HOUSE OF ASSEMBLY

Wednesday 15 March 1995

The SPEAKER (Hon. G.M. Gunn) took the Chair at 2 p.m. and read prayers.

QUESTION

The SPEAKER: I direct that the following written answer to question No. 181 on the Notice Paper be distributed and printed in *Hansard*.

PARKING PERMITS

181. **Mr ATKINSON:** Why must frail and elderly users of the Noarlunga Volunteer Transport Service apply for parking permits individually rather than the service being granted a blanket permit by the Department for Road Transport?

The Hon. J.W. OLSEN: Current legislation limits the issue of disabled persons' parking permits to individuals who have a permanent physical disability that severely restricts their speed of movement. These criteria were introduced in 1978 on the recommendation of the 'Right Committee on the Rights of Persons with Handicaps'. The committee specifically recommended that the issue of disabled persons' parking permits should be restricted to persons with a permanent disability.

A review is being undertaken on behalf of the Department of Transport and the Department of Housing and Urban Development to clarify desirable respective responsibilities of State and local government in the regulation, enforcement and administration of on-road parking, private area parking and the disabled persons' parking permit scheme. The issue of disabled persons' parking permits to persons with a temporary disability and to organisations involved in the transport of disabled persons is being considered in the review.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Industry, Manufacturing, Small Business and Regional Development (Hon. J.W. Olsen)—

Fees Regulation Act—Regulations—Water Sewerage.

By the Minister for Employment, Training and Further Education (Hon. R.B. Such)—

Fees Regulation Act—Regulations—Education.

ALGAL BLOOM

The Hon. D.S. BAKER (Minister for Primary Industries): Mr Speaker, I wish to make a ministerial statement. Yesterday I confirmed to the Parliament that there had been a report of discoloured water just off Farm Beach north of Coffin Bay. At that time there had been some fish deaths in the area. However, as I explained yesterday, there was no immediate danger to aquaculture industries in the area although health tests are being conducted on oyster samples collected from all the farming areas. Results of these tests will be available within the next 24 hours. I undertook to report to the House as soon as more information had become available.

The department immediately began water sampling in the area and an officer visited the affected area yesterday afternoon. Water samples were sent for algal counts and identification of the affected species. Obviously I will report to the Parliament when the results of these further tests are available. The department also conducted an aerial survey of the site during yesterday afternoon, which revealed extensive discolouration of water in the seaward part of Coffin Bay, with discolouration evident in patches within the bay itself. This extended through Port Douglas but not into the oyster farming area. There appears to be no further spread into Coffin Bay itself.

Preliminary results of the water sampling suggest a broadscale, non-specific algal bloom. Further tests are now being carried out to determine the extent of the species involved. The original location of the bloom and its spread coincides with reports of dead cockles and stingrays. However, most importantly, there have been no mortalities in the oyster lease closest to the affected area. Weather conditions at Coffin Bay have changed, and reports have been received of strong winds, overcast conditions and some rain. I am assured that these conditions will help to dissipate the bloom and prevent its spread into Coffin Bay.

May I place on record the Government's appreciation of the responsible way in which the industry has responded over the past few difficult days, and my thanks to those officers within the Department of Primary Industries whose timely efforts and expertise have minimised any risks.

LEGISLATIVE REVIEW COMMITTEE

Mr CUMMINS (Norwood): I bring up the twenty-first report of the committee and move:

That the report be received.

Motion carried.

Mr CUMMINS: In accordance with the preceding report, I advise the House that I no longer wish to proceed with Notices of Motion: Private Members Bills/Committees/Regulations Nos 2, 3 and 4 standing in my name for tomorrow.

PUBLIC WORKS COMMITTEE

Mr ASHENDEN (Wright): I bring up the report of the committee on the Patawalonga dredging project and move:

That the report be received.

Motion carried.

The Hon. S.J. BAKER (Deputy Premier): I move:

That the report be printed.

Motion carried.

QUESTION TIME

MBf

Ms HURLEY (Napier): My question is directed to the Minister for Tourism. Who prepared the Minister's answer to this House on 4 August 1994 in relation to MBf which included criticism of a Malaysian Opposition MP, Mr Wee Choo Keong, and a South Australian journalist covering the MBf story?

The Hon. G.A. INGERSON: I do not know the exact detail, but I will get an answer to that for the honourable member.

Members interjecting:

The Hon. G.A. INGERSON: I was asked who prepared it. I am responsible; I said I would get it.

The SPEAKER: Order! The Minister has answered his question.

BUSINESS SURVEY

Mr CUMMINS (Norwood): Will the Premier say whether the latest surveys of business expectations indicate higher business confidence in South Australia than in other States?

The Hon. DEAN BROWN: The results of the latest national survey of business expectations for February 1995 put out by the Australian Chamber are now out. As members would realise, this survey covers the whole of Australia. It is a very detailed survey both in terms of the number of companies that are covered and also the information they collect. It is worth drawing to the attention of the House the sorts of the results that have come out of this latest survey. I first remind members that the last survey, which was done three months ago, showed that South Australia was in a very optimistic position. The latest survey shows that in South Australia 41 per cent of respondents believe that business conditions here in South Australia are improving, whereas 34 per cent nationally believe that of their own State's conditions.

As far as higher sales in the next quarter are concerned, 47 per cent of the companies believe that it will improve here in South Australia, compared with only 42 per cent nationally. In terms of export sales, 36 per cent of South Australian companies thought there had been an improvement, whereas the national figure was 29 per cent and, in terms of increasing employment, 26 per cent of companies here in South Australia are expecting to increase their employment further in the next three months, whereas only 19 per cent nationally intended to do so. Finally, in terms of investment in plant and equipment, 41 per cent in South Australia were expecting to increase their investment, compared with the national figure of 26 per cent.

It is interesting that the overall results show that South Australian companies are well ahead of the national figures in expecting the economy in this State to improve. It is very encouraging information, and it certainly reinforces the excellent employment figures which came out last week and which showed that we had increased employment in South Australia by 22 500 compared with 12 months ago—

The Hon. J.W. Olsen: Far in excess of the target.

The Hon. DEAN BROWN: —far in excess of the target. To have got unemployment down to 9.6 per cent in South Australia, which is the lowest figure since 1991, means that we have at least rectified the damage inflicted by Labor in the past 2½ years. This survey shows that South Australia is now heading clearly in the right direction and that its expectations for the next three months are well ahead of those of the rest of Australia.

MBf

The Hon. M.D. RANN (Leader of the Opposition): Has the Premier seen, or is he aware of, a memorandum to his Government from advisers to Mr Tan Sri Loy, suggesting ways to discredit Malaysian opposition MP Mr Wee Choo Keong and, further, advising on how to pre-empt both the South Australian media and the Opposition in questions about MBf's involvement in Wirrina?

The Hon. DEAN BROWN: To my knowledge there was material in which the Government asked MBf, quite naturally, to respond to criticism that had been levelled, and I understand that a document was forthcoming. Whether it is the document to which the honourable member refers and whether I have seen the so-called document to which the honourable member refers, I have no idea. However, I do know that some material was received by the State Government that basically answered the points—

The Hon. S.J. Baker: It didn't have anything about the press or anything else like that in it.

The Hon. DEAN BROWN: The document that I saw from my knowledge specifically was in answer to the allegations made by Mr Wee in Malaysia. I think it was the Minister for Tourism who in fact used that information. Whether or not I have seen the detailed letter, I do recall that we did ask for some material to be sent down in answer to those points.

CeBIT TECHNOLOGY EXHIBITION

Mr BRINDAL (Unley): My question is directed to the Minister for Industry, Manufacturing, Small Business and Regional Development. In view of the fact that last week I heard the Minister speaking to Keith Conlon from Hanover, where he was attending the world's largest technology fair, the CeBIT, how successful was his presentation on South Australia to the assembled world innovation leaders?

The Hon. J.W. OLSEN: The CeBIT conference in Hanover, on this occasion, had Australia as the host or partner nation. All Australian States were represented and all Australian States had the opportunity to present in effect their credentials to the world's largest information technology exhibition. On the day that I happened to be at that fair, over 100 000 trade people were present. I am not talking about the general public but people associated with the trade, which indicates the size and significance of that exhibition.

Given that the Government has a commitment to carve out a niche market, a reputation and a credibility for South Australia internationally in information technology and telecommunications, which it is doing, this was an appropriate forum at which South Australia should present its achievements in the past 12 months—achievements such as Motorola, EDS and the Asia Pacific resource centre, and the Asian training centre for EDS, which is located here in Adelaide as the regional headquarters for the Asia Pacific region.

I make the point that, if you are going overseas and talking to a range of companies and at government level, it opens the door to be able to say that internationally recognised companies such as EDS and Motorola have established their base in South Australia. It also establishes credibility and this response: 'Why did internationally recognised companies such as that select Adelaide? If they have selected Adelaide, perhaps we too should be looking at Adelaide, South Australia and the Government in South Australia for what it has to offer to build this information technology telecommunications base out of the State of South Australia'.

The Hon. Dean Brown interjecting:

The Hon. J.W. OLSEN: Exactly. When EDS made its announcement, we saw the critical mass of EDS coming here—Amdahl, Digital, GEC Marconi and Silicon Graphics. They all took up with the Premier and the Government of South Australia the fact that they want to collocate here. As General Motors-Holden's and Mitsubishi came in, you have a range of component suppliers that collocate around such a critical mass. We are seeing that in the data processing area at the moment in information technology and telecommunications.

The Hon. Dean Brown interjecting:

The Hon. J.W. OLSEN: As the Premier reminds me, in the past three weeks four additional international and well recognised companies have sought out with the Premier and the Government of South Australia opportunities for them in the State of South Australia because, given the high costs of Singapore, Kuala Lumpur and Hong Kong, we are seeing a greater number of those companies wanting to come out of the Asia region and locate their operations—whether they be information services, administration services or accounting services—in Australia, in South Australia, because our cost of operating is so much less than it is in the Asian market.

Therein lies an opportunity for us, if we get out and market those opportunities to European companies in particular. Without exception, those companies had targeted Asia for their strategic growth for the future, but Australia, an English speaking country with a good legal system, basic political stability and low cost of operation, had not been brought into the equation to access that market. Exhibitions such as CeBIT are important for South Australia to establish its credentials. We now need to keep working on that and build up the opportunities to expand South Australia's economic base.

South Australia was represented by some 10 companies: Aspect Computing, Austrics Transit Innovations, CSP—Prophecy, Integrated Silicon Design, Intellecta Technologies and Laserex, which is located in the member for Unley's electorate and which announced, whilst we were at the CeBIT conference, that it was putting in place 25 new distributors in Germany, Austria and Switzerland to take its product out of South Australia and into the international market place. MFP Australia was represented, as were Quick Draw Systems and British Aerospace Australia. A whole cross section of information, technology and telecommunications was reaching out at the CeBIT conference—a very important conference as far as Australia is concerned.

The underlying theme is that we have made substantial progress in the past 12 months. More opportunities will emerge as we market, explain and identify that companies such as EDS and Motorola have selected Adelaide, South Australia as their Asia Pacific regional headquarters and base. We can build on that, but it will require a concerted effort over the next few years as we continue to market South Australia to get organisations to understand that South Australia has a conducive business climate coupled with a great lifestyle. To those companies Adelaide, South Australia can offer the best of both worlds.

MBf

The Hon. M.D. RANN (Leader of the Opposition): Given the Premier's response to my previous question, will he ask his adviser, Mr Kevin Donnellan, to show him a memo sent to the Premier's office on 4 August last year by an MBf adviser—with a copy sent to Tan Sri Loy—suggesting ways and words to use to discredit a Malaysian MP and a local journalist, words which, as the Premier seems to acknowledge, were used in this Parliament by the Minister for Tourism on the same day, despite the Government's claims of conducting an official investigation about Mr Wee?

The Hon. DEAN BROWN: I am only too happy to call up the file. I will look at the file and find out which documents are there and what they relate to as raised by the Leader of the Opposition. I am only too willing to do that.

GOLDEN GROVE

Mr ASHENDEN (Wright): Will the Minister for Housing, Urban Development and Local Government Relations advise the House of the projected financial outcomes of the Golden Grove joint venture? In recent articles and letters in the *Adelaide Review* and on Channel 10, there has been criticism of the Golden Grove joint venture. This matter was raised again yesterday in the Upper House and on television last night, suggesting that excessive profits have been made at the expense of South Australian taxpayers.

The Hon. J.K.G. OSWALD: So that all Mps can have a clear understanding of the issue, I believe it is important to place on the record some of the most important financial and developmental aspects of the Golden Grove project. The financial information has been provided to me by the Urban Land Trust. At the outset, however, I wish to make it clear that neither the Government nor Delfin would object to any inquiry being called for or undertaken by this Parliament and, from the Government's perspective, we would cooperate fully by making available any information that may be required. As members would be aware, the arrangements entered into between SAULT and Delfin followed the ratification by this House of the Golden Grove Indenture Ratification Act 1984. It is worth noting that the arrangements were the subject of an intense investigation by a team of senior Government officials in 1984.

All matters associated with the Golden Grove Development Act were the subject of a select committee of Parliament prior to the Act's authorisation in 1984, and this information is on the public record. This Act specifies the infrastructure for which the State is responsible. This committee, chaired by the Hon. Don Hopgood, the then Minister of Environment and Planning, investigated the business arrangements, including land pricing and profit sharing, and concluded that the anticipated rate of return was reasonable given the uncertainties and risks associated with the project. I am advised by SAULT that the projected final project income from allotment sales would equate to approximately $334 million; other income is approximately $33 million, making a total of $367 million. This is offset by developmental costs of $280 million, inclusive of the $20 million land payments, leaving a total profit for the joint venturers of about $87 million.

As the joint venture is based on a 50 per cent share to each partner, namely SAULT and Delfin, they should each receive about $43.5 million in profit distributions by the time the project is completed in 1999. Each partner has already received about $30 million in profit distribution. At the completion of the project, SAULT would have received a total of $63.5 million, being both profit distribution and land payments, and Delfin would have received $43.5 million by way of profit distribution. The land was purchased by the South Australian Land Commission and SAULT between 1973 and 1983 for about $10 million. The overall projected return to Government will be $63.5 million.

However, with the benefit of hindsight, it is probable that a harder bargain could have been negotiated. The extent to which this would have resulted in greater return to Government is simply a matter of opinion. We cannot revisit 1984 and its economic outlook at the time, and any different arrangement would have at best resulted in some shift in the distribution of the overall profits and at worst may have resulted in a smaller profit and lower quality. As I have already indicated, should Parliament wish to review the 1984

inquiry I have no objections. I would stress however that the arrangements approved by Parliament in 1984 were built into binding contractual agreements authorised under the previous Government.

The suggestion that developmental costs are $10 000 per allotment does not reflect reality and does not take into account the specific site conditions or the additional expenditure associated with a project of the scale of Golden Grove. The total development cost per allotment is significantly higher than $10 000. This is further reinforced by the Urban Development Institute of Australia's February 1992 publication entitled 'Land Cost-The Impact of Land Cost on Housing Affordability', which indicated a total development cost per allotment in the Adelaide fringe area of $30 172.

The Golden Grove development is now regarded nationally as the benchmark for excellence in urban and community development. The project has clearly achieved other paramount objectives, including affordable allotment pricing and socioeconomic mix.

The SPEAKER: I point out to the Minister that he does have available to him the right to make a ministerial statement. This is a particularly long answer, and I would suggest that, if he has more material to give to the House, he should consider doing it by way of ministerial statement.

The Hon. J.K.G. OSWALD: I have almost completed the answer. With your indulgence I would like to finish, because it is a major issue in the public arena. The beneficiaries of the joint venture are not only Delfin but the residents of Golden Grove. They have received a high quality development at an affordable price. South Australia has benefited from a national reputation in Golden Grove in seeking the highest standards in quality and affordability.

MBf

Mr ATKINSON (Spence): Is the Premier aware that the MBf adviser's memo to Mr Donnellan, with a copy sent to Mr Tan Sri Loy, included suggestions for action by the Premier and stated:

> The Premier may or may not like to mention that in fact Mr Wee has had two police reports laid against him with regard to conduct unbecoming of a lawyer. I can source these if you want them. He is known to have slept with clients, etc. How deep do you want us to go? Traditionally, we tend not to fight mud with mud as it isn't the way up here, but please feel free if necessary to use what you like.

The Hon. DEAN BROWN: Quite clearly, we did not use it, and that is plainly on the record. So, we did not fight mud with mud, as suggested by the honourable member. I also make quite clear to the House that I already knew of the contempt of the High Court concerning Mr Wee, because I had read about that in a newspaper article in Malaysia. I also had made my own independent investigations of MBf and the allegations made by Mr Wee—

The Hon. M.D. Rann: Of whom?

The SPEAKER: Order! The Premier has the call.

The Hon. DEAN BROWN: If the honourable member would like to read *Hansard*, he would find that I have referred to that. First, I would like to explain. On a Friday night, I think, I returned to my hotel room and found certain allegations made by Mr Wee poked under the door. A copy of that was also copied to the Leader of the Opposition in South Australia. As a result of that allegation, I made a series of inquiries with the highest Australian officials in the Australian Embassy and asked questions in terms of their assessment of MBf and Mr Tan Sri Loy.

I also made an inquiry of a very high-standing person in Malaysia and I further made inquiries concerning trade contracts, in particular amongst his competitors. In the commercial world, I always thought that I received the most honest assessment of anyone from their competitors, because most of their competitors would tell you all their weak points. They are some of the assessments that I had done in terms of the allegations made by Mr Wee against MBf and Mr Tan Sri Loy.

FLINDERS MEDICAL CENTRE

Mrs ROSENBERG (Kaurna): Will the Minister for Health inform the House of any new Government initiatives to address the health needs of the residents of the south?

The Hon. M.H. ARMITAGE: I thank the member for Kaurna for her question and I acknowledge the work of the member for Kaurna for the constituents in her electorate in matters to do with the health. I am very pleased to inform the House that Cabinet has approved a $5.8 million refit of the Accident and Emergency Unit at Flinders Medical Centre: it is not a moment before time. The areas in the south of Adelaide have, during the past decade prior to 11 December 1993, unfortunately got the nickname of 'the forgotten south'. I am sure that the electors in Kaurna, Reynell, Mawson, Davenport, Bright, Mitchell and Fisher, indeed even Finniss and Heysen, who tend to use the Flinders Medical Centre more than others, will be delighted that at last a Government has bitten the bullet and is fixing up what has been a problem for a long time.

The commencement date of the project is immediately. The estimated finishing date is October 1996. The successful contractor is S.J. Weir. The Flinders Medical Centre Accident and Emergency Unit is a particularly busy department. It treats about 57 000 patients every year and Flinders Medical Centre has the highest proportion of accident and emergency patients of any South Australian major hospital. The new facilities will be absolutely world class and will significantly decrease the time that sometimes parents, and indeed adults, wait when they present at an accident and emergency clinic.

Having worked in a number of these, I realise how difficult it is to cater for a varying workload and, clearly, no taxpayer would want us to staff an accident and emergency unit for the most busy period because there would be a lot of other periods during the day when people would be sitting around doing nothing, but this particular refit will allow the most cost efficient use of the dollar. A separate paediatric accident and emergency unit will be built so that children will not only receive specialist paediatric care but be separated from the adult services. That is particularly important because, as anyone would know who has spent a little time in an accident and emergency area, particularly on weekend nights, often adults who are presenting there are perhaps best separated from the children with the diseases that have brought them to accident and emergency.

Other facilities included will be physical arrangements which will allow better observation of patients. There will be extra treatment rooms and resuscitation areas, X-ray facilities will be increased, there will be a decontamination room for major problems and disasters which require decontamination and, importantly from the point of view of people working there, there will be an opportunity for increased security for people working at night. It is a concern that sometimes accident and emergency areas act a little like a magnet for people who perhaps have malice aforethought, but more

importantly sometimes the actual patients themselves tend to be inebriated or affected by drugs, and hence can be a problem for the people working there.

It is a great project and certainly demonstrates the Government's commitment to developing quality health services and to providing the capital infrastructure to ensure that occurs. Whilst I am pleased from the health perspective that it will improve the health care of people in those electorates that I mentioned previously, particularly that of the member for Kaurna, who asked the question, obviously as this $5.8 million capital investment is spent in South Australia our economic development is helped also.

MBf

Mr ATKINSON (Spence): I ask the Premier: did any member of the Premier's personal staff ask MBf, Mr Tan Sri Loy or anyone in Mr Loy's employment to place under surveillance journalists seeking stories on MBf in Malaysia and seize their camera tapes?

Members interjecting:

Mr ATKINSON: The memo faxed to the Premier's Office on 4 August refers to South Australian television journalist Mr Randall Ashbourne and his inquiries about MBf—

Members interjecting:

The SPEAKER: Order! The member for Spence.

Mr ATKINSON: —during a trip to Malaysia. It begins:

> Kevin, as mentioned Randall Ashbourne met with Mr Wee late last week or on the weekend—

referring to earlier correspondence between the Premier's Office and the MBf adviser. Later it states:

> We are still working on having the tapes confiscated but this may not be possible.

The Hon. DEAN BROWN: First, I am very confident that no-one on my staff would have issued such an instruction. Obviously, I will check with them but I am very confident that they would not have done such a thing. I can give the assurance that I would never ask my staff to undertake such an action. However, I understand that there is an action currently between Tan Sri Loy or MBf and Channel 7 over defamation, and I believe that this matter may be *sub judice* and, therefore, whilst I am only too happy to answer the question this afternoon, I will check exactly where that case stands and ascertain what material may be *sub judice* as a result of that case.

TOURISM EXHIBITION

Mr CONDOUS (Colton): Can the Minister for Tourism give the House any information on the major South Australian tourism show currently being held in Rundle Mall and say who is taking part and what is the significance of the show?

The Hon. G.A. INGERSON: Today is the start of 'South Australia on Show in the Mall', an exhibition that is showcasing all the regions of South Australia. The purpose of the event is to continue to show all South Australians the opportunities they have to holiday within their own State. The 'Shorts' program is one of the interesting programs that have been developed, and we are having extraordinary sales involving that program at the moment. However, unless we recognise that we must promote local tourism within our State as well as intrastate and internationally, a large hole will develop in our tourism growth.

All regions are represented in the Mall today. They all have different booths in which they are showing their produce as well as promoting tourism destinations. In the Mall there is also a booth in which the Tourism Commission is setting out information on our State and the way we are promoting it both nationally and internationally. These booths, which are open until Sunday evening, are open virtually throughout the whole trading period that the Mall is open. They are there so that we can continue to get the extraordinary support that we are getting from South Australians holidaying in their own State.

POLITICAL DONATIONS

Mr ATKINSON (Spence): I ask the Premier: when Cabinet made the decision to appoint Mr Les Penley, manager of MBf-owned Sealink, to the board of the South Australian Tourism Commission and to cease the *Island Seaway* service, was Cabinet made aware that Sealink had donated $10 000 to the Liberal Party? Yesterday the Minister for Transport told Parliament that the *Island Seaway* would cease operating on 1 April and that annual savings of $3.2 million to the Government would be used to fund a freight subsidy scheme for operators who use Sealink.

The Hon. DEAN BROWN: No, Cabinet was not made aware of any such donation. We did not know.

EYRE PENINSULA

Mrs PENFOLD (Flinders): My question is directed to the Minister for Primary Industries. Now that exceptional circumstances drought has been declared for a large part of the Eyre Peninsula, will the Minister explain what arrangements have been made to put in place a strategy to ensure the economic viability of the region?

The Hon. D.S. BAKER: I thank the honourable member for her question and interest in this matter. It became obvious during the negotiations with the Federal Government on exceptional circumstances assistance for the Eyre Peninsula that other funds could be available for a regional strategy to make sure that there was economic viability in that area. So, after the submission was put to the Federal Minister for Primary Industries on 29 October regarding exceptional circumstances drought, on 3 January I took a submission to Cabinet to consider what should happen if this money was available. The idea, with which Cabinet agreed, was to approve in principle a regional program, but we were very concerned that it had to have district ownership, and we endorsed a steering committee to be set up.

When it was announced that exceptional circumstances drought assistance had been successful for South Australia, the Federal Minister for Primary Industries, Senator Collins, also said that he would accept from South Australia a further submission on any regional strategy that may be available. With that in mind we have now set up—and I have made some announcements about it—a committee, which includes the Hon. Caroline Schaefer as the Chair of that committee and the Hon. Frank Blevins (a former Minister for Primary Industries), as well as people in the district, including business people, farmers and representatives from the oyster industry and from the banks, to negotiate with the district until 30 June and to report back to me on a monthly basis the district's views on what should happen if there is to be a regional strategy. Then, if the district wants to get involved and the committee so recommends, the Government will look

at it again and inform the Commonwealth Government of our support for it or otherwise. The Premier wrote to the Prime Minister on 3 February saying that South Australia is interested in the project. I know that the committee will consult directly with the community in that region, because what we want in any strategy is district ownership of the strategy before the South Australian Government considers the matter further and goes back to the Commonwealth Government.

POLITICAL DONATIONS

Mr QUIRKE (Playford): Will the Premier make inquires to determine—

An honourable member interjecting:

Mr QUIRKE: You'll get your turn, don't worry. Will the Premier make inquiries to determine whom Mr Henderson represented when he approached Mr Victor Lo for a donation to the Liberal Party and on whose direction the gift was transferred through a Hong Kong based shelf company?

Mr Victor Lo has revealed on the front page of today's *Australian* that he had been approached by Adelaide accountant, Mr Bill Henderson, for 'a sizeable contribution for the Liberal Party'. Mr Henderson was not a member of the Liberal Party Executive, the Liberal Party Campaign Committee or the fundraising committee. He is, however, a member of the board of Gerard Industries.

The Hon. DEAN BROWN: The answer is 'No.' First, it is inappropriate for me to try to get involved in any matters that relate to fundraising for the Liberal Party, and I have made that clear time after time. Liberal members of Parliament are not allowed to seek information about any political donation and are given no information whatsoever. The only information that we ultimately get is any public disclosure.

The Hon. S.J. Baker: How many times have you said that?

The Hon. DEAN BROWN: I have said that on numerous occasions. I also point out again, as everyone understands, that the Liberal Party has complied fully with the Australian electoral laws. A full declaration has been made and there is nothing whatsoever improper in terms of what has been done with Catch Tim Limited.

INTERNATIONALE TOURISMUS BORSE

Mr LEGGETT (Hanson): My question is directed to the Minister for Tourism. To what extent did South Australia take part in and benefit from the recently held Internationale Tourismus Borse (ITB) held in Berlin from 4 to 8 March?

The Hon. G.A. INGERSON: ITB in Berlin is the world's largest collection of tourism retailers and wholesalers. It features 26 halls covering an area about half the size of Adelaide. Consequently, it is the biggest tourism escapade in the world. More than 70 000 travel buyers and as many sellers from around the world took part, and I am delighted to say that it was the biggest group from South Australia that we have ever had at this world conference. Whilst the number might be small, eight groups participated, representing product from Kangaroo Island, the Murray River, Coober Pedy, a major regional airline, the Ghan and Indian Pacific trains, inbound tourism operators and ecotourism developments throughout the State. Also, as part of the Australian Tourism Commission program, South Australia was directly represented there by the South Australian Tourism Commission. This is one of the prestige tourism events of the world and we in South Australia, along with a couple of the other States, believe that this is one of the most important issues for us to be involved in. I congratulate all the companies that made the effort to go. Again, it will be part of developing the 'Come to your senses; come to South Australia' program nationally and internationally.

