the transfer of radioactive waste to South Australia.

Leave granted.

The Hon. M.J. ELLIOTT: In a ministerial statement made by the Premier on 21 March 1995—that is about a fortnight ago—the Premier said:

> I refer to the Federal Government's intentions to transfer radioactive waste from St Marys in Sydney to Rangehead, Woomera. I wrote to the Prime Minister on 28 February about this matter.

A little further on he states:

> In my letter to Mr Keating I made it clear that the South Australian Government will not accept the decision to store this waste at Woomera Rangehead until certain assurances are given and uncertainties clarified. At the weekend, media reports surfaced in Melbourne that this waste contained traces of plutonium. This was the first time I had any awareness of the presence of plutonium traces in this consignment of waste. As I indicated at my press conference yesterday, I have since established that in January the Common-

wealth Environment Protection Agency sent a facsimile to the South Australian Department of Housing and Urban Development about this matter.

If one looks through the rest of the ministerial statement one will see that at no stage does the Premier indicate whether or not he was aware that the Minister for Housing, Urban Development and Local Government Relations had actually signed a letter which had gone back to the Federal EPA. In fact, that letter was sent back by Mr Oswald on 20 February. In the *Advertiser* this morning Mr Oswald not only confirmed that he had signed the letter but also admitted that he had not read the 22 page facsimile that was sent by the Federal EPA to his department here in South Australia, even though I understand that the material being received was passed around among a few departments. A number of questions arise from this. They are:

1. Was the Premier made aware that it was Mr Oswald who had responded to the Federal Government's request by letter of 20 February? If so, when?

An honourable member: Was Minister Oswald aware of it?

The Hon. M.J. ELLIOTT: That is a very good question; I will get to that one, too.

2. Was he aware of that before he made that statement to the Parliament on 21 March?

3. If he was, why did he not inform the Parliament and, if he was not, why subsequently did he not inform the Parliament of the crucial role that Mr Oswald had played in this matter?

4. If Mr Oswald did not inform the Premier of his involvement, what action will the Premier take in relation to his failure to inform him?

5. If Mr Oswald did inform the Premier of his involvement, when did he do so, and why did not the Premier return to this Parliament to give us this information?

6. What will Premier do about the Minister's handling of this sensitive issue and his failure to read crucial correspondence and simply signing replies?

7. Finally, will the Premier remove the Minister from his portfolio as a consequence of this major blunder?

The Hon. R.I. LUCAS: I will refer these questions to the Premier and bring back a reply. I can refer immediately to some aspects. One is that in the Premier's ministerial statement of 21 March he makes it quite clear—which in effect answers a number of the questions that the honourable member has raised—that:

> At the weekend media reports surfaced in Melbourne that this waste contained traces of plutonium. This was the first time I had any awareness of the presence of plutonium traces in this consignment of waste.

That makes it clear in response to a number of the questions that the honourable member has asked about the knowledge that the Premier had in relation to this. He made that quite clear in that ministerial statement on 21 March, and I have quoted directly from his statement there. I at least give the honourable member credit: he does refer to some of the other aspects of that ministerial statement—

The Hon. M.J. Elliott: I actually read that bit.

The Hon. R.I. LUCAS: No; I am talking about another bit now—which were not immediately apparent if one read the front page story in the *Advertiser* this morning, because the Premier himself referred to this document or facsimile when he said:

> As I indicated at my press conference yesterday, I have since established that in January the Commonwealth Environment Protection Authority sent a facsimile to the South Department of Housing and Urban Development about this matter. Several aspects of that communication seriously concern me. The Department of Housing and Urban Development has not been the central South Australian agency handling this matter. The facsimile was not even sent to the Chief Executive Officer of that department. Its covering note stated:
>
> > Defence were unable [to] give me the name of who in the South Australian Government they have been liaising with. I have not given up and will try again.
>
> This is despite the fact that South Australia has clearly established lines of communication involving the Department of the Premier and Cabinet and the Health Commission for dealing with this matter. With the covering page of this facsimile was a Department of Defence document with the title 'Removal of radioactive waste from St Marys in Sydney to Safe Interim Storage at the Woomera Rangehead Site.' This is a 22 page document about a proposal to deal with waste storage by the Defence Department at St Marys since 1979. There is one reference only in this document to the waste containing traces of plutonium. There is no further information about the source of these traces or their activity level.

So, I think that does place in perspective some of the questions the honourable member is raising, and indeed places in perspective some of the aspects of the front page story in the morning paper, because clearly the Premier had referred to this particular facsimile. He has placed in the context of that 22 page document any reference to plutonium. As I said at the outset, he has made it clear as to the particular date he first became aware of traces of plutonium being in this consignment of waste.

The Hon. M.J. ELLIOTT: As a supplementary question, does the Minister himself have any direct knowledge as to when the Premier became aware that Mr Oswald had been personally involved in this matter?

The Hon. R.I. LUCAS: That is a bizarre question. I have just answered the question indicating when the Premier became aware. I do not have any responsibilities for plutonium, nuclear waste or any aspect of this particular matter. I have indicated I will refer the matter to the Premier and bring back a reply in relation to any aspects of the questions that I have not already adequately answered.

MEAT HYGIENE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Primary Industries in another place this day on the subject of meat hygiene.

Leave granted.

COLLINSVILLE MERINO STUD

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about racist comments with regard to the Collinsville Merino Stud.

Leave granted.

The Hon. BERNICE PFITZNER: I have been increasingly concerned with the Opposition's attacks, first on people of Asian/Chinese background making donations of funds to the Liberal Party, and now in supporting an inaccurate media report. This report is in relation to the South Australian world renowned Collinsville merino stud. The Treasurer is alleged to have said to a prospective buyer, a Mr Wickham, that the sale of the stud was on the condition that the business had no Chinese partners. That statement, as the Treasurer's media release states, is a scurrilous claim coming from an unsuccessful bidder. To explain further, first, the Treasurer has

always attended numerous Asian functions at my invitation—Chinese, Vietnamese and Indian.

The Hon. Anne Levy: We had this question on Tuesday.

The Hon. BERNICE PFITZNER: It is a different question. During those functions he has shown his empathy, ease of communication with and enjoyment of the company of people of ethnic Asian backgrounds. Some such functions have been the Chinese New Year, the Vietnamese autumn festival and the opening of the Buddhist temple. As the Deputy Premier, the status he brings to these functions is considerable and greatly appreciated.

With regard to the allegation, the actual statement was that he was absolutely adamant that Collinsville should remain as a key South Australian breeding establishment, and this conversation was in the context of Mr Wickham's going to China the next day. It was the Treasurer's concern to ensure that South Australian, and Australian, breeders would retain access to this world famous breeding stock.

It is with great disappointment that I note that this question was raised by the Hon. Mr Mario Feleppa, an ethic of Italian origin himself, and a person for whom I have had great respect. I understand that the Hon. Mr Feleppa's question has been communicated to the SBS media and to the Asian community with the omission of a response from the Treasurer. However, some of the community are now wondering whether the Hon. Mr Feleppa has raised this issue for political gain. Further, they report that untold damage has been done by raising this inaccurate and erroneous inquiry implying that a racist comment has been made. The local Chinese community has reported that, even if the allegation is inaccurate, some mud has stuck, and a loss of confidence by the Chinese business community has now resulted, a confidence that the Premier has been working so hard to establish in order to attract investments to this cash-strapped State.

Members interjecting:

The PRESIDENT: Order! The question will be heard in silence.

The Hon. Anne Levy: Even if it's got—

The PRESIDENT: Order!

The Hon. BERNICE PFITZNER: My questions to the Minister are:

1. What steps will the Government now take to reassure investors of Asian origin that such allegations are totally incorrect?

2. If the Opposition has no concept—

Members interjecting:

The PRESIDENT: Order! All of you.

The Hon. BERNICE PFITZNER: —of the untold damage that such inaccurate questions can cause, would it be a positive step for the Premier's office to provide the Opposition with some education on the subject?

3. Do Opposition members realise they are damaging the bonds of friendship and goodwill between South Australia and Asia that the Premier and this Government have worked so hard to foster and establish?

Members interjecting:

The PRESIDENT: Order! Once again we have a question containing a considerable amount of opinion.

Members interjecting:

The PRESIDENT: Order! I have ruled it out of order before and I will rule it out of order again.

The Hon. R.I. LUCAS: I understand and share the concerns the honourable member has about the issues that she has addressed in this question. She has expressed her concern to me on a number of occasions at the disappointing approach that has been adopted by members of the Opposition in the Labor Party in relation to a number of these issues. Certainly, any potential effects on the important trading relationship that South Australia has with South-East Asian countries or South-East Asian investors would be regretted. This particular approach is obviously part of a deliberate strategy by the Labor Party to seek to undermine the positive trading relationship that the new Government, the Premier and the Minister for Industry, Manufacturing, Small Business and Regional Development (Mr Olsen) have been seeking so hard over the past 12 to 15 months to establish. It is important for South Australia's future that we do have a positive relationship with South-East Asian countries and investors.

I share the concern of the honourable member in relation to this matter. I will certainly take up the issue with other Ministers, such as the Treasurer, in relation to possible education programs for members of the Opposition or, indeed, information programs for members of the Opposition to assist them in understanding the importance of this relationship between South Australia and our South-East Asian investors and, sadly, the potential damage that their continuing attacks may well cause to that relationship.

The Hon. M.S. FELEPPA: I seek leave to make a personal explanation.

Leave granted.

The Hon. M.S. FELEPPA: I feel offended by the belief of Dr Pfitzner, an honourable member, that I raised this question to score political points. I am on record that it has never been my personal approach to Question Time, or to any debate in which I have participated in this Council, to speak in such a way that I could be accused of political point-scoring. I raised the question referred to because people approached me, as they perhaps approached many others, including yourself, Doctor. I believe it was legitimate of me to raise the question in the way in which I did so as to provide the Minister and the Deputy Premier with an opportunity to clarify whether or not the Deputy Premier said what he has been accused of saying.

ROLLERBLADES AND SKATEBOARDS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport a question about rollerblades and skateboards.

Leave granted.

The Hon. M.S. FELEPPA: In November last year I asked a question about the use of rollerblades and skateboards on public roads. The *Advertiser* of Tuesday 28 March this year reported again that rollerblade daredevils were using Mount Barker Road, between Eagle on the Hill and the Old Toll Gate, for 80 kilometres per hour rollerblade runs, putting themselves and other people at risk. According to the report in the *Advertiser*, 30 000 vehicles use that road every day and the motorists are put under enormous strain. They are further put at risk by the rollerblade runs. The rollerbladers could be the cause of accidents to themselves and the motorists if they are not stopped as quickly as possible. The Minister indicated, when I first asked the question some time ago, 'Legislation will be ready quite soon.' Will the Minister treat the Bill as urgent in light of this newspaper report and fast track it into law before there is a serious accident, as that could happen at any time?

The Hon. DIANA LAIDLAW: I had hoped that the legislation would have been introduced, debated and passed by this stage. Earlier this year I was asked by the Local Government Association to reconvene the working party to look at the issue of limited liability, and I did that. I would like to introduce that legislation next week so that members can look at it during the break before the session of Parliament reconvening in June. In the meantime, the legislation that has been developed and discussed with the Local Government Association, the RAA, and groups representing the older and younger people in the community, including the police, recommends that the Parliament agree that on minor roads and on footpaths rollerblades can be used, but not on all carriageways and roadways. Therefore, the case of young people, to which the honourable member referred, skating on the freeway is illegal at the present time and would be illegal under the Bill I will be introducing into Parliament next week.

COMMONWEALTH-STATE RELATIONS

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about the recent agreement on the development of a multi-million dollar investment strategy for South Australia that will be developed under a major Federal and State Government initiative.

Leave granted.

The Hon. T. CROTHERS: Recently it was made public that the Federal and State Governments have agreed that, in conjunction with representatives from both business and the community, an investment strategy for South Australia would be developed and be in place in about five months' time. Key projects for the consideration of that stratagem, without being exhaustive about the matter, would include the building on Adelaide's reputation as a university city through improved education and research facilities; extending the Adelaide Airport's runway and upgrading the terminal; upgrading the South-Eastern Freeway and the Mount Barker Road; improving water quality for market gardens in Adelaide's north and south; improving transport links between the Islington railway workshops and the Port Adelaide dockyards; and others.

One often reads or hears media reports which suggest that there exists a total break down in relations between the current State and Federal Governments. If true, this could result in problems for the State of South Australia, though according to this latest report on both Governments' cooperation in respect of the major project I have named the opposite would appear to be the case. To set the record straight, I now direct the following questions to the Minister representing the Premier in another place:

1. Does he agree that this cooperation between the two Governments in these vital and major projects is of absolute importance to the future of South Australia?

2. As I have already paid tribute to the Minister and his Government for their diligence, is he therefore prepared to place on record his Government's appreciation of the Federal Government's assistance in respect of the South Australian projects on which agreement has recently been reached between our own State Government and the Federal Government?

The Hon. R.I. LUCAS: As I have said before, this Government is right into cooperation, and certainly we are more than prepared to continue cooperative action with any Government, indeed, the Commonwealth Government, for the betterment of South Australians. In relation to any aspect of the investment strategy or related issues to which the honourable member refers where there has been agreement and cooperation between the Commonwealth and the State, I am sure that the appropriate Ministers or indeed the Premier would be more than pleased—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: Yes—to indicate both publicly and privately their support for any cooperation they might perceive from the Commonwealth. It may well be that there is still some hard bargaining and negotiations over funding levels.

The Hon. T. Crothers: I did not ask that.

The Hon. R.I. LUCAS: Sure; I understand the honourable member's question. I think we would all bear that in mind. We have seen a level of cooperation between the Commonwealth and the State in other areas over the past 15 months to the mutual advantage of both governments but more importantly to the advantage of South Australians. We have seen it in the work that the Minister for Industry, Manufacturing, Small Business and Regional Development has been doing cooperatively with the Commonwealth in the area of the MFP, and other industry related matters such as that. Certainly the South Australian Government is more than prepared to continue to cooperate and collaborate with the Commonwealth Government where there is mutual advantage and an advantage for South Australian citizens. If there is any aspect of the honourable member's question that I have not addressed fairly or adequately, I will be prepared to bring back a further reply from the Minister involved.

TAXIS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before directing questions to the Minister for Transport on the taxi industry.

Leave granted.

The Hon. T.G. CAMERON: In the *Financial Review* dated 8 February 1995, in an article on the taxi industry, it was stated:

> The regulation of the taxi industry is often inequitable, has restrictive consumer choice, has reduced product diversity and has sheltered the market from the dynamic forces of innovation and competition.

We often hear—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Just wait and listen. We often hear from members opposite about the need for microeconomic reform, the advantages to consumers of the competitive marketplace and the need to free industry and business from over-regulation by the Government. The objective or mission of the Passenger Transport Act is to manage a passenger transport service in the public interest—I repeat, public interest. It was also the prime objective of the Metropolitan Taxi Cab Act. The new Act goes further because in section 20 it directs the Passenger Transport Board to act in the public interest. This is the prime directive to the board.

In 1995 the number of licences per head of population is even less than it was in 1974, and we are amongst the lowest in Australia. The value of taxi licences issued in greater metropolitan Adelaide has risen from $85 000 in 1991 to $145 000 in 1994. During this time the number of taxi licence

holders, who lease their plates or licences to operators, has grown to approximately 420. This represents about 50 per cent of the general taxi licences issued. The going rate for a lease is about $350 per week—$7.6 million per year for the industry. In other words, leasing has introduced an artificial cost structure into the industry that ultimately costs the public $7.6 million per annum just for the right for half of the industry to operate. If half of the industry successfully operates by paying $7.6 million in lease fees, the other half is probably receiving $7.6 million too much in tariffs. These licences have achieved a return to the licence holder of approximately 30 per cent over the past three years. A range of complaints has been brought to my attention that time does not permit me to elaborate now, but I am more than happy to give the Minister those details later.

The system appears to be failing after only eight months of operation. I understand that a member of the Taxi Industry Advisory Panel has been threatened with litigation under section 12 of the Act for attempting to debate these issues publicly. My questions to the Minister are:

1. The Passenger Transport Act is very positive in its primary purpose of running a transport system in the public interest. The Act goes further and makes a primary directive to the Passenger Transport Board to act in the public interest. How is the Act working, and is it operating in the public interest?

2. When the Minister was introducing the Bill, she said that it would cut down on the amount of regulation and red tape. Has it done this? If so, what about all the new regulations covering radio service companies?

3. A recent report to the taxi industry by the Passenger Transport Board says that the Minister and the board have adopted as policy the taxi industry proposition that the leasing of taxi licences would be supported, as it has been in the past. Is this policy in the best interests of the public?

4. Now that 50 per cent of all general taxi licences have been leased for about $350 per week, it means that half of the industry is paying $7.6 million per annum just for the right to work. The consumer ultimately pays for this artificial cost structure. Can this be justified as being in the public interest?

The Hon. DIANA LAIDLAW: The honourable member has asked a series of important questions. I recall that a few weeks ago the Hon. Sandra Kanck asked a question about the taxi industry that advocated totally the opposite proposition for which the honourable member is arguing. She said no more licences. In reply, I indicated that I had received representations similar to or the same as those to which the honourable member has referred advocating that there be more licences.

The industry is divided in its views on whether the Government should be advocating fewer, the same number, the *status quo* or more licences and, if more, how many more. I have received representations from the South Australian Taxi Association advocating 10 more licences on an annual basis. I received a copy of the submission that the South Australian Taxi Association sent to the Passenger Transport Board. That submission is now being considered by the board, and I shall shortly be receiving the board's recommendations. There is a division of opinion in an industry that one could calmly say is a hothouse of opinion when it comes to taxi plate issues.

As regards deregulation, the Hillmer report last year or the year before recommended that the taxi industry as a whole be deregulated. I do not recall that one State Government at the time agreed to that recommendation, and Mr Keating and his colleagues in the Federal Government have since indicated that the taxi industry will not be debated at COAG in terms of the recommendations of the Hillmer report. The taxi industry has been given an exemption in that sense, unlike any other industry. Because of that, and it is certainly my view, the taxi industry is on notice that, if it has been given exemption under COAG's response to the Hillmer report, it has to prove to the community, the Government and the Opposition that it is a responsible and mature industry working in the public interest. Sometimes one questions whether that is its attitude to its role in life, but I keep reminding the industry, every time we have an hysterical response from it to any propositions for change or for service improvements, that deregulation is not contemplated. However, in return we expect a code of business practice and ethics which is better than we could expect from any other industry. I have yet to see it.

The issue of leasing is questionable in terms of the public interest. That issue was introduced by the Metropolitan Taxi Cab Board about four or five years ago. Initially, every taxi owner was required to be responsible for driving a taxi for at least two years. When leasing was introduced, that provision was dropped. Therefore, today we have many owners who are in a sense absentee landlords with no commitment to the industry charging drivers $350 per week, which is a very high price compared with the going price in Melbourne, in particular, which is about $280 per week. That has put the industry here under more intense pressure. Certainly it needs more work each week to return to the owner the lease fee that he is required to pay compared with the work that he would have to undertake in Melbourne. It is clear that in South Australia the price remains at $350 because people are prepared to pay it. It is not a price that is set by the Government. If we had more licences, it is argued that the leasing price could go down, and certainly the plate price would also go down.

As I have indicated, that matter is being considered by the Passenger Transport Board. The former Government introduced 15 more licences a year for three years and, initially, with deregulation of the hire car industry, the taxis plate value fell from about $120 000 to $90 000. It is now back to $140 000 a year, so the steady introduction of new vehicles to the industry has not upset the plate price or the investment that owners have made in the industry. However, the issue of leasing has, and that is a matter that I have asked the Passenger Transport Board to review. While I would probably like to go back to the situation where all owners were required to drive their vehicles at least for some period of time, I suspect that it would be very difficult to introduce that on a retrospective basis or to reintroduce it. However, it will be one matter that is considered by the Passenger Transport Board in its review of this practice.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

At 3.18 p.m. the following recommendations of the conference were reported to the Council.

As to Amendments Nos 1 to 3:

That the House of Assembly do not further insist on these Amendments.

As to Amendment No. 5:

That the House of Assembly do not further insist on its Amendment but make the following consequential amendment—

Clause 10, page 7, after line 18—Insert—

(7) A person must not publish by newspaper, radio or television a statement or representation—

(a) by which the identity of a person who is, or has been, the subject of proceedings under this section (the 'patient') is revealed; or

(b) from which the identity of a person who is, or has been, the subject of proceedings under this section (the 'patient') might be inferred.

Penalty: $10 000.

(8) Subsection (7)—

(a) ceases to apply if or when the patient recovers and then gives his or her consent to the publication of the information; or

(b) ceases to apply after the death of the patient.

(9) In subsection (7)—

'newspaper' includes any journal, magazine or other publication that is published daily or at periodic intervals.

and that the Legislative Council agree thereto.

As to Amendment No. 6:

That the House of Assembly do not further insist on its Amendment but make the following consequential amendments—

Clause 2, page 1, line 19—After 'this Act' insert ', other than section 14,'.

Clause 2, page 1, after line 19—Insert—

(3) Section 14 may be brought into operation after the other provisions of this Act except that if it has not been brought into operation sooner, it will, by force of this provision, come into operation six months after the commencement of this Act.

