LEGISLATIVE COUNCIL

Thursday 27 May 1999

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Collections for Charitable Purposes (Definition of Charitable Purpose) Amendment,
Criminal Law Consolidation (Intoxication) Amendment,
Criminal Law Consolidation (Juries) Amendment,
Evidence (Confidential Communications) Amendment,
Evidence (Miscellaneous) Amendment,
Nurses,
Road Traffic (Miscellaneous No.2) Amendment,
Second-hand Vehicle Dealers (Compensation Fund) Amendment,
Soil Conservation and Land Care (Appeal Tribunal) Amendment,
Statutes Amendment (Commutation for Superannuation Surcharge),
Statutes Amendment (Restraining Orders),
Supply,
Tobacco Products Regulation (Smoking in Unlicensed Premises) Amendment,
Trans-Tasman Mutual Recognition (South Australia),
Wingfield Waste Depot Closure,
Year 2000 Information Disclosure.

WINE MUSEUM

A petition signed by 65 residents of South Australia concerning the planned Wine Museum praying that this Council will urge the Government to take the necessary steps to have our Botanical Gardens and parklands retained for quiet relaxation and open space for the people of Adelaide was presented by the Hon. K.T. Griffin.

Petition received.

NATIVE TITLE

A petition signed by 71 residents of South Australia concerning native title rights for indigenous South Australians praying that this Council does not proceed with legislation that—

1. Undermines or impairs the native title rights of indigenous South Australians; and

2. Makes changes to native title unless there has been a genuine consultation process with all stakeholders, especially South Australia's indigenous communities

was presented by the Hon. T.G. Roberts.

Petition received.

QUESTION TIME

SOUTH-EAST WATER

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Transport, representing the Minister for Environment and Heritage, a question about nitrate levels in water in the South-East.

Leave granted.

The Hon. A.J. Redford: Have you read the report?

The Hon. T.G. ROBERTS: Before I have even asked the question the Hon. Angus Redford asks whether I have read the report. That is one of the problems on which I will elaborate in my explanation. I have not been able to get a copy of the report, despite many requests. I have sighted a copy, which was supplied to me by a friendly member of local government who had to hunt high and low to get one as well. I would have thought that the State Government, since it has been such a vexed question in the South-East, would make the report available to as many people as possible in the community and to members of Parliament and their representatives so that the information—

Members interjecting:

The PRESIDENT: Order! It is very hard to hear the question.

The Hon. T.G. ROBERTS: —and report can be cross questioned against the best scientific evidence to see whether the fears of those in the community who are concerned about nitrate levels are put to rest. An article by Chris Oldfield in the *Border Watch* headed 'The Nitrate Debate' puts a whole series of questions, which I will not list because it would be against Standing Orders. The article states:

> According to a State Government report dated November 1998, of all bores tested in the region 24 per cent are polluted above health standards for drinking and 67 per cent contain lower levels of contamination. Most affected are the dairying and market gardening areas around Mount Gambier stretching south and south west of the city as well as the Coorong viticultural area. The report says contributing factors of pollution are intense cultivation, fertiliser use and irrigation. It warns land uses other than forestry and dry land grazing have the capacity to further increase nitrate levels in the underground water resource to above World Health Organisation standards for drinking.

It goes on to list a lot of questions that the local paper asked the Minister and the Minister's replies. Those replies need a wider brief than I can provide in the introduction to my question, in order to allay some of the fears out in the community. The answers to the questions in the article go some way to providing some of the answers I require. My questions are:

1. What is the impact of the report on human and animal health?

2. What is the impact of the report on the distribution and land management for agriculture, horticulture, viticulture and silviculture in the South-East area—if there is to be any impact?

3. How many households or schools rely on bore water in the affected area purely for drinking?

The Hon. DIANA LAIDLAW: It is good to see that the Opposition is at last taking some interest in this subject, because I understand that last November the Minister for Health issued a press release saying that the report was available. So, it is some six months after that press release was issued and the Minister indicated that the report was available. I understand that it was commissioned by the Health Commission, now the Department of Human Services but, when most recently the *Border Watch* requested a copy of the report, it made those inquiries of the Department of Environment and Natural Resources, and it was not that department's report to release.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: I always think that the department or the Minister's office would be helpful, and I am sure they would be helpful if the honourable member

himself sought a copy of the report—and I am not sure that he has.

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: In fact, I have just heard that the Hon. Angus Redford has four copies; the honourable member does not even have to ring the Minister's office. I will nevertheless refer the honourable member's questions to the Minister and bring back a reply. However, they may be better directed to the Minister for Human Resources, whom I also represent.

DAVID JONES BUILDING

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Government Enterprises, a question about asbestos contamination at David Jones and the inspectorate services.

Leave granted.

The Hon. R.R. ROBERTS: Some 12 months ago I raised a matter in this place in connection with reports that I had received about asbestos contamination at David Jones. It is well known that there are some 16 000 to 17 000 square feet of blue asbestos in the David Jones building, and that can be confirmed by looking at the asbestos register with respect to the David Jones asbestos removal project. I asked the Minister to provide me with some information or to address some issues at that time, and I point out that that request has not been responded to.

In the intervening period, two pieces of disconcerting information have been put to me. One was that up to 12 former employees of David Jones have died of mesothelioma or other asbestos related illnesses. They are startling figures. In the light of that information, I have also been advised from another source that with respect to asbestos contamination in David Jones the inspectorate services have been less than enthusiastic in enforcing adherence to the provisions required by all employers in the management of asbestos.

In fact, it has been put to me that the inspectorate has been told to 'lay off David Jones'. Given that sort of information, you can imagine my concern. I was prompted to write to Mr Jack Watkins, from the Asbestos Management Committee, who is the United Trades and Labor Council representative. As an affiliate of the United Trades and Labor Council, I went to him for advice. I wrote to him and asked him whether it was true or had he any information concerning the accusation that up to 12 ex-employees of David Jones had died of mesothelioma or other asbestos related illnesses. This information can be gleaned by the Government because a record is held at the Royal Adelaide Hospital of all people who die from these diseases.

He telephoned me to ask whether it was pertinent for him to raise the issue at the Asbestos Management Committee; I said that I had no objection to his doing that, and I understand that he has raised the matter with that committee. I also told him about the other assertion that had been put to me that, in fact, the inspectorate had been told to 'lay off David Jones'.

The Hon. R.R. ROBERTS: I have a short, but pertinent, preview which was provided to me by Jack Watkins and which I would like to read into *Hansard*. It is a preview of an operation that took place on Monday 24 May 1999. The document reads:

> Asbestos removal work was carried out by MacMahon Services on the fourth floor of David Jones (section 23) babywear. The work started at 6 p.m. and was over by 7.30 p.m. The approximate quantity of asbestos removed from the area was one household bucket load. In attendance when the work started was David Ellis (monitoring), Andrew MacMahon (contractor), Paul Amos (Manager, David Jones) and myself [Jack Watkins]. As I was leaving at approximately 7.30 p.m. I met Adrian Grey (DAIS) who was just arriving. I informed him the asbestos removal work had been completed.
>
> Prior to the work starting, the work area was photographed to show the condition of the asbestos before the removal work commenced. Once the photographs had been taken, the man who was to carry out the work wanted to know where he was to start and finish the removal and clean-up of the asbestos. When he was told to concentrate only on the asbestos shown in the asbestos register photograph, his comment to all of us was, 'There is loose asbestos residue everywhere. Where do I stop?' He was then told to remove the section of asbestos shown in the photograph and vacuum down the tops of ceiling tiles as far as he could reach.
>
> When [Jack Watkins] said it was farcical to be removing such a small amount of asbestos when all the rest of the asbestos, it would seem, was in poor condition [Mr Watkins] was informed by Mr Paul Amos to take the matter up with John Bolas in Sydney as he was the one who made all the decisions regarding the asbestos in the David Jones buildings.

The PRESIDENT: Is the honourable member ready to ask his question? This has gone beyond five minutes: you are tending to debate.

The Hon. R.R. ROBERTS: I will be another half a minute. The document continues:

> I have been told that one manager (now gone) [this is the manager of Department of Administration and Information Services] when pressed by the AMC [Asbestos Management Committee] lost his cool and said, 'Don't blame me, I have been told to lay off David Jones by the Minister.

That manager is no longer there. My questions are:

1. Is it true that inspectors have been told to 'lay off' the implementation of the asbestos removal plan and the inspection services at David Jones?

2. How many ex-employees have died of mesothelioma or other asbestos related illnesses and how many are being treated for those diseases at the present time?

I do have a list of people, four of whom are alleged to have died, one has undergone tests, and four more are under extreme treatment. I am prepared to make that list available to the Minister, but I am not prepared to lay it on the table.

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

The Hon. T. CROTHERS: I have a supplementary question. The Hon. Mr Ron Roberts in the earlier part of his very important question stated to the Council that 12 people had died from the asbestos related disease mesothelioma. In the latter part of his question—

The PRESIDENT: Order! The honourable member must put his question.

The Hon. T. CROTHERS: How many people who have worked in David Jones are known to have died from fatal diseases related to asbestosis? It is a very important question.

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

QUEEN ELIZABETH HOSPITAL

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, a question about hospital cutbacks.

Leave granted.

The Hon. G. WEATHERILL: Recently I have been contacted by people who use dialysis machines. The Queen Elizabeth Hospital used to have three shifts to enable these people to have their dialysis throughout the day. However,

the problem is that the night shift has been cut out. The other problem is that the people in the area, who live, say, in Ottoway, Taperoo or around that area, must travel all the way to Greenhill Road. If their partners have some type of illness or they are single people, the only way in which they can get there is through the Red Cross. The Red Cross pick up these people sometimes at 7.15 in the morning. They are then on the machines for something like two hours. However, they do not get home until probably about 1 o'clock in the afternoon, and sometimes it is 10.30.

The Red Cross picks up people from all the other areas and then takes them all to Greenhill Road. The major problem is that the night shift has been cut out at the Queen Elizabeth Hospital for people on dialysis, and more and more people must go to Greenhill Road. I was also contacted by someone from Elizabeth who has to travel by taxi, and the return trip costs $76 a day. Of course the hospital pays that—the expense does not come out of the person's pocket. Nevertheless, even though we have 13 machines at the QEH, we need other units set up in the Elizabeth area and in the south of Adelaide, and the sooner the better. These people are away from home for six hours, and sometimes longer, through having to travel and then spend time on the dialysis machine. It is a serious situation at the present time. Will the Minister reinstate the night shift at the QEH; and will he set up other units in other hospitals around South Australia?

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

PELICAN POINT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about Pelican Point.

Leave granted.

The Hon. A.J. REDFORD: I understand that earlier today the House of Assembly passed a resolution referring the construction of a power station at Pelican Point to the Public Works Committee and directing that all works cease until the committee has reported. I note that the Parliamentary Committees Act, in establishing the Public Works Committee, provides that the Public Works Committee shall have certain functions, and they are set out in section 12C(a). It then goes on to provide that it can perform such other functions as are imposed on the committee under this or any other Act or by resolution of both Houses. There is another section that might be relevant, namely, section 16 of the Parliamentary Committees Act, which provides that matters can be referred by the committee's appointing House, but there is a proviso that it be relevant to the functions of the committee.

I understand that protesters at Pelican Point are now telling police and workers that work must stop. In the light of that, I would be grateful if the Attorney-General could indicate what the consequences of the resolution in the House of Assembly may be, whether it is valid and whether anyone can now require the work to stop.

The Hon. K.T. GRIFFIN: I think it was unfortunate that the majority in the House of Assembly did not understand the constitutional limitations on their power and also did not understand what the law allowed and did not allow. You will note that—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: You will note that I have reflected not upon the House of Assembly but merely upon the majority who have passed this quite extraordinary resolution. The advice which I have received from the Crown Solicitor is that the resolution is ineffective. The House of Assembly has no power to either require the work to be referred to the Public Works Committee or require the work to stop. In the light of the ineffectiveness of the resolution—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: In the light of the advice that the resolution is ineffective, it is my view that it can be ignored and therefore the work can continue. It may well be that those who are giving advice gratuitously to both police and the workers may find themselves liable for damages for having, on a false basis, required them to stop work.

There are two other points that need to be made. The first is that a House of Parliament acting in this way, in a way which is not in accordance with the law or its constitutional powers, invites the courts to intervene. I would be very concerned if that were to occur, and I think all members would be, because what it does is to bring the courts and the Parliament, or at least a House of Parliament, into conflict.

Ultimately, though, if a private citizen or a private body, faced with an attempt by a House of Parliament acting unconstitutionally and without power, seeks to enforce an invalid or ineffective resolution then quite obviously where do the citizens and companies turn? They can only turn to the courts. The High Court has already been involved in a couple of cases involving the New South Wales Treasurer and the powers of the Legislative Council; and the South Australian Supreme Court has been involved at least in the case of Lewis and Wright. The courts are not afraid to become involved although, on occasions, they are reluctant to do so.

What this resolution will do is encourage private business in this instance to seek an order from the court which declares that the House of Assembly had no power to require either the reference of the project to the parliamentary Public Works Committee or to require the work to stop.

The other point is that I think this sends an appalling message to the whole community not just in South Australia but throughout Australia and overseas, and not just the business community but to private citizens, because they have followed all legal obligations and requirements, they are undertaking work which is lawful, and they are not required to deliver up the project to the Public Works Committee on the resolution of a House of Assembly. It really suggests that South Australia is in Hicksville. That is one of the messages which constantly, at least on the Government side, we are putting down. We are promoting South Australia.