CHARITABLE ORGANISATIONS

Ms STEVENS (Elizabeth): My question is directed to the Minister for Family and Community Services. When will the Government honour its promise to non-government charitable and welfare organisations to provide additional funding to meet award increases which took effect from 18 November 1993? In a letter to non-government welfare bodies dated 9 December 1993, the Deputy Premier, then shadow Treasurer, wrote:

> ...in keeping with our commitment to maintain the vital services provided by non-government charitable and welfare organisations, we undertake to provide additional funding to support the implementation of the award variations to take effect from 18 November 1993.

Fifteen months later the private welfare sector is in financial crisis and is still waiting for the Government to address this matter.

The Hon. D.C. WOTTON: In answer to the honourable member's question, I would say at the outset that it is not a matter of crisis. I have a very close working relationship with the non-government sector, and it is not in crisis at all. I am aware of what was said by the Liberal Party when in Opposition. I have had some discussions with the Treasurer on this matter, and I have had further discussions with the non-government sector and, when we are in a position to do so, we will finalise some of those issues.

I meet regularly with SACOSS officials and with officers from the non-government sector in a number of areas. I am aware of the difficulties that some of those agencies and organisations are facing, but they also realise that this Government came to office with severe financial difficulties, which were brought upon this State by the previous Administration. We are gradually working through those difficulties, and it is my intention to provide the further assistance mentioned by the honourable member as quickly as possible. I repeat that, in those responsibilities relating to welfare, non-government sector organisations are not in crisis.

PHYLLOXERA

Mr ANDREW (Chaffey): Will the Minister for Primary Industries inform members about the phylloxera outbreak in Victoria, given that the recent spate of reports of a new outbreak poses a serious threat to the grape industry in South Australia?

The Hon. D.S. BAKER: I thank the honourable member for his question and I put on record my appreciation of the work the honourable member has done in the formulation of the phylloxera legislation, which passed through this House yesterday. It is a very important matter for South Australia. Of course, the viability of future vineyards and viticulture operations in this State is dependent on our having a phylloxera free area which, unfortunately, other States do not have. There has been another outbreak in the King Valley region of northern Victoria. There has been a total of six outbreaks in that area in Brown Brothers vineyards since 1991. That has been detected by the company itself and confirmed by the Victorian Department of Agriculture.

The important thing to note is that it is thought that the source of that was the movement of people and equipment between vineyards during harvest, which is the most likely explanation. When the Bill is assented to, it will be the first task of the new phylloxera board to make sure that we have regimes that will prevent any such occurrence in South Australia. We have been hamstrung by State borders in the past, and that problem has now been overcome. We want to make sure that the board addresses this very important problem, that adequate buffer zones are placed around the outbreak areas in Victoria, that we do all we can in this State to make sure that material does not come across the border from that area and, more importantly, that the movement of machinery and people across the border is adequately checked to protect a very large South Australian industry.

REMOVE ALL RUBBISH COMPANY

Ms WHITE (Taylor): My question is directed to the Minister for the Environment and Natural Resources. How long has the Government been investigating the waste management practices of Waterloo Corner dump operator, Remove All Rubbish Company, and is the Minister aware of any damage to the watertable from the Waterloo Corner site? If so, what action will he now take? Concerned residents have approached me, and the *News Review* Messenger has run two front page stories over the past month about an Environment Protection Authority investigation into contamination of the watertable from that site.

The Hon. D.C. WOTTON: I am certainly aware that the Environment Protection Authority has been investigating the contamination of the watertable in that area. That investigation has been going on for some time. I am happy to provide the honourable member with the details. It is some little time now since I received a briefing from the EPA in regard to that issue. I will obtain more information for the honourable member and make that available to her.

UNIVERSITIES

Mr ROSSI (Lee): Will the Minister for Employment, Training and Further Education provide details of the latest quality review of Australia's tertiary institutions?

The Hon. R.B. SUCH: I thank the member for Lee for his continuing interest in the university sector. The committee for quality assurance in higher education has brought down its report and, not surprisingly, our three universities rank very highly indeed. The report this year focused on teaching and learning, therefore by definition excluding the focus on research. We can all be proud of our three universities and what they do and what they continue to do. Not many people realise that we are talking about a series of activities within the universities that amount to about $500 million per annum for the State's economy, but we cannot place a monetary value on their contribution in terms of research and teaching.

South Australia, and Adelaide in particular, is well placed to be the education and training centre for Australia, and increasingly the universities are attracting students from overseas to come here to study. We have within our cooperative research centres in South Australia more per capita than any other State in Australia. As Minister, I am proud to be associated with the three universities. In conclusion, I acknowledge the contribution of Professor Lovering, who has recently retired as Vice Chancellor at Flinders; and I welcome to that university Professor Ian Chubb, a distinguished academic, who will enhance the already high reputation of that university.

PATHOLOGY SERVICES

Ms STEVENS (Elizabeth): My question is directed to the Minister for Health. Has the Institute of Medical and Veterinary Science told its department that they could have been more—sorry, I will start again.

Members interjecting:

Ms STEVENS: Here we go; a bit of a mix up.

The SPEAKER: Order! The House has conducted itself in a far more dignified fashion this afternoon than it did yesterday. I want it to continue.

Ms STEVENS: My question is directed to the Minister for Health. Has the Institute of Medical and Veterinary Science told his department that it could have been more competitive in its tendering process for pathology services at Modbury Hospital, and will he release the Gribbles tender price as a benchmark for other public pathology laboratories now facing privatisation? The Opposition has been given a copy of a letter from the member for Wright in which he claims:

> Following the changes made at Modbury Hospital, it has been indicated to the Government by officers of the IMVS that they could have, and should have, been more competitive in their tendering process as they are now confident they could have at least equalled the submission which was accepted on behalf of Gribbles Pathology. . . I certainly hope that the Queen Elizabeth Hospital pathology service will be able to do the same.

The Hon. M.H. ARMITAGE: First, let me be a little pedantic. I do not understand the specifics of the question in that I believe the member for Elizabeth said, 'Has the IMVS told its department'.

Ms Stevens interjecting:

The Hon. M.H. ARMITAGE: Well, let us go and listen to the tape. You did say the second time around 'told its department', but I think I get the thrust of the question, which is based upon the fact that, when the Institute of Medical and Veterinary Science was faced with the competition of the private sector for exactly the same services—I reiterate: exactly the same services including teaching, research and training, which are matters that I have previously discussed in the House—it was more expensive for the IMVS to provide that quantum of services.

I have asked the member for Elizabeth on a number of occasions previously, and I will ask her again: does she want the Government to spend more money than is necessary to provide the same services? That really is the essence of the question that I am being asked. Does the member for Elizabeth want the Government to waste taxpayers' money getting exactly the same services at exactly the same world class quality? I put it to the member for Elizabeth, and every member in the House and, more particularly, every taxpayer, that, if she does, she is reflecting the view of perhaps one person or perhaps 11, but certainly not the vast majority of taxpayers.

The fact remains that the Institute of Medical and Veterinary Science was not competitive in its tender for the Modbury Hospital pathology services. However, since that date I have had discussions with personnel at the highest level from the Institute of Medical and Veterinary Science, and I expressed the concern that they were not competitive, particularly when the various price areas were indicated to them, and they expressed the strong desire to be able to be

part of the process again, and they assured me that they would be more competitive in the future.

I put it to every member of the House, and every South Australian taxpayer, and particularly to the member for Elizabeth, that that is a fantastic result. That is absolutely marvellous, in that we have the same services at Modbury Hospital being provided more cost efficiently, and we have a commitment from the Institute of Medical and Veterinary Science to be better and to be more competitive next time around. So, clearly, there is every possibility that the IMVS will drive the price down even further whilst producing the same quality services. As a result, the patients will not suffer, because they will get the services, and the taxpayers will benefit, because the same services will be provided more cost efficiently. I think that is a very positive result.

As to the part of the question which asked whether I would release the cost competitive tenders of businesses from around South Australia, of course I will not do that. I will not destroy the private sector by telling all its competitors what its prices are. No government around the world would do that.

The Hon. D.S. Baker interjecting:

The Hon. M.H. ARMITAGE: As the member for McKillop says, certainly no responsible government around the world would do that; and I acknowledge that there may be those that are half crazy. We will certainly not destroy the private sector by releasing details of the exact tender prices. I assure the people of South Australia of the commitment of the Government to achieving world quality services, cost effectively.

MORIKI PRODUCTS

Mr BASS (Florey): Will the Premier inform the House whether Moriki Products Limited was approached by the Labor Party for a campaign donation?

The Hon. DEAN BROWN: I am disappointed that the Leader of the Opposition is not here. I can inform the House that the President of the Liberal Party, Vickie Chapman, is this afternoon making a statement concerning the family behind Moriki Products Limited, who made a donation to the Federal election campaign through the South Australian division of the Liberal Party. Vickie Chapman, as President of the Liberal Party, is the correct person to release this information. She is also releasing a letter from the family concerned, or on behalf of the family concerned. The family concerned, apparently through this letter, has revealed that Moriki Products Limited was approached by both the Liberal Party and the Labor Party of Australia for a political donation. I am disappointed that the Leader of the Opposition is not in the House.

Members interjecting:

The SPEAKER: Order! The Minister for Tourism is out of order.

The Hon. DEAN BROWN: After all we have heard over the past two or three weeks from the Labor Party in South Australia about Moriki Products—and particularly from the Leader of the Opposition about seeking donations from overseas companies—here we have the Labor Party of Australia that has apparently approached Moriki Products Ltd for a political donation.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! There are too many interjections coming from the front bench.

The Hon. DEAN BROWN: It raises a number of interesting points, such as: how did the Labor Party have the address to approach Moriki Products Ltd but yesterday apparently could not find it? It also raises questions about why the Leader of the Opposition has been raising this issue at all. Was the Labor Party miffed that it did not get a donation?

Members interjecting:

The SPEAKER: Order! The Premier will resume his seat.

Members interjecting:

The SPEAKER: Order! The Minister for Tourism. The House has conducted itself in a manner which the public would expect of its members today. I will not allow the last five minutes of Question Time to get out of control.

The Hon. DEAN BROWN: As I said, the President of the Liberal Party is releasing the information, but I can confirm that it was a family who lived in Singapore.

HOUSING TRUST RENTS

Ms WHITE (Taylor): Does the statement of the Minister for Housing, Urban Development and Local Government Relations last week that Housing Trust tenants 'will not be evicted because they cannot pay for water' override current Housing Trust credit policy that the same penalties and conditions apply for non-payment of all categories of debt, rent, maintenance and water, and that, unless an arrangement exists, a debtor's payment will be allocated against the oldest debt no matter its category of debt?

The Hon. J.K.G. OSWALD: That question is dangerously close to a question asked last Thursday, but I will certainly—

The SPEAKER: The Minister can give a very brief answer.

The Hon. J.K.G. OSWALD: In answer to the honourable member's question as I interpret it, all that is required of Housing Trust tenants who seek to pay their rent is that they specify at the time of making the payment that the money is to be credited to the rent account and not to the water account. There are various ways of paying rent: through the post office, through agencies, or through a draft from an employer. Provided the tenant specifies at the time, the money will be credited only to the rent account.

I understand from talking to a colleague of the honourable member yesterday that there are some anomalies in Housing Trust offices where the procedure is not completely understood by officers. I made a commitment then and I make a commitment now to the honourable member that I will raise the matter with the General Manager of Tenancy Services within the Housing Trust to ensure that that anomaly is clarified: if people specify that the money they are paying is for rent, it shall be credited against rent and, if they accumulate money in the rent account, it shall not be transferred to pay for water if it was their instruction in the first place that the money should be used for rent.

YOUTH ENVIRONMENT TRAINING AND EMPLOYMENT PROGRAM

Mr SCALZI (Hartley): Can the Minister for Employment, Training and Further Education provide details of the recently announced Youth Environment Training and Employment Program initiated by the Government and how local communities and young people involved will benefit?

The Hon. R.B. SUCH: I thank the member for Hartley for his continuing interest in youth matters, and in particular the employment of young people. Last week, as part of the Government's commitment to improving employment opportunities for young people, I announced the Greening Urban South Australia Project, which involves a budgeted $700 000 commitment from the Government. In addition, local government authorities are committing an even larger amount of money and the Federal department, DEET, is also committing a very large amount of money.

This program will assist in improving the quality of waterways, urban parks, street scapes and so on, and will provide long-term training for young people leading to employment because, provided the people taken on measure up in terms of quality of service, as a result of the scheme they will get employment with the local government authorities. It is a high quality, long-term training and employment program which will benefit not only the young people themselves but also the community and the environment. The eight projects announced last week amount to a commitment from the Government initially of $362 000 and represent once again the positive activities of this Government in contrast to the knocking activities of the Opposition.

GRIEVANCE DEBATE

The SPEAKER: The question before the Chair is that the House note grievances.

Mrs ROSENBERG (Kaurna): I wish to put on the record the Government's achievements in the Port Noarlunga Reef and aquatic reserve area and to recognise the work the Minister for Primary Industries has done in responding to representations made to him over some time from both the Noarlunga council and local residents. In the time I have been the member for Kaurna, considerable representations have been made to me from the council and local residents regarding the Port Noarlunga Reef aquatic reserve area for two reasons: first, to extend protection from fishing; and, secondly, to extend protection from the excessive taking of shellfish and abalone from that area.

The community has obviously been concerned about the excessive taking of shellfish and the damage caused to the reef by that activity. The Minister, following representations I made to him, responded by expanding the aquatic reserve at Port Noarlunga to include Horseshoe Reef. Recent legislation has extended the reserve to include the Port Noarlunga underwater aquatic trail and has also tightened fishing restrictions. The aquatic reserve has been extended from an area parallel to Gulf View Road at Christies Beach to the Onkaparinga head. The Minister attended the electorate to officially launch the trail, which has huge tourist attraction for our area and which is a key area for the local Port Noarlunga Primary School, which conducts its aquatics program there.

There is an attempt at present to extend the Port Noarlunga aquatics program so that it will be available not only during school term but also in the vacation period between December and February. If we can find a way to legally allow this extension, it will be a boost both to the education program and to the tourism potential of that area. These extensions were necessary because of the degraded nature of Horseshoe Reef and the amount of aquatic life being taken off the reef.

The Fish Watch program, to which I have previously referred in the grievance debate, is a great program. It has been extended by the Minister to include a section which involves volunteers under Fish Watch, and I believe the program is working extremely well. I have referred to the major problem of poaching on the reef. People are taking out bucket loads of all types of shellfish, including abalone. They are stripping the reef using hammers, spades, shovels and anything else they can get hold of, and they are causing a serious problem resulting from not only a reduction in the number of marine animals but also an increase in the level of algae that is now growing on that reef. It has been well documented that there is certainly a connection between the growth of the algae in that area and the depletion of the predator, which is the black snail.

The Minister has responded to these problems by announcing an interim prohibition of the taking of shellfish in that area, and that prohibition will remain in place until the end of 1995. It is hoped that before that prohibition expires we will have new regulations in place. The prohibition prevents the taking of any marine organisms in the areas between Brighton jetty and Cape Jervis, and from the high water mark out to a depth of two metres. I also put on record that there is no restriction that will affect children fossicking for shellfish.

At the same time as this prohibition is in place, a discussion paper is being circulated and views of the community are being canvassed. Several options are being put forward in that review: first, the introduction of a total prohibition of the taking of marine animals from that area forever; secondly, a restriction of the quantity of shellfish taken; and, thirdly, seasonal closures. Each of those options has both positive and negative sides. The most important thing to put on record is that the quantity of shellfish being taken is far in excess of that required for personal use. I had an opportunity some weeks ago to go with the Fish Watch people for an afternoon and I know that the material being taken is far more than is required for personal use.

The SPEAKER: The honourable member's time has expired.

Ms HURLEY (Napier): I believe it is very important that the House hear the contents of the letter sent to the Premier's Department by MBf's advisers. I have in my possession a fax cover sheet which is dated 4 August 1994 and which is addressed to Kevin Donnellan from Anne Thompson re Randall Ashborne. It indicates that a copy has been sent to Tan Sri Loy Heang, Wong Hock Sing and Patrick Cheng. The message states:

> Kevin,
>
> As mentioned Randall Ashborne met with Mr Wee late last week or on the weekend. Mr Wee apparently fed him a series of 'issues' and gave him some leads. Knowing that legal action is pending against him Mr Wee would not appear on camera and instead the front person is the son of the Leader of the Malaysian Opposition and a DAP—

The SPEAKER: Order! Can the honourable member assure me that this matter is not currently before the courts?

Ms HURLEY: I am not aware of any matter relating to this before the courts.

The SPEAKER: Then the Chair will allow the honourable member to continue.

Mr LEWIS: Mr Speaker, I rise on that very point of order. Is it sufficient for a member simply to rise in this place and say that they are not aware of the matter being before the courts, even though the correspondence they read states quite clearly that it is before the courts? How naive do we allow ourselves, as individuals, to be in what we debate?

The SPEAKER: The honourable member who is raising the matter is responsible in relation to whether the matter is currently before the courts. The Chair has inquired from the honourable member and I have been assured that, to the best of her knowledge, it is not. Therefore, the responsibility rests with the honourable member, and the Chair cannot take any further action because I do not have any material to the contrary before me. If this or any matter is before the courts and is brought to my attention, I will rule in accordance with the Standing Orders. The honourable member for Napier.

Ms HURLEY: Thank you. It continues:

> . . . instead the front person is the son of the Leader of the Malaysian Opposition and a DAP MP himself Mr Lim Tun Eng. . . .Randall has undoubtedly followed up on I) Wee's allegations with regard to the meetings between Tan Sri and The Lord President Tun Hamid, II) the broader, and I must say more appealing to the Australian media—the issue of the prejudice of the Bar Association and III) a long gone and we thought dead the SAKAPP Berhad scandal from 1986.
>
> I have attached background on these and other issues which may be raised but we are not yet aware of their mention. The real issue for us is that Wee has openly stated that his objective is to destroy our proposed listing of our associate company MBf Asia Capital Holdings on the main board of the New York Stock Exchange and/or engineer a run on MBf Finance. He is obviously annoyed that his tactics have gone astray in Malaysia and will resort to 'attacking MBf wherever they are mentioned'.
>
> This is why we played down the Wirrina MOU here earlier in the year—we didn't give him too much to play with but perhaps enough to get started. It seemed contained until it suited your Opposition, who will obviously also resort to the same tactics Mr Wee, to discredit the Premier. We think it is a terrific idea to pre-empt the Opposition's query and the media story and will load all barrels to back you up in any way necessary. I have touched below on some of the important considerations and attached general and specific news coverage. Some directly related to Wee and some for your interest only.
>
> We are also sending a polite letter to Channel Seven stating that we do not comment on unsubstantiated allegations and that in relation to the Wee matter we are subject to *sub judice*. This will go out this week. Randall apparently interviewed some aggrieved depositors, probably in relation to the—

Mr LEWIS: I rise on a point of order, Mr Speaker. The correspondence the honourable member is reading clearly states that the matter is *sub judice*. What then do you rule, Mr Speaker, should be done to bring the naive statement of the honourable member that the matter is not before the courts to book?

The SPEAKER: The matter is relevant only if it is before the South Australian courts and, therefore, I cannot uphold the point of order. I repeat that members should be aware of their obligations and responsibilities. The honourable member's time has expired. The member for Ridley.

Mr LEWIS (Ridley): Notwithstanding my fondness for individual members of the ALP, what I have seen over recent days and again today reminds me that, as an organisation and the way they conduct their tactics in this place, they are not only horrible, they are not only low, they are not only foul but they are also rats. I have been disgusted by the way in which they have sought—

Mr ATKINSON: I rise on a point of order, Mr Speaker. Reference to Erskine May will show you, Mr Speaker, that the epithet 'rat' is undoubtedly unparliamentary, as are all the other epithets used by the member for Ridley and, as a member of the Australian Labor Party in this Chamber, I ask him to withdraw all his insults to this point.

The Hon. D.S. Baker: Honourable rat.

The SPEAKER: Order! I do not need the assistance of the Minister for Primary Industries. I would suggest to the member for Ridley that some of the terms he used are unparliamentary and that he withdraw them.

Mr LEWIS: Mr Speaker, without wishing to antagonise you—

The SPEAKER: I have asked the member for Ridley—

Mr LEWIS: I heard what you asked me, Sir, and whilst I have never before found those words in any reference to be unparliamentary, in deference to your request, I will withdraw them, and in their place just simply say that the ALP and its members and the way they conduct tactics in this Chamber do not bear comparison with diseased rodents, whatever they might like to think of themselves as being, whether rodents or anything else. They do not deserve comparison with that. I would not be so unkind to the rodents. I would like to know exactly how much—

Mr ATKINSON: I rise on a point of order.

The SPEAKER: I hope the member for Spence is not taking frivolous points of order.

Mr ATKINSON: It is not a frivolous point of order, Sir. The member for Ridley has said that the members of the Opposition are of an order lower than diseased rodents—not even honourable diseased rodents—and I would ask him, through you, to withdraw, Sir.

The SPEAKER: I suggest to the member for Ridley that his comments are in the same vein and that he should couch his remarks in a manner which allows him to continue his speech without interruptions. I suggest that he also withdraw those words.

Mr LEWIS: Thank you, Mr Speaker. I withdraw those words and allow members opposite to choose whatever adjectives they like from the types of terms that have been used by the Prime Minister, a member of their own Party, to describe their own actions. And any and all of them are more than complimentary to my opinion of their behaviour as an organisation at present.

Mr QUIRKE: Mr Speaker, I draw your attention to the state of the House.

A quorum having been formed:

Mr LEWIS: Now that members opposite have been shown to have a smoking gun in their hands, and indeed not just a bunch but a whole box of sour grapes in tow over Moriki, they curiously go quietly away and cowardly fail to pursue the issue in the way in which they were otherwise intending to pursue it. I did not know who this outfit was—I do not know what integrity they have or otherwise—but I do know that the ALP attempted to solicit a donation from that organisation.

Mr ATKINSON: I rise on a point of order, Mr Speaker.

The SPEAKER: Order! The honourable member for Spence.

Mr ATKINSON: The point of order is that the member for Ridley referred to Opposition members as cowardly. That is unparliamentary and I would ask—

Members interjecting:

The SPEAKER: Order! I think the honourable member for Spence is now getting particularly pedantic and I therefore do not uphold that point of order. The honourable member for Ridley.

Mr Atkinson interjecting:

The SPEAKER: Order! I would suggest to the member for Spence that he is now reaching the stage of using points of order to disrupt the honourable member's speech, and I therefore am not prepared to uphold the point of order. The honourable member for Ridley's time has expired. The honourable member for Spence.

Mr ATKINSON: The point of order is that Erskine May lists 'coward' and 'cowardly' as an unparliamentary term and I wonder, Sir, if you are now ruling, contrary to Standing Order No. 1, that it is permissible to use the term 'cowardly' in debate in the House.

The SPEAKER: The Chair is of the view that the manner in which the honourable member for Ridley used the word was acceptable on this occasion. I therefore do not uphold the point of order. The honourable member for Goyder.

Mr MEIER (Goyder): It grieves me that since the Labor Party has been in Opposition it has continued to knock this State above anything else. An Opposition certainly is allowed to question the Government. It is allowed to be probing in its questions and it is allowed to seek information, and it has done that. However, I regret the way it continues to endeavour to denigrate any accomplishments by this Government—and we have had many accomplishments. We hear from the Minister for Industry virtually on a daily basis in this House of new achievements and new enterprises coming into this State. In fact, we have heard again today details of how enterprises are going ahead and how we are getting the gravitational effect from companies such as EDS, Silicon Graphics, Motorola, Australis and others bringing their own companies into South Australia.

We have made it very clear, not only from the day we got into Government but well before that, that South Australia needs to look at Asia a lot more than it has in the past. We told the previous Labor Government, 'You have got to look to our immediate shores to the north,' and the then Labor Government acknowledged that verbally but never took any action on it. Having spent the better part of two weeks in Malaysia and Singapore over the December-January period, I know how competitive the world is with respect to South Australia seeking new investments in this State—how competitive it is to seek joint ventures with Asian companies—because many other countries in the world seek the expertise, know-how and financial capital of Asia, and yet we have seen this Opposition week after week question the Liberal Party on donations, the innuendo in each case being to denigrate any involvement with Asia.

I am extremely worried about how this is being reported in countries such as Malaysia and Singapore. I am extremely worried about the effect this might have, and it concerns me greatly that, after all this Government has done to try to create a new investment climate in this State, the Labor Party seeks to knock, knock, knock the whole time. I cannot for the life of me work out what it is trying to achieve, other than that it is trying to undermine this Government and say, 'If we knock hard enough no-one in Asia will want to know South Australia and, if we can keep that going year after year, the next election will come and we might just have a chance of picking up more seats'—more seats than they would otherwise get, which at present would be zero.

In fact, I know the member for Spence is concerned enough to be doorknocking, because he realises that if an election were held tomorrow his seat would start to swing back our way and could well become a Liberal seat. I say to all members opposite that you need to look at your leadership very carefully. Your Leader is heading you in the wrong direction. You need to take a firm stand in your Party room and in Caucus and say, 'Enough is enough, we have been knocking all the time.'

Mr ATKINSON: I rise on a point of order, Mr Acting Speaker. The member for Goyder continues to refer to Opposition members by the pronouns 'you' and 'your', and I ask him to refer to us as the Opposition.

The ACTING SPEAKER (Mr Scalzi): I uphold the point of order and ask the honourable member for Goyder to address the Chair.

Mr MEIER: I am happy to refer to the members as honourable members and I ask the honourable members to ensure that their honourable Leader changes his course of action. I suggest that the best course of action for members opposite would be to remove their Leader and their Deputy Leader. In fact, if they had only learnt something from the New Zealand experience during their time in office but they did not. Unfortunately, my time has nearly run out. I was going to highlight a few of the key achievements from Singapore, but that will have to wait until another day.

The ACTING SPEAKER: The honourable member's time has expired. The honourable member for Price.

Mr De LAINE (Price): I wish to use my time this afternoon to continue to read into *Hansard* the letter, started by the member for Napier, which was interrupted by various points of order. It continues:

> Randall apparently interviewed some aggrieved depositors—probably in relation to the Sakapp thing or MBf Finance—even though that seems a little odd as it is a long time ago. An award winning journalist from Australia, Mr Bill Mellor, has recently contacted Mr Wee to follow an anonymous tip to his editor, unbeknown to us. He then came through to me for comment and we briefed him thoroughly on these matters.
>
> We believe he is a credible journalist and has done a balanced story. He has informed me that he found Mr Wee to be politically motivated and his allegations unsupported by fact. You will note from the accompanying fact sheet that Wee attempted to engineer a 'run' on MBf at some of our branches. Whilst some money was withdrawn—according to court documents possibly to the tune of $US41 million—MBf Finance remained strong. The company actually has a deposit base of over RM9 billion. Bill's conclusion was that if that didn't shake us nothing would. His story will appear in *Asia Inc* magazine in September. I have given his number and name as an independent reference to journalists that have called.
>
> As Randall has been speaking with disgruntled depositors perhaps this is a fresh angle on an old story and Wee is attempting to shake the depositing public and create another run. When the Premier mentions the issue in Parliament I would like to follow up with a story in Malaysia. The story I will try to see run, depending of course on what the Premier actually does say, is along the lines of:
>
> '. . . the Premier of South Australia today defended one of South Australia's largest investors and the owner of MBf Sealink. 'We have heard', said the Premier, 'that a political roundsman has travelled to Malaysia to talk with a Mr Wee and Mr Lim representatives of the opposition up there—the DAP and Mr Wee the defendant? in a contempt case brought against him by MBf and currently being heard in Malaysia. The correspondent did so based on anonymous information passed in a brown paper bag, we think to the opposition at the same time as we received a little brown paper bag of negative press clippings and a handwritten note on Tan Sri Loy and the MBf Group of companies.
>
> We were obviously smart enough to disregard the story for what it was and particularly in light of the fact that one of the companies in the MBf group—Sealink, one of South Australia's largest tourism organisations—is far from mismanaged and, in fact, is the recent recipient of not one but three tourism awards', etc., etc.
>
> I also believe that the Opposition while in power held meetings with Tan Sri Loy in Malaysia in an attempt to get the company to extend their investment in this State. Something we have been able

to achieve through the conclusion of Wirrina Cove's purchase and proposed redevelopment.