Clause 14, page 9, lines 6 and 7—Leave out subclause (2) and insert—

(2) The Minister must appoint a suitable person (referred to below as the 'Registrar') to administer the register.

Clause 14, page 9, line 9—Leave out 'accompanied by a fee prescribed by regulation'.

Clause 14, page 9, after line 10—Insert—

(3a) An application under subsection (3) must be accompanied by—

(a) a copy of the direction or power of attorney (to be held by the Registrar for the purposes of this section); and

(b) a fee prescribed by regulation.

and that the Legislative Council agree thereto.

As to Amendment No. 9:

That the House of Assembly do not further insist on its amendment.

STATUTES AMENDMENT (PAEDOPHILES) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Procedure Act 1921 and the Correctional Services Act 1982. Read a first time.

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

That this Bill be now read a second time.

It is well known that schools and other places where children are present for educational, recreational or other purposes periodically experience problems with people loitering in the vicinity of the school with no apparent business to be there. Occasionally people attempt to abduct or entice children away. For example, on inquiry, two officers of my department were able to find three attempted abductions from two schools in their local areas last year.

South Australian police keep no figures on such incidents, but have advised that in the past twelve months there may have been up to 50 instances of known paedophiles identified by police loitering near school yards. Police also advise that at present no specific authority exists for police to deal with this problem. This is clearly intolerable. The police must be given the necessary power to deal with such cases. The Government will not stand idly by while children, parents and people who work for and with children are frightened by strangers lurking about with no reason at all to be doing so. On the other hand, the powers that are given should not exceed those necessary to deal with the problem and should not be unfair or curtail individual liberty more than is necessary.

By the Crimes (Amendment) Act, No 129 of 1993, the Victorian Parliament enacted a summary offence of a person who has been found guilty of a sexually related offence loitering without reasonable excuse in or near a school, kindergarten or child care centre or any public place regularly frequented by children and in which children are present at the time of loitering. The Victorian approach has not been taken in this instance because it is relatively inflexible and reactive in nature and goes beyond what is necessary to deal with the situation. Instead, the Government has devised a legislative solution which is more directly targeted, based on a variation of the well-known restraining order model. The advantages of this approach are:

1. It is flexible—the court can tailor an order to suit the situation presented to it.

2. It is preventive—not only can police act before anything more serious occurs but, because the process is aimed at the individual, he will have very serious warning that he is under notice and that, if he continues, he will be in breach of a court order and punished.

3. It requires proof on the balance of probabilities rather than proof beyond a reasonable doubt.

4. The Victorian offence has the effect that any person convicted of a sexually related offence is liable to be arrested near a listed place for the rest of his life, whereas the scheme advocated here would allow a rehabilitated individual to present a case for variation or revocation to a court.

5. The suggested scheme is no more intrusive of civil liberties than the current system of restraining orders.

The applicable procedures and consequential provisions will be those specified in relation to ordinary restraining orders in Division 7 of the Summary Procedure Act 1921. 'Sexual offences' as defined in the Bill include rape, indecent assault, incest, sexual offences against children, child pornography, indecent behaviour and gross indecency, an offence involving child prostitution, prurient interest, and any other offence (such as homicide or abduction) which there are reasonable grounds to believe also involved the commission of one of these sexual offences. It also includes equivalent offences committed outside South Australia.

The general power will confer a wide discretion, because the circumstances to which it is directed are many and varied. It is nevertheless desirable to direct the attention of the court to factors which it should take into account in these cases. They should include:

- whether the behaviour has aroused or may arouse reasonable apprehension or fear in a child or other person;
- whether there is reason to think that the person will, unless restrained, commit a child sexual offence or act inappropriately in relation to or towards a child;
- any prior criminal record of the person;
- any evidence available as to any sexual dysfunction suffered by the person;
- any apparent pattern in the person's behaviour, any justification offered for it and any apparent connection between the behaviour and the presence of children; and

· any other matter the court thinks relevant.

Section 68(2) of the Correctional Services Act specifies the matters to which the Parole Board must have regard when fixing parole conditions. It is proposed that the list be added to by including the possibility of a parole condition which would be the equivalent of a restraining order of the kind proposed, and, as well, the possibility of a condition preventing the parolee from undertaking voluntary or remunerative work with children or at a place used for the education, care or recreation of children.

The incidence of paedophiles hanging about near places where children congregate with a view to the gratification of a prurient interest or worse, with the intention of abducting a child, may not be very high. I do not want this Bill to be carrying the message that there is an epidemic of these incidents or that communities should panic. Quite the reverse. The fact is that there is a problem; there is a gap in the law for dealing with it, and the Government proposes that the gap should be closed in an effective manner that pays respect to individual liberty. I commend the Bill to the Council. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1: Preliminary (clauses 1 to 3)

This Part includes the short title of the proposed Act, provision for commencement of the proposed Act by proclamation and the standard interpretation provision for Statutes Amendment Acts.

Part 2: Amendment of Summary Procedure Act 1921

The purpose of these amendments is to introduce a new type of restraining order that the Court may make restraining a person from loitering, without reasonable excuse, near a school, public toilet or place at which children are regularly present, while children are present (a paedophile restraining order).

Clause 4: Amendment of s. 4—Interpretation

The definition of restraining order is amended to include paedophile restraining orders. Consequently, the procedural provisions relating to the existing type of restraining orders (including provisions for the making of complaints, telephone applications and for variation or revocation of orders) will apply to paedophile restraining orders.

Treating the new orders as restraining orders will also mean that the provisions of the *Criminal Law Sentencing Act* enabling a court to impose a restraining order on sentencing an offender will extend to imposing a paedophile restraining order in appropriate circumstances.

Clause 5: Insertion of s. 99AA—Paedophile restraining orders

This clause provides that a restraining order may be made against a person found loitering near children (as defined) in the following circumstances:

· if the person has, within the previous 5 years, been found guilty of a child sexual offence (as defined); or
· if the person has, within the previous 5 years, been released from prison after serving a sentence for committing a child sexual offence (as defined); or
· if the person has loitered near children (as defined) on at least 2 occasions and is likely to do so again.

In each case the Court must be satisfied that the making of the order is appropriate in the circumstances and in determining whether to make an order and the terms of the order, the Court is required to have regard to certain factors. Consideration of these factors provides a better understanding of the purpose of this type of restraining order. The specific factors are:

· whether the defendant's behaviour has aroused, or may arouse, reasonable apprehension or fear in a child or other person;
· whether there is reason to think that the defendant may, unless restrained, commit a child sexual offence (as defined) or otherwise act inappropriately in relation to a child;
· the prior criminal record (if any) of the defendant;
· any evidence of sexual dysfunction suffered by the defendant;
· any apparent pattern in the defendant's behaviour, any apparent connection between the defendant's behaviour and the presence of children and any apparent justification for the defendant's behaviour.

The Court is empowered to tailor orders to particular circumstances (for example, limiting the order to prohibiting loitering near public toilets, if the defendant's pattern of behaviour indicates that this is the only likely source of concern) or to issue a general order prohibiting loitering near children in all circumstances.

Child sexual offence is defined broadly to include offences involving indecency or sexual misbehaviour.

Loiter near children is defined to mean loiter, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present, while children are present.

Clause 6: Amendment of s. 99D—Firearms orders

This amendment ensures that firearms orders are not an automatic adjunct of paedophile restraining orders as they are of existing restraining orders.

Part 3: Amendment of Correctional Services Act 1982

The purpose of these amendments is to require the Parole Board to consider imposing parole conditions on a prisoner released after serving a sentence for committing a child sexual offence designed to limit the general access of the prisoner to children.

Clause 7: Amendment of s. 4—Interpretation

A definition of child sexual offence is included. The definition is the same as that included in the *Summary Procedure Act*.

Clause 8: Amendment of s. 68—Conditions of release on parole

The conditions that the Board is required to consider imposing are:

· a condition preventing the prisoner from loitering near children (as defined in the *Summary Procedure Act* amendments);
· a condition preventing the prisoner from engaging in remunerative or voluntary work with children or at a place used for the education, care or recreation of children.

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

TRUSTEE (INVESTMENT POWERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 March. Page 1333.)

The Hon. T.G. CAMERON: In South Australia, as in all other States, the Trustee Act sets out a list of authorised trustee investments authorised by the South Australian Government. It is assumed that these investments are *prima facie* prudent and safe to invest in. This approach is designed to relieve trustees from the responsibility of determining whether an investment is prudent.

The main change proposed by the Government's Bill is to remove the list and adopt what is called the 'prudent person' approach to authorised trustee investments. The prudent person rule requires the trustee to act prudently, both in determining the suitability of a particular category of investment as well as when considering actual proposals for investment. Whilst I accept the criticisms directed at the legalistic approach, I have some reservations about new section 6.

The criticisms that I accept of the current Act are that it is overly bureaucratic, that it requires too much administration and, as I think the Hon. Mr Davis pointed out, it can take an inordinate time to get on the list and, once on, being on it confers some kind of financial reward for the institutions involved. It also assumes that all investments are safe, so that trustees looking at the list could form the view that any investment cited on the list was safe and in some instances I understand that some people have become confused and believed that they would have a Government guarantee. I understand that Connell's bank and Pyramid Building Society would both have been approved investments under the current Act, and we all know what happened to them.

I believe that the current list approach is unduly restrictive as it allows trustees to invest only in shares which have been

listed on the Stock Exchange and which have been paying dividends for a period of 10 years. Obviously, that would cut out a lot of listed companies that are usually regarded as blue chip investments. As the Hon. Legh Davis pointed out, it would have precluded trustees from investing in companies such as Woolworths and the Commonwealth Bank.

The list approach also precludes trustees from investing in shares or trusts in international markets. It also prevents trustees from investing in land, except if a case can be made out to show that the beneficiary wished to live on the property. It also precludes people from investing in credit unions, and the list goes on. The list approach does not necessarily take into account the length of investment; for example, under some trusts trustees may be making investments that would run for 20 to 30 years. It can be argued that the list approach is actually counterproductive to being able to establish what in financial jargon would be referred to as a balanced approach to investing, that is, a balanced portfolio. I mean that these days it is generally regarded that, for an investment to be considered safe or balanced, it is a balanced investment, that is, that there is investment in cash and/or Government securities, property and equities which would necessarily include a small component for international equities.

That approach has often been referred to as not putting all one's eggs in the one basket. There are good reasons for this approach: that is, that from time to time the financial markets do not perform as people would predict. We need look only at shares in 1987, at property in 1989 and at bonds or guaranteed investments by banks in 1994 and 1995. However, it is our view that the open-ended nature of new section 6 goes too far, and I say that notwithstanding new sections 7, 8 and 9 and the common law regarding speculative and hazard investments.

I still consider that the Bill goes too far and I foreshadow moving an amendment to that provision. For example, my interpretation—and I am open to correction by the three lawyers on the other side of the Council—is that trustees would be able to invest in futures and derivatives and be able to take out puts and calls on equities, and they would be able to engage in land development, which could be deemed to be speculative by some but not by others. I note that the Hon. Mr Lawson also expressed some concerns about that.

It would also allow investment in private companies or unlisted venture capital raisings. As I understand it, it would also allow trustees to invest in gold, diamonds, silver, perhaps rare art, or a wine collection and the like; and there would be some people who would argue that one could achieve a balanced portfolio of investments by including some of those components. It is my view that this provision in the Bill needs to be tightened, and I am particularly concerned about trustees being approached by investment advisers or people in the accounting or legal professions who may be representing people looking for venture capital to set up a new business. An examination of the prospectus might indicate that the investment is not speculative or hazardous. The trustee could invest in the private capital venture only to find out that the investment was unsuccessful and of course the losers would be the beneficiaries.

Despite those reservations and the concerns I have raised about new section 6, the Opposition supports the thrust and general direction of the new Bill. It will be less bureaucratic and it will not disadvantage certain investments over others. For example, credit unions are currently excluded under the list system, yet building societies and banks are not. The Australian Financial Institutions Commission (AFIC) was established to set and enforce the highest level of prudent standards and supervision. That system of supervision is based on the model used in nearly all OECD countries and is the same as that imposed on banks by the Reserve Bank of Australia, yet credit unions are excluded from the legal list and building societies and banks are included. I believe that one can easily make out a case that credit unions these days with the prudential supervision they are receiving are a safer investment than most if not all building societies.

Clause 7 of the Bill refers to the duties of a trustee and seeks to differentiate between a professional trustee and a non-professional or what I will refer to as a lay trustee. Under the old Act trustees were required to obtain written advice from an independent expert who was defined as a licensed financial adviser under some Act or other. So, trustees were required not only to obtain written advice from an independent expert but also in some circumstances to consider the written advice, at least yearly, from the same. Again, I agree that making this mandatory, as the old Act appears to do, is too bureaucratic and time consuming and may impose unnecessary costs on trustees, particularly lay trustees, who may be administering small trusts as compared to professional trustees and/or people whose income is normally derived from acting in that manner.

I point out that when seeking this advice trustees were also able by right to claim the costs of this advice from the trust. I think it is particularly important that a provision of that nature go back into the Act, making it a right of trustees, particularly lay trustees, to be able to claim the costs, because not everybody who ends up as a trustee of a trust has the necessary experience and/or qualifications to be administering large sums of money. Putting a reference back into the Act and allowing trustees to claim the costs of taking advice from the trust should act as a positive inducement, particularly for lay trustees, prior to making financial decisions, to go out and seek financial advice. I can accept that professional trustees may not want to avail themselves of the advice of an investment adviser, but I believe that lay trustees should be positively encouraged to do so. After all, the Bill requires them to:

> . . . exercise the care, diligence and skill that a prudent person [of]. . . business. . . would exercise in managing the affairs of other persons.

I am not precisely sure what constitutes a prudent person. There is no definition of this in the Act, although I do understand that the established law addresses the question of what it considers the word 'prudent', and consequentially a 'prudent person', to mean.

If that obligation is to be placed on lay trustees under the Act, then there should be a statutory right for those lay trustees to take advice from a licensed investment adviser. Perhaps it should be a duty. However, if trustees do seek advice, they must be able to claim as a right those expenses back from the trust. It is a fact of life that many trusts are administered by lay trustees who do not have any experience, particularly financial experience.

I would also suggest that the Government could look at guidelines for lay trustees as well. Whether it does that by way of a brochure, pamphlet or handbook I guess is up to the Government, but it seems to me that, if lay trustees are to be given expanded choice about where they will place investments and we adopt the prudent person approach, lay trustees will need guidance, and that is something that I would ask the Attorney-General to look at. My concern is that if lay trustees

do not have a duty to take advice they may well not do that, and that would be to the detriment of beneficiaries.

I also have a problem with clause 13D(1) of the new Bill. This clause allows a court, when considering an action for breach of trust arising out of or in respect of an investment by trustee where a loss has been or is expected to be sustained by the trust, to set off all or part of the loss resulting from that investment against all or part of the gain resulting from any other investment, whether in breach of the trust or not.

I submit to the Government that this is a new clause which could create real problems for beneficiaries. If it is the trustee's obligation to make a profit, why should he or she be able to avoid their responsibilities on one investment by saying that they made a profit on another, when in fact that is what they are required to do as a trustee? For example, a trustee may have breached their trust on one investment and lost 10 to 15 per cent of the capital of the trust. All other investments may, for example, be in Commonwealth bank bonds, arguably one of the safest investments that one can get. Or, it could be in blue chip equities that have earned the beneficiaries an income for the year.

Yet, this new provision in the Act would allow a judge to take the so-called safe investments income for the year and offset it against a breach of trust investment. This is hardly fair to beneficiaries, yet it would seem to be a measure which would protect an unscrupulous trustee. On the one hand, where he had committed a breach of trust and lost perhaps a substantial amount of the beneficiary's money, he would be able to point to other investments that he was managing and argue before a magistrate that he breached the trust in only one area and he acted in accordance with the Act and the trust deed in all the others. He could ask why, because he made money there and lost only a bit here, he should be penalised. A judge may well be susceptible to that argument, and that could result in a situation where a beneficiary's income for a year or two could be entirely lost. I have already raised these objections with the Attorney-General and suggested and discussed possible amendments to rectify the Australian Labor Party's concerns with the Bill.

There is one other area about which I am a little concerned, and that is retrospectivity. Once this Bill becomes law, as I understand it, although I would stand to be corrected by the legal fraternity on the other side of the fence, it could well mean that somebody's not having taken the time and trouble to establish a specific trust with a specific trustee who would then fall under the general ambit of the Act may have been quite happy with that situation, in the full knowledge that all the investments that would be invested by the trustees would be placed only in investments listed under the schedule. Individuals might have been very comfortable with that. They looked at the scheduled list and said, 'They all look fairly safe to me: banks, blue chip equities, government bonds, etc. I do not need a specific trust deed. I am quite happy to be bound by the Act.' When this change is introduced—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: No, it would not be a problem in those circumstances, although I am not sure that that is currently in the contemplation of the mind of the Attorney-General, and I can see him shaking his head, so he has confirmed it. The point I wanted to make to the Attorney-General is that, when the Bill becomes law, it could create situations where trustees could remove all the investments out of the investments that they are in, which are covered by the schedule, and place them in a whole range of new investments that was never contemplated in the minds of those who originally set up the trust. It may well be that the Attorney-General does not consider that a problem or, if it is a problem, there is some section in the Act which covers it that I have not tripped across. Apart from those concerns, the ALP supports the Bill.

I point out to the Council, if members are not aware of it, that the Bill is a culmination of an interdepartmental working party set up by the previous Attorney-General in 1987. The committee's report was circulated, as was a draft Bill, which incorporated the prudent person approach to trustee investments. I understand that this was modelled on the New Zealand legislation which, from reports and advice I have received, appears to be working quite well. This legislation has also been introduced into a number of States in North America, although to the best of my knowledge it has not been introduced into any other State in Australia.

The matter did not proceed until it was included on the COAG agenda as an area for the consideration of uniform legislation. Whether the COAG consideration of the topic of trustee investments will result in a uniform national approach remains to be seen. If one was to speculate, I would suspect there would be some difficulty in reaching a uniform national approach to this matter. I agree with the Government that the time has come to progress this matter. It is over 12 years since major reform in this area was undertaken. The matter has been considered by successive Governments in this State and it would appear that the thinking of the previous Government, and in particular the previous Attorney-General, was similar to, if not exactly the same as, that of the current Attorney-General.

I cannot see any reason why we should oppose or delay the introduction of this Bill whilst we wait for COAG to make up its mind. I can see no reason why South Australia cannot become somewhat of a pace setter in this area of legislation. If it is passed by the Parliament, it would be pace setting or ground breaking legislation, particularly for an area which has so long been viewed somewhat conservatively by all Parties. With the reservations I have outlined, I indicate at this stage that the ALP supports the Bill and I foreshadow amendments covering the areas about which I have expressed concerns.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable member for his indication of support of the second reading of this Bill. It is a progressive piece of legislation. I agree with him; we should not wait for COAG to make a decision which might enable this legislation to be enacted on a national basis, and that we ought to be proceeding with it in this State. We did set the lead 12 or so years ago when I was last Attorney-General, and we made some significant changes to the rules relating to investments on that occasion, and we are endeavouring to keep up the pace now with this Bill.

The Hon. Mr Cameron has made a number of suggestions which I am certainly prepared to consider. I did make one of my legal officers available to the Hon. Mr Cameron in order to work through some of the issues, and that is part of the approach which I generally take on legislation to facilitate consideration of the matter. As a result of that, I hope that we can resolve the issues. If there are some amendments put on file, provided they meet with the course of action with which I would be comfortable, we can see the matter progress very quickly.

I will make a couple of observations first about the issue of retrospectivity. The Hon. Mr Cameron has raised some question about whether this legislation should apply retrospectively, that is, to existing trusts, existing investments and existing trustees. I do not think there is any alternative. The fact is where there is presently a provision, say, in a will or a deed of settlement or deed of trust which provides for investment in trustee securities, authorised by the law of this State, there will not be the law of this State which contains a continuing list. Even if one were to maintain for the purposes of those existing trusts the provisions in the present Trustee Act, they will be very much out of date, even within a couple of years. They are already out of date in respect of some of the investments which are listed, and there certainly would be no intention of the Government to seek to maintain those provisions as law for the purpose of dealing with existing trusts.

In 20 years, there may still be some trusts which refer to trustee investments according to the law of South Australia reflecting back to the list system. In 20 years, I would be very surprised if many of the investments would then be either satisfactory investments or if they were even in existence. The other problem you have is that, where there are trusts taking in new moneys, should there be a division between the new moneys which are put in on trust as opposed to the old moneys which are held? You get a problem of mixing and blending and tracing. I do not think it is practical to maintain two systems. It is one or the other, and not both.

The Hon. Mr Cameron does suggest that, as a result of this legislation applying to existing trusts, where there is presently a limitation on the power of investment, it may open up a range of investments which were not in contemplation of the investor. That may be so, but I think it is something we have to live with and we have to recognise that the common law and the laws of equity relating to the investment of trustee investments are maintained so that the duties of trustees remain, the onus is on the trustee in relation to a prudent investment, and all the protections which are currently in the law remain, except there will not be a parliamentary approved list of investments which may not necessarily take the risk out of investment of trust funds, but which may give a sense of false confidence. Under the present Trustee Act, there is still a requirement for a trustee who has the responsibility for managing trust funds to ensure that there is a balance of investments, not necessarily all of the one sort of trustee investment.