We have the unfortunate events of the last few days with a series of homicides where the media is in a feeding frenzy and where there has been flamboyant reporting. I have issued warnings, as have the Director of Public Prosecutions and the Acting Commissioner of Police, about not going over the top, because people accused have a right to a fair trial. It is important for the media, as it is for the public at large, to act responsibly. The difficulty is that that event is giving South Australia a bad name interstate and it is creating a level of fear which is, whilst realistic, unrepresentative of the real threat to the citizens of this State. If you add to that the resolution of the House of Assembly as it affects the business sector, in my view, you are compounding the problem.

It is important that I just indicate why this work is not required to be delivered up for scrutiny to the Public Works Committee and why the House of Assembly cannot require the work to stop. Only a court can require the work to stop if the work is being conducted in a way which is not in accordance with the law. 'Public work' is defined in the Public Works Committee's Act as:

> . . . a work, the whole or a part of the costs of construction of the work, or where the whole or a part of the cost of construction of the work is to be met from money provided or to be provided by Parliament or a State instrumentality. All the work is to be constructed by or on behalf of the Crown or a State instrumentality. All the work is to be constructed on land of the Crown or a State instrumentality.

National Power is meeting the total cost of construction. The work is not being constructed on behalf of the Crown or a State instrumentality. It is a private enterprise project. It is, of course, supported by the Government, but it is a private enterprise project. While the land was previously owned by the Crown and a State instrumentality, it has been transferred in fee simple to National Power. The project is not a public work, and it has to be a public work before the parliamentary Public Works Committee has any jurisdiction at all.

The function of the Public Works Committee is to inquire into, consider and report on any public work referred to it by or under any Act. While the House of Assembly can refer any public work to the committee, this is not a public work. It does not fall within the ambit of the Act. Neither the committee nor the House of Assembly has any power in respect of matters not coming within the definition of 'public work'. Because of all that, the resolution of the House is just ineffective. Even if it were a public work, the second limb of the resolution, that is, 'stop the work', would be ineffective, because the House of Assembly has no power to direct National Power to cease construction.

The powers of the House are granted to it by statute and by section 38 of the Constitution Act, and there is no relevant power vested in the House of Assembly. Section 38 of the Constitution Act grants the House of Assembly the same privileges and powers of the House of Commons as at 24 October 1856. The power to direct private parties to stop construction was not enjoyed by the House of Commons at that time, and it is not a power enjoyed by the House of Commons now.

Everyone should recognise that a House of Parliament cannot unilaterally or by its own resolution increase its powers and privileges. There is just no power in the House of Assembly to do what it purports to have done by its resolution this morning. I would not ordinarily get involved in the affairs of the House of Assembly, but this is a constitutional issue of significance to the State and the Parliament. If we do not deal with it head on and put on the table the issues that are relevant to determining this issue, we would be remiss in our public duty.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: I am not doing it as a ministerial statement because I was asked a question on it—simple. That identifies all of the issues, and hopefully it does so for those seeking to build the power station. Those who are protesting and the police should understand that the resolution is ineffective.

The Hon. A.J. REDFORD: I have a supplementary question. Is the Attorney willing to convey his answer, including the matters of opinion from the Crown Solicitor, to the Speaker of the House of Assembly and, if so, when will he be able to do that?

The Hon. K.T. GRIFFIN: I will give consideration to the issue raised by the honourable member.

MOUNT BARKER PRODUCTS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question about the health implications of emissions from the Mount Barker Products manufacturing plant in Mount Barker.

Leave granted.

The Hon. SANDRA KANCK: My office is in possession of a notice dated 24 May sent from the Mount Barker Waldorf School to parents concerning an unpleasant chemical odour engulfing the school. The notice to parents states:

> Some nearby residents' children and teachers have experienced some reaction allegedly from breathing the fumes—symptoms ranging from mild headache through to nausea and breathing distress.

I have been informed that the fumes referred to are chemical fumes emanating from the Mount Barker Products factory and are a consequence of its water meter manufacturing process. My office has also been told that a parent of one of the school children approached Mount Barker Products to discuss the issue. For his efforts his name was given to the EPA, which warned him he risks an $8 000 fine or two years imprisonment for slandering the company. I will be directing information concerning that incident to the Ombudsman's Office, and I will also be seeking the EPA's report of the matter under FOI. I am told that a Health Commission officer visited the school and factory yesterday and apparently another visit is planned today. My questions to the Minister are:

1. Will the Minister confirm Mount Barker Products as the source of the emissions?

2. What are the constituent parts of the emissions?

3. What are the health risks associated with these emissions?

4. What steps, if any, have been undertaken to curtail the health risks posed by the emissions?

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

TRANSADELAIDE EMPLOYEES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Transport a question about TransAdelaide workers.

Leave granted.

The Hon. CAROLINE SCHAEFER: I wish to draw attention to an advertisement in this week's *City Messenger* authorised by Daryl Dickson, Branch Secretary of the Australian Rail, Tram and Bus Industry Union, SA and NT Branch, and therefore paid for by members of that union's levies.

Members interjecting:

The PRESIDENT: Order! I cannot hear the question.

The Hon. CAROLINE SCHAEFER: I ask the Minister:

1. Are the union claims of Government plans to cut TransAdelaide workers' wages and conditions by 20 per cent true?

2. Is it true that workers agreed to cut wages and conditions to secure their employment?

3. Is it true that the General Manager, Sue Filby, claims that the value of TransAdelaide workers' wages and conditions are 20 per cent too high?

4. Is it true that TransAdelaide workers do not want a pay rise but that they just want no wage cuts and to keep the 'public' in transport?

The Hon. DIANA LAIDLAW: I, too, was interested to see the advertisement. I understand it was placed in all 11 Messenger newspapers this past week, and it seems to me that the union has more money than it has members. Perhaps that is not surprising when one hears the open rumours that are around of the union being bankrolled by ALP members.

The Hon. Carolyn Pickles: We haven't got any money.

The Hon. DIANA LAIDLAW: No, ALP members. I am not sure who they may be, but it is clear that—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: They certainly come from the Left.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Oh, you've found your tongue today, have you? You have been pretty silent for some time, but you are taking an interest now, because it is left wing politics of the ALP. I understand that Mr Dickson is being courted by the Left of the Party, but it is not clear which faction: whether it is the Bolkus-Pickles faction or the Bedford-Duncan faction, or both.

I suspect that Mr Dickson is enjoying the fact that he is being courted by both, and I suspect that this advertisement may have been supported to the same effect, because we all know that the union has financial problems, and it is interesting to see that it can now afford this advertisement. I will be interested to see whether it can also afford advertisements throughout the *Messenger* press of the same size, offering me a public apology. I suspect the ALP will not be falling over itself to pay for that but will follow this issue through.

I am not at all surprised to see that the union—the Australian Rail, Tram and Bus Industry Union as it now calls itself, not the Public Transport Union—does not seek a pay rise, because its members have just had one, last month. It is also clear that, when the whole work force throughout every TransAdelaide depot voted by an absolute majority for variations to their awards, they knew they were voting for a staged pay rise. At Lonsdale, it was 10 per cent over a period of time from 1998 to April 2000, so there they have had 3 per cent in April 1998 and 4 per cent last month, and they will have another 3 per cent in April 2000; and on top of that they have had safety net adjustments.

But it has been better still at every other depot than Lonsdale, where the work force has voted for and is receiving a 12 per cent pay rise over the period 1 July 1997 up to and including 1 April 2000. They do not want a pay rise, because they have just received one and they are getting another one next April.

I see that the union is claiming that its members want to keep the 'public' in transport, but they do not want to keep 'public' in the name of their union: since their new Branch Secretary came along they have changed it from the Public Transport Union to the Australian Rail, Tram and Bus Industry Union.

Perhaps, it intends to work more broadly across the metropolitan bus sector and perhaps it does want to move into areas that have traditionally been the province of the Transport Workers Union. Certainly, the TWU sought to take the membership of the former PTU and was told by the ACTU not to take it over. I think things are fermenting nicely within the union movement and the ALP at the present time.

I indicate that the union has deliberately, I suspect, confused issues. At no time have I ever commented (nor would I comment) on matters that must be resolved between the unions and the business corporation, the public corporation, that this Parliament established last year in the form of TransAdelaide. TransAdelaide is one of 27 companies that next month will be provided with requests for proposals for the operation of the metropolitan bus services. Like all those companies, it will work with the unions, and the Passenger Transport Board, in assessing applications, will respect all registered industrial awards and agreements. That does not change from last time and it will not change in the future. I would not be commenting on any business enterprise in terms of its bidding process and its negotiations with the union movement.

However, I have told this new named Rail, Bus and Tram Union that I am prepared, from a Government perspective, to consider issues that normally would be deemed to be input cost disabilities in terms of superannuation and long service leave, because those are definitely statutory costs to TransAdelaide which no other operator would have to bear and TransAdelaide should not be disadvantaged in the bidding process. But the union is aware that those matters are being considered and that I will get back to it shortly.

I have not done, and never would do, what the union has accused me of in this advertisement. However, on radio and television I have responded strongly to the claim that the union never understood what the changed conditions and wages were when TransAdelaide bid last time. I made a strong response, and quite rightly so, because the union fully understood what it was doing. It was involved through the whole process. To claim now, as the new union secretary is claiming, that the union did not know what it was doing deserves a strong response.

For the record, I want to run through the reasons why the union knows exactly what is going on and for political purposes seeks to misrepresent the case. The unions agreed to vary the award provisions to allow depot based agreements. The union did that: that was nothing to do with Government, nothing to do with TransAdelaide. The union was then represented at every depot on every workplace committee that developed packages of wages and conditions which were then put to the work force at every depot, and the work force at every depot voted by absolute majority in favour of those packages.

Members opposite who have an intimate knowledge of the industrial relations system will know that no agreement can be registered in the Industrial Commission unless the union agrees, and every one of those agreements that was voted on and had the support of the absolute majority of the work force of every depot was registered with the Industrial Commission with the agreement of the union. So it is absolute rot to say that the union did not understand what the wages and conditions would be in terms of TransAdelaide's bid for the operation of public transport services. It just defies logic and the facts that the union did not understand what was going on.

Much more can be said, and I will be saying much more. I have told the union that I will present the facts and figures, costs and savings to this Parliament, which I intend to do next week, and perhaps I can pursue the issue further at that time. In the meantime, I will be pursuing with the union—and if

Labor members still wish to bankroll them, they could help the union in this regard—the public apology that I seek in terms of the advertisements that have been placed by the union that completely misrepresent—and I suspect deliberately so—my position and statements on this matter.

SMOKE ALARMS

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about smoke alarms.

Leave granted.

The Hon. CARMEL ZOLLO: I recently had a constituent contact me concerning residential smoke alarms. He had purchased an older house and was told by the broker that, as the property's title was changing, it required him (as the new owner) to install hard wired alarms and that he had six months from the transfer of the title to carry out the work. The obvious need to do so under law would become evident in the case of a fire. My constituent, who tells me he is normally well informed, expressed surprise at the requirement—that is, from February 1998, new owners of property must hard wire their newly purchased houses within six months of the transfer of title—especially as the previous owner of the house had already installed battery alarms.

I am aware of the various provisions in relation to smoke alarms which were legislated under the relevant Act, including the need for all homes to have at least battery operated alarms by January 2000. These are obviously serious responsibilities that dwelling occupiers need to undertake in relation to fire safety. I was also pleased to hear the Minister for Disability Services outline in the Council the assistance to be provided to people with hearing loss. Regrettably, we still see too many cases of people losing their lives and comments made to the effect that such tragedies could have been averted if alarms had been installed.

Given the apparent widespread lack of knowledge of the legal requirements to be met by January 2000 and the important role that smoke alarms play in saving lives, I ask the Minister: does the Government intend to conduct a general public education program this year to advise the public of their various responsibilities under the Act, particularly on the need for all residential properties to have at least battery operated alarms by January 2000 and the need to hard wire properties following the transfer of title?

The Hon. DIANA LAIDLAW: I recall that after this matter was investigated by an all Party committee in this place—Labor, Liberal, I think the Democrats or at least an Independent—I and the Government were congratulated. I think that even the Hon. Mr Gilfillan was nice to me for a change—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: He has been nasty to you, too, has he? It was acknowledged that the Government and I had done quite a good job in terms of circulating throughout the community knowledge of the requirements in terms of smoke alarms.

The Hon. Carmel Zollo interjecting:

The Hon. DIANA LAIDLAW: I am sorry the honourable member missed it because her colleagues have said that the Government and I have done a pretty good job.

The Hon. Carmel Zollo interjecting:

The PRESIDENT: Order! The honourable member has asked the question.

The Hon. DIANA LAIDLAW: The fact that the honourable member missed it does not necessarily surprise me, but I assure the honourable member that public campaigns do not always reach everyone; it did not reach her—

The Hon. Carmel Zollo: It did reach me. I asked what will happen in respect of the general public.

The PRESIDENT: Order! The honourable member has asked the question.

The Hon. DIANA LAIDLAW: I just misunderstood the situation from the honourable member's question. Further information will be provided that will reinforce the campaign launched soon after the legislation was introduced and the ongoing campaign through the fire services, local government, HACC, Older Persons Group and the Housing Trust. A big effort is being made across the community to alert people to their responsibilities, including through the real estate associations and companies. To support that ongoing effort, there will be a further campaign at the official Government level a few months before the end of this year.