It is appalling that Australian journalists can be so blatantly and easily manipulated by foreign political interests, possibly being used to help engineer a run on one of the very companies that has supported South Australia. Undoubtedly the tactic will be unsuccessful as it has been in the past. The Premier may or may not like to maintain that in fact Mr Wee has had two police reports laid against him with regard to conduct unbecoming of a lawyer. I can source these if you want them. He is well known to have slept with clients, etc.—how deep do you want us to go? Traditionally we tend not to fight mud with mud as it isn't the way up here. But, please feel free if necessary to use what you like. As part of our general corporate relations program we have begun to build a relationship with Tim Treadgold at BRW and he will do a story later in the year. Sid Astbury, the stringer for the *Financial Review* is doing a separate corporate story this Friday. My issues management consultants in Australia are Gavin Andersen and Company—they are monitoring all media in all States. We're still working on having the tapes confiscated but this may not be possible. I look forward to hearing from you.

Warm regards, (signed) Anne.

Attached to that document is an information sheet, as follows:

A.1. Wee Choo Keong is the Opposition DAP member of Parliament for Bukit Bintang and also a lawyer.

2. On or about January 1992, a fraud was discovered in MBf by two senior executives, Huong Hai Kong, Group Chief Accountant, and Loi Hoan Sgo, Head of MBf Information Services, pertaining to the purchase of certain credit card equipment by a company known as Octoplex.

The ACTING SPEAKER (Mr Scalzi): Order! The honourable member's time has expired.

Ms GREIG (Reynell): I want to take the opportunity today to congratulate members of the Stars netball team who in January this year participated in a netball tour of greater Manchester. Members of the team approached me early last year seeking assistance with fundraising towards their trip. The chance to compete at an international level is something that for most of us is a once in a lifetime opportunity and perhaps for some a chance at international recognition. The host city offered accommodation and the use of a mini-bus. The tour provided a great opportunity to promote Australian netball in greater Manchester and an opportunity to show off our talents before the stage is set for the World Netball Championships in Birmingham, England, in July this year.

To go on the trip the team had to raise $30 000. It did not reach the target but the many car washes, quiz nights and countless other fundraisers helped considerably in ensuring that all team members could go to the United Kingdom. The team comprised Melanie Guy, Audrey Barltrop, Michelle Crozier, Kimberley Dinnison, Lisa Pash, Emma Tuddenham, Sally Jones, Johanne Barltrop, coach Tony Smith and manager Garry Pash, and all team members played extremely well; they were a credit to our State. In all they came in at fifth position, which is a fantastic result for a team of young women who have never travelled before.

All team members are from the southern suburbs and play netball locally. Their skills and commitment ensure for South Australia that we have a number of up and coming stars in our netball circle. Full credit must be shared by all team members, coach Tony Smith and manager Garry Pash and all of the families who contributed so much of their spare time and effort to raise funds for the team to be able to go.

Finally, I indicate that the talent of the Stars netball team has not gone unrecognised, as the team has been invited to play in Canada in the games there next year, again another achievement for these young girls who have never played competitive netball before.

WATERWORKS (RATING) AMENDMENT BILL

The Hon. J.W. OLSEN (Minister for Industry, Manufacturing, Small Business and Regional Development) obtained leave and introduced a Bill for an Act to amend the Waterworks Act 1932 and to make consequential amendments to the South Australian Water Corporation Act 1994. Read a first time.

Mr ATKINSON: Mr Deputy Speaker, I rise on a point of order. Was it necessary under the Sessional Orders as amended by the Deputy Premier's motion for the Minister to seek leave?

The DEPUTY SPEAKER: The Minister has not moved the second reading yet, so the honourable member is ahead of himself. The Minister.

The Hon. J.W. OLSEN: I move:

That this Bill be now read a second time.

I insert the second reading explanation of the Bill in *Hansard* without reading it.

This Bill introduces a method of calculating water rates consistent with the Commission of Audit recommendation 14.2, namely, that a new pricing structure should be developed which specifically addresses certain pricing objectives such as, the removal of the free water allowance and, with the reports of the Working Group on Water Resource Policy adopted by the Council of Australian Governments (COAG) on 25 February 1994.

In recent times the residential water rating system calculated water rates based on the capital value of property. This was eventually abolished in 1992, replaced with a set supply charge and an associated 136 kL water allocation for all households, and went some way to achieving a "pay for use" system.

The new water pricing system which the Government announced in December 1994, to come into effect at the beginning of the 1995-96 consumption year, introduced further changes which achieves a "Pay for use" system for residential customers. These changes involved:

- a quarterly access charge of $28.25
- 20 cents per kilolitre (kL) for the first 136 kL
- 88 cents per kL for consumption between 136 kL and 500 kL
- 90 cents per kL for consumption above 500 kL.

This Bill brings into effect further substantial reform to achieve a "pay for use" system for non-commercial properties, including industrial and residential properties and properties in country lands water districts. These changes will effectively bring all non commercial properties into line with residential users, with dependence on property valuation eliminated.

The benefits from reforming water pricing include:

- a water rating system which better reflects the cost of service delivery
- the potential for better allocation of resources, as future demand for services will be guided by customers and their willingness to pay
- elimination of cross subsidies between non-commercial customers, reducing the cost for industry operating in this State
- encouraging the community to use water in a more responsible manner.

Commercial water pricing will, as in the past, continue to be based on property valuations.

I commend this Bill to the House.

Explanation of Clauses

Clauses 1 and 2

Clauses 1 and 2 are formal.

Clause 3: Substitution of Divisions 1 and 2 of Part 5

Clause 3 replaces Divisions 1 and 2 of Part 5 of the principal Act with a new Division 1. The form of this Division is similar to the one that it replaces except that it provides for rating of all land instead of only residential land. Commercial land is rated differently from residential, country and all other kinds of ratable land. The supply charge for commercial land is determined by a rate on the capital value of the land whereas the supply charge for non-commercial land

is fixed by the Minister. A water consumption rate based on the volume of water supplied to land must be paid in addition to the supply charge. However, in relation to commercial land (but not other land) the supply charge is credited against the water consumption rate. Commercial land is defined to be land used for trading in goods or for providing a service but does not include land in a country lands water district.

Clause 4: Substitution of s. 68

Clause 4 replaces section 68 of the principal Act with a similar provision. Subsection (3) allows notices under the new Division for the 1995-1996 financial year to be published up until 31 July 1995 for transitional reasons.

Clause 5: Insertion of ss. 86A and 86B

Clause 5 inserts a new sections 86A and 86B. Section 86A deals with the problem of rating strata schemes. Subsection (1) provides that in a strata scheme the owner of a unit is liable for the supply charge in respect of his or her unit and the strata corporation is liable for the water consumption rate. Liability for the water consumption rate may be shifted from the corporation to the units by notice given to the Minister. The notice must be authorised by a special resolution of the corporation. The purpose of subsection (6) is to safeguard the Minister against a notice that has not been authorised by a special resolution. Subsection (6)*(a)* enables the Minister to recover the water consumption rate in accordance with the notice with the result that the owner of a unit may be obliged to pay more than he or she should. In that event subsection (6)*(b)* enables recovery of the amount overpaid from the corporation or from other unit holders.

New section 86B provides for those situations (other than strata schemes) where the Minister supplies water to two or more consumers through one pipe and rates them separately. They will share the water consumption rate in the manner agreed between them or equally if they can't agree. Subclause (6) is a transitional provision that provides that if agreement cannot be reached in respect of the 1995-1996 financial year subsection (1) will not apply in respect of that year. This provision is necessary because it will take a considerable time to identify all the parcels of land to which section 86B applies so that rate notices dividing the water consumption rate equally can be issued in those cases where the ratepayers have not advised the Minister of some other proportion.

Clause 6: Amendment of s. 94—Time for payment of water rates, etc.

Clause 6 makes a consequential amendment to section 94.

Clause 7: Amendment of the South Australian Water Corporation Act 1994

Clause 7 amends the *South Australian Water Corporation Act 1994*. Schedule 2 of the *South Australian Water Corporation Act 1994* makes consequential changes to the *Waterworks Act 1932* most of which change references to "Minister" in the *Waterworks Act* to references to the South Australian Water Corporation. This clause makes similar amendments to the new sections inserted by the Bill into the *Waterworks Act*.

Mr ATKINSON secured the adjournment of the debate.

STATUTES AMENDMENT (CORRECTIONAL SERVICES) BILL

The Hon. W.A. MATTHEW (Minister for Correctional Services) obtained leave and introduced a Bill for an Act to amend the Correctional Services Act 1992 and the Statutes Amendment (Truth in Sentencing) Act 1994. Read a first time.

The Hon. W.A. MATTHEW: I move:

That this Bill be now read a second time.

I insert the second reading explanation of the Bill in *Hansard* without reading it.

This Bill seeks to amend the *Correctional Services Act 1982* and the *Statutes Amendment (Truth in Sentencing) Act 1994*.

The first object of this Bill is to amend the *Correctional Services Act 1982* to provide an evidentiary aid that will assist in the effective dealing with prisoners who use or consume drugs while in prison.

Difficulties have been experienced in successfully establishing that a prisoner has consumed or used a prohibited drug while in prison (which is an offence against the regulations under the Act and is accordingly dealt with by prison managers or Visiting Tribunals). Firstly, proving that a particular sample of urine was taken from a particular prisoner on a particular day has been onerous. Secondly, different drugs remain in the body for different periods of time—some up to 10 weeks—and so could, in some cases, have been consumed by the prisoner before admission to prison.

Some of these difficulties will be rectified by amendments to the regulations, but it is desirable to amend the Act to assist in the matter of proving that a particular sample of urine was taken from a particular prisoner in accordance with the Act. Without this amendment, prison managers will be required to produce various witnesses which only serves to delay proceedings and make them more cumbersome and costly.

The second object of this Bill is to ensure that prisoners be required to accept their parole conditions in writing prior to being released from prison or home detention.

Prior to the commencement of the *Statutes Amendment (Truth in Sentencing) Act 1994*, prisoners were required to accept parole conditions fixed by the Parole Board in writing before being released on parole. Refusal, or failure to do so, resulted in the prisoner remaining in prison until his or her conditions were signed.

The requirement that prisoners sign their parole conditions was omitted from the Act as amended by the recent "Truth in Sentencing" legislation, largely because long-term prisoners now have to apply for parole and the Parole Board of course will not order release unless the prisoner accepts the proposed conditions.

However, it is now realised that the requirement should be retained for those prisoners still entitled to automatic release, i.e., those serving a total sentence of less than 5 years.

The parole system has rested historically upon the concept of an agreement between the parolee and the State in which the State agrees to release the parolee from prison in return for the parolee's promise to abide by certain conditions. If these conditions are breached, the parolee may be returned to prison.

There could be serious implications for the community and for the effective application of the parole system in this State should prisoners be released without a signed acknowledgment of the acceptance of their parole conditions.

Without the evidence of a prisoner's signature, there only remains an assertion by the Parole Board that the prisoner has been informed of the conditions of parole. Such evidence will only go as far as establishing the Board's perception of the prisoner's understanding of the conditions of parole. It is questionable that an intentional breach of a parole condition could be established without the evidence of a prisoner's signature confirming that parole conditions had been seen and accepted by the prisoner.

Should a prisoner serving a sentence of imprisonment of less than five years state that parole conditions are not acceptable and elect to refuse parole, there is currently no provision for that decision to be formalised. All prisoners who would otherwise remain in prison by refusing or rejecting parole conditions must be released under the provisions of Section 66 of the *Correctional Services Act*.

The intention of this amendment is to ensure that prisoners acknowledge their understanding and acceptance of the conditions set by the Parole Board by signing the release document outlining those conditions prior to release. Prisoners refusing to sign the release document will be required to continue to serve the balance of their sentence in prison until they agree to sign the release conditions set by the Parole Board.

The third amendment to the *Correctional Services Act 1982* proposed by this Bill is to enable outstanding warrants that are to be served on prisoners to be served by correctional services staff. As the law now stands, warrants (many being for non payment of fines) can only be served by the police which is time consuming and costly. It has been the practice for some time for the Commissioner of Police to permit the appointment of certain officers from the Department for Correctional Services as special constables for this purpose. The appointments are made under section 30 of the *Police Act 1952*. While this system has been satisfactory in the past, there is now a reluctance to continue with it as approximately 50 correctional services officers currently hold such an appointment. The administrative burden for the Police Department is significant in making the appointments and monitoring the activities of the appointees and potential problems exist with regard to their accountability under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

It is therefore considered to be more efficient and appropriate that correctional services staff can be authorised by the CEO to execute warrants on prisoners.

Section 20 of the *Statutes Amendment (Truth in Sentencing) Act* 1994 is also amended.

This is the section which deals with the effect of the abolition of days of remission on existing sentences.

There have been differences of opinion over the proper interpretation of this section and the amendments are designed to bring certainty to its interpretation.

On the one hand section 20 has been interpreted to mean that upon the commencement of the *Statutes Amendment (Truth in Sentencing) Act*, 1994 current prisoners who had a non-parole period set before the Act came into force are credited with the maximum number of days of remission that they would have received on that non-parole period and that amount is deducted from both the non-parole period and the head sentence.

The other interpretation of the section is that it requires one-third of the non-parole period to be deducted from the non-parole period and one-third of the head sentence to be deducted from the head sentence.

This second interpretation does not accord with how the remission system worked. A prisoner with a non-parole period only earned remissions while in prison. No more remissions were earned once the prisoner was released on parole.

This is best explained by an example: A prisoner sentenced to imprisonment for eight years with a non-parole period of six years could earn a maximum amount of remissions totalling two years. If that amount of remissions was earned, the prisoner was entitled to release on parole after four years in custody with an unexpired balance (and so period of parole) of two years. This is arrived at by starting with a head sentence of eight years less two years of remission, less four years served in prison. No more remissions would be earned while the person remained on parole. So for such a person, the maximum remission which could be earned is two years.

On the second interpretation a prisoner sentenced to imprisonment for eight years with a non-parole period of six years could be credited with remissions on the eight year head sentence. The maximum remissions which could be earned on a head sentence of eight years is two years eight months. The head sentence could thus be reduced to five years four months. The maximum amount of remissions which could be earned on the non-parole period remains the same as in the first example, namely two years. If that amount of remissions is earned, the prisoner is entitled to release on parole after 4 years in custody, with an unexpired balance (and so period of parole) of one year and four months.

The complexity of these calculations shows clearly a good reason why this system must be abandoned once and for all.

These amendments make it clear that the first interpretation is the one to be used when calculating the amount of remissions which are to be credited to a person who was serving a sentence of imprisonment on 1 August, 1994 (the date on which the *Statutes Amendment (Truth in Sentencing) Act* 1994 came into operation).

Differences of opinion have also been expressed as to whether section 20 requires a once only calculation of remissions on 1 August, 1994 or whether new calculations are required to be made on the happening of certain events, namely when a prisoner is refused or refuses parole or is returned to prison as a result of breaching parole.

The intention was that a once only calculation should be made and new subsections (2) and (3) make it clear that this is so.

Firstly new sub-section (2) makes it clear that a person who is returned to prison upon cancellation of parole does not earn remissions on the balance of the unexpired parole period.

It is true that before the abolition of remissions such a person could earn remissions on the balance of the unexpired parole period. This was anomalous. It had the result that a person on parole who re-offends could have his or her unexpired term reduced by one-third while the person who does not re-offend does not. The rationale for this anomaly was that remissions were a tool for maintaining discipline in prisons. This rationale is not accepted by the Government and therefore has been removed. The Government has no qualms in removing the anomaly.

Secondly, subsection (3) makes it clear that a person who is refused parole by the Parole Board or who refuses parole gets no further remissions.

Prisoners who are refused parole are prisoners who have not shown satisfactory progress in prison. To credit these prisoners with days of remission after they have been refused parole by the Parole Board would, first, contradict the policy of the 1994 legislation that a once and for all calculation of remissions should be made on 1 August, 1994 and, second, would make a category of prisoners eligible for remissions who were never in contemplation when the remission system was introduced.

Prisoners who refuse parole for any reason will, as I have indicated, receive no further remissions. These prisoners would, before 1 August, 1994, have been eligible for remissions until they were released on parole or served their sentence. The effect of new subsection (3) is that such prisoners will not be eligible for any remissions after the expiry of their non-parole period. This once again is in accord with the policy that there should be a once and for all calculation of remissions on 1 August, 1994. It is the prisoner's decision to remain in prison which ends his or her entitlement to earn remissions. This is not a factor which the Government believes calls for reconsideration of the policy that there should be a once only calculation of remissions at 1 August, 1994.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the Act will come into operation on assent, except for clause 4 which will be taken to have come into operation on the day on which the *Statutes Amendment (Truth in Sentencing) Act 1994* came into operation (i.e., 1 August 1994).

Clause 3: Amendment of Correctional Services Act 1982

This clause amends the *Correctional Services Act 1982*. Firstly, it inserts a new evidentiary provision in the section dealing with drug testing of prisoners by urinalysis. If it is alleged in a complaint, information or other notice of charge that a sample of urine was obtained from a particular prisoner on a particular day, and the sample was assigned a particular number, these steps will be taken to be proved, and to have been carried out in accordance with the Act, unless the prisoner proves otherwise.

Paragraph *(b)* of this clause requires all prisoners to accept in writing their parole conditions before they are released on parole. Prisoners to whom section 66 applies (i.e., those serving sentences of less than 5 years) must, if they do not accept their parole conditions, be reviewed periodically by the Parole Board, and will be released at such time as they accept the proposed conditions.

Paragraph *(c)* inserts a new section in the Act that allows an employee of the Department for Correctional Services, if authorised by the CEO for the purpose, to execute any warrant on a prisoner.

Clause 4: Amendment of Statutes Amendment (Truth in Sentencing) Act 1994

This clause amends section 20 of the *Statutes Amendment (Truth in Sentencing) Act 1994* by firstly making it clear in new subsection (2) that no further reductions in sentence are to be made if a prisoner who was sentenced while the remission system was still in force becomes liable to serve the balance of his or her sentence (e.g. as a result of re-offending while on parole). New subsection (3) makes it clear that the reduction of sentence effected by subsection (1) in relation to a sentence with a non-parole period is limited to the maximum remissions the prisoner could have earned off that non-parole period (ignoring the fact that the prisoner may, as it turns out, *not* be released as the end of that non-parole period).

Clause 5: Transitional provision

This clause provides that the amendments made to section 20 of the *Statutes Amendment (Truth in Sentencing) Act 1994* do not affect any prior order or decision of a court or the Parole Board.

Mr ATKINSON secured the adjournment of the debate.

RETAIL SHOP LEASES BILL

Adjourned debate on second reading.

(Continued from 8 March. Page 1859.)

Mr CUMMINS (Norwood): I support the fundamental thrust of this legislation, but a couple of aspects of the Bill concern me. Various Westfield tenants have come to my Norwood office to tell me that at the expiration of the terms of tenancy they are presented with the position and told, 'These are the terms of renewal: take it or leave it.' If that is the case, it seems to me that is not satisfactory. It seems that Westfield is getting the benefit of the value of the goodwill built up by the tenant and possibly the value of the improvements, fixtures and fittings on the premises, depending on the

terms of the lease. In the United Kingdom we know that there are provisions dealing with this sort of problem under the Landlord and Tenant Act 1954.

Mr Atkinson interjecting:

Mr CUMMINS: Some of us do. I know my learned legal colleague opposite does, but other members may not know of this. Certainly, under section 30 of the Landlord and Tenant Act 1954 there are provisions whereby a tenant at the expiration of a lease has a basic right to ask for a further lease rather than a simple renewal.

Section 30 gives a landlord the right to object on certain bases; for example, if there has been a breach in that the premises have not been maintained, if the tenant has persistently delayed in paying rent, if there have been other substantial breaches, and so on. Section 30(1)(a) to (f) of that English Act sets out several provisions stating the bases on which a landlord can object. I am not suggesting that we should provide a provision such as that in the Retail Shop Leases Bill, because we would be providing a lease in perpetuity which would be unsound commercially. However, I suggest that other provisions should set out how the right of a tenant or lessee can be better protected. We know that in relation—

Mr Atkinson interjecting:

Mr CUMMINS: Just sit there and listen and you may learn a bit. I know that although you did a law degree you did not practise law, but if you sit and be quiet for a few minutes you may learn a few things. In relation to a right of renewal, clause 36(1)(b) provides:

> The value of goodwill created by the lessee's occupation and the value of the lessee's fixtures and fittings on the retail shop premises are to be ignored for the purposes of the assessment of current market rent.

It seems to me that it would be very simple to have a provision to the effect that when a landlord is about to grant another lease, whether to the existing lessee or a third party, he is prevented from getting the financial benefit of the hard work put in by the tenant. Also, there is no reason why there should not be a provision stipulating that a landlord, at the expiration of a lease, should give notice to a lessee setting out the reasons why the lease will not be renewed, and those reasons should be subject to appeal to the Magistrates Court. The purpose of putting in that provision is simple. If a landlord is getting rid of an existing tenant to gain a financial benefit, which one would say is inequitable, he should not be allowed to do that. Therefore, I suggest that such a provision should be included.

In addition, it seems that the harsh and unconscionable provisions in clause 38(1) should be extended to a tenant or lessee where the term of the lease has expired with no right of renewal. In other words, if one has the provision which I have just mentioned—the notice and right of challenge—there should also be a provision that the rent shall not be harsh and unreasonable. That provision in clause 38 already applies to renewal leases. In other words, it applies to the right of renewal, but it does not apply to a situation where the lease has expired. What I am suggesting is that that provision should apply.

It seems to me that for equity and justice we have to get rid of the situation where a landlord can stand over a tenant and, by indirect means, obtain a financial benefit from the value of the goodwill built up by the tenant and, in some cases, the value of the fixtures and fittings. I consider that to be inequitable and unjust and suggest that something ought to be done about it. I doubt whether this problem will be sorted out here, but when there is a conference of both Houses we may go some way towards solving that problem.

Mr ATKINSON (Spence): The Opposition believes that the Bill is a worthwhile attempt to balance the interests of landlords and tenants in the retail sector. We understand that the Australian Democrats believe that the advances achieved for retail tenants in this Bill would be nugatory if it were not to be carried in its present form. However, the Labor Party does not entirely agree with the Democrats. We think that the Bill marks an improvement for the rights of retail tenants, with or without the Democrats' amendments.

The Bill ends the practice of ratchet clauses in retail leases. Ratchet clauses give a landlord a choice of methods for calculating the rent, the highest being chosen under a ratchet clause. The Bill outlaws ratchet clauses and I think that retail tenants will react to that abolition with relief. The Building Owners and Managers Association believes that the Bill, in the form in which it comes from another place, is too generous to retail tenants and, as a result, will frighten investment away from South Australia. The Opposition listens to the BOMA point of view carefully—more carefully than the Democrats, who respond to BOMA's concerns by saying that South Australia is already overshopped, that there is a captive retail market, and that if interstate investment is scared off by this measure, so be it.

I think that this is a truly Committee Bill and that the interest will be in the debate on its clauses. The Opposition has consulted widely on the Bill. We have had representations from BOMA and from Westfield on the landlords' side, and we have had representations from the Retail Traders Association, the Small Retailers Association, Just Jeans and the Westfield Arndale tenants, to name but a few. Retail tenants argue that having built up their businesses in shopping centres over a number of years they are very vulnerable to landlords terminating their leases. They argue that, having built up their businesses to be worth tens, if not hundreds, of thousands of dollars, the landlord, being aware of the vulnerability of the tenant, ratchets up the rent in the knowledge that the tenant really cannot move anywhere else without losing his or her entire business. So the nub of the Bill is the clause which approaches the idea of a perpetual lease and automatic renewal unless the landlord can give good, valid written reasons for not renewing.

I should like to digress into the politics of the Retail Shop Leases Bill because they are quite interesting. The Australian Labor Party, of which I am a member, can look with a certain amount of objectivity at the struggle between landlords and tenants over this Bill. It would be fair to say that the Australian Labor Party does not, alas, accrue a great deal of political support from either the landlords or the tenants in the retail sector. We hope to change that in future, but for the moment we can look on this with some disinterestedness in the strict sense of the word.

The tenants have been particularly active in seeking to extend the provisions of this Bill in their favour. The Bill that was introduced in another place tried to balance the rights of landlords and tenants, and that balancing was done by the Attorney-General, who introduced the Bill into another place, having done that arbitration. I see the member for Florey getting unduly passionate; I hope that no attempt is being made to influence the vote of the member for Florey, who may well want to exercise his conscience on certain clauses of the Bill. I hope, Sir, that you will ensure that the member for Florey is not being—

The DEPUTY SPEAKER: Order! The honourable member will speak for himself.

Mr ATKINSON: He will speak for himself, and he will do so most capably. The tenants have been most zealous in bringing their point of view before the three political Parties represented in the Parliament. There are thousands of retail tenants in South Australia. By contrast, there are fewer landlords and, indeed, the big metropolitan shopping centres are dominated by the Westfield Trust. So, when one is doorknocking in one's constituency one is likely to come across constituents who take the tenant's point of view on this Bill. When doorknocking, one will rarely or never come across someone who takes the landlord's point of view on this Bill. Nevertheless, the landlords are responsible for considerable investment in South Australia; they provide work for people to construct shopping centres and to maintain and clean them, so they are an important economic player. The landlords tend to represent shareholders and people who are beneficiaries of trusts—people who are investing in the landlord's enterprise for superannuation purposes—yet these people who will be affected if the landlord's position is undermined by this Bill are not conscious of their political stake in this Bill, and so they remain silent.

Thus, the political debate so far has been heavily in favour of the tenants seeking to expand their protection under the Bill. Some of the clauses that we will have to consider deal with coverage of tenants by the Bill. The Government would like to exclude public companies from coverage by the Bill, arguing, not unnaturally, that a company listed on the stock exchange is a very big concern and should be able to look after itself in commercial negotiations over a retail lease. The Government would like to put a ceiling of an annual rent of $200 000 on this Bill's applying. So, the Government says to tenants who have a tenancy under which they pay more than $200 000 a year that the protections of this Bill should not apply to them. I would like to make the point that—

The Hon. S.J. Baker interjecting:

Mr ATKINSON: Over $200 000. I would like to make the point that there are many smaller retailers in the central business district, and particularly on or adjacent to Rundle Mall, whose tenancies are valued at $200 000 or more, and they would miss out on the undoubted benefits of this Bill for tenants. In the form in which the Bill has come to this House, however, there are different requirements which would mean that the Bill is likely to apply more widely than it would in the Government's version. The Labor Party also supports the provisions on demolition as they come from another place, rather than the Government's preferred position on demolition. The Labor Party is worried that some landlords may behave ruthlessly towards tenants by pretending to be about to demolish their premises to rebuild them later, when in fact they just want to get rid of the tenant.