Remember, too, that there are equities in which a trustee may invest, even under the existing Act. It is not a problem, I would think, because the obligations of trustees remain. The other point to be made is that many trusts are drafted, whether by will or by separate deed of trust, to provide specifically for a very wide range of investments to overcome the limitations of the Trustee Act. Any of the public trust funds, and many smaller funds, all give the trustees a wider power of investment. I know that the wills I drafted in practice—unless there was a specific request by the testator to limit the powers of investment, and there were those specific requests from time to time—generally included a broad range of powers of investment for trustees.

The honourable member has raised some concerns about trustees being able to invest in speculative or hazardous investments. It is my view that the common law is clear on this, and that trustees are not permitted to make speculative investments in the absence of specific authorisation in the trust instrument. We thought we were covering that in clause 8, which makes it clear that the rules of common law and equity imposing a duty on trustees not to invest in speculative or hazardous investments continue to apply. But, on the other hand, if the honourable member wishes to move an amendment which puts that beyond doubt I am certainly happy to accommodate that as a duty of a trustee.

The honourable member also raised the question of trustees being able to take advice at the expense of the trust, whether or not they are under a duty to take advice. This concern, I thought, had been addressed by a general provision enabling trustees to obtain and consider advice. This formulation of words is important because it is the trustee who is responsible for investment decisions. So the trustee can get the advice if he or she wishes to be advised and can consider it, but the ultimate decision is the trustee's. I again have no difficulty if the honourable member wishes to move an amendment which puts that issue beyond doubt. I have difficulty, though, going any further than authorising the trustee to take advice. I would be concerned if it were a provision which provided that the trustee must take advice. I do not think one can impose that duty because there is such a variety of trusts and various circumstances affecting trusts that to put down a mandatory obligation will be expensive and unduly restrictive for trustees.

The honourable member also raises the question of proposed section 13D, which allows gains to be set off against losses. In theory, as I understand it, the Hon. Mr Cameron has a concern that a court could exonerate an imprudent investment. I would suggest that that is not likely to be the case, and it is certainly not, given all of the long history of resolution of issues relating to trusts, considered by the courts both in the United Kingdom, from where we take our basic trustee law, and in Australia. I refer to an American case, and I understand a copy of the relevant parts of that decision have been provided to the honourable member by my legal officer. The case relates to the application of provisions which offset gains against losses and which makes quite clear that trustees are always under a duty to avoid risk. The following extract is from a case *In re Bank of New York (Spitzer)* (364 NYS 2d 164 (1974)):

> The fact that this portfolio showed substantial overall increase in total value during the accounting period does not insulate the trustee from responsibility for imprudence with respect to individual investments. . . To hold to the contrary would in effect be to ensure fiduciary immunity in an advancing market such as marked the history of the accounting period here involved. The record of any individual investment is not to be viewed exclusively, of course, as though it were in its own watertight compartment, since to some extent the individual investment decisions may properly be affected by considerations of the performance of the fund as an entity, as in the instance for example of individual investment decisions based in part on considerations of diversification of the fund or of capital transactions to achieve sound tax planning for the fund as a whole. The focus of the inquiry, however, is nonetheless on the individual security as such and factors relating to the entire portfolio are to be weighed only along with others in reviewing the prudence of the particular investment decisions.

So other investment decisions do have an impact on the imprudent investment decision, or what might subsequently prove to be an imprudent investment decision. One must look at it as a whole, but we do not excuse breach of trust just because the whole fund perhaps has made a profit. The problem is that if there is not a power given to the court to try to balance breaches of trust against other issues relevant to the trust, and a discretion given to the court—and there is a blanket rule for giving a breach of trust—it may well be that there are minor breaches of trust, for example, which are

nevertheless breaches of trust which bring their own burden for the trustee but which in ordinary circumstances, if one looked at it objectively, could be excused. It seems to me that we need to provide for the court at least a discretion which enables that balance to be achieved.

The last problem which I understand the honourable member has raised is that trustees, at least in discussion—and it is something about which I need to make some observations—have raised the issue of investment in private unlisted companies. I have a difficulty with that because many trustees may invest in private companies. I have seen, in my own professional career, families who wished to invest in an unlisted company. They may have a particular project which has been one which might involve some element of risk but which might nevertheless be something quite exciting.

Where they have had a family trust then they have been able to invest. In addition to that a family may, for the purpose of managing their estates, their assets, or even managing their tax situation use a range of family and other private trusts to invest in either unlisted private companies or other investments. I suggest that if a blanket prohibition is applied against it, away from the responsibility of the trustee to balance the nature of the investments within the portfolio, then again we end up with so much rigidity in the system that it detracts from the capacity of a trustee to invest wisely or perhaps unwisely, but nevertheless in the interests of the beneficiaries of the trust.

There may be speculative and hazardous investments even in the private unlisted company area, as there are in the public listed company area, but the common law prohibition against speculative and hazardous investments, and any amendment which might focus upon that would, I think, be a proper way of addressing this issue rather than amending the Bill to exclude one particular type of investment, which in thousands of cases around South Australia would nevertheless be the subject of investment at this present time. I thank the honourable member again for his support for the second reading of the Bill. I look forward to seeing what amendments ultimately are placed on file, but if they are consistent with the approach to which I have referred I can see no difficulty in indicating support for them at that time, but, of course, one has to wait until we see exactly what those amendments are.

Bill read a second time.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate in committee (resumed on motion).

(Continued from page 1789.)

Clause 17—'Substitution of section 43.'

The Hon. R.R. ROBERTS: The Opposition is opposed to the Government's amendment to repeal section 43 and to introduce Comcare guidelines. I understand that the Hon. Mike Elliott, in his second reading speech, referred to this clause at some length (*Hansard*, 4 April, page 1701). We support those views and congratulate the Democrats on their sentiments. We wish to put on record our opposition to the Government's position.

The Hon. M.J. ELLIOTT: I shall refer briefly to this clause, to which I referred in my second reading speech. First, I indicate that the Government did not anticipate making significant savings by this change. The actuarial figures that I saw claimed a saving of about $1 million. Most of that was in relation not to compensation to individuals but to money that was claimed to be saved in other areas. However, I read into *Hansard* some examples of the sort of compensation that would go to workers with particular injuries under the new section 43 compared with the old section 43 and third schedule. In general terms, workers with single and relatively non-serious injuries would in almost all cases receive more lump sum compensation, but workers with multiple complex injuries of a more serious nature would in many cases get less, and often significantly less.

This issue has not been gone through in great depth. It was only in the past couple of days that I was given figures which indicated how individual cases would react under the old section 43 compared with the new one. Outside this place it has been argued with me that other superannuation schemes on examination have felt that people with minor injuries were not being adequately compensated. They may have had that debate, but that is not a debate that we have had in this place; nor is it a debate that has taken place among the relevant interested parties. I would argue that such a debate should take place before we take this quite radically different step.

I indicated in my second reading speech that there were two areas under the current section 43 where I believed change was needed. I have indicated both of these areas on previous occasions. The first relates to multiple injuries. At the moment they are added in a simple arithmetic sense. I told the Government eight months ago that I did not believe that was appropriate. However, the Government brought a regulation into this place which sought to change from simple addition of compensation for those injuries, but it contained some anomalies which created serious disadvantage in some cases, and that regulation was rejected at the time. I said then that if the Government came back with a fair table I would be prepared to support it. The Government chose not to do so, and it has instead tried to tackle it by way of the Comcare tables. My offer, now of some long standing, still stands.

The second issue relates to sexual dysfunction. It appears to be generally conceded that that claim of non-economic loss is being abused. That right was established relatively recently in the courts, or the way in which it was applied, but now it is being chased vigorously and it has the potential to get out of hand. Most people to whom I have spoken concede that it is out of hand. Changing to Comcare would have rectified that situation, but the principal Act is capable of being amended in a simple way to tackle that issue as well. Again, I indicate my willingness to look at that.

A few days ago I had an opportunity to speak to the AMA, which also expressed concern about the application and working of the Comcare guidelines. I do not have my notes with me at the moment, but the AMA did express some quite serious reservations about the working of it. It is the medical practitioners who would be asked to try to make these sorts of judgments and so when the AMA says that it has concerns I think we really have to take some note of that as well. This is one of a couple of issues that the Government has raised in this Bill which deserves to be referred to the parliamentary committee that I proposed, and that is what I want to see happen at this stage.

I repeat the point that, according to the actuary, this clause will not save any significant amount of money, so I do not think that the Government can claim that there is a great imperative on this, on any grounds. I am not saying that the issues involved are not worth looking at, and whether we are sufficiently generous to people with the smaller injuries and

perhaps overly generous to others. That is something that can be argued; I am not going to take sides in that argument. But Comcare does that and until that has been argued through I think it would be wrong of this place to make what is a very radical change in the structures of the benefits of lump sum compensation.

The Hon. K.T. GRIFFIN: I hope the honourable member is not losing his sense of perspective about what is and what is not a large amount of money. A million dollars is a million dollars, and it is worth saving if at all possible.

The Hon. M.J. Elliott: I think the two things I talked about would probably save that, anyway. I am not losing my perspective.

The Hon. K.T. GRIFFIN: I am trying to put it into a perspective from the Government's point of view. Whatever system you put in place it is never perfect, and in this State we have the third schedule, the AMA guidelines and we have had employers, employees, their respective representatives and members of the tribunal complaining about the difficulty of interpreting and applying those.

The Hon. M.J. Elliott: The AMA states that the AMA guidelines are better than Comcare.

The Hon. K.T. GRIFFIN: One would expect that that would be the case if they are promulgated by the AMA.

The Hon. M.J. Elliott: It is American-owned now as far as I know.

The Hon. K.T. GRIFFIN: You know what these clubs are like. Lawyers get blamed—

An honourable member: Your's is the best one of the lot.

The Hon. K.T. GRIFFIN: I think we are all members of the best club. The fact is that whatever table and guidelines one has, there is always a sense of imperfection about them and one can find difficulties in applying or interpreting them. We preferred the Federal Comcare provisions because they were applicable federally. We did not see that there was a particular difficulty with them but since the honourable member raised the issue, particularly in his second reading speech, the Government has been giving consideration to the issue. I would suggest that we leave the clause as it is for the moment, but recognise that the Hon. Mr Elliott has some difficulties with it. The Government is diligently trying to address those, but it may be that as we finally resolve the issues in negotiation, or even at deadlock conference, there will be a different solution presented. I indicate that, as with a number of other issues, that will continue to be and will be, before the resolution of this issue, the subject of further negotiation.

Clause negatived.

Clause 18—'Incidence of liability.'

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

Page 13, line 13—After 'amended' insert:

(a) by striking out paragraphs (a) and (b) of subsection (3) and substituting the following paragraphs:

(a) if the period of incapacity is two weeks or less—for the whole period of the incapacity; or

(b) if the period of the incapacity is more than two weeks—for the first two weeks of the period of incapacity;

(b) by striking out subsection (4) and substituting the following subsection:

(4) If separate periods of incapacity commence during the course of the same calendar year (whether attributable to the same disability or not), an employer is not liable to pay compensation under subsection (3) for those periods of incapacity in excess of an amount equal to twice the worker's average weekly earnings;

(c) [Remainder of the clause to be included in this paragraph].

This amendment, in effect, brings our legislation into line with what is happening in most of the other States, where the other States require employers to pay for the first two weeks of incapacity or in some cases they also require the first $500 of medical bills, which is not required under our Act. In many cases when people are trying to compare costs between the two systems, they are not comparing apples with apples and this will actually bring the schemes closer together.

The Hon. R.R. ROBERTS: It is the intention of the Opposition to support the Government's clause in relation to this matter.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. It would impose upon employers an obligation to pay the first two weeks of income maintenance, an increase from the current provisions of section 46 of the principal Act, which require an employer to make the first one week of income maintenance payment. The latest advice is that if this amendment were carried the additional costs would be something like $5 million. The payments are also in addition to payment by employers of industry levy rates. The honourable member does not address the fact that there are no reductions in benefit levels, so that it is all very much a one-way street.

The Hon. R.R. ROBERTS: I am in some confusion with my briefing notes, and it is entirely my fault, Mr Chairman. The only explanation I can give is that this has all been done under some pressure. I have in fact informed the Committee incorrectly of the Opposition's position. We in fact intend to support the amendment as proposed by the Democrats and not the Government.

The Hon. K.T. GRIFFIN: That is a disappointment; I thought the honourable member had at last seen the light, but regrettably, no. I reiterate the point that this is very one-sided. There is increased pain for employers and there is no reduction in benefit levels for injured workers. Quite obviously both the Opposition and the Australian Democrats want to have a bob each way without being serious in this context about reductions of the burdens on employers.

Amendment carried; clause as amended passed.

New clause 18A—'Claim for compensation.'

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

Page 13, after line 14—Insert new clause as follows:

18A. Section 52 of the principal Act is amended by inserting after subsection (1)(c)(iii) the following subparagraph:

(iv) whether the medical expert has personal knowledge of the worker's workplace and, if so, the extent of that knowledge and whether the medical expert has discussed with the employer the kinds of work that might be appropriate for the worker in view of the disability.

In talking with both employers and employees the issue arose where a medical expert had to make a judgment whether or not a person could return to work, yet the medical expert had no personal knowledge of the worker's workplace. I have received complaints from employees who have been sent back to work when they said, 'If the doctor had known what the work situation and the job was, they would not have done that.' Similarly, I had employers complaining about people who were not sent back to work, saying that the workplace did have suitable work if only the doctor had taken the time to look at it.

While compared to other amendments this amendment is a second or third order issue, it is am important issue and it

could also have been picked up by way of the medical protocols that the Government had in an earlier amendment which I supported. However, where a medical expert is making a judgment about whether or not a worker can return to a workplace, they should also indicate whether or not they have personal knowledge of the worker's workplace. That then qualifies the opinion that they have formed.

Sometimes the qualification is not important because the injury is clearly so serious that it does not matter, but where the injury may perhaps be marginal the error can be made in either direction without that knowledge and, in the circumstances, it is important to know whether or not the person who made the judgment that the worker can or cannot return to work has sufficient knowledge about the workplace itself.

The Hon. K.T. GRIFFIN: The Government is prepared to indicate support for the principle in the amendment. It has some concern about the drafting of it, but that is a matter that can be taken up at an appropriate time in the future. The questions about drafting relate to issues such as what is personal knowledge and what is the timeframe within which that knowledge may have to be obtained, and is the personal knowledge about just the location of the factory, for example, or is it personal knowledge about the actual workplace within which the injured worker was working at the time of the workplace injury? There are those sorts of issues which need to be addressed but, in principle, we do not have any difficulty with the amendment.

The Hon. R.R. ROBERTS: As I understand it, the Democrats' amendment adds an extra requirement to the certificate issued by a doctor to include information about a return to work. We believe that is too cumbersome and impractical and we intend to oppose the amendment.

New clause inserted.

Clause 19—'Determination of claim.'

The Hon. R.R. ROBERTS: The Opposition opposes this clause, paragraph (a) of which seeks to delay determination of a claim until after the corporation has investigated any of the grounds on which an employer disputes the compensability of a disability. Grounds of employee dispute may not be relevant to whether or not a claim is compensable. This will only delay unreasonably determinations of claims. Employers often raise frivolous and misconceived objections to claims.

Paragraph (b) amends section 53A and 53B to allow the corporation to redetermine a claim where the original determination was made because of, or affected by, an administrative, clerical or arithmetical error. Currently section 53(7a)(d) allows for redeterminations if there has been an administrative error, provided that the redetermination was made within two weeks of the original determination. No time limit is specified within which the redetermination must be made so that, for example, someone may be on payments for two years or longer before WorkCover redetermines the claim for no reason but WorkCover's own mistake at the beginning.

The Hon. K.T. GRIFFIN: The Government's rationale for clause 19 is that it will require the corporation and later claims agents to investigate any issues that the employer has identified if the employer disputes any claim lodged before the determination is made. Consultation with employer organisations and complaints from individual employers, both to the Minister's office and the corporation, indicate that many employers believe that their concerns as to the legitimacy of claims are not being sufficiently followed up by corporation staff.

This amendment will require that the legitimate concerns of employers are investigated prior to the claim being determined. This will ensure that all issues, including local employment issues, are taken into account when the claim is determined. This proposed amendment would also allow the erroneous determinations to be corrected by a redetermination. The proposed amendment extends the grounds on which a redetermination of a claim can be made. The current subsection is extremely limiting, in that it refers only to administrative error and requires the redetermination to be made within the unrealistic timeframe of two weeks from the original determination. The corporation is aware of many cases where a redetermination could not be made where it was quite clear that the claim should never have been accepted in the first place, for example, a worker who had a claim accepted for back pain, only later to find out that the pain was due to cancer of the spine. However, the current provisions are too restricting to allow corrections to be made and have resulted in workers continuing to receive income maintenance in circumstances outside their actual entitlement. It is for those reasons that we strongly urge members to support the clause as it is.

Clause passed.

Clause 20—'Substitution of s.58B.'

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

Pages 13 and 14—Insert new clause as follows:

Amendment of s 58B—Employer's duty to provide work

20. Section 58B of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (2) the following paragraph:

(c) the worker terminated the employment after the commencement of the incapacity for work.;

(b) by striking out subsections (3), (3a) and (4).

Insert of s. 58C

20A. The following section is inserted in the principal Act after section 58B:

Notice of termination of employment to be given in certain cases

58C. (1) If a worker has suffered a compensable disability, the employer from whose employment the disability arose must not terminate the worker's employment without first giving the Corporation and the worker at least 28 days notice of the proposed termination.

Maximum penalty: $15 000

(2) However, notice of termination is not required under this section if—

(a) the employment is properly terminated on the ground of serious and wilful misconduct; or

(b) the worker is neither receiving compensation, nor participating in a rehabilitation program, for the disability; or

(c) the worker's rights to compensation for the disability have been exhausted or the time for making a claim for compensation has expired.

[In legal proceedings, the burden of establishing that an employer terminated a worker's employment on the ground of serious and wilful misconduct lies on the employer.]

The amendment adds a new paragraph (c) to section 58B(2). Several cases have been brought to my attention where an employee has knowingly and willingly left employment, for instance, having taken a separation package, and, having exhausted the package, has gone back to the employer and said, 'Because I am a WorkCover recipient I have a right to be taken back again.' That seems to be a nonsense. If the worker is already aware of the compensable injury at the time of taking the package, I do not believe they have a right to expect a lump sum package that relates to discontinuance of their work and then come back and expect to be put in the work force again. Several instances of that have been brought to my attention. It is an anomaly and it is only reasonable that it be removed.

The Hon. K.T. GRIFFIN: The honourable member's amendment is certainly better than the Act currently provides, but it does not go as far as the Government would like. The Government believes that section 58B, which concerns the continuation of employment during the period when a worker has a compensable disability, is in need of significant change to restore a proper and fair balance between the interests of employers and those of employees. The Government's proposed amendments to section 58B seek to make the changes which the Government believes are necessary to restore that balance. The amendment proposed by the Democrats does not go as far as the Government believes is necessary to ensure that we achieve a proper and fair balance. It does improve the operation of the existing section 58B by not requiring the employer to maintain employment open to the worker where the worker has terminated his or her employment after the commencement of the incapacity for work.

The Government believes that the Democrat amendments should be improved by providing a 12 month limitation for the application of subsection 58B(1). Recent Commonwealth Government responses to the Industry Commission inquiry recognised that provisions such as section 58B cannot be open ended in the way that the provision would still operate even after the Hon. Mr Elliott's amendments. For that reason we oppose his amendment and support the provision in the Bill.

The Hon. M.J. ELLIOTT: I did not comment on some other restructuring because it does not have any major legal effect, and that is that in the principal Act subsections 58B(3), (3)(a) and (4) are removed and put into a new section 58C. Essentially, they are drafting tidy-ups, but there is one change within section 58C, namely, the penalty which can be applied under what was old subsection (3). It provides that, if a worker has suffered a compensable disability, the employer from whose employment the disability arose must not terminate the worker's employment without first giving the corporation and the worker at least 28 days notice of the proposed termination. My amendment will take from $5 000 to $15 000 the penalty for any breach that occurs in those circumstances.

The Hon. R.R. ROBERTS: This clause repeals section 58B, which assures continuation of employment for injured workers and replaces it with new section 58B and enacts a new section 58C. We are opposed to new section 58B, because it significantly reduces the obligation of the employer to provide suitable alternative work or to re-employ at all. It is contradictory of the Government to say that the unfunded liability is blowing out whilst minimising the employers' obligation to re-employ the injured worker, which is the obvious way to start bringing down the costs of the workers' scheme, that is, getting injured workers back into productive work.