The Hon. Carmel Zollo: That's exactly what I asked.

The Hon. DIANA LAIDLAW: And I'm just telling you that's exactly what we're going to do.

STATE RECORDS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief statement before asking the Minister for Administrative Services a question about State records.

Leave granted.

The Hon. J.S.L. DAWKINS: During the recent New South Wales election the Premier, the Hon. Bob Carr, announced that the so-called secret files of that State's Police Special Branch would be opened. This initiative received quite a lot of publicity. It has been brought to my attention that the South Australian Government has recently exempted the records of the South Australian Police Operations Intelligence Division from the State Records Act. It has been suggested to me that this exemption will enable the police to destroy records which should be preserved. It has also been suggested that we should be following Mr Carr's example in opening the files and not allowing them to be destroyed. Is it true that the Government has exempted the Police Operations Intelligence Division from the State Records Act? If so, why were the exemptions granted?

The Hon. R.D. LAWSON: It is true that Mr Carr obtained quite a bit of publicity during the election campaign when in a great celebration he opened the files of the old Special Branch in New South Wales. I would not have regarded that as an initiative by Mr Carr: I thought it was a stunt, and it showed a cavalier attitude to the records of Police Special Branch and police intelligence activities. Records of this kind do have the capacity to damage individual reputations, and it is my belief and that of the Government that these issues ought to be addressed sensitively and responsibly.

It is true that the State Records Act, which was passed in 1997, does contain a number of principles. One of them is that official records of enduring evidential or informational value are preserved for future reference; and the second principle is public access, subject to exceptions or restrictions that are required for the protection of the right to privacy of private individuals. So, there are exceptions to the rule, and I think that is very important to note.

In 1998 the Government, through an Order-in-Council of the Governor, did publish in the *Government Gazette*

directions to the Commissioner of Police in relation to the Police Operations Intelligence Division.

The Hon. CAROLYN PICKLES: Mr President, I rise on a point of order. I understand that this matter is before a parliamentary committee and therefore should not be discussed in the Parliament.

The PRESIDENT: Is it before a parliamentary committee?

The Hon. R.D. LAWSON: Not as I understand it. In fact, I am told by the Chair of the Legislative—

The Hon. A.J. Redford: I might be wrong in that. I didn't know you were answering this question today.

The PRESIDENT: Is the Minister explaining his position on the point of order?

The Hon. R.D. LAWSON: Yes, I am. To leave to one side the substance of the point, I have received a letter from the Legislative Review Committee saying that that committee proposes taking no action in relation to a certain regulation, and that is signed by the—

The Hon. Carolyn Pickles interjecting:

The Hon. R.D. LAWSON: The matter is not before—

The PRESIDENT: Order! Only one person has the floor. It sounds like the matter has been dealt with by the appropriate committee. Therefore, I do not uphold the point of order.

The Hon. R.D. LAWSON: I was explaining that the Order-in-Council given to the Commissioner of Police lays down certain rules relating to the Police Operations Intelligence Division. Those directions to the Commissioner of Police do contain a specific regime for the culling of the records of the Police Operations Intelligence Branch. They provide for the appointment of an independent auditor and provide that the information shall not be divulged, and there are certain requirements relating to security, dissemination and destruction of the records. The records can be destroyed under the supervision of that independent auditor.

It is true that there might be seen to be a conflict between, on the one hand, the State Records Act, which maintains the preservation of records, and another regime which allows in certain circumstances culling of records under the supervision of an auditor. It is a question of balance, and the balance struck is one that respects the provisions of the State Records Act but also acknowledges that Police Operations Intelligence does have records of great sensitivity, records from informers and information that might be rumour, innuendo and suspicion. In certain circumstances, for the protection of individuals, this information should be culled, provided appropriate safeguards are introduced—and we have certainly done that. In my view, Mr Carr was entirely on the wrong tram to trivialise the issue of the records of Special Branch.

The Hon. P. HOLLOWAY: I have a supplementary question. Will the Minister say whether he consulted with the State Records Council prior to introducing regulations on this matter?

The Hon. R.D. LAWSON: The regulations in this matter were derived by Executive Government, having regard to its responsibility and also to the Order-in-Council of the Governor relating to the special case of the records of Police Operations Intelligence.

The Hon. P. HOLLOWAY: I have another supplementary question, which is the same as the previous one, because the Minister did not answer my question. Did the Minister consult with the State Records Council prior to the introduction of the regulations?

The Hon. R.D. LAWSON: I have certainly had discussions with the State Records Council on this matter since the regulation came into force.

EYESIGHT TESTING

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions about motor vehicle licences and eyesight testing.

Leave granted.

The Hon. T.G. CAMERON: It has recently been brought to my attention that South Australia is the only State not to test for eye sight at licence issue or re-issue. New South Wales, Victoria, Queensland and Western Australia all have drivers undertake the Snellen test when applying for and renewing their licences, while the Australian Capital Territory and Tasmania issue eyesight certificates. South Australia has the unique requirement for a medical practitioner to report anyone with faulty eyesight to the Registrar of Motor Vehicles—quite a quaint requirement. More disturbing, however, is the fact that South Australian police are forbidden to check for eye sight as a part of crash investigations. The only right the police have to check anyone on medical grounds is covered in the Summary Offences Act (section 81(2)).

If the police want a person's eyesight checked following a motor vehicle accident, that person has to be in custody first. I am also informed that the police do not keep official crash statistics recording faulty eyesight as a cause of motor vehicle accidents. It has been estimated that between 2 per cent and 6 per cent of drivers have vision that is below the minimum safety standard—or about 30 000 drivers. Most of these, however, would meet the standard by simply having corrective lenses fitted. My questions to the Minister are:

1. Considering we are moving towards national standards on road rules, why is South Australia the only State not to have introduced eyesight tests at licence issue and renewal?

2. Why are the police forbidden to check for faulty eyesight in crash investigations?

3. Is there any reason why the police do not keep official crash statistics recording whether faulty eyesight is a cause of a motor vehicle accident?

4. Minister, in order to fulfil your duty of care not only to motorists but to school children, pedestrians and cyclists, do you agree that this matter should be examined and that we ought to be brought into line with the rest of Australia?

The Hon. DIANA LAIDLAW: In terms of bringing it into line with the rest of Australia, the last advice I received on the subject indicated that the honourable member's preliminary statement that 'all other States require such testing' is not right.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: I will re-read the start of your explanation, but as I understood it you said that all those States have this testing regime. As I understand it, that is not so. So, to bring us into line I could not commit in answering a question today when my other advice is that not all of Australia has the practice that the honourable member suggests. This issue has been raised with me and referred to the department and legal officers for further consideration. I will seek a prompt reply for the honourable member.

DISABILITY SERVICES

The Hon. R.D. LAWSON: I seek leave to make a ministerial statement about the new disability services framework.

Leave granted.

The Hon. R.D. LAWSON: Today I announce a significant new step in refining the way in which disability services will be developed in this State. The enactment in 1993 of the Disability Services Act was a watershed. That legislation set out in a formal way the principles which underpin our approach to services for people with disabilities. The language of the legislation cannot be easily paraphrased, but the following captures the essence of those principles:

> People with disabilities are individuals. . . who have the inherent right to respect for their human worth and dignity; and who have the same fundamental human rights and responsibilities as other members of the Australian community. Persons with disabilities have the right to protection from neglect, abuse, intimidation and exploitation.
>
> Persons with disabilities have the same right as other members of the Australian community to the assistance and support that will enable them to exercise their rights and attain a reasonable quality of life. In receiving the services that supply such assistance and support, persons with disabilities. . . have the right to choose between those services so as to provide assistance and support that best meets their individual needs; and. . . have the right to pursue any grievance in relation to those services without fear of recriminations or retribution from service providers.

While the principles focus on the needs, rights and aspirations of people with disabilities, the Act also contains objectives which set the standards to which service providers should aspire. The objectives of the Act speak of concepts such as increased independence, individual needs, positive outcomes, accountability and informed participation. Of course, most of our services for people with disabilities and their families were established many years before the Commonwealth/State Disability Agreement or the Disability Services Act were ever thought of.

Minda Inc. celebrated its centenary in 1998. The Royal Society for the Blind, the Crippled Children's Association, the Intellectual Disability Services Council, Spastic Centres of SA, Julia Farr Services, Strathmont Centre and the Guide Dog Association are all household names. There are many, many other groups. In more recent years the Government has created more specialised agencies, such as the Options Coordination agencies and Independent Living Equipment providers. Indeed, Options Coordination itself is a new system for delivering services in a simplified and more equitable way.

This financial year we will outlay over $156 million through more than 80 Government and non-government agencies. But, more significant than Governments, institutions and agencies, a great proportion of services for people with disabilities have been delivered through the dedication and love of families and informal supports. Disability services in this State have often grown along historical rather than rational lines. This is not surprising, given the great diversity of needs and organisations. There is a point at which it is important to examine the whole system and to make considered decisions about what a holistic services framework should include and, within available resources, where the resources should be directed. We have reached that point.

Accordingly, I have directed that a disability services planning framework be developed. It will provide a new foundation. In order to ensure that the foundation is sound I have agreed that an initial step in its development will be the formulation of a disability policy statement. The statement will be prepared by the Disability Services Office, and a first draft for consultation will be completed by July this year. The policy statement will provide the over-arching principles, which will become the basis upon which the Department of Human Services will operate in planning services and in funding. It will reflect the principles and objectives contained within the current legislation and will set the directions for the provision of disability services in South Australia.

It is vital that interested parties be consulted regarding the content of the policy. Once a draft policy is available, a process will be arranged to enable input and comment for the development of the final framework. Within the Department of Human Services the Executive Director with overriding responsibility for disability services will have oversight of the policy statement and the services planning framework to follow. A project officer will be appointed and a reference group will be formed. The result will be accepted and actioned only after the sector is involved with its development. We must ensure that the framework takes account of the complexity and depth of the service system. It must be founded on a firm understanding of the interrelationships of the total system.

So, what will the completed framework look like? It is envisaged that after setting out the policy statement the framework will include a listing of services and where resources are currently allocated. It will describe what service types are required to provide services to people with disability throughout their lives and, within available resources, what proportion of services should be dedicated to each service type. A good services framework should priortise need and recommend where any new resources gained could be allocated. It will set the vision for a balanced and whole service system. It will provide direction for disability services in this State. It is expected that it will take some time to develop this framework as there will need to be extensive consultation and discussion. It may be easy to describe the perfect framework in the perfect world. It will not be easy to outline a framework acceptable to everyone.

It must be acknowledged that there is increasing demand and competition for available resources both within the disability sector and across Government. I am confident that with cooperation, detailed work and a realistic appreciation of available resources we will produce an agreed framework that acknowledges the constraints and aims for growth and improvement. If we are unable to produce such a framework we will have failed all people with disability. I look forward to working with the community on the development of the disability services framework.

RETIREMENT VILLAGES

The Hon. IAN GILFILLAN: I seek leave to make a statement before asking the Minister for the Ageing a question about retirement villages.

Leave granted.

The Hon. IAN GILFILLAN: On 17 February 1998—more than 15 months ago—the Attorney-General promised residents of retirement villages that the Government would issue that same month an information kit to assist them. In fact it was released on Friday 23 April this year—more than 14 months after the Attorney-General promised it would be available. When I last inquired about the Government's attitude to retirement village residents on 4 November 1998, I cited to Parliament some of the complaints that had been

expressed to me from individual residents. Their concerns were given short shrift by the Minister who said, 'I can say that the situation described does not exist'. So, it was with some surprise that on Saturday 24 April, the day after the Minister launched his retirement village information kit, the *Advertiser* quoted the Minister as follows:

> The performance of some retirement village operators gives rise to a number of complaints from residents.

On Monday this week I received correspondence from a gentleman who went to the Residential Tenancies Tribunal to resolve a dispute in his village. It has taken him three years to have it settled. Will the Minister now acknowledge that he was wrong in his claim last November that the situation I described then, that is, of persistent problems in a minority of retirement villages, does not exist, and will he now support mandatory registration and licensing with minimum compliance standards so as to cut the cowboys out of the industry and minimise complaints?

The Hon. R.D. LAWSON: I am delighted that the honourable member has acknowledged the publication by the Government of the retirement villages kits, which were launched by me in March this year. The kit is a very useful tool and explanation of the provisions of the Retirement Villages Act, because such provisions are not always easy to understand for the uninitiated. It is a matter for regret that, as the honourable member says, the Residential Tenancies Tribunal had a particular matter (I do not know the details of it) for three years before resolving it. I would be delighted if the honourable member would provide me with the particulars of that case, because three years for the resolution of issues of this kind through the Residential Tenancies Tribunal is far too long.

Finally, it is not correct to describe my answer to the honourable member's question last year as brushing him off or denying the existence of problems. I did say that the complaints mechanism in place within the Department of Human Services should answer those complaints that arise from time to time. The Government does not favour licensing or other mandatory provisions in relation to retirement villages. There are problems in a very small number of villages and I believe, on the evidence that I have seen, that they are being appropriately addressed through the mechanisms presently in place. My mind is open to any suggested change in the future.

STATE RECORDS

The Hon. A.J. REDFORD: I seek leave to make a personal explanation about a question asked in Question Time today and about your ruling, Sir.

Leave granted.