The Opposition also has concerns about how franchises relate to the Bill and I shall be asking the Minister questions about franchises and retail tenancies. It is common for a retailer in a large shopping centre to be a franchisee and for his franchisor to be the person who in fact is the tenant of the premises. It is the franchisor who has relations with the landlord. The franchisee is the subtenant. Let us say the franchisor goes bust or wants to get out of business in that shopping centre; that leaves the franchisee without any business, because the franchisee will have lost his business with the termination of the tenancy. In the form in which the Bill comes from another place I understand there is some attempt to separate out the franchise elements from the tenancy elements of an agreement and to give a franchisee as subtenant some right to become the head tenant, should the franchisor pull out of a tenancy or not meet his commitments to the landlord.

The most important clause in the Bill as it comes from the other place is the requirement of landlords to give reasons upon terminating or refusing to renew a tenancy. The Bill sets out the grounds on which a landlord may refuse to renew a tenancy and, if the landlord does not give written reasons in accordance with those grounds, the Bill provides that the lease must be renewed. BOMA makes the point that this is akin to a perpetual lease and both the law and commerce struggle against an interpretation that would grant perpetual leases—or, indeed, any right in perpetuity. So, the Opposition will be interested in the Government's arguments on this Bill. We believe that there may be differences in the Government's ranks in the House on this matter, as well there might be, because small retailers dominate the preselection panels of so many Liberal members in the House. There is nothing wrong with that; there is nothing wrong with some small retailers being active in the Liberal Party.

Mr Caudell interjecting:

Mr ATKINSON: The member for Mitchell asks whether I am suggesting impropriety. I certainly am not. I studied political science at university and am interested in it for its own sake, and I hope the members for Mitchell and Kaurna will be patient and listen to what I have to say on this point. Many Government backbenchers are very sympathetic to small retailers. That is why they opposed the Government's move to extend trading hours earlier this year. Members will recall that the Government was unable to bring into the House a Bill to extend trading hours because of the resistance of many Liberal backbenchers to the proposed Government Bill. So, the Minister had to extend trading hours in metropolitan Adelaide by exercising a discretion or exemption under the existing shop trading hours law.

Liberal backbenchers are intensely interested in the outcome of the Bill and they are placing a great deal of pressure on the Government to take the tenant's view regarding the amendments proposed in the other palce. In short, what so many Liberal backbenchers want in this debate is for Government Ministers to accept the amendments proposed by the Labor Party and Democrats in the other House. So, the debate here may not be as somnolent as might appear: it might hot up later in the day as Liberal backbenchers state their point of view.

Let me reiterate that the question of renewal and written reasons for renewal, provisions relating to which have been inserted in the Bill by the Labor Party and the Democrats over the objection of the parliamentary Liberal Party in another place, is the nub of the Bill. Small retailers will tell you that landlords have been using a threat of non-renewal to undermine existing rights which retail tenants have. Retail tenants fear that, if this clause to which I refer does not remain in the Bill, all the other benefits for tenants in the Bill, for which I commend the Government, will be undermined by the ability of landlords to terminate a lease without giving any reasons reviewable by a tribunal.

The last aspect of the Bill which I think is worthy of comment is that it allows for appeal on pretty much all matters relating to tenancy to the Tenancies Tribunal. So, if times went badly for small retailers, they would have the right under the Bill in its current form to appeal to the Tenancies Tribunal for relief from the agreed rent or from other

provisions such as those relating to outgoings. It may be that, during a recession, under this provision the Tenancies Tribunal might find itself clogged with applications from a very high percentage of small retailers who were disadvantaged by the current trading conditions and found it necessary to seek amendments by an external body to the commercial agreement into which they had entered with their landlord.

In conclusion, I point out that the Opposition has an open mind on many of the provisions in the Bill. We think that the real debate will be in Committee and we expect some disagreement and a number of divisions, not necessarily on Party lines, on the clauses. Ultimately we believe that the matter will be resolved by a conference of managers in which the Labor Party will play a constructive part by trying to balance in a just manner the claims of landlords and retail tenants.

Mrs ROSENBERG (Kaurna): This Bill goes some way towards addressing the issues of both tenants and landlords, and certainly puts in place protections for both, providing greater protection for tenants than they have ever had before. However, it falls short in some areas. We need to look at the reasons why this Bill has been introduced. As we will recall, it came about under one of the agreements regarding the extension of shop trading hours and, as the member for Spence has reminded us, there was considerable debate in this House on the method of introduction.

However, as part of that agreement regarding the increase in shop trading hours, we agreed to do various things in terms of the protection of small business, that is, the tenants. Those agreements are as follows: that retail leasing laws should be strengthened and shop trading hours determined by 75 per cent of retail tenants—I understand that that is covered under clause 58; that retail leasing laws be amended to restrict the transfer of operating costs to traders who choose not to trade outside core trading hours—and I believe that that is not covered adequately in the Bill; that retail leasing laws be amended to permit tenants to form traders associations and be represented by an agent or an association in lease agreements—and I am not convinced that this has been addressed adequately in the Bill; that increases in rental in excess of the prescribed sum above the consumer price index be subject to review by the Commercial Tribunal—and I think that is addressed in this Bill; and that the process of lodging complaints with the Commercial Tribunal be simplified and made more accessible to small retailers—and one could argue equally one way or another whether that has been addressed adequately in this Bill. I will make further comment about each of those items later.

As to the consultation process, it has to be put on record that the Attorney-General has, I believe, conducted a very adequate and well thought out consultation process.

Mr Caudell interjecting:

Mrs ROSENBERG: Certainly, as the member for Mitchell has said, it is the best consultation process that we have ever seen, and I agree. He has included in joint meetings representatives of BOMA, the Retail Traders Association and the Small Retailers Association. As a result of the agreements made there and the concerns that were discussed, he has brought back to this Parliament some changes which accommodate to some extent some of the comments made by each of those associations. He has come back with a Bill that he considers goes some way towards alleviating concerns, although it does not accommodate them all. The one thing I am particularly concerned about is how well, then, have the industry groups that have been represented in the Attorney-General's consultation process gone on and consulted with their members. That is an issue I will raise further in this debate.

The Bill gives substantial rights and protections to tenants. There are some serious concerns with some clauses. In a perfect world, of course, we would not have any need for this type of legislation, but in the big business world there is a very real need for this type of legislation and the protection it should give. The tenancy and lease situation, in the perfect world, would be seen as an equal partnership between the landlord and the tenant. I do not believe that we live in that perfect world, and the protection of those with less power or, perhaps, less money needs to be taken into serious consideration in this legislation.

There has been much talk as part of the outside debate on this Bill about the problem of reduced investment, because landlords simply will not invest in the State. The comment I make is that, if it is profitable, they will do it, and I have not seen a great deal yet in terms of the fact that tenants will not be able to make money and their turnover obviously feeds into profits for landlords, allowing them to charge greater rents at the end of the lease and renewal process. I have yet to be totally convinced that this reduced investment will be a serious problem as a result of changes to this legislation.

The other thing that has been overlooked regarding investment is the small business component. In my electorate in particular we depend wholly and solely on small business—and I mean small business. The investment in that electorate, because of small business, is considerable, and I think we sometimes tend to think about investment as only big business investment; it is about time we gave equal status to small business investment.

The other issue in terms of investment that has been overlooked is what most small businesses actually put on the line when they decide to go into business. Most of them that I have had dealings with have huge mortgages—they have probably mortgaged their house to get themselves into this business—and take a great deal of risk. That is not to say that the landlord does not take a great deal of risk either but, in the way of the world, I have not seen too many big business landlords go under, compared with the many small business tenants I have seen go under.

An example of how small business is under threat by decisions that we make here is the shop trading hours debate. I have stated that I opposed the extension of shop trading hours. Sanity has finally reigned at the Colonnades Shopping Centre, which is in my electorate. Small businesses opened at the Colonnades at the beginning of the process on Friday evenings but I understand that now very few, if any, small businesses other than large businesses, such as K-Mart and Coles, open in the Colonnades on a Friday night. That is obviously a reflection of the fact that it is simply not profitable for them to do so, and so commonsense has seen reason in that instance.

In terms of rentals and lease agreements and how they are drawn up, I have serious concerns with respect to the issue of lease renewals. Approximately eight businesses in the Colonnades Shopping Centre operate on a monthly rent basis. They have been given that monthly rent arrangement by the landlord with the message, 'We want your business here otherwise we would get rid of you.' By allowing the small tenant a monthly rent arrangement, the landlord is saying, indirectly, 'You are a good business and we want you to remain but we are simply not prepared to go the next step and

give you a substantial lease.' That is a huge problem, and the Bill addresses that issue by putting a six month limit on that arrangement. The problem I have is that, at the end of the six months, it is conceivable—and I am not saying it would necessarily happen in all cases—that a continuation of a six month by six month lease could be agreed to. The tenant may decide to agree to that process because he or she simply wants to continue a business which is doing well.

In terms of the end of the lease process, if the landlord decides that he wishes to cease a tenancy, he may indicate to the tenant that at a certain period he will demolish the shop, refurbish the area and create a series of new businesses within that area. By his waiting for the leases to expire and then setting up a new area within the shopping centre, the new lessees will actually pay for the refurbishment. If the landlord does the demolition and relocation process during the time the tenant's lease is running, he will be responsible for the payment of that refurbishment. So, in a way, it is possible for the landlord to wait long enough and give people monthly rental agreements until such time as everyone is on a monthly lease. The landlord then sets up a new series of tenancies.

This Bill addresses some of those issues, but I am not convinced that it addresses them clearly enough and there are possibly some loose ends that need to be tightened up in that area. If a tenant feels that they have no security and therefore do not feel that they have a saleable item, that reflects on the entire market—not only the small tenancy investment but also the landlord.

The other issue that has been overlooked is that, if a business is sold as it is a profitable business, and if it has a lease that it can sell on, we lose sales tax on the sale. I know of one case in the Colonnades where a tenant paid $61 000 to upgrade and relocate from one shop to another and was charged, on top of that, $1 800 to demolish the original shop. I do not see anything in the Bill to address that issue.

There should be fairness and equity and fairness and equity should be shared equally by both the landlord and the tenant. Our role in this debate is to ensure that fairness and equity is there. Certainly, there is not fairness if the landlord can use some back door method of getting hold of the tenant's goodwill. There has been much talk about the fact that goodwill no longer exists. I would like to say that, in my opinion, goodwill certainly does exist in a tenancy. The very fact that a landlord can effectively use the goodwill that a tenant has built up to attract a new tenant at the end of the lease period is an obvious example that goodwill certainly exists and is used to attract other businesses into the centre.

In fact, the goodwill of all the good tenants in that shopping centre is one reason why landlords find it much easier to attract other businesses, to keep businesses in that centre and to maintain the flow of customers through the centre. If the tenants are not doing a good job, people will not come in to buy and to take part in the services the centre provides and, therefore, the landlord does not have a good business. In my opinion, goodwill is alive and well.

My concerns relate to the key issues of relocation costs, which I have covered briefly; what happens at the end of a lease period; and how new rental levels are negotiated. The amendments made in the Upper House, particularly those moved by the Democrats, in some cases have made the situation worse for tenants rather than better. I am happy to debate those issues in Committee and to explain why.

I have consulted fairly widely with the tenants in my electorate and they are of the opinion that the extension to an annual rent of $250 000 is excessive, so I am surprised that the Retail Traders Association is asking for that extension through the Democrats' amendment. I am also informed by tenants that the average size of a tenancy is less than 1 000 square metres. I hope that those who moved the amendments can explain those points.

I understand that the member for Spence raised the issue of franchises, which we will obviously debate at length in Committee. Public companies are currently exempt from provisions of the legislation and it seems unlikely that this could be to their advantage. If they want coverage, they ought to be able to achieve that under the Bill, and that is another example of fairness and equity. We must consider what happens if the franchisor fails. If there is no direct responsibility of the franchisee, they ought to have the right to continue to the end of the lease. If they are good tenants and are doing the right thing by the business and by the shopping centre, I see no reason why they ought not be given the right to serve out that time and to at least have some way of recovering some of their costs. I am quite sure that we will debate that issue in Committee.

Mr Atkinson interjecting:

Mrs ROSENBERG: I did not say that: I said that we would be debating it in Committee. Leases need to be clear; they need to be easily understood by both parties rather than being a lawyer's nightmare. They ought to be settled quickly, and I have some sympathy with the suggestion that landlords and tenants should share the cost of drawing up leases.

Probably the most contentious clause of the Bill, one with which I have some concern, is clause 43, which covers what happens at the end of a lease. I have spoken to the Attorney about this issue on several occasions and I proposed an amendment, which was not accepted. I have some considerable difficulty with that. I cite the example of a tenant with a 5 or 10 year lease who understands that that is all he or she has, and that he or she has no other bind on that shop: if the landlord wants to put the same business in that tenancy, and if the landlord decides he wants to charge more rent for that same business in that same tenancy, there ought to be a mechanism whereby the current tenant has the right to compete for the new lease that is being offered. If the landlord then chooses another tenant, there ought to be a reasonable way for the current tenant to put some argument before an independent tribunal about that.

Some discussions have occurred about the fact that tenants are arguing for permanent tenancy. Personally I reject the idea of permanent tenancy, and I do not know that that is necessarily what tenants are looking for. I think they are looking for an opportunity to extend their business at the end of a current signed lease period and to actually stay within that style of business and continue to do that job in the place in which they have been successful if that is their choice. My argument is that, if a landlord has a good tenant in a particular situation who is doing good business and who actually is attracting sales into the centre, it is as much to the benefit of the landlord as it is to the tenant to allow that to continue.

I do not believe that the Democrat amendment in this particular area does anything to add protection for the tenant. In fact, it only suggests that all the landlord really has to do to get out of the tenancy agreement is to say that he has chosen someone else, and I do not think that that is an answer. So, I cannot see the reason for that amendment being placed on record. In effect, the Democrats' amendment actually does not prevent the business from being stolen, and I mean by that the argument I have previously advanced concerning the way that a landlord can indirectly use the

goodwill of the current tenant. To protect the tenant, there needs to be some further consideration of all those issues we have raised. I do not believe that tenants have an argument if the landlord chooses to put a different business in that particular tenancy, and I do not believe that current tenants would have an argument if they cannot match the offer that has been made to the landlord by another tenant.

I do not believe the tenant has an argument if the shop is to be demolished, nor do they have an argument if they have not complied with the lease or have been a bad tenant. So, if the amendment could be reworded in such a way that it took into account those things, ultimately it would be fair to both the landlord and the tenant. As I said, I am not in favour of perpetual leases, but I do believe that a good tenant who might want to contest a lease from another tenant on equal terms should be given that right to do so, and I believe that an appeal clause would address this issue. I have no wish for the Act to protect poor tenants, and I think I have made that clear by the examples I have given.

In summary, I am extremely disappointed that, after all the consultation that has gone on with the Attorney-General and the three key industry representatives and after these bodies had signed and agreed to this Bill, they have now gone off to the political prostitutes called the Democrats to see if they could push further amendments, and that is unfortunate. The type of debate that occurs here should not have to be a one-sided debate because we have had lobbying. As the member for Spence said, most of the lobbying has come from one side.

Mr CAUDELL (Mitchell): I must declare a potential interest in this matter in the fact that my electorate office, which is paid for by the State Government, is located at Westfield Marion; I am a tenant of a property at Burbridge Road, Hilton; and previously I have been a tenant with an oil company for a period in excess of five years.

Mr Atkinson interjecting:

Mr CAUDELL: It is not a retail premises in that it sells things, but it does provide a tourism service. If the member for Spence were to provide to me the same courtesy that I provided to him, I might be able to put on the table all the information. A lot of misinformation has been provided in relation to the retail tenants and, in particular, in relation to a number of shopping centres. The first matter that must be taken into account is that, following the long and detailed consideration and conference stage that had been entered into, an agreement was reached between the Attorney-General, Westfield, BOMA, the Small Retailers Association and the Retailers Association, all of whom agreed to and signed the provisions that were included in the original Bill considered in the Upper House.

For reasons such as grandstanding, joining the bandwagon, and so on, they have decided to void that particular agreement and head down another direction. It is interesting that we have heard the ALP in the Upper House and lead speaker for the Opposition in the House of Assembly make their statements in relation to this legislation, which replaces the Landlord and Tenant Act, and they seem to contradict completely what the Federal Labor Government is proposing federally. If we have a look at the Federal arena, we will see the recommendations of the Industry Commission report into petroleum products, and they have been accepted by Mr Gear and Senator Schacht.

The Federal Minister for Industry, Senator Schacht, is negotiating at the moment with the oil industry and the MTA for the cancellation of the Petroleum Franchise Act, which involves service station leases. So, Senator Schacht and the Assistant Treasurer wish to put in place a process that deregulates the oil industry and deregulates any form of lease, so that service station proprietors are left to the mercy of the oil industry, with no particular legislative support. The State ALP supports that particular process but when it comes to the Bill submitted by the Attorney-General which gives protection for retailers and landlords, the ALP opposes it and states that it wishes to have much stronger controls over landlords and greater protection in relation to the tenants and retailers. That is a position that I find very hard to understand, when I look at the Labor Party's position federally.

I have supported the Bill as first submitted by the Attorney-General and, as I said, I am concerned about the amendments that have been included in the Upper House by the Australian Democrats—

Mr ATKINSON: I rise on a point of order. I wish the member would be more careful in complying with Standing Orders in referring to the other place.

The DEPUTY SPEAKER: Yes, the honourable member should not directly refer to debate in the Upper House while debating in this House. I ask him to return to the subject of the Bill.

Mr CAUDELL: Also, I have a concern about the contents of other paraphernalia that has been sent out by a variety of groups, including a debate that was held on the ABC this morning between representatives of BOMA and the Hon. Michael Elliott. Let us get one thing clear before we go any further: the current Landlord and Tenant Act is nothing compared with the Retail Shop Leases Bill, which was introduced originally by the Attorney-General. That Bill provides for a minimum of five year leases; it provides for the end of the ratchet clauses; it provides for protection associated with demolition of the trader's premises; and it provides for protection for the trader in cases of relocation.

However, a number of misconceptions need to be addressed. In particular, an issue that seems to be bandied around is that, to obtain a new lease in a retail shopping centre, you must face a 25 per cent increase in rental, and this particular point was made this morning on the ABC's Keith Conlon program. The Hon. Mike Elliott backed it up, and Mr Conlon said to the representative of BOMA that he was living in another world if he believed that rentals were not going up by 25 per cent at lease renewal period.

I inform the Hon. Mike Elliott and the APC that, following discussions with tenants from Westfield Marion and other locations, no justification has been provided to me to back up that particular claim. In discussions with the Small Retailers Association, to date no justification has been provided to me to back up the claim that 25 per cent rental increases are associated with the renewal of leases. What are the rentals being charged to tenants at the turn of the lease? I have received considerable correspondence from tenants in Westfield Marion who have detailed a variety of circumstances that affect their properties. In discussions with the Small Retailers Association it appears that a situation is occurring where we are comparing apples with oranges, because when I spoke to the Small Retailers Association they talked about real rentals.

When we tried to find out what real rentals are, suddenly we find that we are talking about not only the rent but possibly promotion costs, council rates, land tax, water costs, air-conditioning charges and rent on storage. A majority of those particular areas are completely outside the control of

the Building Owners and Managers Association members. Some are at the control of the State Government, some are at the control of authorities and some are at the control of local government, but definitely the majority of them are not at the control of the landlords. Is the concern associated with the rental increase at the end of year five in comparison to the beginning of year one on the new lease, or is the concern over what is the rental increase over year one on the first lease and year one on the second lease?

When we look at year one on the first lease versus year one on the second lease, of course there are some large increases between the two—some of them have been 30 per cent to 40 per cent—but a variety of considerations must be taken into account. First of all, has there been a number of CPI increases during the period from when the year one lease came into operation and when the year one lease came into operation associated with the second lease? Then we have another concern: is the concern the level of increase between year five and year one of the second lease, or is it the base rentals which started the lease off in year one of the first lease? When you talk to a number of people, they say, for example, the rentals are too high in relation to the marketplace; that a number of changes have occurred; property values have decreased; we have gone through a recession; and the dollar is not the same now as it was then.

When it all boils down the whole area of concern begins with the base rental associated with the increase in value of properties through the 1980s and the change in property values in the 1990s. But I have a problem in having great sympathy with some of the retailers, because they were well aware of what the base rental was when they entered the lease in year one. No-one dragged them down to sign; they knew what the cost was at the beginning of year one. Not taking that as the final situation, I then did further investigations. I asked for proof on the 25 per cent and was unable to find any such proof, although I was provided with information—and I am sure the member for Florey will take it further—that of all the lease renewals recently negotiated at Tea Tree Plaza the average rental increase has been less than 10 per cent.

Looking at it closer to home with regard to my own area, I was approached by two tenants concerning the renewal of their shop rentals. One proposed increase was 12½ per cent at the turnover of the lease and the other one was 9 per cent increase at the turnover of the lease. This was far below anything around 25 per cent, but still very high in terms of the CPI. The final outcomes were more in line with 5 per cent and 4 per cent, which are closer to the CPI. Not to be outdone, I thought I would try to find some further information. From the next tenant I spoke to I found that the rental increase was 6.3 per cent and that between 5 and 7 per cent was the normal increase that had been occurring in 1994-95 associated with the turnover of leases between one lease and the start of the second lease.

I discovered that the whole negotiation process was not dissimilar to the negotiation process that occurs between employee and employer at the beginning of negotiations over wage increases. The negotiation process is part of the free market process and it is part of the free market process that I support. I cannot support control over rents any more than I can support control over prices. I have advised tenants within my electorate that I am available to give advice and to listen to and monitor the negotiation phase that they go through and I am also available to assist if required. During my term as member for Mitchell I have been involved with four properties in respect of monitoring, advice and assistance. In all of those matters it has been resolved to the satisfaction of the tenant concerned.

The Australian Democrats Leader (the Hon. Mike Elliott) was given a chance eight months ago to provide full details of any cases causing concern about rental increases and reviews by the Australian Manager for Westfield. To date the honourable member has failed to provide any details of any cases that have caused him concern, yet the Hon. Michael Elliott is quick to run off to the media with hearsay evidence in relation to rental increases. The concern about lease renewals involves those people wanting to push for particular amendments which would be no more than permanent leases. They have said, 'We don't want permanent leases, but we want the person to continue on at that location.' They also want to have reasons for non-renewal. If we have reasons for non-renewal there will be ongoing litigation which will just add to the cost of tenants having to take it through the court system to prove that the reason for non-renewal was unacceptable. There would be ongoing litigation.

In the area of non-renewal of leases, following further investigation I am advised that at Tea Tree Plaza 31 leases came up for renewal recently; 29 were renewed and two were not, which represents 94 per cent. I am advised that 95 per cent of leases are renewed between the tenant and the landlord. I am advised at Marion that, because of a proposed $100 million investment by Westfield and a $45 million investment by the Corporation of the City of Marion, the leases have been renewed on a month to month tenancy basis, pending finalisation of the plan. Therefore, there are no provisions for me to present to this House. I am left with no other impression than that every tenant at Marion who is able to continue on has continued on in the year 1994-95.

A number of statements have been made in relation to refits. It is quite apparent that at the end of the lease the centre management inspect the shops and look to see whether they need a partial or full refit—whether new carpets, new lights, new shelves, and so on, are needed. The negotiation phase once again continues in that area. If a person wishes to spend $200 000 on a refit that includes marble floors, marble pillars and marble shelves, so be it. If a person wishes to spend $50 000 on a refit, so be it, but it is all part of the negotiation phase and no-one is forced to spend $200 000 on the refit of a small shop. In my negotiations with tenants one of them said that in 1994 his sales increased by only 8 per cent because his shop was starting to look tired and needed a refit. He was looking forward to his refit because he believed sales would increase accordingly with that refit.

Enough has been said about particular landlords associated with retail centres. Following my personal experience and my experience as a member of Parliament I have found that landlords such as Westfield are more in tune with being called Peter Pan when compared to oil industry landlords. The oil industry would be considered a much worse landlord than any of the large shopping centre proprietors. At this stage the oil industry has lobbied for the end of the Petroleum Franchise Act, but that will leave the service station industry with no legislative protection.

Accordingly, I agree with the amendment moved by the Australian Democrats to clause 79 to provide that a franchise agreement and a lease agreement should be two separate entities. Accordingly, I will continue to lobby the Attorney-General so that exemptions on premiums for renewal of leases, included in clauses 16(3)(h) and 52(3)(d), be removed from a lease and that he maintain clause 79. I believe that franchise agreements are separate entities and should be

negotiated in a separate phase. Leases are leases and they should be included in the Retail Shop Leases Bill, as this would be better for all concerned.

As to the 1 000 square metres provision included in the Bill by the Australian Democrats, I have a problem with that because it excludes a number of operators outside shopping centres. I refer to the oil industry and the fact that a number of service stations are in excess of 1 000 square metres. The area is measured from gutter to gutter. By having a 1 000 square metre provision it precludes these people being covered by the Bill once the Petroleum Franchise Act is scrapped by the Federal Government. A number of misstatements have been made in the past by a number of parties, and a number of concerns have been raised by these parties which to date they have failed to substantiate. Retail centre operators have been bashed, and I believe that is inconsistent with respect to the provisions of the Bill established by the Attorney-General.

Mr BASS (Florey): First, I advise the House that I have no conflict of interest in this matter as I have never leased premises and have never run a business, but I have been involved with many people who have done that. I wish to refer to a couple of things that occurred in the House before I rose to speak to the Bill. I inform the member for Spence that I was not being coerced into anything by anyone. I will vote in accordance with how I believe my constituents want me to vote, and no-one will coerce me to do anything different from that. Let me get that straight.

Mr Atkinson interjecting:

Mr BASS: I am sure you will. Also, there are no small business members in my branch. I would comment about the member for Mitchell, who seemed very quick to comment about Westfield Tea Tree Gully, which happens to be in my electorate. I wonder from where he got his information about Westfield Tea Tree Gully. He got it from the Westfield organisation. It is unfortunate that the member for Mitchell did not walk through the Westfield shops, where he has an office, and speak to his local small business operators because, if he wanted to speak about Westfield Tea Tree Gully, he should have come to Westfield Tea Tree Gully and walked through the mall like I do and speak to those business people.

Mr Atkinson: He doesn't do that, does he?

Mr BASS: Who am I to say? The member for Mitchell says that there are 187 stores at Westfield Tea Tree Gully, that 31 leases came up for renewal recently and that 29 were renewed to the satisfaction of the parties. Who said it was to the satisfaction of the parties? I know who said it: the Westfield organisation. If the member for Mitchell wants to comment about a shopping centre in my area, I suggest he walks through it with me, which is something he obviously did not do in his own area.