The Hon. M.J. ELLIOTT: I want to make a quick comment on the major thrust of the Government amendments. Essentially, employers' obligations would largely have been discharged at 12 months. I really think that is too blunt an instrument. I can understand that this would create some difficulties for some employers, particularly very small employers, in terms of some of these obligations under new section 58B, but it is an obligation with which much larger employers can cope, I would not say with complete ease, but with relative ease. What is essentially a complete removal of that obligation at 12 months is really too blunt an instrument, and I should have thought that it would be possible to tackle section 58B in other ways to treat more sensitively individual employers on a case by case basis or even to treat classes of employers in some way, but that is not what the Government is offering with this amendment.

The Hon. K.T. GRIFFIN: Even with the Australian Democrat amendment this is much too open ended. I am not conceding that what we are proposing is a blunt instrument but, if there is a basis upon which we can sort out some of the honourable member's concerns by adopting some other mechanism by which limits are put on this, we are certainly happy to explore them. It is open ended and, unless there is some means by which one can close off the benefit, it will continue to be a running sore. So, if there is a possibility that, after this has been through the first round of the Committee, we can consider the matter further, we would certainly be prepared to give further consideration to alternatives. In relation to proposed new section 58C, the Hon. Mr Elliott has talked about increasing the penalty from $5 000 to $15 000.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I cannot imagine that in nine years it has been—

The Hon. M.J. Elliott: I do not think it is too far out of the order of magnitude.

The Hon. K.T. GRIFFIN: I think the increase is quite substantial. Again, I am making the observation (and the honourable member interjected before he gave me a chance to say this) that we are prepared to consider that issue. I would suggest that it really does have to be in the context of considering whether in relation to section 58B there is a mechanism by which some caps can be put on the time period and the availability of the benefits. As I said earlier, the Federal Government itself has taken the view that there should be some limit on a provision such as section 58B; in other words, it should not be open ended. We will give some further consideration to that as we consider further the issues that the honourable member has raised.

The Hon. T.G. ROBERTS: The difficulty with new subsubsections (3)(a), (b), (c) and (d) is they weaken the obligation by employers to take up the moral obligation of looking after the employment future of the individual who has been injured. We have moved from a system that has had responsibility built into it for a two year period guaranteed back to a period of 12 months. With the introduction of this clause, there is a weakening of the whole obligation. As I said in my second reading speech, once the employer's obligation through the cultural understanding of what is required under rehabilitation and security of employment is weakened, then the underlying philosophy of the whole of the Bill remains tested. It is no wonder that people lose confidence in the other content of the Bill when it is a continuing weakening of the resolve of employers to be able to hide behind the legislative requirements that do not indicate a position other than that individuals are work units and are not a part of a company strategy to provide a well-trained, well-organised work force that is required going into the next half of the century. The problem with the whole of the Bill is its philosophical direction. It is going backwards instead of forwards.

As I said in my second reading speech, with the nature of the work and the nature of the work force, that is, a lot of part time and casual work, and a lot more women entering the work force, new section 58B—although I take the point that the Democrats are strengthening it—certainly weakens the Bill and weakens the intention of any employer who is looking towards a philosophical improvement in whole of life employment and being able to make sure that people feel

comfortable in their employ and that their employers are actually looking after their interests.

The Hon. R.R. ROBERTS: I thank the Committee for its indulgence and will conclude what I was saying. We will be opposing the Government's new section 58C and instead will be supporting the Democrat proposed new section 58C, which is the same as that of the Government, except the Democrat amendment provides for a penalty of $15 000 as a breach, whereas the Government's Bill provides for a penalty of only $5 000. It needs to be pointed out that $5 000, which has been the penalty for nearly a decade, is now out of date. We believe that $15 000 is a much more realistic penalty in these circumstances. A $5 000 fine makes it cheaper in many cases for employers to breach the section rather than follow the termination proceedings.

It is our intention to support the Democrat amendment to new section 58B, but we do have some concerns about this provision as well. The amendment would mean that an employer had no responsibility to find suitable employment for an injured worker if that worker had terminated the employment after the commencement of the incapacity for work. In some cases it would be reasonable, that is, if the worker made an informed decision to terminate the employment, knowing the consequence with regard to their compensation claim. However, many workers are coerced into terminating their employment by their employer after they are injured or resign because of misguided or wrong advice from other parties about the effect of resigning. We will support the Democrat amendment to new section 58B and proposed new section 58C, and oppose the Government's proposition.

Amendment carried.

Clause 21—'Ministerial appeal on decisions relating to exempt employers.'

The Hon. R.R. ROBERTS: The Government's proposition inserts new clause 62A which gives the Minister an absolute discretion to decide appeals about the registration, deregistration or renewal of registration of exempt employers. The Opposition is opposed to this because we feel it puts too much unfettered power in the Minister. This function is presently performed by the board of the WorkCover Corporation which should continue to do so in our opinion. This matter was canvassed widely in this place about the powers of the Minister and the powers of the board. The Opposition opposes this provision.

The Hon. K.T. GRIFFIN: I must say I have great difficulty in understanding why the Hon. Mr Roberts is opposing this. It is almost in identical form with the existing section 98A, and that was put in at the insistence of the former Labor Government. In those circumstances, I would have thought the Opposition would maintain a consistent policy position in relation to this. New section 62A does have some minor technical redrafting, but there has been no policy change in relation to it. I would hope that the Committee will agree with the amendment which is in the Bill.

The Hon. M.J. ELLIOTT: I must admit when I read new section 62A, my first reaction was like that of the Hon. Mr Roberts, with one difference. I did find out later that it was already in the Act and that the Labor Party had put it in probably nine years ago. So, having thought that I would probably oppose it, I thought since it has been in the Act for nine years, I was unlikely to oppose it.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: In relation to this, probably only by the Labor Party. That aside, the reason why it is being relocated is that changes are being proposed by the Government in relation to review. To that extent it is consequential. I would suggest that this not be put to the vote until after we have looked at the substantive issue of administrative reviews because, if there is no change there, we will have to unamend this and send it back to section 98 or wherever it was previously.

The Hon. K.T. GRIFFIN: My understanding is that it was essentially a drafting issue: not even consequential. It was the view of those who drafted the Bill that this was not sensibly part of the inner review and appeal provisions which come later in the Act.

The Hon. M.J. Elliott: That is where it was.

The Hon. K.T. GRIFFIN: That is where it was, sure. I am told that it was just a pure drafting issue and the appropriate location for it. I would suggest that we go ahead and pass it. We will recommit anyway and if, for some reason, it becomes inconsistent then we can review it the next time around. My advice is that it is purely drafting, and it was a decision that it was more appropriately placed here than in the place where 98 presently is. If there is some problem with that, I indicate to the Council that I will bring it back to ensure that it is in the proper location. I do not think anyone can quarrel with that.

The Hon. M.J. ELLIOTT: That is very fair. We accept the Attorney's generous offer at this stage and support the relocation of the clause.

Clause passed.

The ACTING CHAIRMAN: I draw to the attention of members that the next indicated amendment is a money clause.

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

Suggested new clause, Page 14, after line 22—Insert suggested new clause as follows:

Amendment of s 67—Adjustment of levy in relation to individual employers

21A.Section 67 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) the incidence or costs of claims for compensable disabilities suffered by the employer's workers (disregarding claims of a classes excluded from the ambit of this paragraph by regulation);

(b) by inserting after subsection (4) the following subsections:

(5) The corporation may establish rehabilitation and return to work programs for disabled workers on terms under which an employer who participates in the program by providing employment for disabled workers and complying with the other conditions of the scheme is entitled to reduction of the levy that would otherwise be payable by the employer on a basis set out in the scheme.

(6) The terms and conditions of a rehabilitation and return to work scheme established under subsection (5) must be promulgated by regulation.

I am attempting to give a little more flexibility to the corporation in relation to the fixing of levies than it currently has. I believe there are a number of reasons why greater flexibility may be wanted, for example, the WorkCover Corporation may decide that it wishes to encourage employers, as it is already doing through the RISE scheme, to take on injured workers who are currently in receipt of compensation. It appears to me that one tool that can be used is to allow variations in the levy of employers where they are prepared to take on injured workers.

It is an unfortunate fact of life that people, once they have been on WorkCover, find it more difficult to regain employment, and if such incentives can be used this can be an

important tool in aiding rehabilitation and return to work, and also giving a worker an opportunity to establish a work pattern which will then encourage other employers to take them on later. That is one example, but I have had a number of areas of concern raised with me including that perhaps there is not quite sufficient flexibility as things currently stand in relation to the setting of levies for the corporation.

The Hon. R.R. ROBERTS: I indicate that the Opposition will be supporting this suggested amendment.

The Hon. K.T. GRIFFIN: I will not oppose the amendment. We will let it go through but I think there will need to be some further consideration given to it. Section 67(1)(b) specifically refers to disregarding unrepresentative disabilities and secondary disabilities. The Government would prefer to have those specifically referred to in this new paragraph (b), but we do not disagree with the further exclusion from the ambit of the paragraph of other classes by regulation: maintain the *status quo* but give a further opportunity to exclude. I put that on the record so that it can be a matter that can be addressed in the discussions which will obviously take place.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Yes, that is what I am saying, and I am raising the particular issue. It looks okay, except that we would want to specifically leave in that part of existing paragraph (b) which refers to disregarding unrepresentative disabilities and secondary disabilities whilst also allowing the other classes to be excluded by regulation.

The Hon. M.J. ELLIOTT: Perhaps I should address subclause (a), which amends subclause (b) of section 67(1)(b). Concern has been expressed to me about the way secondary disabilities are currently being treated by some employers. I am told that some employers are getting the best advice possible, both medical and legal, to ensure that as many injuries as possible are deemed to be secondary disabilities. A consequence of that is that the employer's levy is not impacted upon by the injury. There are a couple of consequences of that: first, that employers who are being straight elsewhere within the same industry classification group are subsidising those employers; and, secondly, those employers are avoiding the very clear signal they are supposed to get that they need to improve work place safety because their levy is not increasing.

I am not saying that there are not classes of secondary disabilities, and I think it is possible to put secondary disabilities under a microscope and examine them in more detail. I am not saying that there are not cases when secondary disabilities should not be precluded, but I do think that precluding them as a total class is dangerous. It is being abused. I am told that 5 per cent of claims and 30 per cent of the value of claims are now under the secondary disability category. That means that an awful lot of the important messages that are supposed to be sent to employers via levies are going missing, and it means that some straight employers are being done in by the crooks.

I do not find that acceptable, and I am surprised that the employer community as a whole would tolerate that. I would have thought that if there are people within their own ranks who are responsible for costs going into the system that they would be wanting to see them challenged because it is in their best interests to do so. I make the point that it was not my intention to preclude secondary disabilities totally, but I do think that by regulation we are capable of looking at secondary disabilities in a little more detail to make sure that there is not the potential for rorting, and the evidence is quite strong that that is now happening.

The Government says that it is concerned about run-away costs, but when one realises that 30 per cent of costs are now linked directly to secondary disabilities, I would have thought the Government would be taking that very seriously as well. I hear the Government saying that it may want to delete that first part of my amendment; I would argue that it is very important, and would urge the Government to think carefully before it went down that path.

The Hon. K.T. GRIFFIN: The honourable member is not correct in some respects. Secondary disabilities are beyond the control of the employer. For example, someone may go out to post a letter and an injury may occur. In those circumstances, the employer has no control. If a degenerative condition is exacerbated by workplace activity, that, too, is beyond the control of the employer. I believe that all secondary disabilities ought to be regarded in that context. Wherever they occur, ultimately the costs are borne by the scheme and by employers. It is a question of where the responsibility should lie. It seems unreasonable that, if they are beyond the control of the employer, the employer rather than the whole scheme should carry that liability. That is the issue. I am not sure how more precisely one can draft a provision which addresses those issues. Obviously the previous Government in regarding them broadly took the view, which I think has worked reasonably well in practice, that this was the most effective way of addressing this issue.

The Hon. M.J. ELLIOTT: I repeat, there are many secondary disabilities that it might be reasonable to treat in this way. I think that the previous Government, putting in secondary disabilities, did the right thing, and I have been supportive of it. I am told that there has been an explosion in the number of claims fitting into this category, particularly of the more serious kind. People are getting the best advice that money can buy, because it is cheaper to shift people into the secondary disability category than pay the increased levies, and it is open to abuse. If the Minister doubts it, I would ask him to go away and come back when we debate this matter again tomorrow, I presume, and give us the statistics on the percentage of claims that fit into the secondary disabilities category and the value of those claims during the nine years that the scheme has been running. I think those figures will speak for themselves. I ask the Minister to do that, and he should do so before we debate this issue next time.

The Hon. K.T. GRIFFIN: Even without the request of the honourable member, I had intended to do more work on this matter and get some information. That will be put in train. I suspect that there are some other motives behind the advice that the honourable member may be getting, and we will address that issue, too.

Suggested new clause passed.

Clause 22—Insertion of section 69A.'

The Hon. R.R. ROBERTS: This clause enacts a new section 69A that allows the corporation to defer payments of an employer's levy if it is satisfied that the employer is in financial difficulty. We are opposed to this clause. We are concerned that this amendment gives a low priority to an employer's responsibility to insure for workers' compensation liability. It also raises the prospect of the general community picking up the tab for the costs of subsequent injuries.

The Hon. M.J. ELLIOTT: I was nervous about this clause. It is not the general community, but other employers,

who will pick up the tab if the levy is not paid, because the system is paid for via employer levies. I raised my concern with the Chamber of Commerce and Industry and expressed surprise that employers were not worried about it, but they insisted that they were not worried. I would expect it to be used only rarely. I do not think that the employer community generally would be too happy if it were generally used, because the rest of the employers would be providing a subsidy if the levy was not ultimately paid. Although I had some initial concern, I do not think that in terms of benefits or anything like that it is a threat to workers generally; it is a threat only to other employers. It appears that employers' representatives are willing to bear that risk, so I am not of a mind to oppose the clause.

The Hon. K.T. GRIFFIN: I think this clause recognises what is already happening. From time to time employers do get into financial difficulties, and in such circumstances they apply for a deferment of the levy. In fact, some go so far as to apply for a waiver of the levy, but I understand they do not get it. However, some already get a deferral of the levy. That can be important, because it will help the employers to recover from what might have been a difficult season in rural areas, or there may be some other reason. If they can be given some respite, they may be able to recover and go on to provide continuing employment rather than be put into liquidation or receivership. I think this clause is sensible. It recognises what is already happening and gives some legitimacy to it.

Clause passed.

Clause 23—'Repeal and substitution of Part 6.'

The Hon. M.J. ELLIOTT: Before we get to the point of moving amendments, I think it would be useful to have a debate covering this lengthy clause, which covers the next 15 pages. If we had a discussion on the general principles now, it might save time in relation to amendments and the like later. The question of review is difficult. I cannot support as a whole the model that the Government has proposed at this stage. There are sections which I find attractive and others which I do not, and I should like to indicate those now.

It seems to me that the latter half of clause 23 in relation to the Workers' Compensation Appeal Tribunal (WCAT) and conciliation which may be carried out under it in general terms does not cause great consternation, with one notable exception, and that is the question of costs. I believe that the attribution of costs which occurs under the existing Act is much fairer than what is proposed under the Government's proposed Division 12 and in relation to the WCAT and conciliation that is the biggest single deficiency there.

Also, in relation to conciliation, while we have been engaged in debate today, there have been some discussions between employer and employee representatives and I know that they are making some progress in relation to the issue of redemption. Those discussions are not concluded at this stage, but I understand that it is likely that, no matter what else, the conciliation section which is currently proposed within this clause would be necessary for it to function. The first half of this clause which relates to review itself causes me a deal of concern. I would like to have seen a review process that was quick and not too complex, but I am not at all convinced that indeed the Government has achieved that. In fact, in some areas I think the Government has made it more complex.

On my recollection of some correspondence I have received, there may be in fact some disadvantage created for workers. Employers who are deemed to be third parties may in fact be invited and treated quite differently under the review process to an injured worker. Injured workers may in fact be limited in the sorts of submissions they can make, in comparison with those which might be made by an employer. In some circumstances the employee might become the third party and it might almost swing the other way. I do not think the Government has effectively achieved what I thought was one of the goals, and that was to make things move more rapidly. The process could still take up to three months, so I do not think the clause succeeds even in the one area where it might have had some attraction.

It has also been put to me that in relation to people who go from review to the WCAT, because the WCAT will now become *de novo* hearings, it will not be a simple substitution of one for the other. The latter has the potential to be lengthy and, more importantly, quite expensive, and that would cause me grave concern if that were the case. There are some other smaller concerns. I note that the language used in the proposed new section 77 is 'the review panel is established', whereas when we talk about the tribunal, new section 87 states 'the Workers' Compensation Appeal Tribunal continues'. The implication of that is that the review panel is actually a new panel and that all present members of the panel are removed and the Government is going to appoint a totally new panel.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I wonder why you have not used the language that you have used in new section 87 in relation to the appeal tribunal, where it simply states that it continues.

The Hon. K.T. Griffin: I think that clause 28(3) addresses the issue.

The Hon. M.J. ELLIOTT: Why did you treat the review panel in that way and the tribunal in another?

The Hon. K.T. Griffin: You finish what you are saying and I will find out.

The Hon. M.J. ELLIOTT: I understand the need for a more streamlined approach, and I do see that if it can be done in a fair way it has the potential to create some advantages for workers. I understand that there is a great deal of concern from unions and the Labor Party about the change, but certainly I have been aware for some time that one of the frustrations surrounding review is that, while a person is in review, it becomes a significant hindrance in terms of the involvement of a worker in rehabilitation and return to work plans, and that is not in the best interests of anyone, including an injured worker. If there is some way that we could make review move more rapidly but still ensure that genuine justice is available to injured workers, that would be a good thing. The advice I have from a wide range of people is that they are concerned greatly that, in its current form, it does not supply real justice to injured workers.

Also, there is a suggestion that some people, particularly those with language difficulties, such as migrants and so on, would suffer significant disadvantage. This could be one of the priority issues that the committee I am proposing could look at. I have been speaking with people who I take to be of goodwill in the employee community who believe that it is possible to come back with something when Parliament resumes at the end of May which will streamline the process but still ensure that there is genuine justice in it. I must say that I am attracted to that. This is an important matter, but I do not see as great an urgency in this matter as in some of the others that are before us in this Bill.

The Hon. K.T. GRIFFIN: There is some urgency to deal with this as there is a substantial backlog. I am told that there is something like 2 500 cases in the backlog before review officers—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It won't necessarily.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: We will see about that. Different mechanisms are currently being discussed about review officers and the review processes. Putting aside that issue, the fact is that something has to be done about the backlog. It is as simple as that. It is an average of seven months for resolution and in some cases up to two years, and that is just not satisfactory. The Government acknowledges that, so it is trying to put into this process some mechanisms to speed up consideration of the issues. That is why the focus is on a documentary review, which still preserves the rights of the injured worker because there is ultimately a *de novo* hearing by the Workers' Compensation Appeal Tribunal.

So there is no prejudice to the rights of the injured worker. One has to look back to the days when WorkCover was established, nine or 10 years ago. Then it was proposed that the review officers would just deal with matters on an administrative basis and there would be no quasi-judicial or judicial determinations made. It has got out of control because the review officers regard themselves as making quasi-judicial decisions. The intention of the previous Government and the present Government was that essentially they should be making decisions of an administrative nature. But, as I say, there is no prejudice to the rights of an injured worker because there is still an independent tribunal before which any issues can be resolved. We are trying to ensure that the process is speeded up.

One of the issues that has been raised in representations is section 95A(2), which has been construed by some as suggesting that the hearing before the tribunal is not a *de novo* hearing. We are prepared to remove that even though it is presently in the Act in order to relieve the concerns that have been expressed. Although there may be some concerns about parts of what the Government is proposing, the Government is attempting genuinely to provide a better process by which disputes can be resolved. It is in everyone's interest that we try to get them resolved at the earliest possible opportunity.

I therefore hope that the Committee will agree with what is presently in the new Part 6 in clause 23 recognising, as I have said on a number of occasions and as others have reminded us, that there are to be some continuing discussions about the Bill after it has first been through the Committee and before it is recommitted or otherwise dealt with.

The Hon. R.R. ROBERTS: The Opposition is opposed to the Government's proposition in this area and I intend to put some of our thoughts on the record. I am pleased to hear that the Hon. Mr Elliott has indicated that he also opposes these provisions, and that means that we will probably not move our amendments. The Government's Bill proposes to emasculate the present review panel system which has been one of the untold success stories of the WorkCover scheme. Review panels hear in an informal way applications from workers and employers to review WorkCover decisions and applications from workers to review exempt employer decisions.

Many people are represented by lawyers but many others are represented by officials from unions and employer organisations. Others choose to represent themselves, and review officers help in ways that judges cannot. Still others still are represented by lay advocates provided by WorkCover's Employee Advocate Unit. There are no detailed pleadings as in the court and, although a minority of lawyers complain about that, it is an essential part of the user friendliness of the review system. To do them credit, most lawyers and most other people coming into the panel adapt very well to playing it by ear and dealing with issues as they arise during the hearing of evidence.

Review officers have inquisitorial powers and responsibilities to inquire into the true story, regardless of the information that the more powerful parties choose to put in front of them. They deal with applications fairly and quickly, although they often have to grant a lengthy adjournment to people awaiting medical reports that busy doctors are sometimes slow to write, sometimes for legitimate reasons and sometimes not. It must be understood that the review proceedings commence when WorkCover or an exempt employer makes a decision which they might take many months or even years to research and prepare.