The Hon. A.J. REDFORD: Earlier in Question Time a question was asked by the Hon. John Dawkins of the Hon. Robert Lawson on the topic of State records. I was unaware that the question was to be asked or answered, and the Minister did not raise the matter with me at any stage prior to the question being asked. The Hon. Ron Roberts indicated to me across the Chamber whilst the Minister was speaking that the subject of the question was still before the Legislative Review Committee. At the time I had no specific recollection of whether or not our deliberations had been completed. The Hon. Ron Roberts indicated that it was his recollection that the matter was still before the committee and had been adjourned for further deliberation next week.

Following that, the Hon. Carolyn Pickles then raised a point of order, indicating that the matter was still before the Legislative Review Committee and was therefore not an appropriate subject for a question. During the course of the exchange between you, Mr President, and the Hon. Robert Lawson, the Minister indicated that he had received a letter from the committee Secretary under my signature saying that the committee had completed dealing with the matter and had resolved to take no action. I have subsequently checked with the committee's research officer and Acting Secretary and he has advised me, first, that the Hon. Ron Roberts's recollection is correct—the matter was and still is before the Legislative Review Committee—and, secondly, that a letter had been sent to the Hon. Robert Lawson and in fact had been sent to him in error. On behalf of the committee and committee staff I apologise to anyone who might have been misled during the course of that exchange.

BUDGET PAPERS

The Hon. K.T. Griffin, for **the Hon. R.I. LUCAS (Treasurer)**: I lay on the table the following papers:

1999-2000 Budget Paper No.1—Budget Speech;

1999-2000 Budget Paper No.2—Budget Statement;

1999-2000 Budget Paper No.3—Estimates Statement;

1999-2000 Budget Paper No.4—Volumes 1 and 2—Portfolio Statements;

1999-2000 Budget Paper No.5—Capital Works Statement;

1999-2000 Budget at a Glance;

1999-2000 Budget Guide;

1999-2000 Employment Statement.

BARLEY MARKETING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 May. Page 1204.)

The Hon. R.R. ROBERTS: I rise to make a brief contribution to the debate on this Bill. As indicated by our Leader in these matters in this Chamber, the Hon. Paul Holloway, I support the Bill. I want to make a contribution about barley, because I have had a fairly lengthy association with barley marketing and barley marketing boards going back some four or five years. At that time a dispute was raging between the farming fraternity in the Minister's office (then the Hon. Lynn Arnold) about the composition of the Barley Board. I remember Lynn Arnold telling me that we did not have a problem with this matter, although some recalcitrance was being exhibited in the barley bowl of Australia—not just Yorke Peninsula in South Australia—because we were then taking the view of the then United Farmers and Graziers Association, later to become the National Farmers Federation, South Australian Branch.

The Minister invited me to represent him at a meeting in Maitland on a cold August night and address a public meeting arranged by barley growers from Yorke Peninsula, but that I was not to worry, because we were doing what the farmers wanted and therefore there would be only a few recalcitrant farmers. Well, there were 354 of them there. I was engaged in a protracted negotiation and am proud to say that I was able to be helpful to the barley growers of South Australia by

ensuring that the barley grower representatives on the Barley Board in this State were indeed elected by farmers themselves, the rest of the composition being made up of a mixture of expert and ministerial appointments.

One of the things that was very clear was that barley marketing, both export and domestic, was a fairly tenuous operation. Also very clear was that the operations of the Barley Board were far superior to those of the Wheat Board and other marketing authorities at that time. The national marketing board was set up with Victoria and, basically, South Australia

The Hon. Ian Gilfillan interjecting:

The Hon. R.R. ROBERTS: It was at that time. The National Barley Marketing Authority was set up, which was basically Victoria and South Australia, and I think it is still true to say that it has been reasonably successful in the export markets. Things have changed, not dramatically but technically since then, with deregulation of feed barley in Australia. We have maintained the single desk status for export barley, and the operations have fallen under the Barley Board for the export of malt barley.

Throughout my dealings with the Farmers Federation and barley growers in South Australia, whenever there was a problem in the barley industry I was lobbied and from time to time was able to identify differences of opinions and, through proper consultation, resolutions were always possible that satisfied the needs of all players.

I am somewhat surprised to see this Bill going through and my having received no consultation or representations from the people with whom I became familiar and of whom I grew quite fond in the barley industry and within this marketing authority. It concerns me from time to time. As most members would realise, I am not a person who responds well to threats, and it worries me that this latest legislation for deregulation—which in one sense completes the deregulation within the barley industry in Australia—has come about, not through the will of the farmers or the people marketing barley in the South Australian scheme, who actually produce the majority of the malting barley for export and the domestic scene, but because a Premier in another State has made threats and laid it on the line to the Primary Industries Minister and farming leaders in South Australia. I am aware that this was the subject of a debate at a National Farmers Federation meeting and that a decision was made to support this legislation, albeit with a gun at the head, expressing a desire for export barley to maintain the single desk.

When one looks back over the history of farming (and I know your own farming background, Mr Acting President), one can see that farming is a career these days—or a business is a better way to describe it—where people are basically price takers. I am reminded to reflect on why we have orderly marketing and single desk selling in this State and indeed Australia for primary produce. It is very simple: in times of high production in the early days third party marketers—those people between the growers and the consumers—absolutely screwed the poor old grower and made their profits. The high margin of profit went to that second tier and not to the first or last tiers. Consumers and growers were therefore disadvantaged and the fly by night traders in the middle made enormous profits.

People may well say that the world has moved on in marketing since the 1930s and 1940s, when farmers were subjected to pressures by these growers during these periods. I would suggest that the world and technology might have moved on, but greed and avarice are still the same today as they were then. It worries me that we are deregulating our domestic industries just as much as it would worry me in respect of deregulating or taking away the single desk on the export front.

However, the fearless leaders of the farming fraternity do not seem to have the same sort of courage that I believe I would have had in taking on Jeff Kennett—on their recommendation. I have received no representations from those people in the barley industry who have exhibited to me that their opinion should be respected, and that has always been reinforced by their actions. I am talking about people such as Mr Honner and Mr Jeff Clift, who had a distinguished career in SACBH—hardly a rabid Labor supporter, I might add.

I am concerned that we are running down this deregulation track and, at the end of the day, it is my earnest wish that we do not find ourselves in the situation in which the forebears of the present day farmers found themselves, being screwed by unscrupulous marketeers. It is to be hoped that the predictions of the free marketeers are coming true and that our farming fraternity, and especially in this case, the barley growers, will not be disadvantaged in the long run.

I was especially pleased when my colleague the Hon. Paul Holloway gave an assurance to the farming fraternity of South Australia that at least the Labor Party in South Australia will be supporting single desk marketing of our farming commodities beyond the year 2004.

The Hon. Caroline Schaefer interjecting:

The Hon. R.R. ROBERTS: For those reasons, I am supporting the second reading of this legislation, despite prompting from the Hon. Caroline Schaefer for me to do probably the opposite.

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

A quorum having been formed:

The Hon. T.G. CAMERON: I rise to make a brief submission regarding this Bill and to indicate that SA First will be supporting it. The Barley Marketing (Miscellaneous) Amendment Bill will provide changes in barley marketing arrangements in South Australia. This Bill is a result of Victorian and South Australian Government reports into the public benefits test of the Barley Marketing Acts under national competition policy principles.

Cabinet recently approved legislation to establish and confer on the grower owned company an effective single desk export power for barley (which I think is a sensible initiative); to deregulate the domestic market for malting barley; to deregulate the oats market; and to repeal provisions relating to the ABB and Barley Marketing Consultative Committee. Deregulation of the domestic feed barley market was initiated separately to accomplish it prior to the 1998 harvest. This Barley Marketing (Deregulation of Feedstock Barley) Amendment Bill was passed in July 1998.

This legislation will remove all restrictions on the sale, delivery and purchase of barley for domestic malting barley harvested in the season commencing 1 July 1999; remove all restrictions on the sale, delivery and purchase of oats harvested in the season commencing 1 July 1999; extend the single desk export for the ABB a further two years until June 2001; exempt exports of barley in bags and containers up to 50 tonnes in weight so as to ensure the servicing of minor niche markets—another welcome initiative; increase the fines for breaching the Act—a long overdue measure; and transfer assets, liabilities and staff of the Australian Barley Board to a grower owned successor, ABB Grain Limited, on or before 30 June 1999.

Once this law is in force, the domestic market for barley sold for malting and other processing purposes in Australia and all markets for oats will be deregulated. I understand that extensive negotiations have taken place over a long time between the two State Governments, the ABB, the South Australian Farmers Federation and the Victorian Farmers Federation to finalise time frames involved in the setting up of the privately owned company. SA First will be supporting this legislation.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their interest in and support of the second reading of this Bill. I will attempt to give a response to several of the issues which were raised. If the issues require further explanation, I will endeavour to give that further explanation during the course of the Committee consideration of the Bill.

In the debate yesterday, two policy questions relating to this legislation were raised: first, the expected term for the single desk authority beyond 2001; and, secondly, the ability of an authorised receiver, for example, South Australian Cooperative Bulk Handling, to participate in the 1999-2000 trading season. I will deal, first, with the single desk authority beyond 2001. The issue was, in fact, addressed in the second reading explanation where I said:

> Single desk powers are likely to continue in this State until it can be clearly demonstrated that it would not be in the interests of the South Australian community to continue the arrangements.

In relation to the ability of South Australian Cooperative Bulk Handling to participate in the 1999-2000 trading season, I make the following points. The Act provides that the Australian Barley Board may appoint authorised receivers who may receive and hold barley. The Act also provides that delivery of barley to an authorised receiver is, for the purposes of the Act, delivery to the Australian Barley Board. Since the Act achieves the single desk export mechanism by restricting delivery of barley to the Australian Barley Board, the appointment of authorised receivers is necessary.

The Act also prohibits an authorised receiver, without written approval of the board, from having a direct or an indirect interest in a business involved in the buying or selling of barley or in a body corporate carrying on such a business. This provision that prohibits authorised receivers from engaging in buying or selling barley has been in the Act for several years and originated in relation to the separate legislation (the Bulk Handling of Grain Act) that provided that South Australian Cooperative Bulk Handling was the only entity that could receive and store grain. The Bulk Handling of Grain Act was repealed in 1998.

During the recent review of the Barley Marketing Act there was an extended opportunity for public comment. Neither South Australian Cooperative Bulk Handling nor any other party raised the issue of prohibition of authorised receivers buying or selling barley. The Deputy Premier has consulted with South Australian Cooperative Bulk Handling, South Australian Farmers Federation Grains Council and the Australian Barley Board and proposed to amend the Barley Marketing Act after the Australian Barley Board has been restructured into grower owned companies on 1 July 1999 and the resulting equity has been distributed to growers and before harvest of the 1999-2000 crop begins (which is expected in October 1999).

Amending the Act in this way will avoid disruption to the restructure and equity distribution processes that are to take place as of 1 July 1999 and will implement changes in the legislation in time for South Australian Cooperative Bulk Handling to be able to trade barley on the domestic market and for niche export markets in the 1999-2000 crop season. For the 1998-99 season just completed, only the Australian Barley Board was permitted to buy and sell barley with the exception of feed barley for the domestic market. Since most South Australian feed barley is exported, the domestic feed barley market is quite small.

Therefore, with the passage of the amendment proposed by the Deputy Premier, South Australian Cooperative Bulk Handling will not have been denied any substantial opportunity for trading in barley than it would otherwise have had for the past several years under the Barley Marketing Act. I think that deals with all the issues. If there are others, as I said at the commencement of my reply, I will be happy to try to deal with those during the Committee consideration of the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 16 passed.

Clause 17.

The Hon. P. HOLLOWAY: This clause establishes the new corporations, ABB Grain Limited and ABB Grain Export Limited. The following issue has been raised with me. I understand that a person has taken action against the Australian Barley Board seeking compensation in relation to a breach of employment contract. I wanted some assurance that, in the transfer of liabilities under this Bill, that person would maintain their current rights in that respect as a result of the transfer to the new companies. Will the Minister give us an assurance in that regard?

The Hon. K.T. GRIFFIN: The normal principle is that, where there is that right of action, it would be retained. Whilst I think the Minister has indicated that he was not prepared to give that advice, the Crown Solicitor has, that is, the rights would be retained.

Clause passed.

Clause 18 and title passed.

Bill read a third time and passed.

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 March. Page 1055.)

The Hon. IAN GILFILLAN: The Democrats support the passage of this Bill. I notice with interest the Attorney-General's second reading explanation. I appreciate that the intention is to finetune the existing provisions of the Residential Tenancies Act 1995, and I note the Attorney's belief that the Act is working well in defining the rights and obligations of landlords and tenants. I share the Attorney's belief in the efficacy of the Residential Tenancies Act. I notice that one of the aims of this Bill is to align provisions of the Residential Tenancies Act with the provisions of the Retail and Commercial Leases Act. I am sure that the Attorney and other members in the Chamber will not be surprised that I cannot let this opportunity pass without wondering why other types of protection available to residential tenants are not available to retail tenants.

If it is good enough to allow residential landlords and retail landlords to have the same rights and obligations in respect of abandoned goods, as this Bill requires, why then cannot residential tenants and retail tenants have the same

rights in respect of, say, security bonds? As the Attorney knows, and other members of the Chamber, this is one of the things that the Retail and Commercial Leases (Miscellaneous) Amendment Bill, which was my legislation and which passed in this Chamber, attempts to do. However, due to the Government's intense opposition, that Bill is still languishing in the other place.