As to the Bill, it is long overdue and it contains six key features. First, there is the requirement for the preparation of compulsory written lease agreements and disclosure statements. The Bill prohibits the inclusion of ratchet clauses, and I congratulate the Government for including that provision. The Bill provides some more detailed information to be given by landlords to lessees in relation to outgoings on the part of the landlord. The Bill contains a significant new provision which entitles a lessee to be accompanied by another person when conducting negotiations with the lessor.

The Bill contains greater rights on the part of lessees in relation to the receipt of information and notification and also in relation to their ability to obtain compensation under the Bill for such matters as misrepresentations made on the part of a landlord at the time the lease was negotiated. The Bill includes many other favourable provisions. Resolving disputes is encouraged before going to the tribunal; the scope and power of the tribunal is extensive, and we hope that it will work well. All outgoings can be recovered only on a floor area basis, and no capital cost or depreciation expenses can be recovered as outgoings. All outgoings and promotional expenses will be audited. The Bill gives some guidance for the establishment of sinking funds for major repairs and maintenance. Rent may have only one method of review and there are to be no ratchet clauses, as I already stated.

Except for stamp duty and registration the small business will pay half the cost of preparation expenses, including mortgage production fees. Key money is prohibited for all new leases, assignments and renewals. Many provisions in the Bill are long overdue, but I have grave concerns about some other areas. Before dealing with my main concern, I point out that I find it hard to understand why the protection of this Bill is extended only to those with an annual rental below $200 000. The effect of this limit is to exclude a range of medium size retailers in shopping centres and gradually have retailers lose protection as their rents are increased above this limit.

Also, I cannot understand why the protection of this legislation should not be extended to public companies, not just private companies. The effect of this limit is to exclude a range of medium sized retailers in shopping centres. These retailers are public companies because of their national profile, but they take up relatively small floor space and they are just as vulnerable as private companies. Only the big retailers can use their market power over landlords, not the medium sized companies. My main problem is with the end of a lease. My colleague the member for Kaurna spoke about problems associated with the end of a lease. No one believes that there should be perpetual leases. All we need is a fair and equitable system of looking after both the landlord and the tenant at the end of the lease.

There is and has been for many years a Landlord and Tenant Act in England, which was reviewed in 1954, and which is still going. Part 2 of that Act provides for security of tenure for business, professionals and other tenants, and the provisions apply to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purpose of the business carried out by him or for that and other purposes. A tenancy to which the Act applies does not come to an end unless terminated in accordance with the provisions of the Act.

Business tenants, including retailers, are able to trade from a property in the knowledge that generally at the end of their current lease they will be able to continue to trade from the same property, unless they have defaulted on the terms of their lease or unless the landlord can establish the right to reclaim possession for reasons which in general relate to the intention to redevelop the property or the need to obtain possession in the interests of good property management. Whilst landlords cannot remove tenants from their properties without good reasons, the Act does not protect bad tenants, so a landlord is faced with a situation in which only reasonable tenants can claim the right to retain possession. The Act also provides for a landlord to receive the full market rental for a property. It goes on to say that there have been no

perceivable adverse effects on the United Kingdom property development market, nor on the property investment market.

There is no need for us to talk about perpetual leases. All I ask is that, when addressing clause 43, there must be a provision enabling a tenant to contest a refusal to renew a lease. We need an umpire, a third person, who can look at the needs or wants of the landlord and of the tenant. Why should a tenant, who has had a five-year lease with a five-year right of renewal, who has worked for 10 years to be well known in the area and in the shopping centre and who has probably assisted the landlord as much as anybody else by running a good business, have that business stolen by the landlord? People run businesses to make money; and they run businesses to employ their family, with perhaps the intention of leaving it to their family. With our present unemployment rate, that is a great thing to do. But I repeat: why should a person who has worked hard for 10 years building up a business and who is looking forward to retiring have the business stolen by the landlord? If the tenant over the period of his lease has not got on with neighbouring tenants, perhaps because he did not keep his shop as clean as the rest of the shopping centre—

Mr Atkinson: That would be a valid ground.

Mr BASS: Great. As the member for Spence says—and there is not much on which I agree with him on most occasions, but I do on this occasion—that would be a valid ground. If he is not opening when the other shops are opening or if he closes his shop an hour before or does not get there until 10 o'clock when others open at 9 o'clock, when the lease comes up for renewal, that tenant forfeits his right to renewal.

Mr Atkinson interjecting:

Mr BASS: He does not get it renewed if he does not do the right thing. The tenant who for 10 years works hard at the business, always has a clean, well stocked shop, opens at nine, closes at 5.30 or 6 o'clock or 9 o'clock with late night shopping, always gets on with the other tenants, pays his rent religiously and upgrades his shop when necessary, has probably helped the landlord by bringing people into the shopping centre because of the way that he has run his business. Therefore, why should he or she in those circumstances not have the right to extend the lease? Why should that business be stolen? It should not be stolen. We should have an arbitrator, a third party, a tribunal, a court, to which both parties can go and say, 'This is the reason why I want them out,' 'This is the reason why I don't want to go,' and have it settled. It will stop the landlord from stealing the business and throwing out tenants who are often good, honest and hard working. As I said, I will speak more about this aspect when we get to the Committee stage and I look forward to the debate, no doubt, with the member for Spence.

Mr CONDOUS (Colton): I should like to contribute to this debate because in both my private and political life I have had numerous approaches made to me about the problems facing tenants in major shopping centres. Small business in South Australia is made up of many genuine people who mortgage their home and are prepared to work seven days a week and in some cases up to 100 hours a week simply to make a living. They are prepared to risk everything that they own in order to earn a little more than they would get if they were on a salary.

I have been in small business for about 30 years. Today, my little company employs only six people, but it plays a vital role in the overall picture of the growth and development of South Australia. Tens of thousands of people make up the small business community. The panel beaters who repair cars in old sheds situated in an industrial area, the taxi drivers going out and working 12 hour shifts, and the hairdressers running salons on their own and working 60 to 70 hours a week in order to earn $400 or $500 because they feel that is the reward for which they are looking make up the backbone and quality of small business in South Australia.

In my retailing life I was fairly lucky: I started off with a little business in Pulteney Street that was left to me by my father and then I went into the Adelaide City Council owned Central Market area, which was taken over by Jack Weinert. Because of my performance there, every time Weinert opened up a new shopping centre, I was fortunate enough to go into centres such as the Unley, Reynella and Ingle Farm shopping centres. Not once in the 20 years that I was a tenant in Jack Weinert's shopping centres did I hear one complaint from any of his tenants. Jack was there every day. He was the bloke who owned the shopping centre but he talked to his tenants. He would go to the ladies and hand them a block of chocolate. He had a policy of live and let live.

Mr Ashenden interjecting:

Mr CONDOUS: That is right; a very popular man. He believed that it was no good his putting a dollar in his pocket if his tenants were not putting one in theirs as well, because all he would finish up with was a shopping centre of disgruntled people who were not performing—

Mr Atkinson interjecting:

Mr CONDOUS: That is right; if they were not performing and earning a dollar for themselves, he did not have a centre that was friendly towards the clients who used it. You can go through literally thousands of people who have been a tenant of a man like that and you will never hear one bad word against him. We have a different situation here now, because we are talking about different types of landlords today. We know that we are not painting everybody with the same brush and saying that every tenant is a great bloke, because some tenants do not perform very well, but bear in mind that in centres such as Westfield, the Colonnades, Tea Tree Gully and so on, you are scrutinised before you go in. They do not just sign your lease without first having interrogated you and gone through everything you own, your financial position and your past performance, so they do not pick very many duds.

They know that, if you do not perform and you happen to topple over, they have nothing to worry about, because you have mortgaged your home and they have a bank guarantee to pay them back any rentals that they lose; they are sitting in a fairly comfortable position. Then they advertise, saying, 'Come and shop at our Westfield or Colonnades shopping centres, because parking is free; it is not like the city, where you pay.' What a load of rubbish! There is no such thing as free car parking. The tenants are paying for the car park so that the customers can have free parking, and the shopping centre is contributing absolutely nothing—not even the lighting on Thursday and Friday nights, when they open up the shopping centres. That is also paid for by the tenants. Lighting is an added fixture to their rental account. That is because a box is working out how much electricity it is costing to illuminate the walkways of the stopping centre and the car parks. That cost is split up according to how many square metres you occupy and is tacked onto your account. For the people who use the shopping centre it is free, but it is not free to the people who operate the businesses in the shopping centre.

Mr Ashenden: There is no such thing as a free lunch.

Mr CONDOUS: That is right; they are the ones who are paying for it. What is the sell when you go there and want to go in? They say, 'This shopping centre is the best in the State. Every year 4 million customers go through it. Our growth is 22 per cent a year. Our tenants get this sort of return.' The sales talk is so unbelievable that you go into it thinking that you will make a fortune. The turnover is there because there is the volume, but you have to be careful about the rent you will pay, the hidden costs to you and also what sort of staff you will need to handle that amount. When they see that too much money is being made, some of the tenants such as the big butcheries or the big fruit and vegetable businesses must pay a percentage of turnover. So they say, 'We want a percentage; we want to see your cash register and we want to know what sort of readings and figures you have.' You have to keep giving them all those readings and substantiate them.

With regard to the new leases, I am currently talking to three people from Westfield at Marion. I do not know where the member for Mitchell got his information, although I think it was substantiated previously that he went to the people at Westfield, who said, 'We will give you the figures, Colin; we will tell you what great performers and what wonderful, honest and honourable people we are: here they are', and he has quoted them. It is like going to the Minister for Correctional Services 30 years ago and saying, 'I have just been into Pentridge and met Darcy Dugan and he told me he is a great bloke; you should let him out tomorrow.'

The picture that was painted was great, but the present leases at Westfield are for five years, with no right of renewal. What about the goodwill that you build up? I have been in business for 30 years and I know that goodwill is a major thing. It can be built up only in three ways: treating your customers properly, giving them good product and delivering them good service. You build that up over five years in major shopping centres and people patronise you time and again simply because they like the look of your face, you are a friendly bloke, you give them good service and the product they buy is good. Therefore, over that five year period you have built up a following of people who patronise you because they believe you are a competent, efficient and good business person.

Then, at the end of that five year period, what happens? They may decide to give you a lease if they feel that the mix of the centre requires you to be there and, if they do not feel that, they say, 'I'm sorry: there's no right of renewal.' There is no renewal: full stop, completely. In that situation what do you do? You have mortgaged your house. You have worked on the fact that in the five years you can recoup your money, but what about the time and effort you have put into building up this business? What rights do you have? Why should the tenant not have the right to renewal if he has performed well and been a good tenant in the shopping centre? He should have that right; that is what it is all about. We must realise that, out there in the real world today, with the recession in this country and the 'for lease' signs all over the place, landlords are happy just to have a tenant without any increase in rent for perhaps four or five years. Here we have a situation where each year there are CPI increases and, at the end, when they decide that they will give you a renewal, what they then want is an increase of 25 to 30 per cent.

If the member for Mitchell wants, I can bring in 20 people to a select committee who will tell their story. The only thing they are afraid of is that he might name them personally to the executives of Westfield. I can bring in people who will give factual stories about exactly what is going on. Only 12 months ago I was sickened to hear of the proprietor of a prominent fish cafe in Gouger Street who, upon the termination of his lease, was told that he would be given a new lease; however, the landlords wanted $30 000 cash before they would draw up a new lease. That sort of behaviour must be outlawed, because that is extortion at its worst. It is corrupt and it is not fair to decent business people who are the backbone of this State and country.

Another matter we must think of is tenants who at some stage make a decision that they want to change direction and sell their business. If they have already used 2½ years of their lease, the next person coming in may be required to pay $250 000 for that business. When they go to see the managers of Westfield and other major shopping centres—and there are plenty of them on Unley Road; they are all over the place—they are told, 'I'm sorry: we can't give you a new lease. What you can have is the continuation of the existing lease and then we will see what happens at the end.' Who will invest $250 000 with no guarantees that in 2½ years there may be no extension or no future for them? Why would they get into a situation like that? The tenant is then stuck with the balance of the 2½ years hoping that just before the end of his lease he can find someone who is interested and keep them quiet until he has been granted a new lease and then transfer that over.

Why should they refit at a cost of between $80 000 and $150 000 every five years? I cannot see that it needs that amount of money. Sure, there has to be a standard set otherwise the shopping centre deteriorates, but let us be fair about it: some of these shops in previous situations were refurbishing every three years. You cannot put that sort of burden onto people.

Let us consider rentals. At present you can get rentals in the Myer Centre for approximately $500 per square metre per year. The departmental stores in the major shopping centres—K-Marts, Woolworths, David Jones, Myers, John Martins—are all paying about $120. That is all right; they are being subsidised. They can afford to have their sales because they are paying low rentals. Who are they being subsidised by? They are being subsidised by the little trader, the little bloke who has a doughnut and cake stall, the little fellow operating a chicken shop, the bloke selling nuts and dried fruit, the health food store in the centre or the sandwich shop. Those people are paying, in some cases, $1 200 or more a square metre per year. The big boys who are earning $600 million, $700 million, $800 million a year go on getting the cheap rentals whilst the honest backbone of the Aussie community are out there working their backsides off to try to make a living out of it and subsidising the major boys. Is that fair?

I ask members: in the Australian way of life, do you think that is a fair and just situation? Do you think it is fair that little people should be working 100 hours a week whilst multi-nationals have rentals subsidised by small retailers so that they continue to make multi-millions and return it to the shareholders—while little people are kicked from pillar to post?

It is totally unfair and not what democracy is all about. They do not have tenants associations in shopping centres any more, because they are afraid that if they speak out they will be victimised. Many of the major shopping centres have a very good policy: divide them and conquer them. You cannot have them together talking. You cannot have them all fighting you. You never talk to them as a whole about rental increases on their properties. You deal with them individually and

threaten them. They say, 'You come and see us; do not talk to anybody else. You should not know what the bloke next to you is paying anyhow.' That is how they do their renewals.

Most of the retailers cut down on staff because some of the shops are paying between $2 500 and $3 000 a week for a shop that is about 100 square metres in size. They are just unheard of rentals. You do not get those in Rundle Mall but you get them in shopping centres. They have the fools lined up so that, if one wants to go out or they do not want to go on, they have someone else to take their place. There is always a mug out there. We are seeing it with a lot of people in the Public Service who took their packages and went into private business without fully exploring what was going on. All of a sudden in six months everything is gone, the whole $200 000 or $300 000 that they get out of the Public Service. These are the sorts of rents that have been paid.

We could be employing a lot more people in this State if those rentals were reasonable. I am not saying there should not be rent increases because I think landlords deserve them, but there should be sensible rent increases of about 3 per cent to 4 per cent a year in line with CPI, allowing the tenant to grow with his business, but no, they want these massive rates. Westfield, the Colonnades, the AMP Society, and all the others want to achieve these massive record increases. We have seen the banks exploiting ordinary little people, with bank charges that are just unbelievable. Have a look at your statement next time you pick it up and see what it is all about. They are exploiting you in every transaction you make. At the end of the financial year, they tell you they have made $1.1 billion. What have they done? They have scrapped 50 per cent of their staff, so they are making these massive profits without employing decent Australians and keeping the country expanding and rolling on.

What about the extras? It is not only the rental. There are advertising charges. They say there will be a promotion for bunny week or something like that before Easter, so they just wack an extra $300 or $400 onto your account for that month. They have promotional charges for special things, including EWS and council rates. They have levies for cleaning charges. They do not clean the centre: you pay for that. The electricity, toilet paper, soap—everything is added on to your rental. They put in absolutely nothing. They take the cream right off the top. It goes into their profits to keep their shareholders happy. It does not matter if people are going through the doors.

If you could guarantee secrecy, I could bring along people who would tell you the facts. A fellow who was in a major shopping centre in Unley, where the whole centre was in dispute, decided not to pay the rental. What did the landlord do? After he closed the shop, he changed the locks, and the next morning he could not get into it. Then they sold off his produce and stock. The case will be before the Supreme Court in three weeks. They are the sorts of tactics to which some people stoop to do what they can.

I will fight for this, because this Party has for many decades been known as a Party that is committed to looking after the small individual business bloke—the bloke who is prepared to give it a go, the fellow who is prepared to go and risk it. Therefore, that man has to have a voice in this Parliament. I know a lot of my colleagues intend to do that as well. I will certainly fight for it. I will also fight for a tribunal for fair play. There has to be a body so that, when two people cannot agree, they have the right to arbitrate. That has to be a central part of this Bill. I certainly believe that there are enough of us who feel that way about it. Certainly, the Government has been responsible and put together a very good package but it has not gone far enough. It has to go further and protect small individuals out in the community from people who want to exploit them. I say to all members: let us support it but let us also demand that extra provisions be included to protect the small business person.

Mr LEWIS (Ridley): In this instance, I support the legislation, knowing that by this means at least we can fix the mess currently confronting small business in the retailing arena and currently bedevilling the capacity of legitimate investors and developers to go about their business wherever there is an opportunity for such development of shopping centre facilities. However, the Bill is not the legislation to which the Liberal Party first agreed and brought into this Parliament: it is in the form in which it arrives in this Chamber from the other place, and that is unacceptable. More particularly, we find that the legislation—

Mr Atkinson interjecting:

Mr LEWIS: Yes, the form of the legislation as we see it here has been meddled with by elements that have influenced the debate and the decision in the other place, unfairly, unwisely and unjustly in my judgment.

Mr Atkinson interjecting:

Mr LEWIS: I am as much entitled to that opinion as is any other member, as the member for Spence would know. However, notwithstanding that there are still gross inadequacies in the law, even if this measure passes in a form somewhat similar to the form in which we find it, those inadequacies are the kinds of things to which the member for Colton has drawn our attention. There is presently a disproportionate amount of power in the hands of the owners and managers and, more especially, their staff controlling shopping centres. We need to examine the background against which this situation has developed. Parliament has been of the view, for better or worse, that we need orderly planning of land use in the development of our services, facilities and suburban dwellings, and so on. Our belief is based on the fact that that enhances quality of life; that we do not have a dog's breakfast spreading across vacant land as the urban areas grow and spread in this State—and in other States too, I guess—have expanded to provide the facilities required by the increasing population. We have now had some measure of urban renewal in the inner suburbs.

During the past century and early this century, right up until the mid-50s, just after the economic recession brought on by savings and other stringencies during the Second World War, not many people had automobiles in which to get around. The motor car had not been invented in the early part of that period, and the wealth and prosperity which make it now possible—indeed, a reasonable expectation that most families have a motor car—were not present. We did not have motor cars nor the means to buy them—even after they were first invented and put on the market—until late in the 1950s and early 1960s, when families generally at least had one motor car. With many families now considering they need two motor cars, the pattern of movement and the lifestyle are very different from those days.

We now have the independent means of getting about and, for those people without such means, we have provided public transport in a comprehensive way, and we have rationed the space available in our urban developments for retailing; we have rationed it through this planning process. That has meant that our public transport systems focus upon—in the outer metropolitan area that has been developed

over the past 25 to 30 years—those shopping centres to which members have referred, such as the Westfield and Noarlunga centres, and the like.

It is not possible to obtain a free market in retailing space because those centres have been taken up by one interest alone, one company to develop them, which acts as the owner and landlord of the facilities so established. The consuming public are captive of the interests of a very small number of shopping centre owners who, by unspoken signals in collusion or otherwise, have established a cartel. Although I do not suggest there has been any deliberate impropriety or breach of anti-trust laws as occurs in the United States in this regard, the people concerned have now cornered the market on the space for a large area of the metropolitan developments in Australia in general and Adelaide in particular. They have cornered that; they own it, and so they decide how and to whom they will let the space, and they know there will be no competition for that process.

Previous Labor Governments failed to recognise the stupidity of that aspect of planning and do something to address the scales in favour of the people who would be the proprietors of the businesses providing the retailing services in those shopping centres, as well as their customers. Ultimately the costs so incurred are passed on to the public either in the prices the public pays for the goods bought through retails outlets in those shopping centres or in the losses incurred when those proprietors go bankrupt.

The debts remain unpaid and the firms which miss out on payment must make extraordinary allowances in their budgeting to cover those bad debts, and so they pass on those charges through the prices which they charge for their goods and services to ensure that they have covered themselves against such consequences. We all pay eventually, one way or the other. What is the solution to all this, to give retailing interests—the smaller, weaker members in this unfortunate setting—a fair go? I will come to that in a minute.

I want to place on record my understanding of the situation of development of urban Australia up to that point about 25 or 30 years ago, when we opted for strict planning controls on what went where in our suburbs, who got what in the development of those suburbs, and why. Prior to that we had small, what the Americans call, strip mall developments of shops that were either free standing or maybe in groups of three or five up to, at the very most, 20. We also had central business districts in the principal cities. They provided the full range of all merchandise available where the suburban strip malls provided the more frequently sought after goods, which made it possible for the inventories of the shop owners to be turned over with relative frequency and resulted in minimal loss through spoilage, age and deterioration of the goods causing losses to the business.

That sort of system was satisfactory and sensible where people mainly had push bikes at best to get around on, but often the spouse at home had to walk to and from the shops, as the honourable member for Spence would know. Commonly, this has been the case in the western suburbs of Adelaide. In recent times, those strip malls have been bought up, as have dwellings adjacent to them, and they have been expanded to become shopping centres in which there are up to 20 separate retailing outlets, and they tend to be set back now from the arterial thoroughfares where they can be seen by people passing by.

Mr Atkinson interjecting:

Mr LEWIS: And they have declined for other reasons. There has been a loss in the comparative spending power of the people living in those localities as they have aged and their incomes have fallen behind the incomes of those in careers in mid-life who have sought to inhabit the outer suburban areas or the higher value real estate in the eastern suburbs of Adelaide. That is the background of the situation in which we find ourselves. In some of those older suburbs there is an excess of retailing space compared to the level of patronage attracted by it.

In the outer suburbs, which are served by these larger shopping centres that have had the effects of rationing available space within them, successive Governments, over the years, have focused the provision of all public services, particularly transport, around those shopping centres, making it easier for people to get there to do their shopping and their other business. Government has put its agency shop fronts in those shopping centres where it is thought to be relevant.

So, we have aided and abetted the process of giving the landlords more of those larger shopping centres and making them a more attractive place in which people can do their business and their retailing. They have provided vast areas of car parking space around these shopping centres so that it is relatively convenient and parking is free. That is the reason why we find those shopping centres attracting the public's patronage. It is not out of any extra value the landlord and owner has provided. Indeed, the capital so invested in those shopping centres has attracted a high yield through capital gains in their escalating value, determined by the amount of rent which they can extract from their lessees, and through profits obtained from that rent.

Accordingly, we find that the retailing businesses of the kind owned by individuals to whom the member for Colton has drawn our attention have been compelled to pay higher rents per square metre than many of the larger chain stores, which are often at least national, if not multinational, in their operation. They have a stronger bargaining position because, if there is not, say, McDonald's in your shopping centre, in the opinion of the general public and especially the children who accompany their parents to these centres, they are regarded as second-rate shopping centres.

Quite simply, the bottom line of all this is that they have the bargaining power to hold down the rental per square metre that they pay in those shopping centres, but the small retailer beside them does not. At present there is secrecy about the charges made per square metre by the landlord, and that means that, in fear of losing what they have already outlaid against their mortgages, those retailers buckle down and suffer the consequence, trying to raise the extra revenue from some other gimmick.

Mr Atkinson: You will support us?

Mr LEWIS: No, I will not; not at all. The member for Spence needs to recognise that the only solution to this problem is to redress the scales in the way in which the space is owned. It seems quaint to me that it has never occurred to anyone else that this is the real solution to the problem.

Mr Atkinson interjecting:

Mr LEWIS: Not at all; I do not think this legislation, as a bill of goods, is appropriate for the amendments to the existing law that I believe are necessary.

Mr Atkinson interjecting:

Mr LEWIS: Give us time and we will fix the mess that has been created by the ALP over the past 30-odd years. Give us time; we will fix it. The stupidity of the planning law, which ought to have been addressed from the outset, has not been addressed and needs to be. We must prevent any one company from owning all the shop frontage in the pedestrian

malls within those centres, and compel the owners and developers to sell off at least half of that frontage in strata title form, so that each shopping centre is the master of its own destiny as a strata title company. There may be a substantial shareholder in that company, but a number of shareholders would be retailers or owners of the retail premises other than that major shareholder, if the major shareholder wished to retain a substantial interest. It would then mean that they got an honest reward for the development and establishment of the facility by selling off that space having once developed it, in the same way as speculative home builders sell off the homes they have built at the going market rate instead of, as at present, the owners of the shopping centre simply retaining ownership of all the shops and leasing them only to the people they select to screw.

They may not like you or for some reason that has nothing to do with your reliability in paying your rent—the tidiness with which you present your shopfront and the wares in your shop or the competence with which you satisfy your customers' needs in conducting your business—the shopping centre managers may decide that they want some other sucker in there to suffer the consequences, or that they want one of their mates to take over the space that you have because it seems to have a good turnover in that particular location in the shopping centre. Many of the people who have given me the information that brings me to these conclusions were clients of mine prior to the time I came into this Parliament when I made my living as a management consultant.

There is no question that they are afraid of the consequences of attempting to draw attention to their plight as individuals, because they know that they will anger the people who own the shopping centres to the extent that they will probably be forced out by incurring high imposts in terms of renovation costs and/or higher than reasonable rentals per square metre, which will send them broke or otherwise compel them simply to hang their head, lick their wounds and go away the poorer for their involvement with and service to the public through the retailing industry in which they have participated.

Therefore, I cannot allow this opportunity to pass without drawing attention to what I believe to be the basic changes which need to be made in the commercial structure of shopping centres which we have established in the public interest to increase the quality of life, to consolidate the provision of services in one central location and thereby make things more convenient. However, in the process of doing so, we have overlooked the public interest, particularly the interests of those people who have sought to become the entrepreneurs of the retailing in those centres. With those remarks, I look forward to the day when we can redress the scales in that way, but in the meantime I will support the general thrust of this legislation because it is a hell of a lot better than the law we have at present.

Mr BRINDAL (Unley): I rise to support this Bill. I was not intending to speak but, in view of the robustness of the contributions of other members, I felt that I should perhaps add a few of my own comments. I preceded the member for Mitchell as the member for Hayward and, like the member for Mitchell, I can claim the unique distinction, apart from him, of being the only current member of Parliament to have occupied an office in a Westfield Shoppingtown. So, I have listened—

Mr Atkinson interjecting:

Mr BRINDAL: The member for Spence points out in his normal pedantic fashion that June Appleby did; I acknowledge that but June Appleby at present does not appear to be visible in this Chamber.

Mrs Rosenberg: Who is June Appleby?

Mr BRINDAL: June Appleby once was the member for Brighton and the member for Hayward but she has long since passed into memory. So, I was a tenant of Westfield Shoppingtown, and I find it extraordinary that we have a debate that concerns retail shop leases—

Mr Atkinson interjecting:

Mr BRINDAL: If the member for Spence would shut up for a little while and allow someone else to have the floor he might learn something. He has not learnt much in five years; that he will learn much more in the next 20 minutes is beyond real belief, but we can always live in hope.

There has been some robustness in this debate, and I am sure everybody who has contributed has been honest about the points of view that they have put and that they are legitimate points of view. We cannot afford to let anybody in our society become a victim. As a Government we owe to all our citizens, to business people, to owners of businesses, to owners of properties and to shoppers in shopping centres some duty of care, which is a legitimate function of Government. I find it extraordinary that, when talking about retail shopping leases, much of the discussion centred on one owner, that is, Westfield Shoppingtowns. I put on record that that is unfortunate because the issue is much larger than just Westfield Shoppingtowns.