The decision might be to reject or accept the claim or to stop or reduce payments on a claim that has already been accepted. It might be a decision on the amount of a lump sum assessment for permanent disability, on the amount of weekly payments to be made, or on the extent of the worker's incapacity for work. The worker or employer then has just one month to lodge the application for review and, although it is reasonable to expect the application to be lodged in that time, it is not necessarily reasonable to expect that all medical reports that will be needed to answer WorkCover's decisions can be obtained in that short time.

The overall standard of justice is high and the number of successful appeals is quite low. It would be lower still if it were not for constant amendments being made in an adult way to the Act and the regulations which always produce a new rash of test cases and delays while the outcomes are awaited. The Government's plan is to stop workers and employers having access to these cheap informal hearings.

The review panel would be preserved in name only. Review officers would be demoted to paper shufflers with such rigid time limits that new workers could never prepare a case in time to put before it a review officer. So, the review officer will often have only WorkCover's own file to consider and base the decision on. If WorkCover is able to get some sort of case together, there is no provision for hearing—the matter has to be submitted in writing. That is bad news for blue collar workers, and in many cases may be an absolute barrier to their getting justice. The Government will provide employee and employer advocates, but how many? How will they be able to get together a case in the time allowed? With no entitlement to face to face hearings, where they meet the case against them and put arguments to the review officer and have an opportunity to hear what WorkCover or the exempt employer is putting to the review officer, what sort of justice will be done?

The review officers have the power to summons people and documents under the Government's proposal but have no power to insist that people answer questions when they get them there. The parties have the power to cross-examine or test any evidence put to the review officer. At present there is no sanction for failing to tell the truth. The review officer cannot ask people to take an oath while they are relating the facts, and all interviews (as they are called) must be completed within one month of the dispute being referred to the

review officer with no power to extend time, and still no sufficient opportunity to build the case in a complex matter.

Nevertheless, workers will be penalised at the appeal tribunal for any failure to put things to the review officer by possibly not being allowed to raise those points on appeal. How many workers will be able to use the appeal system? Huge delays will develop unless the Government plans to appoint another half dozen judges, all with extensive and expensive facilities and support and all at public expense paid from consolidated revenue and not at the expense of the WorkCover Compensation Fund.

Hearings that take a few hours before the review panel will take three days before the judges, and hearings that take a day or two before a review panel will take five days or more before a judge. This will not only lead to huge delays but also will be very expensive for workers, who no longer have the guarantee of their legal costs being reimbursed under the Government's proposal.

The Government's proposal also increases the number of areas where the review panel cannot operate at all. The new area of redemption is carefully kept away from the review officer and workers have no right to go through the appeal tribunal, either. An application can be made to the tribunal, but all the judge is allowed to do is refer it to a conciliator, who has no power to adjudicate on the dispute. Compensation for non-economic loss flowing from permanent disability is now to be assessed by two doctors who, from the suggested manner of their selection, are hardly likely to agree, but justice cannot be obtained from the review panel. Disputes have to go straight to the appeal tribunal where the cost of a big trial will devour the bulk of any lump sum the worker ends up with. Is this the Government's intention? I do not think it is the Hon. Mr Elliott's intention.

The Government's plan seems quite deliberately to be to starve the injured workers into submission. This is also a constant theme of the Government's other amendments. If the Australian Democrats go along with these proposals—and I am pleased that they have said that they will not—they would have to hang their heads in shame. The preservation of benefits is meaningless unless injured workers have an effective means to enforce their entitlements in disputed cases—you cannot separate the two. The Government's proposals appear to have come from its lawyer friends who are not making as much out of the review panel system as they used to make out of a purely court based system where they could run three and five days trials in front of judges in wigs and gowns with little regard to the human beings involved.

Some lawyers have had trouble adapting to the system where informality rules and the person hearing the proceedings, that is, a review officer, freely intervenes asking his or her own questions regardless of those questions being inconvenient at the time to both parties. The Government seems also to have been advised by a bunch of sore losers who do not like workers and small employers having easy access to cheap, user friendly forums to obtain justice on small questions that would not be worth taking before a judge, with all the costs and procedural obstacles involved in that process. For those and other reasons we are opposed to the Government's proposition and thankful for the indicated support of the Democrats. As the Hon. Mr Elliott is supporting our position, it seems pointless to pursue our amendments at this stage.

Clause negatived.

The Hon. K.T. GRIFFIN: Mr Acting Chairman, I draw your attention to the state of the Council.

A quorum having been formed:

Clause 24—'Copies of medical reports.'

The Hon. R.R. ROBERTS: The Opposition opposes this clause, because it is our view that the Government has completely neglected to address the privacy issue. Subject to a prescribed fee, the clause would enable employers to receive all copies of medical reports held by the WorkCover Corporation. Experience has shown that many employers out there would be willing to abuse such an avenue to discover information about a worker. Members must bear in mind that many medical and psychiatric reports go in great detail into workers' sexual lives, family history and other relationships and, arguably, nothing that will be relevant to most employers.

On the contrary, it would represent a terrible invasion of an injured worker's privacy to allow an injured worker's medical reports to be bandied about in this way. One can trust a statutory body such as WorkCover to keep sensitive personal information confidential, and perhaps insurance companies can be relied on to some extent to keep sensitive personal information to themselves, but employers, and particularly those in small enterprises, are not subject to the same constraints.

If this clause was passed, we would soon find a flood of complaints from workers that their personal lives had been splashed all over their office or factory floors. The Labor Party and, I hope, the Democrats will not be parties to legislation that creates the risk of this happening. I ask the Committee for support in opposing this clause.

The Hon. K.T. GRIFFIN: I am really surprised about that approach, because we are trying to ensure that injured workers go back to work and that employers, who have a very important role in providing the work, can facilitate that. It seems not unreasonable that, if WorkCover has a medical report which identifies the injuries, their nature and scope, the capacity to work and the sort of work that can be done, the employer, who has an obligation under this legislation, ought to be at least familiar with that. I do not think there is any basis for asserting that this will mean that private details of the employee will be splashed around. The fact is that, if through WorkCover levies the employer contributes to the employee's entitlement to compensation and also has a responsibility to provide work for the injured worker, it seems not unreasonable that the employer ought to be in a reasonable position to be able to facilitate that progress.

The Hon. M.J. ELLIOTT: I understand the concerns raised by the Hon. Mr Roberts and I think perhaps the problem with section 107A(1) is really its breadth at this stage. I recall the freedom of information legislation debate in this place a few years ago, in which I recall the Attorney, then shadow Attorney, was involved. We established certain protections before personal information about individuals could be divulged. Personal information was one type of information that could not be divulged without the consent of an individual. That is not to deny that employers do not have a legitimate need for some understanding of the medical condition, but I do not think we are talking about an understanding of a medical condition. We are talking about reports which may be comprehensive, perhaps beyond what a employer genuinely needs to know. A genuine worker can use the medical information to ensure that they do the right thing. However, section 107A(1) as currently drafted appears to me to be broader than is necessary to give the necessary

information. I would ask the Government to respond to that. It should have been possible to be a little more prescriptive in terms of the information that is made available. Simply talking about copies of reports is too broad.

The Hon. K.T. GRIFFIN: With respect, I disagree with that. If you look at the context in which section 107A(1) is drafted, you will see that it relates to copies of reports in the corporation's possession, prepared by medical experts and (I emphasise) relevant to the worker's medical condition, their progress in rehabilitation or the extent of their incapacity for work. The fact is that if there is an application to a review officer, discovery is made and these reports are available anyway. If you do not put in some mechanism which would enable access to be given to these at an earlier stage, it encourages applications for review to gain access to the reports.

As I said earlier, the fact is if we are trying to make this scheme work, and that is to encourage a person to go back to work, provide the opportunities for a person to go back to work, and it is the employer who provides the facilities and opportunity for an injured worker to go back to work, it seems to me not unreasonable that the employer have access to these sorts of reports. As I said earlier, the employer is paying for them, in one way or another, in the process of paying levies or in other ways dealing with the particular injury. I think it is not unreasonable. I do not know how else you can constrain it, because someone will have to make a decision about any parameters which might be imposed by the legislation. What we have done is relate it to the issue of relevance. That in itself may raise a question as to whether it is or is not relevant, but at least it is not so restrictive that it will prompt unnecessary litigation in resolving technical issues. As I say, the employer can gain access to these any way at some stage during the review process.

The Hon. R.R. ROBERTS: The Attorney-General seems to be forgetting another important player in this equation. We are talking about whether a person is fit to go back to work, and I refer to the rehabilitation provider, who is quite capable of liaising with the employer in respect of what the injured worker is capable of doing. The point that the Hon. Mr Elliott made is an important one. He referred to relevance and, as this provision is laid out, it allows for the voyeur to get into information which should not necessarily be available. We recognised very early in the piece that, in the rehabilitation program, there are three or four players. The corporation obviously has the overall responsibility. The liaison and confidence that is built up between the rehabilitation provider and the injured worker is a very important part of the rehabilitation process, and we actually debated that at some length yesterday. I believe that this clause overlooks the need for confidentiality in sensitive areas as I have previously outlined. I would ask the Democrats, in particular, for their support in opposing this clause.

The Hon. M.J. ELLIOTT: You have to be very careful that you do not get paranoid about some things sometimes. Whilst I have questioned the wording of the clause, I have not questioned its intent. I think there is a legitimate ground for an employer wanting to know details of the worker's medical condition. This question of relevance is an important one. The report may be relevant, but perhaps all the information contained in it might not be. Although the problem there might be the reports themselves and how they are being written, what is actually being prepared might be the greater issue. When a medical report is being produced, issues of relevance to the needs of the corporation I suppose are important, and that might be more of an issue than whether or not it is actually being made available to employers.

There is certainly a paranoia that this will be used against workers in some way. I would also argue that in many cases it will be used in the worker's favour. We have to be a little careful and think about that. I guess the invitation I was making to the Government to start off with was: is it possible to be a little more prescriptive with this, because I was not opposing the general intent. If discovery allows the full document to be released anyway, even if you take a very strong stand against making the material available, it will all come out in the end, so I think we have to be sensible about it.

The Hon. K.T. GRIFFIN: I understood what the honourable member said earlier, that he was not opposing the intent of it. I just expressed the doubt that we would be able to find some words which would specifically narrow the access. Could I suggest that the honourable member might support this and we put it on the list as one of those matters which has to be the subject of some further discussions, as many others will be in the course of the consideration of the Bill once it has been through this stage of the Committee?

The Hon. T. CROTHERS: I rise to put another couple of matters before the Hon. Mr Elliott in support of the Opposition's position in respect of this. I take issue with the Attorney-General relative to that which he read out from his proposal, and that was the word 'relevance'. What might be relevant to me in a particular issue and relevant to him might be two matters that are so far apart as never to be able to be enjoined together. Of course, the other problem that confronted me is how you enforce that which is the prescription in respect of whether or not a part of a person's private life can be obtained or shared with some other party. Indeed, whilst I recognise that there are elements of the current Act that provide for medical reports to be conveyed to people other than the patient, in respect of the hippocratic oath in the medical profession and the doctor/patient relationship, how do you define that part of a report that might be relevant as opposed to that part of the report that might not be?

In the absence of a definition in the Act in respect of what constitutes relevance, I find fairly draconian the Government's current proposition before the Committee relative to trying to separate out, if you like, the flesh from the foul of the matter. What I find even more difficult to accept is there appears to be no penalty, even if you include a definition, with respect to enforcing the parameters of what is meant in respect of getting a determination of what relevance means in this case. I put that to the Hon. Mr Elliott. I do not think it is paranoia on the part of the Opposition to put forward this point of view. Rather, I think it is something about which all of us in this Chamber should be genuinely concerned, that we are reaching outside what is the normal tradition, custom and practice of a relationship between patient and doctor. Furthermore, we are going to enshrine in the Act a particular clause that is centred around the word 'relevance', which could be all things to all people.

So, in the absence of a very finite expression of opinion in respect of the word 'relevance', I have considerable difficulty in accepting this, even though the Attorney has given us his assurances here. The question that exercises my mind is: what force have those assurances got when it comes out into the real world? All is not sweetness and light in respect of matters compensable between employers and employees. I have seen some awful things done in the name of so-called justice when it comes to the implementation of

the Workers Compensation Bill and its provisions. I think the Hon. Mr Elliott has to some extent referred to the very loose wording of what we are considering, and I would urge him again to look at and take on board those matters that I have put before the Committee for its consideration.

The Hon. R.R. ROBERTS: I strongly assert that the only information that is relevant to an employer in this situation is the worker's capacity to perform any duties that may be available in the employer's establishment to determine whether that worker has the capacity to engage in the rehabilitation program. Information beyond that opens up the frivolous, and any information by the simple paying of a prescribed fee allows the employer to get any information about his employee which either he or someone else thinks is relevant. We make the clear point that the only information other than that provided by the rehabilitation provider's report is the capacity of that worker to perform any duties that may be available.

We think that is a very honourable position; it provides privacy and good conscience. I do not think that we are being paranoid, and I am prepared to take anyone on who says we are. We have canvassed this fairly widely, and I would hope that the Hon. Mr Elliott would change his mind on this clause but, unfortunately, we are probably too late. I indicate that we will be strongly contesting this clause in recommittal.

The Committee divided on the clause:

AYES (12)

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

NOES (9)

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

Majority of 3 for the Ayes.

Clause thus passed.

Progress reported; Committee to sit again.

[Sitting suspended from 6 to 8 p.m.]

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

That it be an instruction to the Committee of the whole Council on the Bill that it have power to consider new clauses relating to the establishment of a standing committee under the Parliamentary Committees Act 1991.

Motion carried.

Clause 25—'Worker to be supplied with copy of medical report.'

The Hon. R.R. ROBERTS: Contrary to my remarks on the previous clause, we believe it is appropriate for a worker to receive medical information and details of diagnosis about their own medical condition. It is then for the worker to choose with whom he or she will discuss that information. There is no reason why medical reports received by the relevant insurer should not be passed on immediately to the worker. Therefore, a seven-day limit is appropriate. We support the clause.

Clause passed.

Clause 26—'Dishonesty.'

The Hon. R.R. ROBERTS: We support this proposition. The provision is presumably aimed at expanding the categories of dishonesty offences to catch employers who give false statements in relation to their obligation to pay levies. The offences established by paragraphs (a), (b) and (c) already exist in the Act. It must be recognised that employers may well be dishonest about facts which are used to calculate their levy entitlement, and this type of behaviour would not be caught by the existing paragraphs. Therefore, we are happy to support the clause.

Clause passed.

Clause 27—'Repeal of schedule 3.'

The Hon. R.R. ROBERTS: This is consequential on earlier discussions in relation to section 43. The table for lump sum compensation must stay. We oppose the clause.

The Hon. M.J. ELLIOTT: As this is consequential, I, too, oppose it.

Clause negatived.

Clause 28—'Transitional provisions.'

The Hon. R.R. ROBERTS: Again we will be supporting this. We will not oppose the transitional provisions set out in the Government's amending Bill, as they are not unreasonable. I note that there are references in subclauses (3) and (4) to conciliators. We may need to look at this aspect of the clause in recommittal, depending on how the earlier provisions shape up. It is our intention to support it at this stage.

The Hon. K.T. GRIFFIN: We will be having a look at this in the light of the changes made to section 35, but only from a perspective of consistency from a drafting point of view.

Clause passed.

Clause 15—'Substitution of s.42.'

The Hon. R.R. ROBERTS: We will be opposing the Government's clause 15. The commutation provisions have been working reasonably well. Commutation is the capitalisation of income maintenance payments which are expected to be made to a worker based on the actuarial calculations. There are many situations where this is a useful option for both the worker and the corporation, or the relevant insurance company. Administration of payments is obviously made easier. For the worker, a capital sum is received which can be used to pay off debts or start a business to enable the worker to be financially self-sufficient. In situations where redemption is not available to a worker, commutation may still be mutually beneficial. We are opposed to the Government's clause.

The Hon. K.T. GRIFFIN: My understanding is, having approved clause 16, we need to persist with clause 15 and the repeal of section 42 of the principal Act. It seems to me that that is an appropriate course to follow.

The Hon. M.J. ELLIOTT: I do not believe that clauses 15 and 16 cannot exist side by side. Certainly with the original proposal I had for redemption there were some cases when commutation would have been more appropriate and some cases when redemption would have been more appropriate. We do not yet know what the model of redemption is that may be brought back to us and, in those circumstances, at this stage I believe that section 42 of the principal Act should remain and, as such, this particular clause should be opposed.

The Hon. K.T. GRIFFIN: I would ask honourable members to think about it. Redemption provisions which we have now enacted in clause 16 are all embracing: they cover commutation and redemption. I am advised that as a matter of consistency clause 15 ought to be supported. Section 42 deals with commutation but it is now subsumed by the redemption provisions which we enacted this afternoon.

Clause negatived.

Schedule.

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

After clause 28, insert Schedule as follows:

SCHEDULE 1

Amendment of Parliamentary Committees Act 1991

1. The Parliamentary Committees Act 1991 is amended—

(a) by striking out the definition of 'Committee' from section 3 and substituting the following definition:

'Committee' means—

(a) the Economic and Finance Committee; or

(b) the Environment, Resources and Development Committee; or

(c) the Legislative Review Committee; or

(d) the Public Works Committee; or

(e) the Social Development Committee; or

(f) the Statutory Authorities Review Committee; or

(g) the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation.

(b) by inserting after section 15C of the principal Act the following Part:

PART 5B

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

DIVISION 1—ESTABLISHMENT AND MEMBERSHIP OF COMMITTEE

Establishment of Committee

15D. The Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation is established as a parliamentary committee.

Membership of the Committee

15E.(1) The Committee consists of six members.

(2) Three members of the Committee must be members of the House of Assembly appointed by the House of Assembly and three must be members of the Legislative Council appointed by the Legislative Council.

(3) The members of the Committee are not entitled to remuneration for their work as members of the Committee.

DIVISION 2—FUNCTIONS OF COMMITTEE

Functions of the Committee

15F. The functions of the Committee are—

(a) to keep the administration and operation of the Occupational Health, Safety and Welfare Act 1986, the Workers Rehabilitation and Compensation Act 1986, and other legislation affecting occupational health, safety or welfare, or occupational rehabilitation or compensation, under continuous review; and

(b) to examine and make recommendations to the Executive and to Parliament about proposed regulations under any of the legislation mentioned in paragraph (a), and in particular regulations that may allow for the performance of statutory functions by private bodies or persons; and

(c) to perform other functions assigned to the Committee under this or any other Act or by resolution of either House of Parliament.

I discussed during the second reading stage why I felt that a parliamentary committee was necessary. I suppose there could be some argument about what form it should take, but certainly I have spoken to a number of people on all sides of this issue who see some merit in this. I think most importantly a parliamentary committee has the capacity to at least diffuse some of the Party politics which surround this issue. Once people sit around the table, many parliamentary committees—not all—do manage to work in a relatively Party political neutral fashion and treat issues quite impartially. A number of issues which have been addressed but which may not be passed do deserve further attention. I for one do not want to see another WorkCover Bill with the politics that has surrounded the last two, because I really feel that the whole process has been a very destructive one.

I am also keen to see a parliamentary committee oversee outsourcing. As it proceeds over the next couple of years it is important that a very close scrutiny be kept upon it and how it proceeds. The Government has already acknowledged that there will be a three year sunset clause on the regulation in relation to outsourcing and there will need to be a recommendation about a year out as to whether or not outsourcing may continue. So, that is a role that the committee would also play. It then becomes a question as to what form this committee should take. I certainly have the view that it should be a committee of the two Houses, similar to many of our standing committees—three members from the Upper House and three members from the Lower House, and there will be a balance of the Parties composed within them. Although I have moved that it be set up under the Parliamentary Committees Act I expect and hope that it would not meet on a weekly basis, and it is certainly not my intention that there should be remuneration linked to this committee.

I do not see it requiring the same sort of resourcing that the other committees do, either. As I said, there may be other models but I think this is as good as any, with those provisos that I have surrounded it with. It can keep a watching brief on all issues which surround occupational health and safety, rehabilitation and compensation. I certainly want to see how the proposed rehabilitation protocols that are now being established under this Bill work. I am also keen to see an increased emphasis put on occupational health and safety. It has been talked about for a while and the committee's keeping a close monitoring eye on that can also be highly valuable. I urge all members in this place to support the schedule.

The Hon. K.T. GRIFFIN: The Government does not support the establishment of another standing committee of the Parliament, notwithstanding that there is a specific provision that its members will not be entitled to remuneration for their work as members of the committee. There are already two advisory committees established under the Act. There is the Workers' Rehabilitation and Compensation Advisory Committee and the Occupational Health, Safety and Welfare Advisory Committee, and the functions of the committee are quite broad: to advise the Minister on the formulation and implementation of policies relating to workers' rehabilitation and compensation; to advise the Minister, on its own initiative or at the request of the Minister, on proposals to make amendments to the Act or to make regulations under the Act and other legislative proposals that may affect the operation of the Act; to investigate work-related injury and disease; to report to the Minister on its own initiative or at the request of the Minister on any other matter relating to workers' rehabilitation and compensation; and to carry out other functions assigned to the advisory committee by the Minister, and then it has a wide range of responsibilities and opportunities to initiate action.