The only other point I wish to make concerns the provision in this Bill which prevents the Residential Tenancies Tribunal from considering claims for damages arising from personal injury caused by a breach of a tenancy agreement. On my reading of this provision, it would not prevent a plaintiff with an appropriate case taking it to a court of higher jurisdiction. I believe that the District Court or the Supreme Court would not be prevented from hearing such a case arising from a breach of a tenancy agreement merely because of the clause which we are contemplating inserting into the Residential Tenancies Act. In his summing up, I ask the Attorney-General to confirm whether or not my interpretation is correct. I would not want to say that a tenant or a landlord, who has been psychologically injured by a protracted battle over their rights, should have no right to legal redress to compensate them for that injury.

Although I understand that it is not on file at the moment—and probably the Hon. Carmel Zollo will make reference to it—I think it is appropriate in my second reading contribution to indicate that I have been shown an amendment which deals with a situation where the tribunal may have ordered an eviction. The circumstances as postulated are that the evicted tenant, through connivance with the landlord, can re-enter those premises virtually the very next day. I have not had a chance to take advice on this from any other source other than in conversation with my research assistant, Shane Sody, but I feel it does at least raise the question of whether a tribunal's determination can define a period of time in which a tenant is not able to re-enter premises or whether there is some loophole whereby the determination of the tribunal can virtually be rolled overnight.

I am sure that the Hon. Carmel Zollo will give a detailed and explicit explanation of this amendment in due course, but I indicate that I feel sympathy for the intention, and I am somewhat surprised that the hazard is there in the current legislation. I look forward to an explanation from the Attorney. If the Hon. Carmel Zollo has discovered a loophole, it would be very appropriate for us to deal with it as an amendment in Committee. With those few remarks, I indicate the Democrats support for the Bill.

The Hon. CARMEL ZOLLO: At the outset, I declare an interest in this matter as the co-owner of tenanted property. The Opposition supports this amending Bill which deals primarily with the association between landlords and tenants. The Government has brought before this place several minor amendments to the principal Act, which has been in operation for about three years.

The Residential Tenancies Amendment Act 1995 was the first major revision of the Residential Tenancies Act since 1978, and since that time the Act has not undergone many alterations. In the main, the provisions of the Act attempt to serve both the landlords and tenants evenly, attempting to protect the interests of both parties and seeking to resolve possible conflicts.

Clause 3 of the Bill amends section 97 of the Act and seeks to clarify conflict resolution involving abandoned goods. The Act already provides for the sale of unclaimed non-perishable abandoned goods after a 60-day period. The amendments seek to provide the ability for landlords to cover all their reasonable costs, including associated advertising charges, in the removal and sale of any goods that a tenant may have abandoned.

I note that when this Act was before this place in 1995 the Attorney-General at that time felt that the provisions of section 97 would include the reasonable recovery of associated advertising costs. It appears that since then the tribunal has been reluctant to provide that interpretation, presumably necessitating the amendments to the abandoned goods section.

Clause 4 amends section 110 of the Act which deals with powers of the tribunal. The changes to section 110 appear largely administrative in nature. I would have thought that under the powers of the tribunal it could have ordered payment of moneys directly into the Residential Tenancies Fund, thereby eliminating the need for this amendment. Nevertheless, the Opposition will take this proposal on face value.

Due to attempts by the Government over the past few years to make major alterations to the tribunal system and the accompanying allegations that the tribunal favours the tenants, the Opposition is mindful of any changes to the scope and power of the tribunal and the application of the fund.

Whilst recognising that the intention of the fund is not to act as an insurance fund and that in the main landlords, just as with most business activity, can insure themselves against loss, I am concerned that we may be limiting recompense to genuinely aggrieved tenants. Whilst I have indicated that the Opposition supports clause 4, I ask the Minister in Committee to address whether section 101(f) of the Act (application of income), which allows the income derived from investment of the fund to be applied 'for the benefits of landlords and tenants in other ways approved by the Minister', could in fact not be interpreted as a vehicle for recompense. Therefore, one could question the need for section 110.

The Attorney has mentioned recent decisions of the New South Wales Supreme Court. I ask that the Attorney provide some examples of this situation during the Committee stage. I am also interested to learn whether any applications for such compensation have been made to the tribunal in South Australia.

I appreciate that clauses 5 and 6 of the Bill, which amend the Landlord and Tenant Act 1936 and the Retail and Commercial Leases Act 1995 respectively, are consequential and seek to provide consistency with these changes. Whilst talking about consistency, I note the inconsistencies in the terms 'lessor', 'lessees', 'landlord' and 'tenant' between commercial leases and residential leases which have appeared since the revision of that Act. Whilst I prefer the terminology as applied in the residential tenancies legislation, I would ask whether the Attorney-General in his reply could also address this inconsistency.

An amendment has been filed in my name which will seek to amend a deficiency cited by the Opposition in section 90. This proposal will seek to rectify the anomaly that could arise when a lease has been terminated under the provisions outlined in that section. I look forward to some of the Opposition's concerns being addressed in Committee. The Opposition supports the second reading of the Bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

FINANCIAL SECTOR REFORM (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 25 May. Page 1164.)

The Hon. P. HOLLOWAY: The Opposition will not oppose the Bill. It is regrettable that we have not had a great deal of time to consider it. We only received a copy of it earlier this week. I appreciate that when we have—

The Hon. K.T. Griffin: But we did give you some briefings beforehand.

The Hon. P. HOLLOWAY: I didn't have them; they might have been given to others.

The Hon. K.T. Griffin: The Leader of the Opposition, the Leader of the Opposition in this Council and the shadow Attorney-General.

The Hon. P. HOLLOWAY: I was going to say, Mr President, that I appreciate that when we have legislative schemes such as this that apply throughout the country, and there is a need for legislation that is uniform throughout the country, there are problems. I note that the legislation that the Commonwealth is considering in relation to financial reform was introduced into the House of Representatives back on 11 March. Indeed, I just happened to tune into the radio earlier today and I heard some debate on the Bill in the Senate, so I gather that that Bill is at the final stages of being passed through the Federal Parliament. I make the point that a Senate committee had apparently considered the Federal legislation, which is a companion to the State legislation, and had reported on that Bill fairly recently.

Let us go into the background of the Bill, because I think it is important to make some points about the changes we have seen in our financial sector. The financial institutions that exist today are almost unrecognisable when looking at those that existed as recently as 20 years ago. During the 1970s there was a growth in non-bank financial institutions (as they were then called), in particular, building societies and credit unions. I happened to look at some statistics concerning that in the Campbell report which came out in 1981 and which looked at the Australian financial system.

It noted that, for building societies, the share of all assets of financial institutions (the building society share, that is) had increased from around 1 per cent in the mid 1960s to almost 7 per cent in 1979. If we look over the decade ending in 1979, the assets of credit unions grew from $90 million to $1.7 billion. So, there was a massive growth in non-bank financial institution assets during the 1970s and, of course, that obviously meant that the banks' share of deposits was declining during that period. That was one of the reasons that led to the Campbell report and many of the changes that were implemented after that report was brought down, and the subsequent Martin report.

We saw a whole lot of changes to the financial institutions in Australia. There was, of course, deregulation, the requirement for banks to hold statutory reserve deposits, and LGA ratios (I think they were called liquidity and Government asset ratios) were all removed. Foreign banks were introduced, although they do not seem to have had quite the impact that was thought at the time. We have seen substantial mergers in the financial sector, and we have also seen a greater range of services that have been adopted by banking institutions and, in particular, one could mention insurance, stockbroking, investment management and so on. All of these sorts of activities were—

The Hon. A.J. Redford: You might not say that if you lived in Karoonda.

The Hon. P. HOLLOWAY: No; certainly the large banks dabbled (with limited success, I might say) in some of these activities. But it is interesting to note that, at this very time, having dabbled in some of these fringe areas, if I can call them that, unsuccessfully in some cases, it looks like now we are moving back to this expansion again of financial services.

The point I am trying to make is that, during the 1980s following the Campbell committee report and the changes that the Federal Government made, there were massive changes to our financial institutions and they are unrecognisable from 20 years ago. Of course, the banks reacted in this new competitive environment to try to increase their share. That put pressure on those institutions—the non-bank financial institutions—that were controlled under State law to compete, and we have also seen large changes in that sector.

There were a number of mergers of credit unions and building societies, to the stage now where in this State we have only one building society, although we do have 14 credit unions, one of which is the largest in Australia. We also have four financial friendly societies as well as some other friendly societies that one could describe as pharmaceutical societies and fraternal friendly societies. So, a considerable part of the financial industry was still controlled by the States.

Of course, what happened in 1992 was that we had seen some problems in this sector—I recall, for example, the collapse of the Pyramid Building Society in Geelong. The need had been seen in the changing financial environment to bring about national regulation of the industry. In 1992, the States agreed on a scheme with Queensland to be the lead legislator and, of course, national bodies were set up to regulate the credit unions, building societies and friendly societies. We had in this State the South Australian Office of Financial Supervision and, nationally, AFIC.

When the Howard Government came to power, it again decided to take the financial institution reform process further. It established the Wallis committee, which reported back in 1996 or 1997. The Wallis committee recommended that all deposit taking institutions (which appears to be the name we will now know them by), including banks, non-bank financial institutions and friendly societies, should be subject to the same regulatory regime, and responsibility for the new regime should be transferred to a single Commonwealth regulator, APRA (the Australian Prudential Regulation Authority).

That recommendation has been broadly accepted across the Australian community. It is certainly supported by the Opposition at the Federal level and it has been supported within the industry. I venture my own opinion that it is certainly appropriate that, in this day and age, with the massive changes to financial institutions to which I have just referred, we should have one body responsible for the prudential management of this sector. Of course, for the Wallis report recommendations to take place, it is necessary that the State powers over these institutions should be referred to the Commonwealth Government. Essentially, that is what the Bill before us is about. It is about transferring the State powers to the Commonwealth to enable APRA (the Australian Prudential Regulation Authority) to prudentially supervise credit unions, friendly societies and building societies. Of course, there are within the Bill a large number of transitional measures which will allow for that transfer of authority to take place in an orderly way.

In this Bill we will also need to change the nomenclature. There are a large number of amendments within this Bill which change a number of Acts to provide for a name change from a bank to an ADI (authorised deposit-taking institution). Perhaps, with the popularity of the banks being at an all time low, the banks would prefer being called ADIs. Certainly, that is what they will be known as under a great deal of our legislation when this Bill is passed. While it is necessary for this State to refer powers to the Commonwealth to regulate these financial institutions, it is also necessary for the Commonwealth to take up that power and to set the guidelines for the regulation of these institutions by APRA.

At this stage I should also point out that, in fact, another body is involved in the regulation of these institutions. Whereas APRA will be responsible for prudential regulation, ASIC, the securities commission, will be responsible for the corporate regulation of these institutions. So, the two Federal bodies will regulate them. The Opposition certainly supports in principle this transfer to the Commonwealth regime. However, there are some questions I would like to place on record in relation to this transfer, because it is important that we ensure that, as a result of this transition, this State's interests are protected.

In particular, I am concerned about the implications for the staff at our State office, the South Australian Office of Financial Supervision. It is my understanding that it employs five staff at the moment and that these staff will transfer to APRA. I understand that APRA will have an office in Adelaide. I would like the Minister to give an undertaking about how long the APRA office in South Australia is guaranteed. It would be most unfortunate if that office were transferred interstate, as has happened with so many other Commonwealth regulatory offices. That is one question I would like the Minister to answer.

Also, I note in the information supplied with this Bill that it provides for the transfer of AFIC and SAOFS employees, assets and liabilities to ASIC and APRA on terms to be contained in transfer agreements. I would like the Minister to provide an answer as to what negotiations have been undertaken on this particular subject. Can the Minister give us an assurance that the conditions of those employees who are to be transferred to the new Commonwealth body will be fully protected? I would also like the Minister to provide an undertaking that all the staff who are now here will continue to be located here in the APRA office. These are important questions.

I also note in the Bill that there are some amendments to State taxation legislation. Under the new legislation, State taxes and charges will apply if there is to be a voluntary merger of institutions; however, if there is a compulsory merger of institutions, in other words, a merger that is required by APRA for prudential reasons, State taxes and charges will not apply. It is interesting that in the past a number of bank mergers have taken place which have required State legislation. I can recall in the past few years at least two pieces of legislation. One of those involved the merger, I think, of BankSA and Advance Bank. In that particular Bill I recall that no State taxes and charges needed to be paid. There was also a merger between the Bank of New Zealand and either the National Australia Bank or ANZ.

I note in that case that the payment of stamp duties and other State taxes and charges was required. I understand the new clause in this Bill as it relates to the payment of taxes and charges on mergers is similar to that which applies in other States, and it is also similar to the precedents that have been set in the past when there have been bank mergers in this State. Of course, under this Bill, if there are to be mergers of banks, the new Bill will apply in all cases. As I understand it, we will not have to introduce special Bills each time banks merge to allow for the transfer of assets, as has been the case in the past.

In conclusion, we have a companion Bill to this that relates to the transfer of property—in other words, bank mergers. I will have a little more to say about that later. This is the most important Bill with regard to reform of the financial sector. I want to make the point that this Bill is really yet another example where the States are relinquishing their powers to the Commonwealth. Whether or not we like it, the States are quite rapidly becoming less and less relevant in the Australian federation. This Bill is yet another Bill, following on from so many that we have passed here, that brings that into effect. We have to accept that this is an inevitable consequence of a technological development on the one hand and globalisation of the economy on the other. It would be both futile and irresponsible to resist such changes in this area. Some issues have been raised in the Federal Parliament in relation to the transfer of powers to the Commonwealth, and I will mention those in the debate on the next Bill. The Opposition supports the passage of this Bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

FINANCIAL SECTOR (TRANSFER OF BUSINESS) BILL

Adjourned debate on second reading.