I commend the member for Ridley because I believe his line of argument merits serious attention. As he puts it, it is true that the Government, by limiting available retail space, has created a concentration which is perhaps not as desirable as we might wish and that may, in some way, distort the free play of markets. The member for Mitchell spoke about his shopping centre and, in general, I concur with the sentiments that he expressed. I was there for four years and I knew most of the traders. I say to the member for Florey, 'I used to shop there. I used to live there and I did and still do know most of the traders on a personal basis.' I am not disputing one word he said concerning his area—I can only tell him what I know about the area I lived and worked in for four years.

A good number of the traders in Westfield at Marion have been there since the opening of the shopping centre. I remind members that Westfield bought that land as a green acre site about 30 years ago. No infrastructure was put in by the Government, and Westfield has invested hundreds of millions of dollars. As a result, I was privileged as a trader in Westfield to receive monthly reports on categories of trade, sales within the centre and number counts within the centre. That information was not given to me as propaganda but because I was a trader in the shopping centre.

What constantly interested me was that when we were going through the depression of the late 1980s and the early 1990s Westfield Shoppingtown at Marion increased the volume of trade and the number of people coming in the door consistently. I am not saying it was spectacular—sometimes it was very incremental—but there was consistent improvement in the trading figures at Westfield Shoppingtown over that period. I have known that shopping centre for 20 years. I say to the member for Florey that I know something of Tea Tree Plaza, too, because my mother used to shop there and I used to shop there, but that is so long ago it is almost ancient history.

Mr Becker: What about Arndale?

Mr BRINDAL: I know nothing about Arndale, so I will leave that to you. I will mainly talk about Westfield at Marion. There are very few empty shops. Occasionally a shop is vacated—I presume because of the lease not being renewed or a disagreement, or even a business going broke—but within days, or weeks at the most, that shop is refitted and fully let. If Westfield is such a dreadful landlord, it appears to me that there are a lot of suckers in South Australia, because people appear to be falling over themselves for the privilege of being ripped off by this unscrupulous landlord. If that is a fact, I can only say *caveat emptor*: let the buyer beware.

If you want to go into a business venture, you had better know what you are going into and you had better analyse and understand it. If you then go broke you cannot always blame the other guy—some of it is called free market. Having said that, I know of a number of businesses—and I am sure the member for Mitchell knows them—that have traded successfully in that shopping centre for decades. There is one man, whose name I will not mention, who has become a millionaire because he traded at Westfield Marion. He started there on day one, he is still there now, and he is a millionaire.

Mr Becker: Does he have a protected business?

Mr BRINDAL: Yes, I think he does.

An honourable member: Only one.

Mr BRINDAL: No, because there is another person who is known to the Deputy Leader—again I will not name him, but the Deputy Leader probably knows who I am talking about—who has owned coffee shops, cake shops and florist shops in Westfield. He has traded in shops at Westfield over at least two decades. He now owns a most successful business in Westfield and is so bored because the business is so successful that he is thinking of standing for Parliament. That is a measure of his success.

An honourable member interjecting:

Mr BRINDAL: No, I said he was so bored with making money at Westfield that he might come in here where he certainly would not be bored, given the contributions of the member for Hartley and, in fact, all members.

Mrs Rosenberg: He certainly wouldn't make any money, either.

Mr BRINDAL: As the member for Kaurna says, he will not make money in here, and all honourable members can attest to the truth of that statement. There are two sides to this equation. I accept totally the sincerity of the member for Florey and the sincerity of the member for Colton and others who have said we cannot let people be ripped off. That is true. However, I dispute the assertion that in this State there is a monopolistic company which is just ripping people off and is unscrupulous and unprincipled. I accept that in the robustness of debate, but that was not the case when I was a tenant of that shopping centre for four years. If members can prove me wrong, I will be proved wrong, but I must speak as I find it. Westfield Shoppingtown at Marion is owned as a joint venture with the Commonwealth superannuation fund, as is Westfield Shoppingtown at Arndale.

Mr Leggett interjecting:

Mr BRINDAL: The member for Hanson is right. I know they are the managers, but half the return on the investment goes to the Commonwealth superannuation fund. Westfield is also in a joint venture with the AMP. In fact, it is in at least four joint ventures around Australia with the Commonwealth superannuation fund. That is worth repeating because it has been intimated here, if not said, that Westfield is an unscrupulous landlord who is ripping off all this money solely to the benefit of shareholders. However, in at least 50 per cent of the cases in some of these shopping centres those shareholders are Commonwealth public servants and AMP policy holders; and, of course, Westfield itself has shareholders.

This legislation improves the situation for the small tenant. I am not saying everything regarding commercial leases has been perfect. We were not in Government, so it could not have been perfect. We are now in Government, so we are correcting a bad situation. This Bill, as it is presented by the Deputy Premier in this Parliament, represents a marked improvement on the current situation. It represents, as it was explained to me and to others by the Attorney-General, a considered opinion after detailed consultation with many groups of people. I am convinced that the Attorney-General has made his absolute best effort to achieve the best Bill that most suits the largest number of interest groups in this matter. I have nothing but praise for the Attorney and the Ministers who have handled this matter. They have behaved in an exemplary and honourable manner in respect of this matter.

I am not for one minute pretending that this Bill will make utopia for small traders. I do not think we can ever make utopia for every one. However, it will make a better situation, and I am sure the Deputy Premier and the Attorney in another place are more than amenable to looking at any improvements that may be necessary in the future. I do not see how people can come into this Chamber and expect more of any Government other than diligent, honest and persistent effort, and that is what we are getting.

As a Liberal, let me say this: I do not believe that we should live in a society where everyone is ripped off. That is abhorrent, but I do believe in a society that has inherent in it a thing called the free market. So, if I spend $100 million, $200 million or $300 million and build a shopping centre, if I can attract over 250 000 people a week to my shopping centre and make it the most sought after shopping place—and believe me, there are people on Unley Road, Goodwood Road, King William Road and Fullarton Road who grizzle on an almost daily basis about Remm Myer, Westfield and every other centre that pulls people away from traditional shopping precincts—if I want to make that investment in South Australia and if I am successful, I believe I have some right to a share of the profit for my success.

That is where the problem lies. The real problem as I see it is working out what is a fair share for the owner and what is a fair share for the operator. We can get into an argument about who is responsible for the success of a shopping centre. Is it Westfield for building the place and demanding the refits, the advertising and everything that goes with it, or is it the small trader who sells good quality fruit and vegetables, cassettes or perfumes? Who is responsible for that success? I do not know the answer, and I do not believe that any member knows the answer.

I believe that the owner of a business, having invested the money, is entitled to a fair return, just as the trader is entitled to a fair return. What I have heard in this Chamber is different points of view about what is a fair return. That is a most legitimate line of argument, except I wonder how much this Parliament has a right to dictate what is fair in terms of return in a marketplace.

Mr Lewis interjecting:

Mr BRINDAL: Exactly, and I think the member for Ridley was absent from the Chamber when I particularly commended his speech, because he raised some of the most interesting points raised in the debate. Unlike the member for Spence, who goes off half cocked about everything, I

commend the member for Ridley for saying it is not really part of this Bill but is a much more serious consideration that deserves the proper attention of this Parliament, and indeed it is. What the member was arguing, as I understand it, is that we do not have a truly free market and it would be much better if the market was more free, because then the sort of argument put forward by other members would not be relevant. It was a most intelligent, lucid and excellent contribution, but I am just limiting myself to this debate and arguing that I can see both sides of the question.

What I can see overall is that this Government by this effort will improve the lot of the small businessmen, wherever they are trading, and that that is a step forward for this Government, and the Government is to be commended. I am sorry that much of the debate has devolved around Westfield, because I am sure all of us could quote instances of owners of perhaps two or three shops—

Mr Becker: Service stations.

Mr BRINDAL: Yes, service stations and shops along arterial roads where landlords are equally as capable of wanting to increase rents. I can name one road where the number of empty shops is directly linked to who owns them. Frankly, some landlords demand so much rent that people say, 'We will not go there but we will go across the road and down the street. The site might not be quite as good but we have the choice and our business will not bear those costs.' If we think that avariciousness is linked to any particular person, I think that is wrong. It is a condition and perhaps a human condition, and it can be linked to anyone. I am disappointed that the debate has concentrated more on one group than on general principles. I repeat: I accept members' contributions as being entirely genuine, but I particularly commend this Bill to the House and I commend the Government's initiative in bringing the Bill back before the House.

The Hon. S.J. BAKER (Deputy Premier): It would be an understatement to say that the Bill has evoked some interest. Indeed, that would be an understatement because the Bill has evoked considerable passion, as the House has heard this afternoon. It is right that it should do so because we are debating what we think is best for South Australia. If the Attorney thought back on the process that he believes was totally constructive and appropriate, he might ask whether he wasted an enormous amount of time and energy. I remind members of exactly what the Attorney did. He called together all the interests in the retailing area and said, 'How can we improve the situation? What are the issues that we need to address so that we can form a better partnership?'

We would all recognise that relationships between the big and the small, between landlords and tenants, have not necessarily been the most constructive over many years for many of the reasons expressed in the House. The Attorney sat down with the industry and said, 'What can we do together? What improves trust, what improves relationships and what gets us a better level of understanding?' Those elements came together. There was never going to be complete agreement on a range of issues, but it was decided, perhaps naively, that there were some common areas. It has been claimed that good tenants make good shopping centres or strip centres, and that good landlords make for good trading. Such sentiments are common, simple and profound. Under these simple concepts people came together and reached important agreements about how the industry could serve itself better.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: That is exactly what happened. I remind members that some agreements were reached. They said that they could step forward. This is a world that is changing rapidly, and people cannot stop stepping forward. People have to change with the times, change with the demand patterns and relationships that develop over a period. Someone suggested to me that most shops will become irrelevant because we will all be sitting by the television ordering goods that will be delivered to our homes. Perhaps in 10 years that will be the case. People may be able to view goods at the supermarket or any other outlet without leaving their home.

The nature of retailing has changed dramatically, just like the nature of life. People are investing today and will not necessarily get a return tomorrow. The Attorney did the right thing and brought everyone together and said, 'Let us see whether we can sort things out to the positive benefit of all parties.' In the process we now have a Bill, and they all signed along the dotted line for the general changes that will take place. Each party said, 'I do not want to give this away because it gives me more bargaining power and it suits my position better.' But they all gave a little in the process. If people have power, sometimes they do not want that power to be eroded, but there was a transfer of power in that process to a point where everyone agreed that some positive changes could take place, because that was in the interests of the parties.

Much of the change was based on the New South Wales Act, which was deemed to be working reasonably well. I do not need to go through all the issues canvassed because they were wide and varied. We saw a step forward in respect of the Bill. The sorts of changes we have seen are outlined in the second reading explanation, but we did insist that there should be written leases and disclosure statements so that people knew what they were contracting for and that it was down on paper.

[Sitting suspended from 6 to 7.30 p.m.]

The Hon. S.J. BAKER: Before the break I was mentioning some of the complexities of retailing as we know it today and where it may or may not be in 10 years.

Mr Atkinson: You're an expert.

The Hon. S.J. BAKER: I do not think anybody is an expert. The member for Spence was making suggestions with which I do not agree. I do not think that anybody in this House knows what will be there in 10 years. It is important that the industry should develop together, not as separate components, because we will see dramatic differences between supply and demand for shopping space from what we see today. Some of the major problems in the industry relate to historical events and, indeed, concentrations.

I can make probably four observations. First, South Australia has far too many shops. I think that everybody agrees that there are far too many shops for the consuming public. If we had a growth rate of, say, 10 per cent per annum, we could probably absorb them in two or three years, but the population growth rate is less than 1 per cent. Whilst we will be endeavouring to improve that, the fact of life is that the population change is very small; it is incremental to a very small degree.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: The member for Spence needs to try a bit harder; he can at least be a success in one area. The second observation is that there is a great deal of

patchiness about demand. We all know that the strongest areas are those where there are complete shopping facilities and arrangements, which people can use as a one-stop shop for groceries, sporting goods, travel arrangements and consumer durables. They are the most successful areas, because people like to go to one establishment and pick up all their wares. Naturally, the larger shopping centres have a very strong hold on the consuming public.

That is in stark contrast to other areas which traditionally may have had very good patronage but which have declined due to population and demand factors related to the one-stop shop. Some of those other areas are very successful because they differentiate their products. For example, it can still happen today that you can place a bakehouse where people get fresh bread almost anywhere and if there is a reasonable population around it will do a good trade, particularly in metropolitan Adelaide. There are ways in which a new market can be generated outside those major centres, but that is the exception, not the rule.

Another interesting observation is that the majority of holders of properties as landlords are not conglomerates. They are not publicly listed corporations in the wide sense; they are investors. The majority of people who own commercial shopping land are small investors, so they rely on that income for their livelihood.

My fourth observation about the industry and why we have such a dramatic perception of problems in certain areas is that the shopkeeper, by his or her nature, is not a person of great wealth. Most shopkeepers today rely on a particular shop for the income to sustain their household. They do not have an enormous amount of wealth behind them; they do not have a lot of power behind them: they are simple people who have grown up in shopkeeping and who continue to provide that service. Of course, if they have not upgraded, they will be sent bankrupt, as the market clearly shows. The turnover in shopping, in terms of businesses, is dramatic. The statistics are that probably 40 per cent of new entrants into shopping fail every year. I will take advice, but I suggest that, if it is not in the first year, it is within the second year. People who go into business are often not suited to the business. They are people with great expectations and a great deal of will and drive to achieve, but they are not necessarily suited to the businesses in which they desire to operate. Therefore, we have an inequality in the market place which can lead to the complaints about which we have heard tonight.

I thank all members for their contributions. All those issues have been visited by everyone on this side. I know that every member of Parliament on the Liberal side of politics has had shopkeepers coming through their door at some stage or another complaining about a number of aspects concerning their relationship with their landlord. A few were mentioned tonight. On our side of politics there is a great commitment to the small business community, unlike what happened on the other side of politics when members opposite were in power prior to the last election. The ALP just trod all over the small business people of South Australia.

Mr Atkinson: Who extended trading hours in defiance of the wishes of the small retailers?

The Hon. S.J. BAKER: The member for Spence, who I suggest is inappropriately interjecting, has a very short memory. That same person was involved with a Government which declared that shops would be open until 9 o'clock at night five days a week, so all the supermarkets could destroy the small business people. What sort of confidence does he think that created in the small business community? I really do not think—

The Hon. G.A. Ingerson interjecting:

Mr ATKINSON: I rise on a point of order, Mr Speaker. I understand that it is in order for members to interject from their seat, which I have been doing, with your grace, but it is not in order for members, such as the member for Bragg, to interject standing well out of their seat. I ask you to rule on that matter.

The SPEAKER: All interjections are out of order. It is particularly wrong for a member to interject other than from his seat. I think the Minister in question is now aware that he was completely out of order. Therefore, I uphold the point of order.

The Hon. S.J. BAKER: I can understand the member for Spence being quite content with that position; I can understand that he got donations from the Shop Distributive and Allied Employees' Association; I can understand why he should be wanting to increase the unionised work force by backing in the majors; I can understand those vested interests; but they have nothing to do with helping small business in South Australia. The member for Spence makes no pretence that he hates small business and wants big business with big unions to dominate. We can clearly understand his motives, but let us get back to the Bill.

Every Liberal member wants a just solution to the issues that have been raised. I can canvass the issues which have been brought to their attention and which they have raised vigorously with me and others, and I think it is important to put them on the record. They are not just some of the issues that were raised here. Of course, there is the end of lease arrangement. People ask, 'What happens at the end of five years; do I have a livelihood any more?' This is very important for many shopkeepers, particularly if they have not gone into the business in a professional, commercial fashion, as is the case for the majority of shopkeepers. They would know that you should do your sums and sign a contract on the basis of your capacity to perform over the five years of that contract.

But that is not the real world, where a lot of hard working people out there have believed in their inherent ability to be able to sell goods and make a profit and therefore keep themselves and their families. Whilst I might say that professionally after five years they should be indifferent as to the result, obviously that is not the case in fact. So, it is a big issue that most of them want some sort of safety net. They want some guarantee that they can continue in the business which they may well love, into which they have put their heart and soul and at which they have worked 65 or 80 hours a week. That is the emotion.

My amendments have raised those issues very strongly, such as the position at the end of that lease. The landlord's saying, 'You can stay here but with a 25 or 30 per cent increase' (as has been cited) has been a real situation for many. I do not say it is a standard situation. I am aware that the circumstances near my office are far different. Whilst there are grumbles, there seems to be some rapport between the landlord and the shopkeeper. There is the issue of the rentals and what is a fair charge. Everybody has asked, 'What is a fair charge? How can I expect to keep paying the bills asked by the landlord while at the same time I have to keep my family?' I know that in many circumstances of which I am aware, where businesses have gone bad because of the economic recession brought on by the ALP, the landlords

have adjusted rents, so there has been a recognition of people's capacity to pay during the hard times.

Mr Atkinson: Did we cause the drought, too?

The Hon. S.J. BAKER: I was actually talking about the economic recession, not droughts. There is the issue of goodwill. When someone has a business, they believe that it may well be their superannuation or their pension for the rest of their lives. They want to believe that all the hard work that they invest in that enterprise will be repaid when that business is sold, so they would like to believe that they have something to carry on with. If that goodwill is dissipated or lost altogether, they will feel cheated. That issue has been raised in the context of the end of year lease and during the lease where there may not be many years left on the original lease and they cannot get someone to come in and take over the lease at the right price and have a full five year lease. They feel disenchanted with that process.

Many shopkeepers feel disenchanted about turnover. They say that turnover is the means by which the landlord—in many cases the corporation—can obtain the figures of trade and, if surplus is generated through the good efforts of that shopkeeper, with the turnover figures the corporation has the capacity, which it sometimes exercises, to remove that surplus by way of rent or a sign-up fee. As has been mentioned, many successful shopkeepers have been operating for 20 years.

There is the question of who should be in and who should be out, and whether $200 000 is an appropriate measure of bargaining capacity (and that is what we are talking about) or whether it should be 1 000 square metres of space. There will never be a magic answer to this proposition but, if you are on the wrong side of the sum that is laid down, you might feel aggrieved that you are not within the rules prescribed by this legislation. The issue has been raised of big retailers quite often being attracted to big centres at the outset, having been given a very good incentive to enter into that arrangement and be the nucleus of attraction for the surrounding shopping. There is a great sense of aggravation from many small shopkeepers in large centres, because they are paying the bills for the larger retailers that signed up 10, 15 or 20 years ago to a scheme which, if it were looked at today, would be uncommercial from the landlord's point of view but which was originally essential to have that centre operating successfully.

There are a number of other areas which have an impact, such as the amount of time given for people to make up their own mind if the business is not going particularly well and the landlords are not helpful. All those sorts of criticisms have prevailed in the marketplace. It gets back to the original ingredients I was talking about.

The member for Ridley enunciated that we do not have a perfect marketplace and that therefore the problems that are created in human and business relationships exist simply because there are areas of particular retail strength and there are other areas of choice. I have received complaints about their rent, for example, from people on Belair Road and I have said, 'But hang on; there are three vacant shops.' When we have actually discussed it, two of them have moved. They have gone along to the person with vacant premises and have done a deal, because those premises are not being used, although the taxes are still rolling through. They have done a deal that is far better than they could obtain from their existing landlord, so they are more than happy that that is available to them in the marketplace. That is not an unusual circumstance.

Again, we seem to see some of the aberrations in areas where a monopoly is not operating but where there is a particularly strong attraction for consumers which prevails for a very wide part of a region. They are the complaints; they are the issues that have been raised, particularly by people in shopping centres and in other circumstances. On the other side of the coin, if I asked the investors, 'What upsets you?' they would say to me, 'I am upset by a number of things. I am upset by the fact that during the recession I had to drop my rents; I had to pay my land tax and all my other bills; I carried my tenants through that recession; I did not get a return; my shareholders did not a return and my family did not get a return.'

Most of the investors are ordinary people who have bought some property for their future and, just as the shopkeeper wants to have that facility to build up a certain amount of capital for retirement, a large number of South Australians have invested in property for that very reason. They would say, 'I feel cheated, because I had to bear all these costs, lower the rents and carry these situations, and the Government did not stop taxing me.' I would say that that person has a legitimate complaint.

Perhaps when we are dealing with shopping centres they would also say, 'I am not too happy either because, every time I ask for a contribution towards advertising and maintenance of the area, the tenants express their disgust.' The investor would say, 'That is part of the total shopping package. When you joined this centre that is what you bought into, and if you do not want advertising or to maintain the quality of this establishment, your future will be affected.' I suppose the investor would say, 'We believe that there should be a fair arrangement.' Sometimes the issue is: what is fair? That matter has also been raised with me by shopkeepers.

In principle, no-one could deny that any person who owns property and is enhancing that property should have the tenants participate in that if they are to be beneficiaries of that process. If anybody is arguing differently from that, I am sorry, I cannot agree with them. If somebody is suggesting to me that, if I spend $1 million doing up particular premises I have no right to expect something back in the rent, that does not compute. If we really do believe in South Australia and its future, the extent to which the arrangements are deemed to be fair will be critical for people who want to invest.

Obviously, shark merchants will want super normal profits, and they will go wherever they can get them. I do not think Adelaide has too many shark merchants. We had plenty of them during the State Bank saga of the 1980s. If we looked around little old Adelaide, we would draw the conclusion that they are basically good human beings. We have a few shysters out there wanting to make a quick buck, but all the employers I have spoken to have a great belief in themselves, the business they are operating and the people they are serving. To suggest that an investor feels different from that is stretching my imagination too far.

Capital is required. If you say, 'I want to load the dice in one particular area,' be aware that people's willingness to do any sort of business in the process, to participate in what I trust and hope—and, with the whole of our team, I will be working towards it—will be a better South Australia, where you can actually get a return on your investment, and you can get capital coming into the State, will be affected. If we send out signals that if you invest you will get screwed, no-one will want to come to this State, and I do not think we will be doing anyone a favour. There has to be balance in the system—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Exactly right; I said exactly that. The member for Spence has an excellent memory on occasions. I said it is over shopped. I am talking—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: If the member for Spence could contain himself and stop interjecting, he would realise that the issue is not about shopping investment: the issue is about investment. The issue is about the perceptions of people who are willing to put their dollars in, to risk their dollars—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: I was not referring to investment in shopping. I do not think we need a great deal of investment in shopping. What I think we need is investment in this State. We need investment in businesses—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Well, you cannot partition off one part of the market and say, 'We will load the dice in that area' and say to the people coming to this State, 'In all these other areas it is all right.'

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Of course it is over shopped, but that was not the issue. The issue was investment *per se*, not investment in shopping. There is no reward for investing in this particular area. It is over shopped. I know that the member for Colton has a number of constituents who have put their life savings into property and they are not getting a return. They have taken the risk and they are not getting the rewards and, if we make it even harder for them to get some return on their properties which have been depreciated and devalued, that will not help them. So, it is all about balance, and it is not a simple equation. That is why I think it is important—absolutely vital—that we take that step forward but put in place mechanisms capable of addressing the issues which obviously prevail out there, which are obviously quite complex in nature, which need to be addressed, which people need to talk about but which are simply not transmitted through MPs in relation to a Bill.

I believe there has been a commitment by the Attorney-General. It was taken one step forward. The next step, which may be a much larger step, can be an undertaking that those provisions which remain in contest will be studied by a select committee of the Parliament. We have done plenty of work on shop trading hours over the years, but I do not believe that that is the issue. I think it is the future of shopping and the relationship between investors that is absolutely critical and vital. So, I understand the passion. I understand the reason for people sometimes feeling absolutely aggrieved and irate, when they rush to the local MP because they feel they have been harshly treated. In some cases that is correct: in other cases, it is bad planning, bad business and bad management. Let us not forget that.

When we talk about the perpetuity of leases, what does that actually mean? Does that mean to say that every lease is contested? I do not know how many thousands of leases exist in South Australia that could conceivably come up for contest. We would create another bureaucracy in the process. There may well be a point of contest where serious breaches of faith can be adjudicated. We are not in any way discontinuing that possibility. The Democrats' amendment provides that you can have a lease for life. They do not give a damn about the trader or whether you are going broke. It does not matter whether you are an excellent performer, a good performer, a reasonable performer or a very bad performer, you have a lease for life. That is the impact of the Democrats' amendment that we are looking at as part of this Bill. That is just patently stupid. It is crazy, and the ALP is saying it is good for South Australia. It is good for no-one—

The Hon. Frank Blevins interjecting:

The Hon. S.J. BAKER: —not even the little people. The member for Giles happens to be interjecting out of his seat, Sir. They are the issues, and they are issues we can all feel passionately about. I know that, if I talked to 10 people, whether on this side or the other side of politics, there would be certain issues out of that whole basket—

Mr Atkinson: You would not have talked to 10 of your constituents in a month.

The Hon. S.J. BAKER: The member for Spence is quite wrong. I do spend my Friday afternoons talking to those who require my services. I do appreciate the extent to which there has been participation in the debate. There has been almost a cleansing of the soul in some ways, if you like, and it is appropriate in the Parliament for members to say, 'These are my innermost concerns. These are the things that worry my constituents. These are the things that are bugging small business.' This is an appropriate place to raise such issues. There were a number of contributions, and I thank all members.

If we are talking about having goodwill at the end of the lease, that is the end of the contract. There is no goodwill left. The issue does not seem to be related to that. It is more related to how you impart goodwill during the contract, not at the end of the contract. If we are to impart goodwill at the end of the contract, that is the end of any commercial relationship that will prevail in South Australia.

Members, and particularly the member for Spence, should thank the Attorney for a number of the provisions, including the ratchet clause. We have removed the ability of the landlord to invoke a ratchet clause. We have received considerable criticism from the Building Owners and Managers Association (BOMA) about that provision—it is not happy with it. It is not as though BOMA will get a free ride in the process, but it makes the system fairer, and that is what the original Bill was all about. The issues of vulnerability of tenants at the end of the lease is recognised, because there is a dramatic difference between the power of individuals and the capacity to negotiate.

That is an issue we debate in a whole range of areas in this Parliament, including shop leases. Politicians have power; business people might have certain amounts of power; people on the street do not possess the same amount of power, so there is inequality in all walks of life. Members have said, 'We want this redressed'; I understand that, but how we do it is important. The member for Spence highlighted Rundle Mall, which is probably the exception to the rule in terms of the $200 000 ceiling. In 90 per cent of cases the $200 000 rule is more than adequate to address those people who do not have natural bargaining power. The demolition provisions put in by the Democrats are unworkable.

Mr Atkinson: Put in by the other House.

The Hon. S.J. BAKER: Very well, the other House. I will not reflect on the ALP's association with the Australian Democrats in some of these provisions, although I would suggest it might be helpful to those concerned if they did reflect upon it.

Mr Atkinson: I don't understand that at all.

The Hon. S.J. BAKER: I will be much plainer than that. It would seem that the ALP finds itself in bed with the Democrats on numerous occasions when it suits its political purposes to do so. That is quite straightforward, yet if the

ALP reflected on that relationship, which is being established today, and on where it happened to be not long ago in Government, it would find that it had lost its marbles in the process.

The Hon. Frank Blevins interjecting:

The SPEAKER: The member for Giles is completely out of order.