The Government does not want yet another standing committee. There are already six standing committees of the Parliament and, of course, an opportunity to have select committees on an *ad hoc* basis on particular issues. It may be that after a year or so some members may wish to have this matter considered by an *ad hoc* committee. I would suggest that, if one sets up a permanent standing committee of the Parliament, even the monitoring function will be an ongoing and regular responsibility, and I do not think that it will get away with meeting only infrequently: there will have to be a level of conscientiousness to service this committee. The Government understands why the Australian Democrats want it, but it is not prepared to support it.

The Hon. R.R. ROBERTS: The Opposition supports this schedule. It amends the Parliamentary Committees Act to

ensure that there will be a standing committee to review WorkCover issues from time to time, and the Opposition fully supports that concept. We have informally suggested that an inquiry or a select committee into WorkCover would have been more appropriate than the Government's barging ahead with a host of repugnant provisions. We were lobbied, and the view of the Law Society was very strongly in favour of an inquiry or a select committee process. As it turns out, the best we can do is to follow the Democrats' suggestion and set up a parliamentary committee.

It has been my personal view for some time that a proper inquiry into the way in which WorkCover is run probably would have avoided this long and arduous, sometimes amateurish and repugnant, system that we have gone through over the past three or four months to get to where we are today, which has led to this shambles that we are going through here trying to rush this legislation through in the dying hours of this Parliament. Setting up this committee is a good thing because, the next time this Government wants to hack into injured workers' rights, we will be able to take guidance from the deliberations of a bipartisan committee rather than trying to bulldoze a reform through after carrying out shabby and token consultation processes.

I think this is a worthwhile project. I feel that the Hon. Mr Elliott underrates this committee to some extent. Whilst I certainly do not advocate that the committee must be paid, I believe that, in order to do a proper job, it must be adequately resourced because, as the Attorney-General pointed out in his commentary, it could meet every week on some matters. If that is the case, clearly that is an argument in favour of setting up the committee. When the committee gets under way, it will be necessary to provide research and secretarial skills from time to time at least to make it a proper committee to provide proper scrutiny of this important area which affects the working lives of most South Australians. It may eliminate some of the undue hardship and it may eliminate the need to keep coming backwards and forwards to this place to tinker around the edges with what is now, even at the end of these deliberations, in my opinion somewhat of a dog's breakfast. In some cases it will be a litigant's nightmare. I am fully supportive of a standing committee to keep an eye on the likes of the Hon. Mr Redford and his colleagues opposite.

The Hon. K.T. GRIFFIN: The dog's breakfast may not be particularly palatable to the honourable member opposite, because it does try to get some rationality into a very difficult system. I know that the honourable member has to play to his constituency and make a few so called powerful remarks in the closing stages of the Committee debate. He has got to get them on the public record and make all sorts of emotive statements and use words like 'shambles' or however else he wants to describe the situation.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You have been the one who has been largely behind the creation of the state of apparent chaos. The fact is, you have organised rallies and bused people in; you could not get them in any other way than by busing them in. The honourable member has to play to his constituency and get a few emotive remarks on the record.

Members interjecting:

The Hon. K.T. GRIFFIN: The truth does not hurt me.

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: The fact is, we have been working through the parliamentary process and it is going to continue. Even in the last few days we have offered members opposite the opportunity to sit after Easter, if they want more time, but I do not think they want to be here after Easter. They want to get the issues resolved.

Members interjecting:

The Hon. K.T. GRIFFIN: I am perfectly relaxed. We brought in this consolidated Bill with some amendments that we acknowledged should be made in an effort to reach a compromise and to facilitate consideration of the process. That is the way it ought to be. We have to expect on these highly emotional subjects that there will be a great deal of confrontation within the parliamentary process and publicly. We all understand that, however frustrating it might be for those of us in government who are trying to achieve some results for South Australia.

The Hon. T. CROTHERS: I do not usually intervene in matters of this nature when there is debate between the Government Minister and our shadow Minister, but I feel constrained to make a contribution, and I am particularly constrained by some of the remarks recently pronounced by the Attorney in talking about playing to the gallery and constituency remarks—

The Hon. K.T. Griffin interjecting:

The Hon. T. CROTHERS: The problem with that is that the Government has made two attempts at a major revamp of this Bill and they have been nothing short of being scandalous. If anyone wants to talk about playing to one's gallery, one ought to talk about the manner in which the Government has endeavoured to gut the Act when it first introduced the Bill nine months ago and the second attempt to gut it now. If that is not playing to its constituents in respect of some of the peak employer organisations, I do not know what is. The other thing the Attorney—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Be quiet, junior! When you have been here a while, you will learn. You are not in court now but in a Chamber of the Parliament. The other thing that must be said about the Bill is that even decent minded Liberals have said to me that it really is going too far. I well recall my father saying to me at one stage, 'Son, as you progress through life it is always a practical thing to accept too much.' I am on my feet tonight because I think that on two occasions the Government has endeavoured 'three much'. The committee which the Hon. Mr Elliott by his amendment will set up and which we support is very important. We heard the Government when in Opposition talk about democracy and having straw votes out in the electorate over and above the periods when Governments and political Parties are up for election, as happens here every four years and, all of a sudden, now that it is not in Opposition but in Government, when things are different they are not always the same.

The proposed committee is probably the most democratic way that one can ensure that everything is equitable, that nobody is rorting the system and, above all else, that South Australians injured in their place of work are not denied recompense with respect to the injury which occurred and which was paid for on most occasions, I would suspect, by the people whose bad business housekeeping had more often than not led to the injury.

I am speaking from the heart as a person who has had hands-on experience both at the work face and with respect to suffering injuries at work—and I did not suffer them very often. The majority of people who used to come to see me about their injuries wished to God that they had not happened, and in the majority of cases their only endeavour was to get back to work. Yet we see that the contents of this Bill

and the previous amending Bill are aimed at diminishing, if not altogether dispensing with, the principle of people being paid for wages lost as a consequence of a work related injury.

I am pleased that the Hon. Mr Elliott saw fit to move to establish the committee, which I believe to a very large extent will ensure that fair play and equity will remain the keystone and cornerstone of this Bill, as it was when the Labor Government of the day first introduced this type of workers compensation provision into this Parliament some decade ago.

The committee of the Parliament that is proposed to be set up is perhaps the most important committee in which this Parliament will be involved, because it can have a potential impact on every single working South Australian in our community. Every single person who works in our community has the potential to suffer a work related injury. When you set up a committee, how much more important can you get than to understand that that will be the Bible of the committee—the rampart and the rock on which that committee is located?

I am sorry that the Attorney saw fit to talk about a motion. It is most unlike him: he is generally much more logical and clinical than that. But it was not really that aspect of his remarks that forced me to my feet: it was his attack on the *bona fide* efforts of the Elliott amendment to set up a committee which will give some teeth and meaning to the Bill. I support the Hon. Mr Elliott's amendment and ask that the majority of my colleagues in the Council and others will support the motion.

The Hon. A.J. REDFORD: I always listen to the Hon. Trevor Crothers with some interest, and I always treat his views with some respect, but a couple of the comments he made do not withstand any possible examination. The Hon. Michael Elliott's motion is seeking to add almost another layer of bureaucracy into the whole process. As I said in my second reading speech, if members opposite and the Australian Democrats could possibly come to understand how our system of responsible Government works, the addition of another bureaucratic layer will really not achieve anything. I will take up a couple of points he made. The honourable member said that a parliamentary committee will ensure fair play and equity. How on earth can a parliamentary committee bring in more fair play and equity than a properly constituted legal system with courts and proper appeals and things of that nature? I cannot see how a parliamentary committee can possibly deal with the sorts of issues that will be confronted in this area. How can—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: You have been here for 10 years, you have come into this place nine times and you have mucked it up nine times.

The Hon. M.S. FELEPPA: On a point of order, Mr President, yesterday the Attorney-General objected to one colleague on my side not addressing members as 'honourable' rather than 'you'.

The CHAIRMAN: I ask the honourable member to refer to members as 'honourable'.

The Hon. A.J. REDFORD: The Hon. Michael Elliott has been here on more occasions than I during this whole charade of coming back on an annual basis to try to get this legislation right. He sits here and pontificates about what is right and wrong and he has done it on nine or 10 occasions. It is about time he sat back and analysed things properly. All he is doing with this is adding another bureaucratic layer. He will stand there—and we have to sit here on a daily basis and put up with it—and make himself judge, jury, legislator and everything, because the honourable member knows best. He sits there and says that this will bring in fair play and equity. I have been sitting on these parliamentary committees, and sometimes there is fair play and equity and sometimes there is not. Then he says that this will ensure that no-one rorts the system.

The Hon. M.J. Elliott interjecting:

The CHAIRMAN: Order! The honourable member had his chance.

The Hon. A.J. REDFORD: The honourable member will get out there with his camera and his investigative staff and make sure that no-one rorts the system. What I cannot understand is that, if he was so good, why has not the WorkCover Board taken him on board to ensure that there is no further rorting. The sort of stuff we have to sit here and listen to is unbelievable.

The fact is that if, under the system of responsible government, we allowed the Minister to get on and administer this system properly, and he mucked it up, the system would be held accountable in accordance with the Westminster democratic system. All the honourable member does is seek to undermine the responsible system of government which was established hundreds of years ago and which over and over again has been deemed to be a proven performer. He comes in here and pontificates about parliamentary salaries-

The CHAIRMAN: 'The honourable member sits here.'

The Hon. A.J. REDFORD: The honourable member sits here and pontificates about parliamentary salaries, and I have a vision that in the new few days he will stand up and say, 'I do not want an increase in parliamentary salary.' This so-called committee will cost, on my calculation, an extra $120 000 a year.

The Hon. M.J. Elliott: Where's the cost?

The Hon. A.J. REDFORD: Where's the cost? I will go through it. You know what each member on a standing committee gets paid in addition—

The Hon. M.J. Elliott: You haven't read the clause; there's no pay.

The Hon. A.J. REDFORD: So he is not going to pay? Well, I will take that back. So, is he going to have any staff?

Members interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: How on earth will the Hon. Michael Elliott stop the rorting and ensure fair play and equity with so few resources? Quite frankly, just to bring in another standing committee will achieve absolutely nothing. You have got no resources, you are not equipped, you are not trained, and you will sit there and take—

The Hon. M.J. Elliott: Do you mean legal training?

The Hon. A.J. REDFORD: I am not just talking about legal training: I am talking about investigative training. I said that in my second reading speech. I said that one of your biggest problems is in claims management.

The CHAIRMAN: Order! I ask the honourable member to address his remarks through the Chair.

The Hon. A.J. REDFORD: Sorry, Sir. The honourable member interjects and says 'you', and he has referred to me directly. He asks whether it is just legal training. No, there are other aspects that involve claims management, as I said in my second reading speech, if the honourable member cared to read it. If you want proper claims management, you will not get it through one of these committees. Quite frankly, as I have said, the performance of Parliament in the past 10 years has been absolutely lamentable. The honourable member has

been here on every occasion, and here we are again. We will be back here again next year, and you will be sitting here holier than thou, because you will not let the Minister run it and you will not let the Minister be accountable.

Schedule inserted.

Long title.

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

Page 1, line 6—After '1986' insert '; and to make a related amendment to the Parliamentary Committees Act 1991.'

This is consequential on the previous amendment.

Amendment carried; long title as amended passed.

Title passed.

Progress reported; Committee's report adopted.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1724.)

The Hon. A.J. REDFORD: I support the second reading of this Bill. As stated by the Minister for Transport on behalf of the Attorney-General, the objects of this Bill are fourfold in relation to the conduct of liquor licensing. The first provision involves an extension of the power of licensees to ban people. The second provision makes it an offence to sell liquor to intoxicated persons, described as persons who 'indicate slurred speech, aggressive behaviour or unsteadiness'. The third aspect is the prohibition of minors on licensed premises after certain hours. Finally, the Bill provides that it be a condition of licences that licensees and managers undergo approved training. In that regard, there is a requirement that the licensing authorities consider the knowledge, experience and skills of licensees.

I am not sure whether the Opposition supports this Bill, although I must say I appreciate the position of the Hon. Trevor Crothers as outlined in his contribution last Tuesday. As I understand it, he gave the Opposition's support, in principle, to the general thrust of this legislation. I believe that the Attorney has reacted to the specific question that the honourable member asked regarding the barman who serves someone over the age of 18 and that person then in turn supplies a minor. I congratulate the Hon. Trevor Crothers for raising that issue. No doubt he has had a lot of experience in that area. I also acknowledge the Attorney-General's response in that regard.

I now refer to clause 4 and the issue of education standards. The standard of service in South Australia, in my experience—and I know that this is very anecdotal—is far higher than that which one often experiences interstate. To that extent one has to acknowledge and congratulate those conducting the various training programs run by TAFE and the hospitality industry for achieving that high standard. However, in terms of the international scenario, we have a very long way to go. On my experience of travelling in the United States, we have a long way to go in terms of achieving a high quality of service.

Quality of service is vital to tourism, because we have a tourism industry that needs greater support. It is pleasing to see that the amendments are supported generally by industry. It is also important to acknowledge that liquor licensees are generally small business people. They do not have the capacity to maintain a strong in-house training and education scheme. Indeed, what they do—

The Hon. T.G. Roberts: It varies a lot.

The Hon. A.J. REDFORD: It does, but you have a lot of small pubs with a lot of people employed on a casual basis. They are struggling to make a living and the consequences of their standard of service occurs to them only in terms of how many people are in their premises on a day-to-day basis. If we are going to have to lift the whole standard and quality of service provision in this State in the hospitality industry then we have to look at providing service and recognise that there are many small enterprises.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: The honourable member asks whether I went into any of the dives in the United States. No, I did not; I had read too many books before I went over there. I would also like to raise the issue of intoxicated persons. I know that you, Mr President, were a publican of some note prior to coming into this place. No doubt you would understand the difficult position in which publicans are often placed, particularly under the old legislation, in having to deal with people who have drunk too much.

In most cases the publicans act in a very responsible way. Giving them greater control over who can enter their hotel certainly is a step in the right direction. I do not know that it will necessarily have a great effect on drink driving, but it certainly will not do any harm. However, I do think that publicans can now better control the behaviour patterns of their customers and perhaps can influence young people not to drink to excess.

The power to ban and the control that we give the publican is an important tool in the management of hotels. Without that management tool there are many occasions on which people can ruin the enjoyment of other patrons in hotels. It is also important for the protection of publicans and for the protection of customers from themselves. I must say that it would be nice if that applied right across the board: that a publican could ban someone for as long as he is the publican of a hotel, although I understand the reason why that cannot happen. In many premises and hotels in small towns that would impose an unreasonable burden on the customer and, I suppose, that goes with the general system of licensing of hotels. In concluding, I make a few general comments about the hotel industry and some of the difficulties that have been caused by the introduction of poker machines.

A number of hotels are endeavouring to obtain general facility licences in order to trade on a Sunday night. An ordinary hotel licence requires a hotel to close at 8 o'clock on a Sunday night. Difficulties arise when a hotel on one side of the road gets a general facility licence and can trade with the poker machines on a Sunday night but the hotel on the other side of the road without poker machines cannot. That is something the Government ought look at and remove any distortions. The second issue is that every State in Australia has Sunday trading except South Australia, and I would be interested to hear what effect that has on tourism.

Another issue that has been raised with me relates to live entertainment. The current Act says that if a hotel wants to trade after midnight it must provide live entertainment, and there is a demand for that sort of service, for example, Lennie's at Glenelg, the New Market Hotel, and various other licensed establishments that run very late night operations. The difficulty is that in order for hotels to trade within those hours they must provide live entertainment. As I understand it, live entertainment at Lennie's Tavern at Glenelg has caused enormous problems with complaints from local residents, the council, and the licensing court. It has generally led to huge conflict.

I would again invite the Government to consider its position on this issue. One problem caused by the Lennie's situation is that because hotels must provide live entertainment and because it is so expensive hotels try to attract large crowds and, as a consequence, problems occur with respect to noise, people leaving the premises late at night, parking, litter and broken glass problems, and the like. In that regard, as I said earlier, I would invite the Government to look at that issue.

Finally, I would like to deal with the problem that has been posed with regard to poker machines by the Aristocrat group of companies. Members would be aware that the Treasurer, on two occasions since this Government was elected, has expressed his concern about the way in which that company has dealt with the local hotel industry. Indeed, promises were made for delivery of Aristocrat poker machines; those deliveries were not forthcoming and the Treasurer, as I understand it, spoke very strongly and sternly to the management of Aristocrat poker machines in South Australia. Unfortunately, Aristocrat is again up to its old habits. Aristocrat poker machines has introduced a new series of poker machines. As I understand it, a poker machine can be purchased for somewhere between $8 000 and $10 000, and if a new game comes in all one needs to do is change the front facade and the chips in the machine for an average cost of somewhere between $1 500 and $2 500. But not so with Aristocrat poker machines. Aristocrat says that the facade and the chips cannot be changed in its new series of games: one must buy a new machine.

One might think that would be because there is different technology, or some other reason, but not so. The way this has been marketed is that if you want a new game you have to buy a new machine for $9 500. If you want a new game down the track, you can wait until 1 September and get the new game incorporated into your machine for $2 500, but you have to wait until 1 September. The net effect is that, if I as a publican want the new game because I have to maintain a competitive edge, I have to buy the new machine or wait until 1 September. That is not quite as bad as it seems because, Aristocrat poker machines being as popular as they are, they achieve very high trade-in rates. As I understand, it is about the same price to trade in your old Aristocrat machine as it is to upgrade your existing Aristocrat machine with the new game.

It is important that the Government be cautious about this practice, because Aristocrat poker machines have 3 500 machines out of 7 000 machines in South Australia. In the 18 months or so since we have had poker machines, it has managed to achieve some 50 per cent of the market. I would be the first to acknowledge that the reason for that is that it probably has the best machines, but if one looks closely at what it is doing, it is trying to push as many Aristocrat poker machines into the market as it can so as to achieve a market dominant position. It is important that the Government keep a close eye on Aristocrat so that, through practices such as that, it does not achieve a market dominant position that undermines the poker machine industry and the hotel industry as a whole.

I draw members' attention to those practices. I know that the AHA and the liquor trades industry are very concerned about that. They are concerned about one company being in such a dominant position, particularly in a sensitive industry such as poker machines and hotels where normal market forces and competitive forces do not apply. I commend the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions at the second reading stage of this Bill. So far as the matters raised by the Hon. Angus Redford are concerned, they are matters upon which I will need to take some advice, and I undertake to refer them to the Liquor Licensing Commissioner for a response in due course. Some of the issues raised relate not so much to the Liquor Licensing Act but to the Gaming Machines Act. Although the Liquor Licensing Commissioner has the responsibility for the day-to-day administration of that legislation, the Act is actually committed to the responsibility of the Treasurer.

The Hon. Mr Crothers indicated the Opposition's support for the Bill subject to some comments that may have arisen at the Labor Party Caucus meeting. As indicated, this legislation has been circulated widely to interested parties and groups for comment. Expressions of support for the Bill have been received from Tourism-Hospitality Training SA, the South Australian National Football League, the Chief Justice and the Chief Judge. More extensive comments and suggestion for amendment have been made by the Commissioner of Police and the Australian Hotels Association. Those suggestions have been examined and I propose to move several amendments during the Committee stage of the debate in response to the comments received.

I wish to address the matter raised by the Hon. Mr Crothers in relation to the legal position of bar staff, where a patron has purchased liquor that is then supplied to a minor. Section 118 of the Liquor Licensing Act provides:

> Where liquor is sold or supplied to a minor on licensed premises the licensee, the manager of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.

It is clear from the wording that both the licensee and the manager are responsible irrespective of whether the liquor is sold or supplied directly to a minor. If a bar attendant sold liquor to a minor, he or she would be guilty of an offence; if a bar attendant sold liquor to a person knowing that it would be supplied to a minor, he or she would also be guilty of an offence. However, if a bar attendant sold to an adult who then supplied to a minor without the knowledge of the attendant, it would be the adult who supplied, not the seller, who would be guilty of the offence.

In the circumstances raised by the Hon. Mr Crothers, the licensee and the manager would each be guilty of an offence. As responsible officers, they should ensure that the premises are not operated in such a manner as to encourage direct sale or subsequent supply to minors. Licensees should not be able to understaff premises and then claim that they cannot supervise the premises. A licensee or manager can only claim that the business was not conducted in such a way as to entice minors to the part of the premises in which the liquor was sold or supplied and that proper diligence was exercised to prevent the sale or supply of liquor to a minor. In these circumstances, the bar attendant would not have committed an offence.

Bill read a second time.

In Committee.

Clauses 1 to 10 passed.

Clause 11—'Insertion of Division 7A of Part 6.'

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

Page 3, after line 29—Insert:

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

(a) if the defendant is the person by whom the liquor was sold or supplied—that he or she believed on reasonable grounds that the person to whom it was supplied was not intoxicated; or

(b) if the defendant is the licensee or manager of the licensed premises and did not personally sell or supply the liquor—that he or she exercised proper diligence to prevent the sale or supply of liquor in contravention of subsection (1).