(Continued from 25 May. Page 1165.)

The Hon. P. HOLLOWAY: We continue where we left off. The financial reform changes that have been brought about as a result of the Wallis report have been wrapped up into two Bills for this State; within the Commonwealth, three or four Bills are necessary to bring about the changes. The Bill we have just debated is the most important as far as those changes are concerned. However, this Bill relates to the transfer of business. My Federal colleague the Hon. Simon Crean, when he was debating these measures in the Federal Parliament, when they were accepting from the States the transfer of responsibility for building societies, credit unions and friendly societies, made some interesting points. His argument was that the word 'transfer', as it is used in this Bill, is really a cute term for de facto mergers. Of course, the concern of many of the members of the Federal Parliament—and, indeed, the Federal Opposition in moving amendments on this matter—is that under changes that have been made to the Commonwealth legislation it may be possible for mergers of the four large banks, the so-called four pillars—Westpac, ANZ, National Australia Bank and the Commonwealth Bank—to be permitted to take place without ministerial approval.

The provision for mergers of financial institutions to take place has always been permitted in State controlled institutions, that is, the building societies, credit unions and friendly societies. The Commonwealth has decided, when it takes over this power from the States, to extend that more general provision to include other banks, and that would create the anomaly of allowing the four large banks to also merge, or so it is alleged.

That is one of the most controversial issues that the Commonwealth is dealing with at the moment. I hope the Senate will ensure that the Federal Treasurer is required to endorse any mergers of the large banks—the so-called four pillars. However, that is a matter that the Senate must address. For mergers of State controlled institutions, it is quite appropriate that the current arrangements should be transferred to the new Federal bodies, which will regulate the financial sector, that is, the Australian Prudential Regulation Authority.

The Hon. K.T. Griffin: They actually rely on the State laws for their existence. That is the ironic part.

The Hon. P. HOLLOWAY: The reason why State powers have to be transferred to the Commonwealth is that, if there is to be a merger of banks and therefore a transfer of the deposits into a new institution, it would be messy to get the permission or approval of every deposit holder within each bank. That is why State legislation is needed to provide that approval by the State.

I mentioned earlier that as exists under the current regime there will be two types of mergers: first, a voluntary merger, which is a coming together of these financial institutions in their own economic interest; and, secondly, there is also provision for compulsory merger, which could come about for prudential reasons. In other words, if one of these financial institutions was experiencing some difficulty, the prudential authority could require that body to merge to ensure its viability. There is really no change to that, but it sets an interesting precedent that is causing all these hiccups in Canberra about whether mergers should be permitted for the larger banks.

In conclusion, these changes are inevitable. It is appropriate in this day and age, given the massive changes we have seen in our financial system, that prudential regulation for these bodies should be transferred to the Commonwealth. Therefore the Opposition will facilitate the passage of this Bill through both Houses of Parliament in the next week so that all States can come into the scheme together by the end of the financial year on 30 June. We will assist in providing speedy passage for these two Bills.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS (WORKPLACE RELATIONS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Introduction

The South Australian Government established its workplace relations policy position in 1997 with its pre-election policy document "Focus on the Workplace". This policy document envisaged a comprehensive and evolutionary series of changes to workplace relations in this State. This Bill, the *Industrial and Employee Relations (Workplace Relations) Amendment Bill 1999*, reflects and implements the policy commitments made by the Government in 'Focus on the Workplace'.

The policies, which this Bill will implement, have been in the public arena for almost 18 months. They have been broadly circulated and published, and there have been continuing opportunities to challenge and improve them.

The resulting combined input has helped to ensure that in implementing these policies, the Bill is a logical, well considered, contemporary and evolutionary step for workplace relations in South Australia. The changes reflected in this Bill are formulated to suit the workplace relations needs of employers and employees in this State, by allowing employers and employees to share the benefits of a more flexible and user friendly system, which encourages greater freedom for employers and employees to determine their own relationships. The changes are 'South Australian' in nature and do not 'blindly' follow workplace relations systems either federally or in other States. The Bill will not implement a radically deregulated system, but it will re-position South Australia's workplace relations legislation abreast of other states.

Opposition to the reforms contained within this Bill, especially those relating to workplace agreements, will mean that South Australia's workplace relations laws will fall behind those of other States. As other States continue to move forward, passage of the Bill becomes all the more critical to ensuring that South Australia maintains its reputation as a State with industrially contemporary and competitive laws, and a State in which to do business.

The Government's commitment to developing and focusing employment relationships at the workplace level is demonstrated through the amendment of the short title of this Act to the Workplace Relations (SA) Act. It is further demonstrated in similar name changes to a number of bodies, including the change of the Industrial Relations Commission to the Workplace Relations Commission, Enterprise Agreement Commissioners to Workplace Agreement Commissioners, and the creation of the new agreement approval authority, the Workplace Agreement Authority (the "WAA"). Similarity, this change in focus sees most references in the Act to "Enterprise", change to "Workplace".

Objects of the Act

With this Bill, the South Australian Government confirms its commitment to providing new opportunities to increase employment for all South Australians, by improving key areas of the workplace relations system.

Through amendments to objects of the Act, the Government makes clear its desire to create a stronger, flexible and more efficient workplace relations system in this State.

The Government recognises the need to promote employer / employee partnership in the workplace. The Bill inserts into the Act an object that recognises the primary responsibility which employers and employees have to determine the terms and conditions of, and matters affecting, their relationship. The encouragement and facilitation of the determination of wages and conditions of employment through agreements between employers and employees is fundamental to the Bill.

The Government continues to recognise the importance of the award system as a fair and enforceable base for employment conditions, which does not hinder the responsibility of employers and employees to determine the matters that affect their employment relationship.

The Government recognises the desirability of encouraging parties to reach and "own" their own solutions to difficulties in their workplaces. To this end, the Government has provided for a new mediation stream as part of its overall package of reforms.

The Government is committed to ensuring that youth employment in this state continues to improve. The Bill will insert a new objective into the Act, which seeks to encourage and facilitate the employment of young people in this State, through the protection of their competitive position in the labour market. This aim will be enhanced through the maintenance of youth wages.

The Employee Ombudsman

The Government is keen to see that employees are able to obtain independent and informal assistance when negotiating a workplace agreement. The Bill will focus the role of the Employee Ombudsman to where the help of the Employee Ombudsman is needed most: for those employees who request the help of the Employee Ombudsman in relation to a workplace agreement.

In this regard, the Bill gives the Employee Ombudsman extensive functions. In particular, the role of the Employee Ombudsman will be refocussed on assisting and representing employees who request the assistance of the Employee Ombudsman in the negotiation of, approval of or in disputes arising from individual or collective workplace agreements. The Employee Ombudsman will be able also to assist or represent an employee who requests the assistance of the Employee Ombudsman in claiming that they have been subject to coercion, harassment or improper pressure in the negotiation of a

workplace agreement. In carrying out these functions, the Employee Ombudsman will have the powers of an inspector.

These amendments will ensure employee protection and maximise the efficient use of the resources of the Office of the Employee Ombudsman.

Rationalising the functions of the Employee Ombudsman in this way will see improved utilisation of resources, with inspectors from the Department for Administrative and Information Services taking the major responsibility for workplace agreement and award compliance.

Functions of Inspectors

In keeping with the encouragement of employers and employees to resolve their own differences, inspectors will be expressly charged with a new function of encouraging voluntary compliance with the Act, with workplace agreements and with awards. Consequentially, inspectors will no longer need a complaint in order to enter a workplace. Inspectors of course will retain the ability to take action to enforce compliance where that is appropriate. The Bill makes it clear the inspectors have the role of investigating whether there is compliance with workplace agreement and award obligations in respect of outworkers.

Deduction of union dues

Strong representations were made to the Government that this Bill should prohibit the deduction of union dues by employers. The Government rejected that position. Rather, the Bill will limit to a maximum 12 month period the effect of a written authorisation to an employer to deduct union dues from an employee's wages. This allows an employer and employee to agree upon the employer's facilitating payment of union dues in this manner, but properly ensures that every employee reviews this decision at least once per year. This is consistent with the arrangements that are in place in the SA public sector.

Minimum Entitlements under the Act

The Bill proposes to move the provisions of the *Long Service Leave Act* into this Act. Wherever possible, legislative provisions about workplace relations matters should be contained in the one statute. Whilst workplace agreements will facilitate more flexible long service leave arrangements, there will be no reduction in entitlements.

Employment of Children

The Government's commitment to fairness for, and protection of, employees compels recognition of the special considerations which face children involved in door to door selling. In this respect, the Government considers children involved in door-to-door selling as a special and isolated case. The Bill therefore will make it an offence to employ a child under the age of 14 years in a prescribed occupation or activity. The Government intends to ask the Governor to prescribe certain door to door selling activities.

Workplace Agreements

The Bill aims to provide employers and their employees with new opportunities to make employment arrangements which best suit their workplace needs. This allows for arrangements to be made between employers and employees which are conducive to the removal of restrictive workplace practices which can often hinder an enterprise. It allows for the development of more innovative and productive working arrangements. Access to such arrangements has clear benefits for employers and employees alike. The Bill will give employers and employees the freedom to choose the workplace agreement that is best suited to their mutual benefit.

This Bill provides for two forms of workplace agreements. It will preserve the ability to make collective workplace agreements, which are made with a group of employees. It will introduce the ability to make a South Australian individual workplace agreement, which will be an agreement made between an employer and an individual employee.

The introduction of individual workplace agreements will provide new opportunities for South Australian employers and workers. In particular, it will provide access to a type of individual agreement for many workplaces that have been unable to access the federal stream of individual agreements. The Bill provides for the statutory recognition of individual workplace agreements, which is something denied currently to many South Australian workers. This is something which is offered to many employees through the federal system and other State systems. In this regard, the Bill will draw South Australia level with many other States.

A new "Workplace Agreement Authority

The Government recognises the achievements of the current Enterprise Agreement Commissioner in making the approval process for agreements less formal and accessible.

However, the Government feels compelled to recognise the concerns expressed to it by users and potential users of "the system" that the existing Commission processes can be perceived as legalistic and intimidating. In this regard, the Government is concerned that the use of workplace agreements is being hindered by the parties perceptions about the processes used by the existing bodies.

In an attempt to accommodate these concerns, most workplace agreements will be approved by a new Workplace Agreement Authority. In addition, the process for approving workplace agreements will be simplified, and made even more accessible and user friendly in nature.

The Workplace Agreement Authority will be expected expeditiously and informally to assess individual and collective workplace agreements against specified approval criteria. The Workplace Agreement Authority will undertake this process by consultation with the parties. The Act encourages the Workplace Agreement Authority to visit individual workplaces, where appropriate, to hold discussion with the parties, in order to work out whether the criteria for approving an agreement has been met.

The interests of employees in this new agreement-making system will be protected by an extensive array of checks and balances. The Government's commitment to this is demonstrated for example by the introduction of a "cooling off" period for employees of which a breach by an employer is punishable by the highest level of maximum fine applicable under the Act.

The approval criteria

The approval criteria which the Workplace Agreement Authority is charged with applying are simple, but fair. The Workplace Agreement Authority must approve a workplace agreement, if after examining it and making reasonable enquiries, the Authority finds no reason to believe that the criteria for approval have not been satisfied.

The approval criteria for collective workplace agreements and individual workplace agreements will be slightly different. With regard to collective workplace agreements the majority of employees to be covered by the agreement must have agreed to it. The approval criteria for individual agreements require the Workplace Agreement Authority to be satisfied that the parties appear to understand the agreement; that there was no coercion, harassment or improper pressure applied in the negotiation and signing of the agreement, and that the parties genuinely want the agreement registered. In those circumstances where the Workplace Agreement Authority is unable to come to a clear determination whether the workplace agreement reached between the parties satisfies approval requirements, the proposed agreement must be referred to the Workplace Relations Commission for consideration.

Furthermore, no workplace agreement will be able to be approved unless it complies with the minimum requirements of conditions of employment set out in the Bill. Those minimum requirements relate to annual, sick, bereavement, parental and long service leave, plus a rate of pay no less than the ordinary time rate appropriate to the nature of the work, that is applicable under a relevant award. These statutory minimums provide employers and employees with the necessary flexibility to negotiate terms and conditions which suit their workplace. Despite the freedom this offers, the Government has insisted that the Bill guarantee that certain "essential elements" of these statutory minimums cannot be "cashed out". For example, the Bill requires a workplace agreement to preserve an employee's entitlement to take the relevant amount of paid annual leave.

The Government recognises the need to balance these user-friendly procedures with clear offences for employers. An employer who is found to have discriminated against an employee, or who applies coercion, harassment or improper pressure to an employee in respect of a workplace agreement, will commit an offence under the Act. Furthermore, the Workplace Relations Commission will be able to set aside the approval of a workplace agreement if it is subsequently found that an employee was subject to coercion, harassment or improper pressure in the negotiation of the agreement.

The Workplace Agreement Authority will be independent from the Minister as to how it exercises its statutory powers and discretions, but will be responsible to the Minister for the proper administration of the Authority's office.