The Hon. S.J. BAKER: As to the requirement to give reasons for termination of tenancy, the issue is whether we want to start a war as to the good and bad attributes of both the tenant and the landlord, or whether this is a means of getting to a negotiated settlement. I am not sure what the reason is. If I contract to do a certain amount of work in a certain amount of time, that is the end of it. I contract to be a member of Parliament for four years, but when an election comes along I may or may not go beyond that point, depending on the vagaries of the electorate, and that is the situation that prevails for MPs.

There is some suggestion that a contract is not a contract. There is also some suggestion that we should give that a further level of comfort. We should seriously think about the extent to which contractual arrangements are eroded in the process. When I do a deal I do a deal. It might be in relation to how we operate the House; it might be in relation to what part of the ministry I have to look after if someone is away. I say, 'I will do that for a particular period', and I will keep that undertaking. Someone is suggesting that that undertaking can be broken: that, at the end of a period, it really meant nothing in the first place.

We must look at whether or not we are contracting or not contracting and the ramifications of that, and how we can encompass the concerns and reach some balance. The matter of shop trading hours was raised and we have certainly canvassed that. If tenants do not believe there is any trade in the shopping centre near my home they close their doors. We now find that—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: —most shopping in my area is done on Saturday afternoons, so that Thursday night trading is decreasing dramatically and some shopkeepers are closing their doors at 8 p.m. because there is very little trade after that. The extent to which every person within a shopping centre has that ability is important, and there are provisions in the previous Act that preserve that position so that people can make that choice. If they do not want to work Fridays, they do not have to work Fridays; if they do not want to work Thursday nights, they do not work Thursday nights.

We have put some fail-safe mechanisms in the Act but they are not actually fail-safe, because tenants would say that pressure is placed upon them to work hours which they would not work if they had to make a commercial decision. Perhaps they are the matters that need to be addressed and the extent to which that person has the right of decision making within the rules set by the Parliament. The member for Kaurna mentioned shop trading hours and the protection to small business in clause 58. She also mentioned the need for balancing the power of people, other than the lessee, when negotiating leases, and that is in the Bill.

The previous provisions prevail with respect to strengthening the Tenants Association and increasing the capacity of any individual to bargain with the owners. I note that the member for Kaurna mentioned the enormous amount of work put in by the Attorney-General. The issues of refurbishment and demolition were raised by the member for Colton. He cited one particular establishment that is refurbished every two years and the tenants are charged. If that is the case, one would question the management of that particular operation, and the investor should also question that arrangement because it seems they are wasting an enormous amount of money.

It may be a real concern that there are huge outgoings over which the tenant has no control or capacity to recontract should that expenditure be incurred and they are presented with a bill. That is an area that again needs some consideration as to how it can be sorted out. I would be surprised if landlords were wasting money, even if tenants were paying the expenses, because if, as a landlord, you are not getting a return commensurate with the money you spend then you are wasting everyone's time and making a loss for not only the tenant but also yourself. If that were the case, obviously, the landlord would price his or her shopping centre out of the marketplace because people would not be able to afford to rent premises in there.

The issues of reasonable cost and refitting are important. Those issues should be taken up by the Tenants Association. They are matters that can be addressed and, if there are some deficiencies and there needs to be more strength given to one side of the equation, then it is appropriate for that to be done. Let us not put bland provisions in legislation when there would seem to be sufficient provisions there now. Let us think about how we can even up the equation a bit. Everyone mentions the problem at the end of the lease, and I do not need to go over that matter.

The member for Mitchell raised a number of issues and talked about investment. He said that quite often in the bargaining process, when the lease has come to the end of its term, the landlord asks for a very high price for renewal which the tenant cannot afford. The member for Mitchell said that in most cases it comes down to a negotiated agreement. I do not think that any observer of the system could tell me whether or not that was a fair outcome. It may well be that, taking into consideration the enhancements to the property over that period which have not been reflected in the CPI increases, 9 or 10 per cent at the end of the five year period is a realistic increase in rent, but obviously a 30 per cent escalation, when at face value you have a CPI running at 2 or 3 per cent over a five year period, is absolutely outrageous. It goes back to the point the Attorney made at the very beginning, when he said, 'Let's get everyone together and let's improve the relationship.'

The issue of refitting again has been raised, as has the matter of franchise agreements. In relation to the issue of public companies, it is true that in this particular area they are divorced from their market. If a public corporation is running a manufacturing firm and has the managing director on board who is sitting at the plant and ensuring that operations are working effectively, there is a vested interest. In terms of shopping centres, the only vested interest is the final profit. So, you have management on a performance arrangement, which relates to the number of people who go through the door and the amount of dollars generated in the process. I think there has been a legitimacy about that working relationship.

In fact, at the end of the day, if you have a look at some of the practices you could say that they are dollar driven. I have seen instances where the prices go up simply because there is a call on the share market; there is an increase in profitability which is needed to boost the shares of a particular entity, for example, or they are going to a buy-out process, where they are going to invest in another entity. So they salt

the mine a little; they increase the rentals above what normally would be reasonable and say to the people carrying out the task of due diligence, be that the bank or whoever, 'Look at the profitability of this enterprise; I am getting so many dollars return per square metre', and they have so organised that outcome.

So, we know that practices operate in that area that do not operate in a normal working environment because the investors are divorced from the very thing in which they have invested, whereas in most other circumstances where you are putting your dollars in you have a fair expectation that there will be hands-on management, that the results will be profitable, that the dividends will be solid and strong, and that the share price will go up. However, you know that you have management that has a vested interest in ensuring that the health of the business is the most important item on the agenda, and the short-term profit can turn into long-term loss and a decline in shares if you do not get that equation right.

I do not think that ownership of shopping centres actually brings out the best practices, because there is divorcement between the particular individuals. That is not to say that better practices than those which were occurring five years ago are not prevailing today, but frankly I believe that there is still a long way to go. I think better relationships need to be developed. I have contacted shopping managers in the past, and I will not mention them here but some of them showed a complete lack of interest in the particular issue affecting a particular trader. So, repair is needed in relation to all parties. In most areas there has been repair, and a better and more professional/commercial relationship has been established between all parties. Therefore, we have taken that further step with the Bill introduced in the other House by the Attorney-General.

There is still a large number of issues about which shopkeepers feel aggrieved; some of them are right, but many of them are not. They relate to individuals who, either through lack of power or through lack of capital backing, find themselves in difficult circumstances, and we are not here to shore up those areas of business which would not survive in normal circumstances. We are trying to achieve that important balance between those people who want to put their dollars into the areas of shopping and those people who would wish to profit by their shopkeeping. So, I will not commend to the House the Bill as it stands. Simply, I reiterate that, if we can get this matter to a conference of both Houses and if there are outstanding issues at the end of that conference, they can be looked at in totality rather than as individual issues that have been raised. Indeed, I have heard some Mickey Mouse suggestions on how we can correct them, and probably they would create another problem that we have not thought about. I believe that it is appropriate for us to have a really good look at this matter.

I was involved in a Select Committee on Rural Finance, and it was one of the greatest learning experiences of my time in this Parliament when I actually sat down with the farmers, had a look at their balance sheets and worked my way through the issues that were important to them. I believe that if we can operate in a professional fashion, get an understanding of how each party in the process feels and how we can make it better—whether it be training shopkeepers in the art of finance, whether it be management issues, whether it be asking managers of shopping centres to be a little it more sensitive, whether it may be legislative change, attitudinal change or a whole range of other things—at the end of the day probably it will lead to improving the relationship between all the parties involved in the retail industry. I thank all members for their contributions to this Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. S.J. BAKER: I move:

Page 2, line 6—Leave out the definition of '(indexed)'.

This amendment will make more sense when we deal with the quantum that is set in the Bill of $200 000. So this is, if you like, one of a number of amendments that deal with the matter of where the line in the sand actually is drawn; those people who come under the jurisdiction of this measure and those who do not. Of itself it is not of vital importance; it is simply part of the total set of amendments that we need to bring the Bill back to where it was and where we would hope the Parliament will finish.

The amendment was moved in another place to change the provision to the 1 000 square metre rule and to raise the sum to $250 000 indexed. The word 'indexed' has been placed in there. It is part of the total package. It may well be that in the conference the issue of indexation will be addressed on its own merits, rather than as part of the package that we have seen here. They are interwoven. It is a matter that I believe we can sought out in the appropriate place. In principle, the Government wants the definition of 'indexed' left out of the Bill.

The Hon. FRANK BLEVINS: I oppose the amendment. As the Deputy Premier said, it relates to a package that is designed to ensure that the Parliament does not just set a figure above which some major provisions of the Bill will not apply and wants to maintain that that is relevant without having to come back to Parliament. I believe that if substantial changes are to be made they should not be made incrementally because, in 10 years, we will have a figure far higher than was ever envisaged by the Parliament. If, once the Bill goes through in its final form, the Government wants to change the figure that is in the Bill—$200 000—it should come back to Parliament.

I do not know why Governments are afraid of coming back to Parliament. I cannot see any problem. That is what Parliament is for. The Deputy Premier made a bit of a song and dance in his response to the second reading, congratulating everybody for getting things off their chest. He was right, because that is what Parliament is for—not only to get things off your chest but to do other substantial things. Certainly, the Government should never be afraid of the Parliament. I understand why it is, but it ought not be.

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 2, lines 16 and 17—Leave out the definition of 'Magistrates Court'.

This is one of a number of amendments to remove the Magistrates Court and replace it with the tribunal. I can reflect on where we have been with one or two other Bills and where we are going on this Bill, and there seems to be a reversal of roles in where we believe the jurisdiction should ultimately lie for sorting out some of the problems that prevail in this industry. We have a tenancies tribunal, and that is the appropriate place for matters to be adjudicated. We are not suggesting it has the same status as some of the other areas that have recently been debated in respect of, for example, second-hand motor vehicles and consumer credit. Basically we are talking about a different relationship. We are

talking about the law of contracts rather than breaches of particular provisions of licences and laws and, conceptually, we believe that a more appropriate place is the tenancies tribunal rather than the Magistrates Court.

I am informed that the tribunal will become a division of the Magistrates Court so that the laws are satisfied. This may be one of those amendments that was made at a time when there was some misconception. I understand the Attorney is winding all these tribunals into the court system but with laws and practices that are consistent with the conciliation processes which have normally prevailed in these tribunals. All members of Parliament might like to reflect on the recent decision of the High Court, which threw grave doubt on the powers exercised by a number of tribunals and commissions which had been set up by Governments. That sent a shiver through the whole community. So, we may be talking about semantics here. We are talking about a tribunal which will become a division of the Magistrates Court. I am not aware of the background of the deep division in the other place and I cannot reflect upon it, but what we are doing now should satisfy everybody.

The Hon. FRANK BLEVINS: I oppose the amendment. I will not go as far as to say that I was inclined to support the amendment when I first saw it because that was not the case, but I was waiting eagerly for the Deputy Premier's explanation of the amendment. After hearing the Deputy Premier's explanation I am now totally convinced that the amendment is nonsense. The Deputy Premier is now a little bit uncomfortable about what he said, and that is understandable because every argument that was advanced by the Deputy Premier was in support of it being the Magistrates Court.

Clearly, the strongest argument of all was when the Deputy Premier referred to the recent High Court decision whereby Governments do have a tendency to set up all these tribunals—some of them fairly mickey mouse—apparently cloak them in some legal powers and allow them to have, in effect, a judicial function. Of course, the High Court has said, quite properly in my view, that that ought not be allowed. It is a very important principle. If the Government wants a judicial function carried out, that properly can be carried out only by a court. I am now totally convinced as to the merit of the clause in the Bill. The Deputy Premier said that the tribunal will be rolled into the Magistrates Court anyway, so what is the problem? Why should it not stay as the Magistrates Court? I have heard the Deputy Premier speak in this place for very many years. As we all know, at one stage, he was the nearest thing to a lawyer that the Liberal side had in this place.

The Deputy Premier acquitted himself in some instances quite well given his total ignorance of the area. He managed to get through it pretty well against some pretty formidable lawyers on our side. He certainly learned enough to know that what he was stating when he moved this amendment was ridiculous, that in fact the opposite to what he was saying was the case. The Deputy Premier would have been convincing if he had made a case for the Bill rather than the amendment. His heart would have been in it, he would have believed it, he would have known it was correct and we would not have had to waste these two or three minutes. I oppose the amendment, and I know in his heart the Deputy Premier also opposes it.

The Hon. S.J. BAKER: The honourable member misjudges me completely. On a point of clarification, all the tribunals, with the will of Parliament, will become special divisions of the Magistrates Court. I hope the member for Giles can understand that. That is the Attorney-General's intention. If it refers to the Magistrates Court blandly, as suggested by the Bill, it finishes up in the legal system rather than in the specialised area of the Magistrates Court, which is the subject of a further Bill. The member for Giles was sharp, and I congratulate him on his observation but, with the will of the Parliament, the tribunals will be wound into the court system so that we do not have this duplication of effort. We will have people who are expert in this rather than—

The Hon. Frank Blevins interjecting:

The Hon. S.J. BAKER: Special divisions of the Magistrates Court are being established. I mentioned two Bills that we previously discussed where this was happening, and they will not be subject to the same rules of court that prevail in the Magistrates Court. If the member for Giles had been here for the previous debates he would understand the difference. I thought I would clarify that for the member for Giles.

The Hon. FRANK BLEVINS: I draw the Deputy Premier's attention to the Bill. If he leaves his brief alone for a moment and applies his own intelligence to the Bill, he will note that it provides:

'Magistrates Court' means the Civil (Consumer and Business) Division of the Magistrates Court;

What could be more appropriate? The rules of that division of the Magistrates Court are set down with complete propriety by the Chief Magistrate. If the Chief Magistrate wants that court handled in a particular way, perhaps somewhat less formally than the full blown Magistrates Court with its pomp and ceremony and, some would argue, pretensions, it is up to the Chief Magistrate to say so. I am surprised that the Deputy Premier is persisting with this amendment, as it is an amendment where, to save everyone time and embarrassment, the Deputy Premier ought just say that he will not persist with it.

The Committee divided on the amendment:

AYES (27)

Andrew, K. A.	Baker, D. S.
Baker, S. J.(teller)	Bass, R. P.
Becker, H.	Brindal, M. K.
Brokenshire, R. L.	Buckby, M. R.
Caudell, C. J.	Condous, S. G.
Evans, I. F.	Greig, J. M.
Gunn, G. M.	Hall, J. L.
Ingerson, G. A.	Kerin, R. G.
Lewis, I. P.	Matthew, W. A.
Meier, E. J.	Olsen, J. W.
Oswald, J. K. G.	Penfold, E. M.
Rosenberg, L. F.	Rossi, J. P.
Such, R. B.	Venning, I. H.
Wotton, D. C.	

NOES (6)

Atkinson, M. J.	Blevins, F. T.
Geraghty, R. K.	Hurley, A. K.(teller)
Stevens, L.	White, P. L.

PAIRS

Armitage, M. H.	Clarke, R. D.
Ashenden, E. S.	De Laine, M. R.
Brown, D. C.	Foley, K. O.
Leggett, S. R.	Rann, M. D.

Majority of 21 for the Ayes.

Amendment thus carried.

The Hon. S.J. BAKER: I move:

Page 2, line 31—Leave out the definition of 'Registrar' and insert—

'Registrar' means the Registrar of the tribunal;.

We have just had a division on the principle relating to the tribunal which will be wound into the Magistrates Court.

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 3, after line 23—Insert—
'Tribunal' means the Tenancies Tribunal.

This is consequential.

Amendment carried.

The Hon. S.J. BAKER: I move:

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

Again, this is consequential upon the amendment which related to indexation and which has been carried.

Amendment carried; clause as amended passed.

Clause 4—'Application of Act.'

The Hon. S.J. BAKER: I move:

Page 4, lines 1 and 2—Leave out paragraph (a) and insert—
(a) the rent payable under the lease exceeds $200 000 per annum or, if a greater amount is prescribed by regulation, that other amount; or.

I think the Committee will debate whether $200 000 is appropriate and sufficient. The provision in the regulation is to allow the amount to change in keeping with the circumstantial change that occurs in the market place rather than being attached to a bland thing such as the CPI. We all appreciate that there have been some remarkable changes in the—

An honourable member interjecting:

The Hon. S.J. BAKER: I said that there were two principles involved. The regulatory power allows the Government of the day to adjust that amount up to reflect prevailing market circumstances if the $200 000 is agreed as being fair and reasonable. That changes the current provision which allows for a somewhat more significant amount of capacity to prevail, that is, that the lettable area of the shop exceeds 1 000 square metres, and the sum is $250 000. The Government believes that $200 000 is an appropriate sum to give protection to those who do not have sufficient bargaining power. When we get above that sum, in general we are talking about large businesses which normally have significant bargaining power in their own right. The suggestion that those people need protection is highly questionable. For those who are in that situation and who already have enormous bargaining power, there is obviously a bonus if the current provision prevails.

I understand that the statistics support the Government's belief that in about 95 per cent of cases this provision is adequate to protect those who do not have the power to which I referred earlier. We believe that the figure of $200 000 is appropriate and also the 1 000 square metres. If both conditions prevail, we are talking about some very significant enterprises. The Government requests of the Parliament that we go back to the original provision, not the amendment that was successfully moved in another place.

Mr ATKINSON: The Opposition opposes this amendment. We prefer the Bill as it comes from another place. We are at a loss to understand why the Government is seeking to restrict the coverage of this new law which it claims is so virtuous. If it is so good, we cannot have too much of it. The Retail Traders Association wrote to me about this matter and said:

Clause 4(2)(a) excludes any tenant paying rent of more than $200 000 per annum from coverage under the Bill.

That was the Bill as proposed by the Attorney-General before it was introduced. The letter continues:

Clause 4(2)(c)(i) excludes a public company or a subsidiary of a public company. This association objects most strongly to both of these exclusions and considers them to be unfair and discriminatory. They have the effect of excluding many retailers who need the protection offered by the Bill just as much as those who are covered. It is clear that the Building Owners and Managers Association is seeking to retain these exclusions which apply under the existing part 4 of the Landlord and Tenant Act. Their vigour in trying to protect these exclusions is clear evidence that they have something to lose if there is a wider application; that is, their continuing right to run centres to suit themselves without regard to the needs of tenants.

There are many shops, not of particularly large area, in the Rundle Mall the annual rental of which would exceed $200 000, but the Liberal Party seeks to exclude them from the benefits of this legislation. The Small Retailers Association, which one would have thought would not have gone in to bat for tenants with annual leases of more than $200 000, in a letter to me, said:

The Act must cover as many retailers as possible. It is not there just to protect small business. The cut-off point for coverage under the Act of $200 000 annual rent is too low and regressive. It should be at least $300 000 and indexed or follow the New South Wales Act where the cut-off is 1 000 square metres floor area—our preferred option.

The Small Retailers Association goes on to say:

The Act should apply to as many leases as possible. We do not see were a public company or a subsidiary should be denied protection, nor for that matter, a bank, crown agency, local government, etc. We can verify that many tenants presently outside the new Act want to be covered under the new Act.

It seems to me that, if this Bill is as good as the Government says it is and if the Opposition is to vote for it, it should apply to everyone except the anchor tenant in a shopping centre, so I urge the Parliament to vote for the Bill as it comes from another place and not to support the amendment moved by the Deputy Premier.

Mr CAUDELL: I am somewhat surprised that the Opposition opposes the amendment, on the one hand saying that its efforts are to protect the small retailer and the small business person when on the other hand by its mere actions it will disfranchise the 300-odd service stations in metropolitan Adelaide, as this clause will exclude lettable areas in a shop which exceed 1 000 square metres. The definition of 'retail shop' in the Bill is 'business premises at which goods are sold to the public by retail or at which services are provided to the public, or to which the public is invited to negotiate for the supply of services . . . ' A service station shop area is the area from the gutter of one corner to the gutter on the other corner.

Mr Atkinson interjecting:

Mr CAUDELL: Excuse me.

The CHAIRMAN: I remind the member for Spence of Standing Order 142.

Mr CAUDELL: A very large number of service stations in metropolitan Adelaide exceed a lettable area of 1 000 square metres, so it is somewhat surprising that on the one hand the Labor Party says that it supports small traders but that on the other the action of its Federal colleagues and the cancellation of the Petroleum Franchise Act will result in service station dealers being left in no-man's land. Accordingly, I support the amendment.

Mrs ROSENBERG: I said previously that the tenants who have approached me from the Colonnades shopping centre in my electorate have indicated that they are happy that most of the small tenancies are below the 1 000 square metres

and below the $200 000 annual rent. What is the Minister's estimation of the percentage of small retailers in South Australia who fit the criteria of occupying less than 1 000 square metres and paying rent not exceeding $200 000 per annum?

The Hon. S.J. BAKER: I thank the member for Kaurna for her question. It is an important one.

Members interjecting:

The Hon. S.J. BAKER: It was a serious question; the detail that was mentioned in the second reading debate could not be assembled in the time available, so it is not, as members opposite say, a Dorothy Dix question. We are talking in the main about shops, although the member for Mitchell raised a very good point about people being disfranchised under this Bill. The average size of a specialty shop, for example, is 100 square metres, so the limit of 1 000 square metres is 10 times the average, and the average itself includes small and large areas, as members could understand. So, the 1 000 square metres is a long way outside the ball park of what for definitional purposes one would class as a small area leasing arrangement within a centre or strip shop. That is the best estimation I can give and, leaving out public corporations and the big stores where they have presence in shopping centres, I would hazard a guess that we are talking about 99 per cent.

Mr Atkinson: Thanks for that decision.

The Hon. S.J. BAKER: We are talking about shop retailing. If I try to calculate that without having the figures available to me (and I will check whether I can give members any other information), I have to try to envisage how many large shops exist which occupy more than 1 000 square metres and which are not in public corporations. I cannot think of a natural example, but obviously there will be some. This Bill protects all the big guys as well. You are saying to an investor, 'You don't count; your money doesn't count. We want to improve the countervailing power on the side of someone who already has power.' We will deal with this amendment, then we will deal later with further amendments covering particular exclusions. If we consider this amendment in isolation and deal with the other one after this, I can answer the member for Mitchell's question. I would suggest that 1 000 square metres is probably 10 times the average size of a normal shop arrangement. That is about the best information I can give to the honourable member at this stage.

Mr BASS: The amendment attempts to reduce the Bill as it came out of the other place by excluding businesses where the rent payable under the lease exceeds $200 000 per annum. In placing this Bill before the other place, the Attorney-General said that it precludes from its application businesses with leases where the rent exceeds $200 000 per annum which may be presumed to be able to look after their own interests without statutory assistance. Many small businesses pay rent exceeding $200 000. What is to be done for these people if they are not covered by clause 4?

The Hon. S.J. BAKER: The honourable member suggests that many businesses will lie outside the set of rules in the Bill that we have before us. The issue of the figure that is applied will be subject to regulation. If we have not captured all the people we would wish to capture by this provision of $200 000, plus the capacity by regulation to ensure that we retain the same provisions for the people to whom we wish to give some level of protection, I would suggest that this is the means by which we can fix it up. The information coming back is that, again, very few people not covered by this provision would not come from a business franchise or public corporation arrangement or where there is considerable buying power.

Members interjecting:

The Hon. S.J. BAKER: Why worry? The reason is that, with this blanket provision providing for $200 000 in the two items mentioned (and the member for Mitchell has raised the issue of who gets unnaturally excluded in the process), the issue is really whether we are capturing the marketplace that we are trying to protect. The answer is a clear 'Yes'. This matter was debated when everybody sat around the table, and I do not need to remind members of all the people involved. I know that some fairly powerful people wanted to do exactly as has been suggested and include the square metre rule, and to lift the sum. They thought they could do better and increase their bargaining power. I remind members that those who were party to the agreement included BOMA, the Westfield Shopping Centre Management Company, the Retail Traders Association, the Small Retailers Association, the Newsagents Association, and the Australian Small Business Association.

That $200 000 was agreed as a reasonable catch-all to give people the protection of this Act without giving too much protection to those who already had bidding or negotiating power. I can only rely on, as I have relied on, the information that was fed back as a result of those meetings, and say that, with $200 000, we are actually capturing the marketplace. The question is: should we go any further? To my mind we would then have to go back and say, 'Is that realistic?' Or are we then tipping the balance the other way and giving power where it really is not deserved?

The matter has been researched considerably, and I can only rely on the information that has been fed through to the Attorney-General as a result of those meetings where it was indicated that the $200 000 level was satisfactory. We could change it to $1 million, and you would find that the investors have a fair chance of getting no money back, because there would be very little capacity for them to negotiate in the process if they were all to be caught by the Bill's provisions.

The essential part of the exercise is to provide protection where people do not have a natural capacity to negotiate. That is what we all agreed on. I am told that $200 000 is more than adequate to capture the people we are trying to protect. If I had certain other advice, it would not worry me in the least to shift that sum up, but by doing so we then change the balance again. I am relying on information fed back by all the people who sat around the table, where $200 000 was seen to be very reasonable. That is all I can go on, so the Government insists on its amendment.

Mrs ROSENBERG: The reason I raised that question was that in my first contribution I said that tenants in the Colonnades Shopping Centre had indicated to me that their average rents were about $70 000. It seemed to me at the time that $200 000 was more than adequate to cover my shopping centre areas. I raised the question not, for the information of the member for Spence, as a dorothy dixer, because if it had been the Minister would naturally have had the answer ready. I also raised the question because I wanted to put on record the fact that some of us on this side are debating this Bill because we actually care about small business, not for political means. I wanted the Minister to be able to satisfy me that the 1 000 square metres and $200 000 per annum were adequate, and he has done that.

The Hon. FRANK BLEVINS: After that little lecture from the member for Kaurna about only the member for Kaurna having the interests of the small business person at

heart, I will say something about it. I do not know why the member for Kaurna was so angry and grumpy with us.

The CHAIRMAN: There is no mention in the Bill of the condition of the member for Kaurna.

The Hon. FRANK BLEVINS: The member for Kaurna has just given us a little lecture here.

The CHAIRMAN: The member for Giles has been disserting away from his call for most of the evening. I ask him to return to the subject of the Bill.

The Hon. FRANK BLEVINS: This amendment seeks to dilute the protection that is given under this clause. I draw again the Deputy Premier's attention to the title of the Bill, the Retail Shop Leases Bill 1994. It seems to me that the Government has decided, as Parliaments have decided all over Australia and in many other parts of the world, that lessees, particularly in retail shopping centres, need some protection against landlords, because landlords have an obligation. That obligation is not to lock out the tenants or the lessees, and not to supply goods and services, but to maximise their profits for the shareholders. If that means that lessees are tossed out, that lessees finish up with no goodwill, that lessees—

Mr Brokenshire interjecting:

The Hon. FRANK BLEVINS: I am pleased that the member for Mawson has woken up and intends to take part in this debate, because it was rather dull while he was an awful lot quieter and breathing rather heavily. That is the obligation on landlords. They have a duty to their shareholders to do that: a duty to maximise profits. They do not have a social responsibility at all. You could argue that the people who are in those shops have no responsibility either. The lessees of the shops in the shopping centre have no responsibility down the line. Their sole objective is not to give food, shoes or clothes to people: they have no social objective. Their sole objective is to make a profit at the expense of the people who come into the shop. Their position, in principle, is absolutely no different from that of the landlord.