Clause 11 provides that it is an offence for a licensee, a manager of licensed premises or an employee to sell or supply liquor to an intoxicated person. The Australian Hotels Association SA has requested that a defence to this offence be provided in the Bill. It is my view that this is reasonable, and an amendment has been made to effect a different defence for the licensee and the manager from the employee to reflect the different roles and responsibilities of each. Section 118 of the Liquor Licensing Act provides for a similar offence of sale and supply of liquor to a minor on licensed premises, and separate offences are provided for the person by whom the liquor was sold and the licensee or the manager.

The Hon. T. CROTHERS: I thank the Attorney for his diligence in going a very long way to resolving the problems that I had foreshadowed because of previous events, and I am very pleased with that. It may facilitate the passage of the Bill if I indicate that this amendment and two further amendments to clauses 12 and 13 will be supported by the Opposition.

Amendment carried; clause as amended passed.

Clause 12—'Minors not to enter or remain in certain licensed premises.'

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

Page 3, line 35—Insert 'or an area approved by the licensing authority for the purposes of this section' after 'dining area'.

This amendment is made to remedy an oversight in the Bill which has been identified by the AHA. The AHA has pointed out that not all venues which hold a general facility licence would have a designated dining room as provided for in the Bill, and there are a number which provide accommodation. The amendment provides some flexibility by allowing the licensing authority to approve other areas either at the time of issuing the licence or subsequently.

Amendment carried; clause as amended passed.

Clause 13—'Insertion of Division 3 of Part 9.'

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

Page 4, line 12—Strike out ', abusive'.

Section 128 of the Act refers to 'offensive or disorderly behaviour,' while new section 128A refers to 'offensive, abusive or disorderly behaviour'. It has been pointed out that the two provisions should be uniform in this respect or it may lead to confusion in practice. The amendment ensures uniformity in this respect.

Amendment carried; clause as amended passed.

Clause 14 passed.

Title.

The Hon. K.T. GRIFFIN: There was one matter which I should have dealt with in my response, but which I did not, and perhaps I will take the liberty of referring to it now. I refer to the education process. It is important that I give some indication of what that will entail. There will be an education process to advise the industry of the new legislative provisions, particularly in relation to the banning of patrons and the serving of intoxicated persons. The measures to inform the members of the industry of the new provisions include the following: a laminated card (jointly funded with the AHA) is to be prepared, which will be handed out to patrons to advise them of the new laws relating to the banning of patrons and the serving of intoxicated patrons—and the card can be used as a drink coaster; and a poster is to be prepared for licensees to place in a visible position in their premises to advise of the new legislation.

There is to be a stand manned by senior personnel at the hotel and hospitality expo in July this year, and that will provide the public with information about the new legislation. A new course on the responsible serving of alcohol and the banning of patrons is to be incorporated into the existing training modules. Some thought has already been given to the issue of education and training. There may well be more initiatives, but honourable members may find it helpful to know at least those are in the process of being planned.

The Hon. T. CROTHERS: I commend the Attorney for that initiative: it is one whose time has come. In respect of giving the licensing commissioner—whoever he or she may be—the power to determine whether new applicants for a licence are not only trained but trained sufficiently and a couple of other matters that have always been of concern to the Licensing Court in respect of new licensees it is a commendable step. I commend the training initiative because it does two things. First, it more properly puts the industry on a firm footing for the additional tourism that has been flowing into Australia over the past 10 years; and, secondly, because that training is available, it will ultimately lead to an infusion of new licensees who are better equipped in many instances—they may not be better people but they will be better equipped because of the training—than has been the case up until the inclusion of this matter in the Attorney's Bill. I commend the Attorney for his initiative in this respect. There are other areas in respect of the hospitality industry that somewhere down the track may be looked at in the same way.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

In Committee.

Clauses 1 to 13 passed.

Part 4A—'Amendment of Fences Act 1975.'

The Hon. CAROLYN PICKLES: I move:

Page 5, after line 2—Insert new Part as follows:

PART 4A
AMENDMENT OF FENCES ACT 1975

Amendment of s.23—Departures from requirements of this Act.

13A. Section 23 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The court may not, when determining a matter in a minor civil action under this Act, exercise any discretionary power to disregard a requirement or provision of this Act or to provide a special form of relief that the court would (but for this subsection) be able to exercise only by virtue of the provisions of the Magistrates Court Act 1991 relating to minor civil actions.

This is an amendment to the Fences Act 1975. Section 12 of the Statutes Repeal and Amendment (Courts) Act 1991 came into effect on 6 July 1992. In conjunction with section 3 of the Magistrates Court Act applications to the Magistrates Court pursuant to the Fences Act of 1975 then became minor civil actions, which was the name given to small claims by the 1991 Magistrates Court Act. The Fences Act sets out a clear and unambiguous framework for landowners to follow if they wish to erect a fence on a common boundary with a neighbour who initially at least does not agree with the proposal. The proposal would normally specify such matters as the type of fence, the height of the fence and the cost of erection of the fence.

Section 5 of the Fences Act allows an owner to serve a notice on the owner of the relevant adjoining land. The notice must be in a prescribed form or at least substantially complying with the prescribed form. The form should state:

> If you do not within 30 days after service of this notice serve upon me a cross-notice in accordance with the Fences Act you will be deemed to have agreed to these proposals and will be bound thereby.

That seems clear enough. Section 6 then sets out how the objecting person can serve a cross-notice on the person who proposed the fence. Section 7 states that, if a notice is served and no notice of objection is given by the neighbour, the neighbour is deemed to have agreed with the fence proposal. The consequence of the deemed agreement is that the original landowner may then proceed to build the fence and sue the neighbour for half the cost of the fence, but section 8(2) is very important to anyone who proposes to build a fence without their neighbour actually agreeing to the proposal. This provision spells out that no contribution will be payable by the neighbour in respect of any fencing work done before 30 days is up after the neighbour was properly served with the notice.

One could argue that it is a bit unfair on someone who builds a fence in the last few days before the 30 day objection period expires and there has been every indication that the neighbour neither agrees nor intends to reply with an objection notice, but people are assumed to know the law and the law is apparently clear cut. In the case of *Jackson v Takacs*, judgment was delivered by Chief Judge Brebner of the District Court on 10 May 1985. His Honour made it plain that the notice provisions of the Fences Act had to be carried out properly if someone were to expect to receive a contribution from a neighbour for a fence. This is where the Magistrates Court comes in. Since the 1991 changes to the Magistrates Court, section 8(1)(d) of the Magistrates Court Act has permitted the court to grant any form of relief necessary to resolve a minor civil action. Section 38(1)(f) of the Magistrates Court Act provides that when dealing with minor civil actions the court must act according to equity, good conscience and the substantial merits of the case without regard to legal form.

The problem arises because some magistrates have been strict about compliance with the Fences Act procedures before ordering a contribution to be paid by a neighbour, and some magistrates have relied on the abovementioned provisions to adjudge what they think is fair in the circumstances of a particular case rather than insisting strictly on the Fences Act procedure. The point is that it has become difficult for lawyers and members of the public to predict what the outcome will be if it is taken to court. Because of this, I presume that more cases are taken to court with both sides hoping to get a good deal out of the magistrate on the day. If everyone, including legal advisers, had a clear set of ground rules as provided for under the Fences Act, less cases would go to court because people could more easily assess for themselves what the answer would be. To address this problem, the Opposition seeks to amend the Fences Act so that the court will not be able to circumvent the Fences Act procedure by reference to the flexible approach directed by the minor civil action provisions.

The Hon. K.T. GRIFFIN: What the Leader of the Opposition says is essentially correct. There have been two points of view in the magistracy as to whether the Fences Act lays down a code which has to be applied strictly including time limits or whether the Fences Act in conjunction with the Magistrates Court Act allows some flexibility. As the honourable member says, there has been a conflict in the magistracy, not one which will lead them to battle but one which makes it difficult for litigants and particularly their advisers. I do not think that either group in the magistracy holds particularly strongly to their respective point of view. They recognise that from the point of view of service to the community it is confusing, and it is something that ought to be put beyond doubt.

I tend to the view that the position put by the Leader of the Opposition is the appropriate course to follow, but I think it must be recognised that an injustice may be created where a person may be a day out or not have otherwise followed the requirements of the Fences Act strictly and will just miss out, but at least everyone knows where they stand. I cite one example where the strict interpretation was applied. A person sent a notice, received a cross-notice, and did nothing. Subsequently, the applicant demolished the fence and built a new one and claimed a quarter of the cost of the new fence. The magistrate found that the old fence was not an adequate fence and that the new fence was of an appropriate standard. The magistrate held that he could not order any contribution towards the cost of the new fence as the notice requirements had not been complied with.

So if we move down the path of this amendment, we must recognise that it may lead to injustice and inflexibility and an obligation on the court not to act according to equity and good conscience but according to the technical constraints of the law. If we accept this on that basis, at least we go into it with our eyes open. So I indicate that I do not oppose the honourable member's amendment. It is a matter of judgment as to whether it or some other course is appropriate, but I am satisfied that if this does create injustice we can review it again in a couple of years' time.

New part 4A inserted.

New part 4B—'Amendment of law of Property Act 1936.'

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

Page 5, after line 2—Insert new part as follows:

PART 4B

AMENDMENT OF LAW OF PROPERTY ACT 1936

Insertion of s.35d

13A. The following section is inserted after section 24c of the principal Act:

Capacities of corporations

24d. (1) A corporation sole established under an Act has, and will be taken always to have had—

(a) perpetual succession and a common seal; and

(b) the capacity to sue and be sued in the corporation's name; and

(c) subject to any limitations imposed under an Act, all the powers of a natural person.

(2) A right or liability that a corporation sole or corporation aggregate would have acquired or incurred but for the occurrence (before or after the commencement of this section) of a temporary vacancy in the office or offices of the corporation will be treated as having taken effect on the filling of the vacant office or offices as if the vacancy or vacancies had been filled before the right or liability was acquired or incurred.

This inserts a new part in the Law of Property Act to clarify the law relating to corporations sole. A number of corporations sole are recognised by the common law. Her Majesty the Queen of Australia is a corporation sole, for example. Ministers may be established as a corporation sole either pursuant to an Act administered by them, pursuant to a special Act passed for that purpose or pursuant to a proclamation made under section 7(1) of the Administrative Arrange-

ments Act 1994. Public officers may also be established as a corporation sole.

Most of the case law on corporations sole is quite old and deals with ecclesiastical matters. The common law appears to be deficient in some respects and, while the courts may well take a wider view of what a corporation sole can do today, it is preferable to clarify the law by legislation to eliminate unnecessary arguments. At common law a corporation sole possessed the power to purchase, hold and demise real property. However, at common law a corporation sole did not have the power to lease land or to hold personalty. New section 24d(1)(c) provides that a corporation sole has, and will be taken always to have had, all the powers of a natural person, subject to any limitations imposed by an Act on the powers of a corporation sole.

New section 24(2) clarifies what happens to rights and liabilities which have been incurred or acquired when there is a temporary vacancy in the office of the corporation. At common law a grant of lands, for example, made to a corporation sole was void unless the office was filled at the time of the grant. Subsection (2) provides that a right or liability will be treated as having taken effect on the filling of the vacant office as if the vacancy had been filled before the right or liability was acquired or incurred.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

New part 4B inserted.

Clauses 14 and 15 passed.

New clause 15A—'Membership of committee.'

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

Page 5, after line 20—Insert new clause as follows:

13A. Section 12B of the principal Act is amended—

(a) by striking out from subsection (1) 'The committee is to consist of five' and substituting 'Subject to subsection (1a), the committee is to consist of six';

(b) by inserting the following subsection after subsection (1):

(1a) On and from the first sitting day of the House of Assembly following the next general election of members of the House of Assembly after the commencement of this subsection the committee is to consist of five members of the House of Assembly appointed by the House of Assembly.

This follows an issue raised by the Hon. Carolyn Pickles as we moved to reduce the quorum of two committees which presently have five members. I intend to support her amendment in relation to that issue, but there was a difficulty in relation to the Public Works Committee. The solution to the problem of the quorum and the fact that the membership of that committee is different in balance between the Government and Opposition Parties has been to propose an increase in the membership of that committee by one from five to six, only until immediately after the next election. The first part of my amendment increases that committee by one. It is intended that that position will be filled in the House of Assembly by a member of the Opposition.

The second amendment is in effect the sunset provision so that the committee reverts to a membership of five members of the House of Assembly on and from the first sitting day of the House of Assembly following the next general election of members of the House of Assembly. That appropriately addresses the concerns raised by the Opposition and puts beyond question the issues which needed to be addressed.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment and thanks the Attorney for reaching a sensible compromise. One could have gone in two ways. One could have reduced the Government membership, but on balance it would seem rather unfair to do that at this stage. This is a sensible compromise; after the election the membership will revert to five and will reflect a more reasonable political balance. It is an important committee; it deals with the expenditure of very large amounts of State finance and it is appropriate that members of the Opposition have the opportunity to scrutinise the deliberations of the committee at all times.

New clause inserted.

Clause 16—'Procedure at meetings.'

The Hon. CAROLYN PICKLES: I move:

Page 5, line 26—After 'members' insert '(at least one of whom must have been appointed to the Committee from the group led by the Leader of the Opposition in the Committee's appointing House)'.

As indicated in my second reading speech and as the Attorney has already said, the intention is simply to ensure that the members comprising the quorum of three would not be only Government members, as that would be against the spirit of the committee system. This will now apply only to the Statutory Authorities Review Committee, given that for some time now the Public Works Standing Committee will presumably have a quorum of four. In practice, it has been difficult to ensure that one of the Opposition members on the committee will be able to attend on a particular date, but I am sure that this quorum can ensure that there is a proper political balance, which has been the intent of the parliamentary committees. I am sure that members can support this amendment.

Amendment carried; clause as amended passed.

Remaining clauses (17 to 20) passed.

Long title.

The Hon. CAROLYN PICKLES: I move:

Page 1, line 7—After 'Evidence Act 1929,' insert 'the Fences Act 1975,'.

This amendment refers to the previous amendment that has already been agreed to.

Amendment carried.

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

Page 1, after line 7—After 'Evidence Act 1929,' insert 'the Law of Property Act 1936,'.

This amendment is consequential on the amendment of the Law of Property Act.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

STATUTES AMENDMENT (FEMALE GENITAL MUTILATION AND CHILD PROTECTION) BILL

Returned from the House of Assembly with the following amendments:

Schedule of amendments made by the House of Assembly

No. 1 Clause 6, page 4, lines 7 to 14—Leave out the clause and insert:

6. Substitution of s.27

Section 27 of the principal Act is repealed and the following section is substituted:

27. Family care meetings to be convened by Minister

(1) If the Minister is of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection, the Minister should cause a family care meeting to be convened in respect of the child.

(2) The Minister cannot make an application under Division 2 for an order granting custody of a child, or placing a child under guardianship, before a family care meeting had been held in respect of the child unless satisfied—

(a) that it has not been possible to hold a meeting despite reasonable endeavours to do so;
or
(b) that an order should be made without delay; or
(c) that the guardians of the child consent to the making of the application; or
(d) that there is other good reason to do so.

(3) An application under Division 2 is not invalid by reason only of a failure to hold a family care meeting.

No. 2 Clause 7, page 4, lines 15 to 21—Leave out the clause.

Consideration in Committee.

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

That the House of Assembly's amendments be agreed to.

The purpose of the amendments to sections 27 and 38 of the Children's Protection Act contained in the Bill is to provide that the legally binding requirement to hold a family care meeting be restricted to cases in which the application relates to a matter that is truly determinative of the child's future. The provision contained in the Bill before the House seeks to amend section 27(2) so that a family care meeting is required only where the Minister is applying either, first, for the first order of custody or guardianship under section 38(1)(b) and (c) or, secondly, for a guardianship order until 18 years under section 38(1)(d).

After the Bill was drafted, the Crown Solicitor pointed out that, because of the categorical way in which the Children's Protection Act is expressed, the result would be that the application for dispensation from the requirement to hold a meeting and the principal application in relation to the child would have to be heard separately. That would mean two separate applications, two sets of documents and two hearings. While that is possible, it would result in delay, expense and a great deal of inconvenience.

When considering this problem, Parliamentary Counsel came to the conclusion that, as a matter of drafting, the amendments would be far better placed in general terms in section 27 rather than in the list of the consequential powers contained in section 38. The amendments which were introduced in the House of Assembly and are now before us are designed to overcome both problems.

The Hon. CAROLYN PICKLES: The Opposition is pleased to support the amendments. As the Attorney has indicated, they are merely to facilitate the process and we are very pleased to accept them.

Motion carried.

PARLIAMENTARY REMUNERATION (BASIC SALARY) AMENDMENT BILL

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

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

That this Bill be now read a second time.

Due to the lateness of the hour and the fact that the Bill has been discussed in another place, I seek leave to have the second reading explanation and the detailed explanation of these very important clauses inserted in *Hansard* without my reading them.

Leave granted.

Its purpose is to set salaries payable to Members of the South Australian Parliament from July 1 1995.

It will mean a $1 000 reduction in the basic salary for a Member of this Parliament compared with what would have applied if the previous parity with the Federal Parliament had been fully restored.

Honourable Members will recall that the Parliament legislated last year to impose a freeze on Parliamentary salaries.

This action reflected the Government's concern that it wanted to be able to establish salary levels in the Public Sector free of any suggestion that MPs themselves were not willing to set an example in wage restraint.

The effect of that decision was to maintain the basic salary for a Member of this Parliament at $68 693 per annum for the whole of this financial year.

Had the Parliament not acted to impose this freeze, members of this Parliament would have been entitled to a basic salary of $73 460 since December 15 last year because of automatic parity arrangements which had previously applied.

Accordingly, the salary freeze has amounted to a cut of more than $91 a week on the basic salary for a Member of this Parliament.

Members of the State Parliaments in New South Wales, Victoria, Queensland and Western Australia, and the Northern Territory Legislature also received salary increases last December.

The result has been that salaries payable to members of this Parliament are lower than for every other State Parliament except Tasmania.

Even with the Bill being introduced today, that situation will prevail.

This is because the Government has decided that the previous parity with the salaries of Federal MPs will not be fully restored.

Rather than $1 000 below the Federal Parliament, the parity will now be $2 000 less.

The result is that the basic salary of a member of this Parliament will be $72 460 per annum from July 1.

This will be $1 500 less than the basic salary since December 15 1994 for the New South Wales, Victorian and Queensland Parliaments, and $1 450 below Western Australia.

In percentage terms, the increase embodied in this Bill is just under 5.5%.

This compares with the recent rise in judicial salaries in this State of more than 6%.

The Government's offer to the public sector of a $35 a week phased-in increase represents a rise of about 6% on the average Public Sector salary.

I should point out to the House that in comparing the salaries of members of this Parliament with those of the Federal Parliament, account also needs to be taken of the provision of motor vehicles to Federal MPs.

Federal Senators and Members can elect to have a vehicle for a payment of $700 per annum.

As the true cost of the provision of a vehicle exceeds $8 000 per annum, the real differential between the basic salary of a member of this Parliament, and a member of the Federal Parliament, will be about $10 000 even after the passage of this bill.

The decision of the Government to return to a level of automatic parity with Federal MPs will remove the public concern which inevitably applies to salary movements for Parliamentarians that there is no independent benchmark against which increases can be measured.

In making this decision, the Government has had to balance the need for continuing wage restraint with what is fair and reasonable in providing a level of remuneration for Parliamentarians consistent with their responsibilities, duties, and hours of work.

Another consideration is the extent to which the level of salary will encourage people with a contribution to make to the community, to put themselves forward for election to this Parliament.

In this context, the highest private sector executive salaries paid in South Australia are about nine times the basic salary payable to a Member of Parliament under this bill.

I should say finally that there has been consultation with Members of the Opposition about this bill and I understand it has the Opposition's support.

I commend the Bill to the House and seek leave to have the explanation of clauses inserted into Hansard without my reading it.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal

Clause 2: Commencement

The legislation will come into operation on July 1 1995.

Clause 3: Amendment of s. 3—Interpretation

The clause amends the definition of 'Basic salary' so that it is fixed at $2 000 less than the rate from time to time of the basic salary of a member of the Federal Parliament.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

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

Consideration in Committee of the recommendations of the conference.

The Hon. DIANA LAIDLAW: I move:

That the recommendations of the conference be agreed to.

We are nearing the end of the debate on this Bill, which has been in this Parliament for nearly three years, since the former member for Coles, the Hon. Jennifer Cashmore, moved for the establishment of a select committee to address this issue. The select committee made recommendations and a Bill was introduced. There has been a change of Government since, and there have been two or three attempts through the Parliament to introduce this matter. I can understand that there would be strongly held views. I certainly hold such views, although I have to concede that they have not prevailed in the debate in this place. However, I acknowledge that the Bill which left this place and which was an issue of contention with the House of Assembly before the conference was a vast improvement on the situation that prevails at the present time.

I suppose it is one of those issues where two or three steps forward are better than none at all. Those who wish to reform matters in this area should take heart that the Bill, while it may not meet everybody's objectives, certainly is a vast improvement in terms of the rights of a person who is dying to be able to have some say over how they wish to die and also the rights of a person well before they are dying to have some influence over arrangements that will apply by either appointing a person as an agent or indicating whether or not they would wish certain procedures to be applied.