Role of awards as a safety net in the agreement process

Awards will remain safety nets by which an employee can choose to remain covered simply by declining to make a workplace agreement. However, for those employees who do not wish to remain covered by an award but who want instead the flexibility offered by a workplace agreement, the minimum standards set out in the Bill

will provide a statutory safety net. Some aspects of the award safety net will "carry over" in this regard, those being minimum provisions as to an ordinary rate of pay, and bereavement leave.

Awards

The Government recognises the importance of creating a workplace relations system within this State that is easily understood, and yet which provides employees with critical minimum protections. The Bill therefore provides for a means of award simplification, and specifies the range of matters with which an award is able to deal. It also provides that within 18 months after the implementation of the award simplification provisions, any provision of an award that could not have been validly made under these provisions will automatically become void.

This process of award simplification will occur in a manner which, where appropriate, encourages greater correlation with relevant federal awards, while still recognising issues which have particular significance for South Australian workplaces. This will reduce the confusion that has been caused in the past by particular discrepancies between federal and state awards which are otherwise substantially the same.

The Government considers that the 1994 award review provisions have not achieved their stated aims in respect of a significant number of state awards. Many awards continue to contain provisions which confound and confuse both those covered by them and those who are approached to provide advice in relation to them. Contrary to the aims of the existing review provisions, these awards affect to a significant extent the way work is carried out, inappropriately interfere with the practical application of the award provisions, and have failed to keep pace with industrial, technological, commercial or economic developments applicable to the relevant industry. The Bill therefore modifies these 1994 review provisions, and integrates them with the award simplification provisions I described a moment ago.

In recognition of the Government's commitment to ensuring that youth employment is promoted in this State, where an award prescribes rates of pay the award will be required to prescribe rates of pay for juniors.

Public Holidays

In proposing to allow more flexible observance of public holidays, the Government draws a parallel with the informal (but written) individual agreement system which has worked so well for the cashing out of long service leave. This is so, despite much Parliamentary unrest about the passage of the relevant amendments during 1997.

Many South Australians come from diverse cultures/background. Many South Australians may prefer to have flexible arrangements that allow them to use their "public holidays" to celebrate their own special days. In recognition of this, the Bill facilitates the reaching of an informal but written agreement between an individual employer and an individual employee to transfer the observance of a public holiday.

The aim of these changes is to increase flexibility and meet the needs of both employers and employees. The changes will allow employees to choose to make arrangements with their employer, to suit the needs of the employer's business as well as the employees own particular needs.

If an employee does not agree to transfer the observance of the public holiday and is nonetheless required to work on the public holiday, the employee will remain entitled to any penalty rates otherwise applicable for that work.

Unfair dismissal provisions

The Government recognises that the unfair dismissal laws have provided many businesses (and particularly small business) with a disincentive against employing a new employee. The Government is aware also that, due to the fear of an unfair dismissal claim, some employers will only offer short-term or other types of employment, which do not contribute to the establishment of an ongoing employment relationship. The Government therefore recognises the need to balance the criticisms of the current unfair dismissal regime against the desirability of certainty about rights and obligations. This balance is achieved through the amendments to unfair dismissal laws contained within this Bill.

The Bill contains a limited exemption from the application of unfair dismissal laws for employees of small business. Employees of small business, defined as a business with 15 or fewer employees, who have less than 12 months service, will not have access to the unfair dismissal provisions. The Bill also provides that a "larger" business, which divides itself into a number of "small" businesses, will not be covered by this exemption.

The small business exemption is viewed as an important step in restoring employer confidence that has been destroyed by small business exposure to unfair dismissal claims.

Access to unfair dismissal laws is restricted also to those employees who have continuously served an employer for 6 months or more. The current exemption for probationary employees which speaks of a 'reasonable' period is confusing, and fails to provide either an employee or an employer with the certainty they tell the Government they want. This six month qualifying period for employees of medium and large businesses will give employees and employers a reasonable and appropriate period of time to assess whether they want to establish an ongoing employment relationship.

The Government considers that all employees are entitled to be treated fairly in the course of their work. However, if a casual employee is not entitled to expect ongoing work from their employer, that employee should not be able to bring an unfair dismissal claim in the event that no further work is offered to the employee. To enable more appropriate assessment of an employee's casual employment status (or otherwise), a casual employee will need to have worked for an employer on a regular and systematic basis for at least 12 months, and have a reasonable expectation of continuing employment, before being eligible to make an unfair dismissal claim.

On the other hand, the Government considers that those employees who are entitled to expect ongoing work from their employer are also entitled to expect that employer to treat them fairly in the event that the employer seeks to end that employment. Therefore, the Government's amendments will ensure a better and fairer balance of the rights of employers and employees.

In order to discourage frivolous and vexatious claims, employees who make an application claiming that they have been unfairly dismissed will be required also to pay a $100 filing fee. If an employee claims that the fee is beyond their means, the Registrar has discretion to remit or reduce the fee. In two other limited circumstances, the fee is to be refunded to the employee.

The Government's amendments in relation to the current unfair dismissal regime strike an appropriate and reasonable balance between the rights of employees and the need to encourage employment.

Mediation

The Government is committed to encouraging the parties to find their own ways to resolve their workplace disputes. Settlement of disputes in this manner gives the parties ownership of and therefore greater commitment to the outcomes. This sort of approach is more likely than adversarial dispute resolution to preserve a working relationship between the parties.

However, employers and employees (and particularly those who have rarely, if ever, participated in proceedings before the Commission) have expressed to the Government their perceptions about the intimidating and legalistic confines of the Commission.

For these reasons, the Bill elevates the status of mediation as a preferred mode of dispute resolution. It retains for the Workplace Relations Commission the mediation powers that the Commission already has. At the same time, and in order to attempt to address the parties' perceptions about the Commission processes, the Bill introduces a mediation service separate from the Commission.

This mediation initiative will be criticised because "it has not been tried and proven elsewhere". It will be criticised by those who believe that despite the voluntary nature of mediation, and the ease with which any party may withdraw from the process at any time, employees will somehow feel pressured by mediation. These sorts of issues justify a cautious approach to mediation – an approach to see if it works for South Australians – and that is exactly what the Bill proposes. However, these concerns do not justify rejecting this important initiative.

To this end, the Bill makes it clear that the parties can continue to seek help from a mediator of their own choice, the Commission, or a mediator from the new mediation service. The Bill requires the Commission to encourage parties to explore the possibility of reaching a negotiated settlement, and to ensure that they are aware of the mediation avenues available. Importantly, the Bill does not institute mediation as a necessary first step to dispute resolution. Use of the mediation service is to be voluntary in every respect.

Parties will be able to utilise the mediation facility for all forms of workplace relations disputes, other than a dispute about dismissal from employment, which will remain within the jurisdiction of the Commission.

This mediation proposal is not focussed on setting up a mediation industry in South Australia. Mediators for the mediation service will be appointed by the Minister.

At any stage prior to, during and after use of the mediation service, any of the parties are free to utilise the Commission processes. The mediator will not have the power to make a binding determination, order or direction. However, it is considered that as it is the parties themselves who will determine the terms of resolution of their dispute, they will be likely to be more willing to adhere to that resolution. Additionally, parties who have reached an agreement in mediation that indicates the need to vary their workplace agreement would be encouraged to independently seek variation of that workplace agreement.

The Bill further provides that information disclosed during the course of mediation by the mediation service and the outcome of mediation must be confidential unless the parties agree to the contrary. The mediator must suspend mediation if a party to the relevant dispute engages in industrial action.

In encouraging the parties to use mediation to resolve their disputes, and in order to provide a service which is as user-friendly and non-legalistic as possible, there will be limited right of representation for those participating in mediation by the mediation service. However, these limited rights will not prevent any party from seeking independent advice during that mediation process, or even from having an adviser present. In recognition of difficulties suffered by a person who is not fluent in English, the Bill provides that an interpreter may assist that person. However, in most cases, these advisers will not be able to represent a party in mediation at the mediation service.

Rights of entry of union officials

The Government's workplace relations policies devolve greater responsibility upon the parties for determining matters relating to their employment arrangements. In keeping with this, the Bill restricts the inspection rights of union officials to accessing time and wages records of their members only. Non-union employees have a right to privacy in relation to records concerning their employment. Of course a departmental inspector may inspect records relating to any worker, whether union member of not, and irrespective of whether a worker has requested such assistance. However, the Government considers that rights of this nature are necessary for departmental inspectors, but that similar rights for union officials are unnecessary and inappropriate.

The Bill also requires that prior to entering a workplace, a union official must have a reasonable suspicion that an employer has breached, or is breaching an award or workplace agreement to the prejudice of a union member. The Bill preserves the current requirement that a union official notify an employer of a proposed entry to the workplace, and also requires such notification to refer to the nature of and grounds for the suspected breach of an award or workplace agreement.

Freedom of association

The Bill preserves existing requirements that a workplace agreement cannot discriminate or require discrimination against or in favour of any person on the ground that the person is, or is not, a member of an association.

This Bill also allows members of a registered association to resign from membership, even though they are not financial at the time of resignation. It further provides that resignation from a registered association will become effective 14 days from the giving of notice of resignation. These changes will take effect, despite any rule of a registered association to the contrary.

Penalties

The Bill offers parties important flexibilities, and greater opportunities to determine their own working arrangements. This is a fundamental aspect of the Government's workplace relations policies. However, the Government recognises that increased responsibilities must accompany these fundamental freedoms.

The Bill therefore increases many of the maximum penalties for breaching the Act. Offences which attract the highest level of maximum penalty of $20 000 appropriately will include those in relation to discrimination against, or coercion, harassment or improper pressure of, an employee in respect of workplace agreement issues.

The maximum penalties for obstructing the right of entry of union officials, departmental inspectors or the Workplace Agreement Authority will be $5 000.

The Bill introduces some new expiation fees (for example, in respect of an employer's failure to keep certain records). The introduction of additional expiation fees is consistent with the Government's desire to ensure that there be quick and expedient ways to achieve justice within the workplace relations system. The use of expiation fees saves the court process both time and money in cases where it is not appropriate to use the court process for determination of such offences. Expiation fees have not been, and would not be, introduced for those circumstances where an apparent breach of a provision would be a matter that needs to be determined judicially.

Operational changes

The Bill also makes a number of operational improvements, particularly in relation to the manner in which the Workplace Relations Court and Commission will be able to conduct its proceedings. In this regard, I am pleased to have received and been able to act upon many suggestions from members of the Court and Commission. With the incorporation in the Bill of a number of those suggestions, the Court and Commission have been able to make a very constructive contribution to this important Bill.

The Government looks forward to the passage of this Bill and the consequent increase in employment in South Australia, along with the continuation of the harmonious workplace relations that we enjoy in this State.

Explanation of Clauses

Clauses 1 and 2

Clauses 1 and 2 are formal.

Clause 3: Substitution of s. 1

This clause changes the name of the principal Act from *Industrial and Employee Relations Act 1994* to *Workplace Relations Act (SA) 1994*.

Clause 4: Amendment of s. 3—Objects of Act

This clause amends the objects of the principal Act. A new object "to encourage and facilitate the employment of young people and protect their competitive position in the labour market" is inserted. New provisions are inserted emphasising the primacy of agreements in determining industrial issues between employers and employees and resolving industrial disputes.

Clause 5: Amendment of s. 4—Interpretation

This clause inserts definitions required for the purposes of the amendments. The Commission and the Court are renamed as the Workplace Relations Commission of South Australia and the Workplace Relations Court of South Australia. The is a consequential amendment to the Registrar's title. A definition of improper pressure is included in relation to the negotiation of agreements. A new subsection (5) is included requiring the Registrar to publish for each year the dollar amounts of sums which are fixed in the principal Act but are subject to indexing.

Clauses 6 and 7

Clauses 6 and 7 make consequential amendments.

Clause 8: Amendment of s. 7—Industrial authorities

This clause amends section 7 of the principal Act to reflect the new names assigned to industrial authorities and to allow for the appointment of the new Workplace Agreement Authority.

Clause 9: Amendment of heading

This clause makes a consequential amendment to a heading.

Clause 10: Substitution of s. 8

This clause repeals and re-enacts section 8 of the principal Act. The new section provides for the Industrial Relations Court of South Australia to continue as the Workplace Relations Court of South Australia.

Clauses 11, 12 and 13

Clauses 11 to 13 make consequential amendments.

Clause 14: Amendment of s. 15—Injunctive remedies

An order under section 15 of the Act may be in the nature of an interim or final injunction. A determination or order under the section does not constitute evidence of the commission of an offence.

Clause 15: Amendment of heading

Clause 15 makes a consequential amendment.

Clause 16: Substitution of s. 23

This clause repeals and re-enacts section 23 of the principal Act. The new section provides that the Industrial Relations Commission of South Australia is to continue as the Workplace Relations Commission of South Australia.

Clauses 17, 18 and 19

Clauses 17 to 19 make consequential amendments.

Clause 20: Substitution of s. 35

This clause repeals and re-enacts section 35 of the principal Act. This deals with the terms of office of Commissioners and acting Commissioners.

Clause 21: Amendment of s. 39—Constitution of Full Commission

This clause provides that, if the Full Commission is to determine a workplace agreement matter, at least one member of the Commission

must be a Workplace Agreement Commissioner. This corresponds to the present law in relation to enterprise agreements.

Clause 22: Amendment of s. 40—Constitution of Commission

This clause provides that if the Commission is to be constituted of a Commissioner for the purpose of determining a workplace agreement matter, the Commissioner must be a Workplace Agreement Commissioner. This corresponds to the present law in relation to enterprise agreements.