It has been a long, drawn out process. It was a difficult conference and hard to manage in the sense that it is a Bill involving a conscience vote. I thank all members who participated from this Chamber for the mature manner they displayed in this matter and their professionalism as members of Parliament in dealing with an issue which is essentially controversial and certainly very emotive and which could have deteriorated to the degree that the Bill was lost. In the event, the House of Assembly did not insist on amendments in relation to the age at which a person can make anticipatory decisions about medical treatment, and nor did it continue to insist on its earlier refusal to allow any reference to and review by the Supreme Court. However, amendments have been proposed in relation to the register.

These amendments provide that the Minister, while still required to appoint a registrar, is no longer required to appoint a person who is engaged as an employee under the Government Management and Employment Act. The amendments allow the Minister to appoint a registrar from the private sector, for instance, Red Cross, Medic Alert, or a number of other most able organisations that could easily undertake such a responsibility. It was also deemed important at the conference that, if a person did voluntarily resolve that they would put their name on the register, they must then also lodge their form or a copy of the direction or power of attorney.

This was deemed to be important by all members of the conference, because provisions in the Bill require the medical practitioner to sight the direction or power of attorney. It was considered that, if a medical practitioner made reference to this registry of directions or power of attorney and learnt that a person whom they were seeking to treat had lodged such a direction or power of attorney but then found that they could not sight that direction or power of attorney, there was little to be gained from the procedure. The conference therefore resolved that a copy of the direction or power of attorney would be held in future by the registrar for the purposes of this section, and also that a fee would be prescribed by regulation.

The other matters arising from the conference for consideration by the Legislative Council relate to referral to the Supreme Court. I indicated earlier that considerable concern had been expressed about this reference to the Supreme Court or right of review in relation to a decision by a medical agent. Nevertheless, the Legislative Council did insist on this amendment, and the House of Assembly has agreed. We have collectively considered, however, that we should be providing for a person (the patient) to be protected from the ordeal of having this whole issue, fought before the Supreme Court, publicised in the newspaper or on radio or television, and this was thought to be important in terms of protecting the identity of the patient.

We are familiar in this Parliament with a number of other protections, whether it involves a juvenile in terms of any offence, or the names of sex offenders being withheld if it would identify the person whom they had offended. So, this protection of the individual is something that has been enshrined in legislation in the past. We believe it is appropriate also to be enshrined in this legislation, which essentially deals with the rights of a person to medical treatment and the rights of that person to have some say over that medical treatment while they are active to make a decision or when in the terminal phase of a terminal illness. I indicated earlier that this has been a sensitive piece of legislation for members to address. I commend all members for taking their role in addressing this legislation most seriously. I think we have come to a compromise that is acceptable in the community's interests and in the interests of patients. I take heart from the fact also that one does not always gain all that one wants when addressing such issues on the first attempt. I know that—

The Hon. R.D. Lawson: You got most of what you wanted.

The Hon. DIANA LAIDLAW: But I did not get all I wanted, and I am just saying that I take heart from legislation such as votes for women, which took seven Bills actually to get through this Parliament.

Members interjecting:

The Hon. DIANA LAIDLAW: I am just bringing in this little feminist bit: I know that you love the feminists.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: Yes, for homosexuals it took three. In terms of dignity for people who are dying, or of general consent for medical treatment, we have made considerable progress with this Bill. I remind members who may feel as I do in this matter that it was not worth losing the Bill—and this was the general opinion of the House of Assembly members, too—hanging out for two or three matters which were deemed to be important but which may have been peripheral to the central argument, that is, the right of a person to have some say over medical treatment and the right of people who are dying to have their wishes taken into account in terms of medical treatment.

This is an important piece of legislation. Progress has been made. It is certainly an issue that will be before this Parlia-

ment again, whether in the form of a euthanasia Bill or amendments to this legislation. In the meantime, I think we can rest easy knowing that this Parliament has provided in a much more satisfactory way than is provided at present for the dignity of people who are dying.

The Hon. SANDRA KANCK: In the past 12 months I have been involved in a number of deadlock conferences on different pieces of legislation, and I am not sure whether this one was the seventh or eighth that I have been involved in. However, it proved to be very different and an exception to others in which I have been involved, because there was not an intent by all involved to reach some form of consensus. Although the numbers were there in the conference for the House of Assembly amendments to be carried, the reality always was that the numbers in this place were what we would have to come back to. I am really saddened that there was no attempt to negotiate on the issue of 16 and 17 year olds having the right to sign an advance directive or to appoint an agent.

The option of giving this right to a 16 or 17 year old in the terminal stage of a terminal illness was, sadly, not taken up. We were always aware that there are some people in this Chamber who would have preferred to see the Bill lost rather than giving 16 and 17 year olds any extra rights, no matter what their state of health might be. I believe that the public, and particularly young people, will not judge this Chamber kindly for this decision, and history will reveal that it has been an opportunity missed. However, the situation with 16 year olds represents the *status quo*, so, from that point of view, the outcome is bearable, and there have been other improvements.

As a result of not being able to achieve any negotiation on those points, we still face the ridiculous situation that a 16 or 17 year old who is dying can indicate, while they are conscious, that they want a machine turned off or do not want a particular form of medical treatment, but the moment they lose consciousness someone, who thinks that they know better, can dictate that that treatment be resumed. If the patient regains consciousness, the patient can again direct that the treatment be stopped, and that wish will be observed until the patient again loses consciousness, and then the so-called adult can still step in and countermand the child's wishes.

I think that is incredibly demeaning, and there is no dignity and respect for the dying person in that situation. It occurs because some people have strong feelings—I say feelings, not necessarily logic—about this matter, and because they have had more birthday parties than the patient. I express my great regret to all young people that this has been the outcome. I want to record the fact that I was willing, on behalf of the managers of this Chamber, to compromise, but others in this place have prevailed.

I am also not happy with the possibility of Supreme Court intervention. However, in my own case I will ensure that this intervention cannot occur by having an advance directive only and not appointing an agent. On the basis that I do not want to see the Bill fail and because some improvements have been made of the two steps forward and one step back variety, I support the recommendations.

The Hon. R.D. LAWSON: I, too, support the motion that the recommendations of the conference be agreed to. Far from the view expressed by the Hon. Sandra Kanck a moment ago, I do not regard this measure as two steps forward and one step back. I think it is three or four steps forward, and something of which this Parliament should be proud. A number of very significant improvements to the law are made in this measure, and it ill behoves members of this Parliament, as it were, to denigrate the Bill on the ground that it goes not far enough.

In response to the remarks made by the Hon. Sandra Kanck, the suggestion that the wishes of a 16 or 17 year old who is terminally ill regarding his or her treatment can and will be countermanded by others is an extreme view. One would imagine in most cases that the views of a 16 or 17 year old, communicated to his or her parent, guardian or person who can speak on their behalf, would be taken into account, honoured and respected by that person. The suggestion that we will see a number of cases of 16 or 17 year olds' wishes frustrated in the manner outlined is an extreme response. I think it is highly unlikely that that will occur. One would imagine that in most situations the wishes of such a person will be respected.

I am strongly in favour of the passage of this measure. I think that those who brought it forward, the initial committee which made the recommendations and all those who have made contributions to the passage of this measure are to be congratulated for the way in which this Parliament has at least achieved something.

The Hon. R.R. ROBERTS: I did not represent the Council at the conference, but I congratulate our managers for their handling of this matter. The Bill makes significant gains. There are now more rights for those who are sick and for those who are dying. Some of these rights, especially those in respect of parents, have been overdue for some time. I refer to the situation in respect of 16 year olds. Throughout the debate we were continually told of the maturity of 16 and 17 year olds. I put it on the record that I do not deny that that is the case, but there is nothing in the law, either in this Bill or in any other Bill, that stops a 16 year old from writing down what he or she would like to be done under certain circumstances—they do not have to be 18 to write a letter. Those letters can be lodged. They can record their wishes and, if they are mature and they have parents or guardians who respect them, I am reasonably confident that in a family situation the parents would take their child's written request into consideration.

This Bill is a far cry from what we had before, and I am certain that the Hon. Diana Laidlaw, after a certain period, will exercise her option if she is not happy with it—or anybody else—to bring it back again. The changes are worthwhile and are worthy of trial. I commend the conference for the additions to the Bill with respect to confidentiality, because disputes do occur at sensitive times and I do not believe that they ought to be aired in public. Therefore, I commend the conference, I commend the Bill and I congratulate the conference managers.

The Hon. ANNE LEVY: I rise to say how disappointed I am with the results of the conference. I will certainly not vote against the motion because I agree with the Hon. Sandra Kanck that half a step forward is better than none. However, I had hoped that greater progress would be made, particularly in this sensitive area of the age at which a person can make an advanced directive. I still think that the agreement which has been reached is insulting to young people, who, faced with the personal tragedy of suffering a terminal illness, should be able to indicate what their wishes are in a way that has legal effect—and not by writing a letter on a piece of paper. Anyone can write a letter but, if it has no legal effect whatsoever, it is not worth the paper on which it is written.

Some parents trust their children, some children trust their parents, but not all parents trust their children and not all children trust their parents—often with good reason. The Bill does contain some valuable provisions which are an advance on the existing law and, while it has not achieved all I had hoped it would, it is better than the existing law and so I am happy to vote for it.

The Hon. M.J. ELLIOTT: This Bill in its final form is not the one that I would have preferred but, having noted that, it has been a long time coming and there are some very important reforms contained within it. When you have a doughnut you have to look more at the doughnut than the hole if you want to have a positive outlook on these things. This Bill is a major step forward. Some people have misconstrued it as being a euthanasia Bill, but it is not: it is all about people being able to make decisions and give instructions in advance when they know that at some time in the future they may not be able to make a decision. It does not involve active measures under which a person will die but passive measures which relate to a person only when they are already in the process of dying and have no prospect whatsoever of recovery. This is a major advance in the law. Not only can a person leave an advance directive but they can also appoint someone to act on their behalf in the same manner.

As I recall, at one stage advance directives were not going to be included in the first Bill; it was largely going to be reliant upon people acting on a person's behalf. I am pleased that this legislation has picked up the advance directives provision because I for one would prefer to leave an advance directive rather than place such a burden on another person. Very clearly people will have a choice in that regard. This is a major advance with just a few unfortunate amendments, but I guess they can be dealt with at another time.

Motion carried.

SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA BILL

Adjourned debate on second reading.

(Continued from 16 March. Page 1573.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank honourable members for their contribution to the second reading debate. There is only one amendment to be considered, and we will address that matter in Committee.

Bill read a second time.

In Committee.

Clauses 1 to 8 passed.

Clause 9—'Establishment of the board.'

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

Page 6, line 13—Leave out 'and' and insert 'or'.

I believe that the qualifications required under Part 3 are ridiculously high. The provision demands that people have not only degrees, diplomas and other qualifications from some tertiary institution but also five years' experience in investment management, business management, banking, asset management or auditing. We have two very high hurdles stacked on top of each other so that a high jumper would not be able to get over them by the time they are finished. I understand the need for qualifications or experience and that experience can be as good as qualifications, but to say that you must have both is an unnecessarily high hurdle. It appears that by the look of the Government's amendments, it might concede that in relation to the first of my amendments where I propose that the word 'and' be replaced by the word 'or', because I think it makes it open to a much broader spread of people, but you will not hire anyone who has not a good idea of what is going on.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. R.I. LUCAS: We have a similar amendment, because in essence the debate between the two amendments will occur at line 18, which is my next amendment. So I support the amendment.

Amendment carried.

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

Page 6, line 18—Leave out 'banking' and insert 'financial management in the banking sector'.

The Hon. Mr Elliott indicates correctly that the original Government Bill provided that a member of a board of directors had to have both qualifications, that is, one of the qualifications provided in paragraph (a) or five years' experience in various areas as provided in paragraph (b). The Government's attitude is that superannuation funds have been and will continue to be extraordinarily difficult bodies to run and manage. We have already seen a number of significant problems in the financial sector as a result of persons without the appropriate level of experience and expertise operating superannuation funds. For the future—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, I don't think so. He might fit your qualification under paragraph (c).

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: No, I don't think he would either—he isn't in the country. The examples used tongue in cheek by various members about persons such as Mr Bond and Mr Skase and others are further proof of the importance of ensuring as best we can as legislators when talking about important bodies such as superannuation fund management that we insist on appropriate qualifications and experience. That was the Government's preferred position and it still is, but I note that the Hon. Mr Elliott has indicated concern in this area, and in the spirit of compromise the Government has moved a further amendment. We are unable to support the Hon. Mr Elliott's amendment because he suggests that a member of a board of directors can have either a degree or a diploma as outlined under subclause 3(a) or five years' experience in these areas or five years' experience in any other area that is relevant to the performance by the authority of its functions. The view of the Government and in particular of the Treasurer is that that particular catch-all phrase—any other area that is relevant to performance—is a bit too wide. The areas of expertise listed in paragraph (b) are quite specific: the investment and management of superannuation funds or other substantial sums of money; or business management; or (as it will now be) financial management in the banking sector; or asset management; or auditing. They are quite specific qualifications or areas of expertise directly related to the management of superannuation funds.

The Treasurer's view is that to extend that even further by saying 'any other area', unspecified, that is relevant to the performance by the authority of its functions is just taking it a little bit wide. So, the Government in a spirit of compromise is saying, 'All right, we understand the point the Hon. Mr Elliott is making,' and we are now saying either (a) or (b), which is the point, so it will be either of those particular areas. It does introduce greater flexibility, but it is still a little closer to what the Government's preferred position is, that is,

that we have to be super careful in relation to the qualifications and expertise of the people we put on the Board of Directors of the Superannuation Funds Management Corporation of South Australia. I urge the Committee to accept the Government's further attempt to meet the spirit of what the Hon. Mr Elliott is attempting to do, that is, provide some greater flexibility without, in the Government's view anyway, going just a little too far.

The Hon. CAROLYN PICKLES: We are dealing with the amendment moved by the Hon. Mr Lucas to leave out 'banking' and insert 'financial management of the banking sector'. The Opposition supports that amendment.

Amendment carried.

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

Page 6, line 20—After 'auditing,' insert 'or'.

As I am not sure whether the Opposition indicated support for my amendment, this is one way of finding out. It seems pretty clear to me that, if we talk about other relevant areas, we are not talking about making cups of tea for the board in the past or the like, and it really has to be relevant to the performance of the role of the board. When we read it in conjunction with the other subclauses, they already give a guide about the sort of things being considered. It is a catch-all, but when we have a catch-all, surely it is a catch-all consistent with the rest of the clause. The person who makes cups of tea or empties the waste paper basket is hardly a person who can claim five years of relevant experience.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 6, after line 20—Insert subparagraph as follows:

(vi) any other area that is relevant to the performance by the authority of its functions,.

This amendment is consequential.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. R.I. LUCAS: The Government opposes the amendment strenuously and will fight it to the end. This may well mean a deadlock conference of the Houses; it may well mean the Houses having to work over Easter. I indicate to members that the cricket match may well have to be cancelled on Maundy Thursday. The Government feels very strongly about this matter and I want to place that on record and warn members about the enormity of what they are about to do.

Amendment carried; clause as amended passed.

Remaining clauses (10 to 39), schedules and title passed.

Bill read a third time and passed.

MFP DEVELOPMENT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1724.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their articulate, passionate and well informed speeches in the second reading debate on this piece of legislation. I thank them for their support.

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

PUBLIC SECTOR MANAGEMENT BILL

Consideration in Committee of the House of Assembly's message—that it had agreed to the Legislative Council's amendments Nos 1 to 15, 17, 18, 20 to 22, 24 to 27, 29 to 35, 37, 39, 41 to 44, 46, 48 to 51, 53 to 114 and 116 to 133; had agreed to the Legislative Council's amendments Nos 16, 19, 23, 28, 36, 38, 45, 47 and 52 with the amendments indicated in the annexed schedule; had disagreed to amendments Nos 40 and 115 and had made the alternative amendment to amendment No 115 as indicated in the annexed schedule; and had made the consequential amendments as indicated in the annexed schedule (for schedule of amendments, see page 1827).

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

That the House of Assembly's amendments to the Legislative Council's amendments Nos 16, 19, 23, 28, 36, 38, 45, 47 and 52 be agreed to.

Since we last debated this legislation, there has been intensive discussion between the Government and/or its representatives with the Public Service Association. Members of the Opposition and maybe members of the Australian Democrats have been party to either the discussions or the results of those discussions. I have been led to believe there is now agreement between the Government and the PSA, the Labor Party and the Democrats. If that is the case, I welcome it. There has been a preparedness by the Premier to continue to negotiate. As with any compromise, it is not the Government's preferred position but an indication of the reasonableness again of this Government in being prepared to negotiate and consult until we are all down to our knees and reach some form of agreement on these issues. I commend the compromises and amendments to the Committee.

The Hon. R.R. ROBERTS: After that spirited contribution by the Leader of the Government, I need to correct what he said. This compromise, which we are supporting, is clearly a victory for the PSA and an ignominious defeat for the Premier. The Premier took this on head on—had to do it himself—and has been defeated badly. This is a victory for consultation and a defeat for confrontation. In this exercise there was again another example of the contempt the Government has shown for the promises it made at the last election.

Despite the promises, it thought that all this would be done in the Lower House and it could ram it through. So, Mr President, it is also a victory for the Legislative Council whereby the majority view of the Council has had to pull into line those who would crash through and instil some commonsense. This has been a significant example that the Government ought to heed that consultation and proper negotiation will in the end win through.

I would like to pay particular tribute to Mr Peter Christopher from the PSA who by and large conducted the negotiations sensibly. This piece of legislation was rammed into this Parliament. We got half-way through it and the Leader of the Government, under instructions from the Premier, said, 'Look, we have to stop,' and it was put aside. Having been belted mercilessly around the ears, the Government decided to retreat and lick their wounds. They sent their emissaries around to talk to the Public Service Association and, once again, in a spirit of cooperation, the PSA entered into meaningful negotiations and were a whisker away from a compromise which has now been reinforced. But again, this Government said, 'We will not mess around any more with you people. We will ram it through the Legislative Council.'

However, the Government found that we had not softened our resolve to ensure that its promises would be kept and instead made it go through the process of sending it to the Lower House. What happened? When they went down there, rather than get belted again, they said, 'Let's go back to the negotiating table.' The Government went back to the negotiating table with these perfectly reasonable people from the PSA and continued the process that was taking place on a sensible compromise. It is gratifying to know that, even though they were forced, the Government was prepared to come up with a sensible compromise, lick its wounds and, despite the assertion by the Leader of the Government as an indication of the Premier's preparedness to negotiate, the fact is that he had no option but to negotiate.

What we have here is a very sensible position. As I said, I would like to congratulate Mr Peter Christopher on the work that he has done, for the patient and well thought out arguments that he presented and for the assistance that he provided to me.

An honourable member interjecting:

The Hon. R.R. ROBERTS: I know that he also provided some assistance to the Democrats, and he did provide a perfect example of how the Government ought to conduct itself with some honour in its negotiations. These amendments represent a sensible position. As I said, it is an absolute victory for the PSA and the Legislative Council, and a bad defeat for this Government and this Premier.

The Hon. M.J. ELLIOTT: I would like to begin by thanking the Hon. Ron Roberts. Since he supplied all the rhetoric, I can give that a miss and move right along.

The Hon. R.R. Roberts: Do your 'holier than thou' speech.

The Hon. M.J. ELLIOTT: I will just say 'ditto' to the first bit. I support the motion. I had an opportunity to speak with the PSA, which tells me that it has reached a satisfactory compromise with the Government. I think they are quite happy with what has happened here. I make the point first, as was made several times during the debate, that the Government had in fact said it would not amend the GME Act at all. This Council could have taken the position that we would refuse to treat the legislation at all on that basis, but in the spirit of cooperation, although the Government likes to portray it otherwise, we said, 'Despite the fact you promised that you would not amend it, we are prepared to look at it.' It is my view that in fact the legislation we have now is better than the GME Act.

In fact, I think the PSA has that view as well. I think it recognises, and I see, that some of the things that the Government hoped to achieve in terms of management structures at the top end have been achieved. I think that the Government ended up getting some of the major things it wanted to get out of this legislation. At the same time, there were some legitimate concerns aside from the management levels of the public sector about the whole concept of the independence and integrity of public servants. I believe that also has been preserved by this Public Sector Management Bill as it is about to leave this place.

I would prefer actually to see what has happened here. I hope that when people look back on it they will see this as something of a win-win situation. I think the Government has some of the major things it wanted. By the same token, as I said, the PSA itself would say that in some regards this Bill, as amended, is in fact superior to the GME Act. PSA members have said that to me privately. I think it is a good thing when that result can be achieved.

Motion carried.

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

That the Council do not insist on its amendment No. 40.

Motion carried.

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

That the Council do not insist on its amendment No. 115 and agree to the alternative amendment made by the House of Assembly.

Motion carried.

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

That the House of Assembly's consequential amendments be agreed to.

Motion carried.

ADJOURNMENT

At 10.34 p.m. the Council adjourned until Friday 7 April at 11 a.m.