Clause 23: Amendment of heading

This clause makes a consequential amendment.

Clause 24: Amendment of s. 41—The Registrar

This clause changes the Registrar's title.

Clauses 25 and 26

Clauses 24 and 25 make consequential amendments.

Clause 27: Amendment of s. 45—Annual report

This clause requires the President of the Commission to include in his or her annual report a report on progress in the review of awards identifying any impediments to progress.

Clause 28: Substitution of s. 46

This clause provides for the Industrial Relations Advisory Committee to continue as the Workplace Relations Advisory Committee.

Clause 29: Amendment of s. 62—General functions of Employee Ombudsman

This clause sets out the functions of the Employee Ombudsman. These functions are—

- to assist or represent employees in negotiating individual or collective workplace agreements;
- to assist or represent employees who are uncertain about whether an agreement should be approved as a workplace agreement, or who are opposed to the approval of a proposed workplace agreement;
- to assist or represent employees in obtaining approval of a workplace agreement to which they are parties;
- to advise employees about their rights under workplace agreements and to assist or represent them in enforcing those rights;
- to assist or represent employees who claim that they have been subjected to coercion, harassment or improper pressure in the negotiation of a workplace agreement;
- to assist or represent employees who claim that they have been subjected to adverse discrimination by their employers because of participation or non-participation in proceedings intended to lead to the formation or approval of a workplace agreement or because they have asked the Employee Ombudsman to take action on their behalf in connection with a workplace agreement.
- to carry out other functions specifically assigned to the Employee Ombudsman—such as the negotiation of provisional workplace agreements.

The Employee Ombudsman is, however, not to provide advice, assistance or representation in connection with a claim for unfair dismissal. For the purpose of carrying out his or her functions, the Employee Ombudsman is to have the powers of an inspector.

Clause 30: Amendment of s. 63—Annual report

The annual report of the Employee Ombudsman will be required to include reference to any assistance or representation provided by the Employee Ombudsman in cases of coercion, harassment or improper pressure, or involving adverse discrimination, in connection with the negotiation of workplace agreements.

Clause 31: Amendment of s. 64—Inspectors

This clause makes a consequential amendment.

Clause 32: Substitution of s. 65

The functions of inspectors have been revised. A new function is to encourage voluntary compliance with the Act, workplace agreements and awards.

Clause 33: Insertion of Division 3 in Part 6 of Chapter 2

It is proposed to constitute the *Workplace Agreement Authority* to provide an expeditious means of approving workplace agreements without formal hearings of a judicial or quasi-judicial kind. The Workplace Agreement Authority will either approve agreements lodged with the Authority in cases where the Act allows for such approval, or refer agreements lodged with the Authority back to the parties for renegotiation, or to the Commission for consideration. The amendments also contain a scheme for the appointment of the Authority. An appointment will be for a term of six years (which term may be renewed for one further term of six years). The Workplace Agreement Authority will be responsible for the Minister for the proper administration of the Authority's office. The Minister will not be able to control how the Authority is to exercise its statutory powers and discretions. The Workplace Agreement Authority will prepare an annual report that will be forwarded to the presiding Members of both Houses of Parliament and laid before the Houses.

Clause 34: Amendment of s. 68—Form of payment to employees

This clause amends section 68 of the Act with respect to the amounts that may be deducted from the remuneration of an employee. An authorisation to deduct subscriptions payable to an association of employees will only have effect for a specified term not exceeding 12 months. A written authorisation will be required.

Clauses 35, 36, 37 and 38

Clauses 34 to 37 make consequential amendments.

Clause 39: Insertion of s. 72A

The Act will now deal with the general entitlement to long service leave. The minimum standard will be included in new Schedule 5A. The provisions will not apply to a contract of employment if the employee is entitled to long service leave under another Act, or under an award or agreement under the Commonwealth Act.

Clause 40: Insertion of new Part 1A

It will be an offence to employ a child under the age of 14 years in an occupation or activity of a prescribed kind.

Clause 41: Substitution of Chapter 3 Part 2

It is proposed to enact a new Part 2 of Chapter 3 of the Act to deal with *workplace agreements*. A workplace agreement is an agreement between an employer and an employee or a group of employees about employment or industrial matters approved, or intended to be submitted for approval, under the Act. A workplace agreement will either be an individual workplace agreement or a collective workplace agreement. A workplace agreement within the meaning of the Act will have no force or effect unless approved under the Act.

New section 74B describes the effect of a workplace agreement. An individual workplace agreement operates to the exclusion of a collective workplace agreement or award that would otherwise apply (but not so as to affect entitlements that have already accrued), and a collective workplace agreement operates to exclude (to the extent of any inconsistency) an inconsistent provision of an award that would otherwise be applicable to the employee.

In addition, an individual workplace agreement approved under the Act will operate to exclude (to the extent of any inconsistency) any inconsistent provision of a contract of employment, and a collective workplace agreement approved under the Act will operate to exclude (to the extent of any inconsistency) any inconsistent provision of a contract of employment, other than where the contract of employment makes a more beneficial provision and the parties agree that the inconsistent provision in the contract of employment is to prevail despite the workplace agreement.

An employer who proposes to enter into an agreement that is to operate as an individual workplace agreement must provide certain information to the employee or prospective employee. An employee will be entitled to be represented in any negotiation by the Employee Ombudsman, an association or other representative of the employee's choice. An employer will not be able to submit an individual workplace agreement for approval if the employee notifies the employer within seven days after the date of the agreement that the employee does not want the agreement to proceed.

The provisions also specify various procedures to be followed if an employer is intending to begin negotiations on the terms of a collective workplace agreement. It will still be possible to enter into a provisional agreement in certain cases. A workplace agreement will need to comply with certain formalities and contain certain minimum requirements.

The criteria for approval of a workplace agreement will be set out in the legislation (*see* proposed new section 78). A workplace agreement will initially be submitted to the Workplace Agreement Authority for approval (unless it is intended to prevail over a Commonwealth award). The powers of the Authority are set out in the legislation and the matter must be referred to the Commission if the Authority cannot approve the agreement under the proposed legislative scheme (*see* especially proposed new section 78B). The Commission will be able to set aside the approval of a workplace agreement if it subsequently appears that a party was subject to coercion, harassment or improper pressure in he negotiation of the agreement.

Clause 42: Amendment of s. 90—Power to regulate industrial matters by award

This clause makes more specific provision about the matters for which the Commission may make an award. An award will only regulate pay and conditions under which outworkers work to the extent necessary to ensure fair and reasonable pay and conditions in

comparison to employees who carry out the same kind of work. If an award prescribes rates of pay, the award must, wherever appropriate, prescribed rates of pay for juniors.

Clause 43: Amendment of s. 99

These amendments relate to the principles to be applied when awards are to be reviewed.

Clause 44: Amendment of s. 101—State industrial authorities to apply principles

This clause makes a consequential amendment.

Clause 45: Insertion of s. 101A

Proposed new section 101A provides for the making of holiday substitution agreements by award or workplace agreement.

Clause 46: Amendment of s. 102—Records to be kept

This clause increases the expiation fees under section 102 of the Act, and the penalty under section 102(7).

Clause 47: Amendment of s. 103—Employer to provide copy of award or workplace agreement

The penalties and expiation fees under section 103 of the Act are to be increased.

Clause 48: Amendment of s. 104—Powers of inspectors

The penalty under section 104(8) is to be increased and an expiation fee included. An inspector will be given authority to have access to individual workplace agreements, and related documents, in the custody of the Workplace Agreement Authority or the Registrar.

Clause 49: Amendment of s. 105—Interpretation

A definition of "remuneration" is to be included for the purposes of Chapter 3 Part 6 ("Unfair Dismissal").

Clause 50: Amendment of s. 105A—Application of this Part

This clause revises the circumstances to which Chapter 3 Part 6 will not apply.

Clause 51: Amendment of s. 106—Application for relief

An application for relief under Chapter 3 Part 6 must be accompanied by a $100 fee. A remission, reduction or refund may be made in an appropriate case.

Clause 52: Amendment of s. 107—Conference of parties

The presiding officer at a conference under section 107 of the Act will also be able to hear and determine (as if sitting as the Commission) an application for an extension of time to bring the application, and any question about the applicant's ability to claim relief under the relevant Part.

Clause 53: Amendment of s. 112—Slow, inexperienced or infirm workers

This clause increases the penalties under section 112 of the Act and provides an expiation fee under section 112(5).

Clause 54: Amendment of s. 124—Rules

The rules of an association registered after the commencement of new section 124(2) must include a rule to the effect that a member may resign from the association whether or not the member is a financial member at the time of resignation. A resignation will take effect no later than 14 days from giving notice of resignation.

Clause 55, 56 and 57

These clauses revise the penalties in the relevant provisions of the Act.

Clause 58: Amendment of s. 140—Powers of officials of employee associations

This amendment revamps the circumstances under which an official of an association of employees may enter an employer's premises and carry out an inspection or interview in the exercise of statutory powers under the Act.

Clauses 59 and 60

Clauses 58 and 59 revise the penalties in the relevant provisions of the Act.

Clause 61: Insertion of s. 144A

Despite any rule of a registered association to the contrary, a member of the association may resign from the association whether or not the member is a financial member at the time of resignation. A resignation will take effect no longer than 14 days from giving notice of resignation.

Clauses 62, 63 and 64

Clauses 61, 62 and 63 make consequential amendments.

Clause 65: Substitution of s. 173

This clause revises the circumstances where the Court or Commission may make an order for costs.

Clause 66: Insertion of s. 175A

This clause will allow proceedings before the Court or Commission to proceed before another member if it is not possible or convenient for the original member hearing the matter continuing.

Clauses 67 and 68

Clauses 66 and 67 make consequential amendments.

Clause 69: Amendment of s. 187—Appeals from Industrial Magistrate

The amendment effected by this clause will allow a Judge hearing an appeal under section 187 to refer an important or difficult appeal to the Full Court for hearing and determination.

Clause 70: Amendment of s. 190—Powers of Court on appeal

Clause 69 makes a consequential amendment.

Clause 71: Insertion of s. 190A

The amendment effected by this clause will allow an industrial magistrate or a single Judge to state a question of law for determination by the Full Court.

Clause 72: Substitution of s. 192

It will be a provision of the Act that a settlement of an industrial dispute negotiated by the parties is to be preferred to a solution imposed on them by another. This amendment is consistent with that principle.

Clause 73: Insertion of Division 1A

Parties to a dispute will be encouraged to resolve the dispute with or without the assistance of mediators. External mediation will be available. The Minister will be able to establish a panel of suitably qualified mediators. A mediator under these provisions is to be limited to a dispute, other than a dispute about dismissal from employment, within the jurisdiction of the Commission. Limited rights of representation will apply on a mediation. Information disclosed in the course of a mediation, and the outcome of a mediation, must be kept confidential unless the parties agree to the contrary. A mediator will not have power to make a binding determination, order or direction. Industrial action must not be taken by a party to a mediation while the mediation is in progress.

Clause 74: Amendment of heading

Clause 75: Amendment of s. 198—Assignment of Commissioner to deal with dispute resolution

Clause 76: Amendment of s. 199—Provisions of award etc. relevant to how Commission intervenes in dispute

Clause 77: Amendment of s. 202—Reference of questions for determination by the Commission

Clause 78: Amendment of s. 204—Experience gained in settlement of dispute

Clause 79: Amendment of s. 207—Right of appeal

Clause 80: Amendment of s. 209—Stay of operation of determination

Clause 81: Amendment of s. 212—Reference of matters to the Full Commission

Clause 82: Amendment of s. 219—Confidentiality

Clause 83: Amendment of s. 220—Notice of determinations of the Commission

Clause 84: Amendment of s. 223—Discrimination against employee for taking part in industrial proceedings etc.

These clauses make consequential amendments.

Clause 85: Amendment of s. 224—Non-compliance with awards and workplace agreements

The maximum penalty under section 224 of the Act is to be increased to $10 000.

Clause 86: Amendment of s. 225—Improper pressure etc. related to workplace agreements

The maximum penalty under section 225(4) of the Act is to be increased to $10 000.

Clause 87: Amendment of s. 226—False entries

The maximum penalty under section 226 of the Act is to be increased to $5 000.

Clause 88: Amendment of s. 227—Experience of apprentice etc. to be brought into account

Clause 87 makes a consequential amendment.

Clause 89: Amendment of s. 228—No premium to be demanded for apprentices or juniors

The maximum penalty under section 228(1) of the Act is to be increased to $5 000.

Clauses 90 and 91

These clauses 90 and 91 make consequential amendments.

Clause 92: Amendment of Schedule 3—Minimum standard for sick leave

It will be possible to negotiate to have unpaid sick leave and an allowance or loading in lieu of paid leave.

Clauses 93 and 94

Clause 93 and 94 relate to essential elements of relevant employee entitlements.

Clause 95: Insertion of schedules 5A & 5B

This clause provides for the minimum standard for long service leave.

Clause 96: Amendment of Schedule 8—Rules for terminating employment

Notice of termination will not be required in certain circumstances.

Clause 97: Repeal of Long Service Leave Act 1987

The *Long Service Leave Act 1987* is to be repealed.

Clause 98: Transitional provisions

This clause sets out the transitional measures associated with the Bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

ADJOURNMENT

At 4.35 p.m. the Council adjourned until Tuesday 1 June at 2.15 p.m.