If members opposite—all these people who support the free market—had any principles at all, and argued that the landlord has to be constrained from the enjoyment of his own property, then likewise the same argument would apply that you are entitled to constrain the shopkeeper from the enjoyment of his business. You cannot have it both ways. I thought for one minute, when the member for Mitchell spoke, that here we have a capitalist who is prepared to stand up and say, 'Let the market decide. We ought not constrain the landlords at all. They have invested their money. They are entitled to make the return they wish.' I thought, 'The member for Mitchell is my man! He is a man I can understand; a man I can have a bit of respect for because he has the courage of his convictions,' but no, unfortunately, I was let down again.

The member for Mitchell wanted Westfield and all these other people (who may be very nice people but that is irrelevant) to have free rein, to exploit to the maximum—which is probably their legal obligation—their tenants, whilst crying about the petrol retailers. I was disappointed. The member for Mitchell was no different from the rest. He wants protection when it is in his interests, but he wants to parrot the free market also when it is in his interests.

Those things are diametrically opposed. You cannot have it both ways. I have absolutely no hesitation in saying that the Parliament should interfere in the free market whenever it so chooses. We should make no apologies for it whatsoever, because if society is to be reduced to dog eat dog—and the free marketeers say that a free market will make this country great—then no-one can complain when someone gets hurt, such as the tenant in the shopping centre, because that is the inevitable result. That is what happens when dog eats dog, and that is the system that members opposite pretend to support.

I have no hesitation in interfering at all, because the power relationship is so unequal. The power a shopkeeper has when negotiating with the big shopping centre owner is very small indeed, just as the power of the consumer is very small when going into a shop. If you do not have, say, $10 for the product you either get out or the police are called in. It is no good trying to reason with the shopkeeper and talk about being hungry or about the shopkeeper's social responsibility to distribute these goods. He will call the police and kick you out. Where we have unequal power relationships, the Parliament ought to intervene.

This talk about the free market and the right to enjoy your property is so much nonsense. If I heard correctly, the member for Florey was very strong in support of that principle. I thought the member for Florey put his finger on it in a couple of places very well indeed. He is stating, as we are on this side and as this Bill does, that this is a proper level of intervention in these contracts, and I look forward to the support of the member for Florey, because he is not one of your silvertails. The member for Florey has done it hard. He has gone wrong along the way, and that is unfortunate, but for those such as I who believe in redemption in some respects I still have some hope for the member for Florey, and his speech on this Bill kept that hope alive.

The Deputy Premier spent a great deal of time telling us all about our wonderful Attorney-General; how our wonderful Attorney-General sat the various parties around the table and got them to thrash out what was in their own interests. A half a dozen parties were present, and so this Bill came out as a win-win-win-win-win-win situation, in the jargon—

Mr Atkinson interjecting:

The Hon. FRANK BLEVINS: That may well be, but the Attorney is certainly very relaxed. He is a lot more relaxed than he was between 1979 and 1982. He almost singlehandedly lost them the Government, but that is another story. I will not be diverted by the member for Spence. We have this picture of capitalists, big and small, who were all activists. They were entitled to their place in the sun, and if it was at the expense of someone else it did not matter: that is the system working. But the lion lay down with the lamb, and then they all got up and said, 'This is the result. This is what we want.' The criticism from the Deputy Premier appears to be that after that agreement was signed some of the parties came to the Opposition and said, 'We want you to have a go at this.'

The Deputy Premier must have a very short memory, indeed because, when I was Minister of Labour Relations and for the best part of 11 years involved in Cabinet, the unions and the Government sat down with the employers and thrashed out agreement after agreement. The agreements were signed—no problem—and I, or the various Ministers of Labour Relations, would wheel a Bill in here that had the full agreement of the Industrial Relations Advisory Council (IRAC). The Chamber of Commerce was represented and agreed to all of it; the Employers' Federation—for what it was worth—agreed to it; and the unions agreed to it. Everyone had given and taken a bit, as the Deputy Premier said.

And what would happen when the Bill arrived in here? The bosses would be right onto the Deputy Premier, when he

was the spokesperson on industrial relations, and he would have pages and pages of amendments inspired by the employers, contrary to the agreement they had come to. They all do that. There is nothing novel about it. The fact that the Retail Traders or the Small Business Association ratted on the agreement is neither here nor there, because they ratted on every agreement they had with us, and the Deputy Premier was party to bringing in their amendments.

Do not attempt to give us all that flannel about how disgraceful it is that people do not take notice of the agreements they have made, because they have always done it. You cannot trust their word one iota. We have never been able to; no Government has ever been able to. In a way, I congratulate the Retail Traders Association and the other groups for ratting on this agreement because at least they are consistent: they rat on everything. They ratted on the previous Government and they are ratting on this Government. Anyone who lines up behind them, or stakes their reputation on them, or says, 'We will go to the wall for you', is making a big mistake, because if they can see that they can get another inch or another half an ounce by crawling to the Opposition they will go and get it.

What I do not understand is why the Upper House, never mind the Deputy Premier, wants them in at all. If tenants are deemed to be worthy of protection against the so-called rapacious landlords, then why restrict it at all? If we are going to have some restrictions—and I will be guided by my colleague the member for Spence, who is far more learned in this area than I; he says that the limitation in the Bill is appropriate—then, reluctantly, I will go along with that, but I will not go along with this amendment.

Absolutely under no circumstances will I do that, because we will be leaving out very small business people who are attempting to do business in areas of very high rent. Westfield does not necessarily have the highest rent areas. There are retailing areas in the city with higher rents than Westfield. The Bill will ensure that those very small business people in very high rent areas are given some protection. It ought not to be—

The CHAIRMAN: Does the member for Giles have a series of questions to ask? The Chair has been fairly lenient in allowing him almost 20 minutes, when the one restriction the Chair is vitally interested in is the one involving 15 minutes. The honourable member has the right to further debate the clause. I am not restricting him.

The Hon. FRANK BLEVINS: I thank you, Sir, for your tolerance. I think I have probably gone as far as I need to, but I was attempting to explain very clearly to the Deputy Premier and to members opposite, some of whom at least appear to be tempted to vote for the Deputy Premier's amendment—many will abstain, and I hope one or two will vote against it—why I am so opposed to the amendment that has been put forward by the Deputy Premier.

Mr ATKINSON: I thank the member for Giles for his magisterial survey of these matters; he leaves me with very little to say. The Deputy Premier told the Committee that the Building Owners and Managers Association had sat down with the Retail Traders Association, the Small Retailers Association, a couple of other lobby groups and the Government and that they had nutted out the Government Bill, which was introduced in another place. The Deputy Premier then says that, since this process has been gone through, the Committee should respect this tripartite process and not amend it. The Deputy Premier keeps pretty strange company on that, because that is a corporate State mentality and not one which the Labor Party can endorse.

It is a mentality of another era and another political doctrine, far from Liberal democracy, so I suggest that the Deputy Premier, in a sense, was being disrespectful to the Committee when he suggested that the Committee should be bound by tripartite negotiations. If the Deputy Premier wants the corporate State, I suggest that he reads the doctrines of Giovanni Gentile, the philosopher for the Italian Fascist Party, and that he keep those opinions to himself because this Parliament makes law for South Australia, not tripartite negotiators.

Mr Kerin interjecting:

Mr ATKINSON: For the benefit of the member for Frome, Giovanni Gentile was the house philosopher for the Italian Fascist Party during its rule of Italy from 1922 to 1944. I am sure that the member for Frome knew that. Of course, Giovanni Gentile is the philosopher of the corporate State. The member for Mitchell complained that the Bill, as it arrives from another place, excludes from coverage petrol station tenants. Clause 4(2) of the Bill provides:

> (2) However, this Act does not apply to a retail shop lease if—
> (a) the lettable area of the shop exceeds 1 000 square metres—

and I interpolate here that the member for Mitchell made the point that many service stations gutter to gutter do exceed 1 000 square metres—

> and the rent payable under the lease exceeds $250 000 (indexed) per annum;

The member for Mitchell conceded that petrol station tenants are not paying more than $250 000 per annum for their lease, so the Bill, in the form that the Australian Labor Party supports, covers petrol station tenants. The member for Mitchell is wrong.

The Hon. S.J. BAKER: The member for Spence has made a very good point, and I think that the Committee should contemplate that point, because it is the exact reason why the existing Bill is all wrong. Let the Committee be aware that, if someone is paying $10 million rent a year and they have 900 square metres of space, those poor fellows get coverage under this Bill. Talk about protection: it is a bloody protection racket, of which the member for Giles wants to be a part. Talk about the big people. If we just—

Mr Atkinson: He will get up again.

The Hon. S.J. BAKER: I know that. Actually, I will take all that back if it means he will get up again. I will address the remarks of the member for Spence, because he has the carriage of the Bill for the Opposition. Under this provision you have to meet both criteria as paragraph (a) contains the word 'and'. That means that you have to satisfy both criteria before you are excluded. As I said, if you are less than 1 000 square metres it does not matter what rent you are paying, whether it is $50 or $5 million a year, because you get protection under this Bill as it stands in this Parliament. I suggest that the Labor Party and the Australian Democrats are protecting people to destroy other people's investment. No wonder the retail traders are excited about this proposition.

I ask members to contemplate for a moment what $200 000 in rent means in terms of turnover. If we consider that rent is 10 per cent of turnover—and that is an extraordinarily high figure because, if you were paying 10 per cent out in rent, you would go broke—such an enterprise would be taking about $2 million a year. So, $200 000 provides very adequate protection. Does anyone in this Chamber know

someone who is paying $200 000 a year in rent yet has no bargaining power? I do not know anyone in that category.

Mr Becker interjecting:

The Hon. S.J. BAKER: I suggest to the member for Peake that he still has a long way to go.

The CHAIRMAN: Order! I ask members not to make statements from the side, as it is confusing for *Hansard*.

The Hon. S.J. BAKER: By the Bill as it stands before this Committee, the Australian Labor Party and the Australian Democrats say that it is all irrelevant; it does not matter how much rent you are paying, you are protected under this Bill provided your shop area does not exceed 1 000 square metres. There is no justification whatsoever for that position, and I ask the Committee to support the amendment. I ask members to support the process of going to a conference where we can sort out what can be done straight away with some degree of credibility and comfort, and go into the wider issues of the future of shopping provision in this town and get ourselves updated to understand the fears, the trends, the prevailing issues and how they are going to be sorted out. If we do that, some of these issues will not have to come back for another debate because not enough people in this Parliament know enough about the subject to be able to tell us and give us a definitive answer on these issues. Numbers are being plucked out of the air.

The sum of $200 000 does have some validity because it was negotiated as a reasonable figure. Under this provision, the 'big boys' are being protected fully, and if you look at the other exclusions you will see that they are getting even better protection. I find it a little bit strange and a little bit frustrating that the ALP, which is renowned for its dislike and hatred of business, suddenly is protecting those people who have more than adequate negotiating power. I can only assume that members opposite either misread the amendment and did it late at night or they are just trying to make the task difficult for the Government. Either way, I am not satisfied with the outcome so I ask the Committee to support the amendment. Let us get back into a constructive framework where, if there are some small areas that are missed in the process, there is an opportunity further down the track within a reasonable time to pick up on them.

The Committee divided on the amendment:

AYES (25)

Andrew, K. A.	Ashenden, E. S.
Baker, D. S.	Baker, S. J. (teller)
Becker, H.	Brokenshire, R. L.
Buckby, M. R.	Caudell, C. J.
Evans, I. F.	Greig, J. M.
Gunn, G. M.	Hall, J. L.
Ingerson, G. A.	Kerin, R. G.
Lewis, I. P.	Matthew, W. A.
Meier, E. J.	Olsen, J. W.
Oswald, J. K. G.	Penfold, E. M.
Rosenberg, L. F.	Rossi, J. P.
Such, R. B.	Venning, I. H.
Wotton, D. C.	

NOES (9)

Atkinson, M. J. (teller)	Bass, R. P.
Blevins, F. T.	De Laine, M. R.
Geraghty, R. K.	Hurley, A. K.
Quirke, J. A.	Stevens, L.
White, P. L.	

PAIRS

Armitage, M.H.	Clarke, R.D.
Brown, D.C.	Foley, K.O.

PAIRS (cont.)

Leggett, S.R.	Rann, M.D.

Majority of 16 for the Ayes.

Amendment thus carried.

The Hon. S.J. BAKER: I move:

Page 4, after line 9—Insert—

(ai) a public company or a subsidiary of a public company; or.

The amendment inserts an exclusion provision relating to public companies. They should not get the protection of this legislation.

Mr ATKINSON: I ask the Deputy Premier to give us a little more reasoning than that. In my previous vocation I was an organiser for the Shop Distributive and Allied Employees Association to which the Deputy Premier referred earlier, and one of the areas which I organised was Katies. Katies is a national chain, which is—

Mr Becker interjecting:

Mr ATKINSON: The member for Peake interjects and says that they are nearly broke.

Mr Becker interjecting:

Mr ATKINSON: He says that my behaviour nearly broke Katies. I am afraid that my skills as an organiser were insufficient to bring Katies to its knees and it continued to pump out its supply of high fashion, despite my efforts. When I was organising Katies it was a subsidiary of the Coles Myer group, so it does not get the protection of this legislation, yet the Katies outlets are small stores. They would otherwise fit well within the definition of clause 4(2)(a), which we were discussing, but they are excluded by the Government's proposal to exclude public companies, because Coles Myer is listed on the Australian Stock Exchange. I see no reason why Katies—or Just Jeans for that matter, which also wrote to me—should be excluded from the protection of the legislation merely on the whim of the Liberal Government.

The Hon. S.J. BAKER: I suggest to the member for Spence that Katies is a national chain which can make up its own mind and can negotiate its own deals. If it thinks it needs the protection of this legislation, the world is rapidly coming to an end. The member for Spence has given me a very adequate example of why we are protecting those people—unless he says that big business needs protection. If he wants to say that, let him say it before the Committee. If he does not want to say that, let us stick to the script. The script says: 'Katies, why do you need protection; why should you get special privilege; why should we provide a safety net for you out there?' I do not believe we should, but if the member for Spence is saying that Katies and all the other chains need special protection, even though they have enormous buying power and enormous power to get clothes made at the right price, imported at the right price, to position themselves and market at the right price and to decide on what shopfront they need at the right price, the Labor Party has lost its marbles.

Mr ATKINSON: Organisations such as Katies that employ union labour always need the consideration of Parliament. Katies shops are comparatively small in shopping centres but, as the Deputy Premier says, there are a lot of them and it is a national chain. That is correct, but in the view of the Australian Labor Party it is not correct that Katies should be driven out of the major shopping centres by matters which are regarded as malpractice by landlords when they are applied to anyone else but when applied by the landlords to Katies are okay in the view of the Deputy Premier. The Bill is a good Bill. We have supported the second reading of the

Government's Bill and, if it is good enough for the vast majority of tenants, it is good enough for Katies.

Mrs ROSENBERG: I have received correspondence from BOMA indicating that the minimum number of shareholders for a public company would be 20 to 25 and its assertion is that those companies are large enough to protect themselves, both from a legal point of view and as they have substantial accounting, business and money behind them. Does the Minister agree that there is a stipulation that public companies require 20 to 25 shareholders or more?

Ms HURLEY: The Deputy Premier implies that the Labor Party is not able to defend small or big business. I want to defend some of the small businesses in large shopping centres that are subsidiaries of public companies and the people of my electorate who work in those shops. The treatment by many landlords of small shops such as Katies and Just Jeans in leases can force these shops out of business and their employees go with them. There is no valid reason why the Bill cannot apply to a public company or a subsidiary of a public company provided it fits within the definition of the lettable shop area and the lease amount. It makes no sense to me to refuse help to a company just because of the way it is structured under the Companies Act.

The Hon. S.J. BAKER: As to what constitutes a public company, I am told that members of a public company can be as few as five. Members will realise that to list a company on the Stock Exchange is an expensive business. I am not aware of the minimum capital required, but it is significant. Across Australia, the best reference I have is that there were 8 081 public companies on the Stock Exchange as at June 1994. As to proprietary companies—and this does not include many of the small businesses we are talking about—there are 866 726. If I am correct, there are 100 times more proprietary companies than public companies. There are also other trading relationships that exist where proprietary companies are set up. That highlights the approximate relationship, although I understand that in South Australia the relationship is more like 120:1. Public companies do not dominate the market as the proprietary companies do.

I am flabbergasted by the argument put by the Opposition and its suggestion that a multi-million dollar—$100 million—company needs protection. I hope all members opposite will put that in their newsletters and think about what they have said. I have seen wheels turn in my time, but this amendment was not properly considered—either the first or the second amendment relating to this clause. Under the earlier provision one can pay $1 million in rent or turn over $100 million in goods and still get protection under the provision inserted in another place. The Opposition is saying it wants to protect public companies but, frankly, I do not think they need protection.

Ms HURLEY: Public companies are not necessarily multi-million dollar companies: many of them are small struggling companies, particularly those that do consist of a network of small shops such as Katies. The member for Peake suggested that they might be struggling, but I do not believe that is true of Katies although it is true of many other chains. I was not aware of a minimum capital requirement for the listing of a public company. Can the Minister expand on that?

Amendment carried; clause as amended passed.

The Hon. S.J. BAKER (Deputy Premier): I move:

That the time for moving the adjournment of the House be extended beyond 10 p.m.

Motion carried.

Clauses 5 to 10 passed.

Clause 11—'Annual report.'

The Hon. S.J. BAKER: I oppose the clause. There is duplication of effort in the Bill. We have another reporting provision in clause 82 and it is prudent to tidy the matter up.

Clause negatived.

Clauses 12 to 17 passed.

Clause 18—'Minimum 5 year term.'

The Hon. S.J. BAKER: I move:

Page 9, lines 6 to 13—Leave out paragraph (c) and insert—

(c) the lease contains a provision excluding the operation of this section and a lawyer who is not acting for the lessor certifies in writing that the lawyer has, at the request of the prospective lessee, explained the effect of the provision and how this section would apply to the lease if the lease did not include that provision; or.

The amendment removes the unnecessary legalistic and bureaucratic requirement for a person seeking to reduce the minimum five year term of lease from having to obtain a lawyer's certificate that includes the reasons stated by the lessee for not wanting the benefit of a five year term and also requiring the filing of a certificate with the tribunal. This is an unnecessary procedure which will place an unwarranted workload administratively and potentially legally upon the courts in terms of the filing of certificates. The provision of the legal advice obviates the need for written reasons to be prepared and submitted to the tribunal. We are dealing with a commercial arrangement and negotiation between parties. If a party does not like the terms of the agreement, they do not have to enter into a lease. The preparation of written reasons in relation to the reduction of the term of a lease serves no particularly useful purpose.

Amendment carried; clause as amended passed.

Clause 19—'Warranty of fitness for purpose.'

The Hon. S.J. BAKER: I move:

Page 9, line 26—Leave out 'landlord' and insert 'lessor'.

This is a mere correction of terminology.

Mr ATKINSON: I am curious as to why the Deputy Premier does this. I notice that the terminology in the law is being changed from 'landlord and tenant' to 'lessor and lessee'. I suppose there is not much harm in that, but it seems to me that when one is reading a Bill (and afterwards when one is reading the same Bill as an Act) it is confusing to go through it looking for 'lessor and lessee'. Sometimes one has to look very closely to see which it is, and one can lose the sense of the section.

The Hon. S.J. Baker: The rest of the legislation has 'lessor' in it.

Mr ATKINSON: The Deputy Premier interjects that it is a drafting change and I should not be bothered with it, but I should be bothered with it for the sake of clarity. I would be happier if throughout the Bill there was reference to 'landlord and tenant', because not only is it the language of the people but it is also clearer. I hope that Bills such as this are drafted for the layman rather than the lawyer. Will the Deputy Premier tell us why the commonly accepted terms 'landlord' and 'tenant', which are clearly distinct when one is reading a Bill because they start with different letters, have been changed to 'lessor' and 'lessee'?

The Hon. S.J. BAKER: The member for Spence had some relationship with the law in his previous life, so he would know that when contracts are signed the terminology

is 'lessor'. Contracts do not contain the word 'landlord'; they contain the word 'lessor'.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: The terminology 'landlord' is now outdated. It is a contractual arrangement. The person who collects the rent is no longer the person who possesses the title or owns the property. We now have more diverse arrangements. The days of Scrooge or whoever went along and collected their pound of flesh, or whatever it may be, have gone. The days when there was a very strong relationship between the person who owned the property and the person who rented the property have changed dramatically, as the member for Spence knows. There are different arrangements in place now from those which prevailed in most cases 20 years ago. Indeed, if we go back another 50 years, we will find that there has been a further change over that period. In simple terms, in legal terms, in all terms, the lessor is the person who is imparting the benefit and the lessee is the person who is paying for that benefit.

Mr ATKINSON: In Charles Dickens' *A Christmas Carol*, Scrooge was an employer, not a landlord.

The CHAIRMAN: Thank you, the member for Spence; pedantry reigns.

Amendment carried; clause as amended passed.

Clause 20 passed.

Clause 21—'Repayment of security.'

The Hon. S.J. BAKER: I move:

Page 11, lines 21 and 22—Leave out 'Magistrates Court' and insert 'Tribunal'.

This amendment is consequential on a matter that has previously been debated.

Amendment carried; clause as amended passed.

Clauses 22 to 24 passed.

Clause 25—'Turnover rent.'

The Hon. S.J. BAKER: I move:

Page 14, lines 33 to 36—Leave out subclause (5).

This has been a matter of some debate: first, whether turnover figures should exist as a medium of rent collection; and, secondly, to what extent the knowledge of those turnover figures should be made available to various parties. Subclause (5) provides:

A lessor must not require a lessee to provide to the lessor information about the lessee's turnover unless the retail shop lease provides for the determination of rent by reference to turnover.

The suggestion in the Bill is that the only conceivable reason for turnover figures is to keep a handle on what rent should be charged. It is accepted practice, both here and internationally where turnover has always been accepted as a means of meeting the rent, or a substantial part of the rent, that turnover figures are appropriate.

The issue that has been defined by the Opposition and the Australian Democrats is that if rent is not based on turnover there is no right to turnover figures. I have some sympathy with that argument if we accept that turnover figures are used only to extract rent. In some cases turnover is a more constructive way, provided it is fair, of increasing rent. It means that during a downturn the landlord has a decreased take from the rent, whereas in an upturn the landlord or lessor benefits from the rent.

Mr Atkinson: So you are now confusing 'landlord' and 'lessor'.

The Hon. S.J. BAKER: That is all right. I am stuck in the old terminology, but I would have thought that with his legal background the honourable member would certainly be inclining towards the new terminology. The word 'lessor' has been accepted for a long time; it was accepted even when the member for Spence was doing law, which was a long time ago. Judging by his contributions, he has not updated. I have great sympathy with the issue of whether turnover information should be kept within the confines of the person who is renting the property.

In practical terminology some important issues need to be addressed; for instance, should someone be going through a very difficult period, when they come to the landlord for a rental adjustment there must be proof of that actually happening. If they are a part of a shopping centre which is paying the rent but which is failing to attract custom and the turnover figures are suffering, I think the lessor—the landlord—would and should want to know that some businesses in that centre are not doing particularly well. In a constructive relationship, some action would be taken on behalf of both individuals. I am dealing here with a constructive relationship. If a shopping centre is operating and someone keeps paying the rent but that shop is losing custom, it affects the rest of the shopping centre, and I would have thought it in everybody's best interests to keep an eye on changes and movements in trade so that everybody benefits, or if there is a downturn the loss is minimal.

There are very constructive reasons why turnover should be part of the information provision between landlord and tenant. I understand the reason for the amendment and I have great sympathy with it, but it is an important component in a professional, businesslike arrangement. I am willing to consider modifying that stance further, but I certainly believe in principle that if we are dealing with the lessor and the lessee that information should be shared so that each party can operate constructively, effectively and professionally. That is why it has been removed, but I take the points that will obviously be made by the member for Spence.

Mr ATKINSON: The Opposition is more sympathetic to the views of retailers on this matter; we will vote for their point of view. We believe that landlords have no reason to obtain access to a retail tenant's turnover unless that turnover is relevant to the calculation of the rent. In that, we stand by retail tenants when the Government deserts them on a very important issue and votes with the landlords. Many small retailers in Adelaide will be most disappointed with the stand the Government has taken on this.

Mrs ROSENBERG: I have some sympathy with the issues raised by the Deputy Premier in relation to the lessor being worried about a particular lessee's performance and perhaps wanting to make some judgments about why a business is not performing, but I also have some problem with their ability to make an estimate based on turnover. I would have thought that, if they were not aware of the business's turnover but were aware that the business was not doing well, it would be an obvious assumption that the turnover was low. I echo the member for Spence's suggestion: if the rent is not based on the lessee's turnover and the lessor does not intend to use it as a base to introduce a new tenancy—that is, to steal a business and use the so-called goodwill—why would the lessor want the turnover figures?

The Hon. S.J. BAKER: I have said that this is an issue with which I have considerable sympathy. Let us leave aside completely the issue of whether figures are being used to screw the tenant. The member for Spence and I are aware that, in areas where rent is not based on turnover, in a constructive, working professional relationship the turnover figures are readily supplied as a matter of course. A person

who has an interest in their investment and who wants to ensure that the investment is performing at its maximum has an interest in whether part of the area—such as the flower shop or newsagency—is not performing. I am aware that most of the leases in close proximity to my office (except those in the Mitcham Shopping Centre) are based on an annual rent. They do not use turnover as the basis for rent, yet I am aware of a number of instances where that information is quite willingly shared.

I would ask members to read this measure. It provides that you cannot supply the turnover figures and you cannot ask for them. It provides here that a lessor must not require a lessee to provide to the lessor information about the lessee's turnover unless the retail shop lease provides for the determination of rent by reference to turnover. Therefore, at the beginning of a contract you cannot even suggest that those figures be supplied as a requirement for everybody's mutual benefit, so the existing Bill is flawed. This amendment removes that provision because, quite frankly, it is dangerous.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: To the extent of saying that a person who owns property has no interest in how that property is performing. This provision implants that principle the Bill.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: It is. I would suggest that there is a lack of confidence in Parliament in reaching that determination so, on principle, even if the member for Spence said, 'In good working relationships that is appropriate', that is not allowed under the Bill.

The Committee divided on the amendment:

AYES (30)

Andrew, K. A.	Armitage, M. H.
Ashenden, E. S.	Baker, D. S.
Baker, S. J. (teller)	Bass, R. P.
Becker, H.	Brindal, M. K.
Brokenshire, R. L.	Buckby, M. R.
Caudell, C. J.	Condous, S. G.
Evans, I. F.	Greig, J. M.
Gunn, G. M.	Hall, J. L.
Ingerson, G. A.	Kerin, R. G.
Leggett, S. R.	Lewis, I. P.
Matthew, W. A.	Meier, E. J.
Olsen, J. W.	Oswald, J. K. G.
Penfold, E. M.	Rosenberg, L. F.
Rossi, J. P.	Such, R. B.
Venning, I. H.	Wotton, D. C.

NOES (9)

Atkinson, M. J. (teller)	Blevins, F. T.
De Laine, M. R.	Geraghty, R. K.
Hurley, A. K.	Quirke, J. A.
Rann, M. D.	Stevens, L.
White, P. L.	

PAIRS

Brown, D. C.	Clarke, R. D.
Kotz, D. C.	Foley, K. O.

Majority of 21 for the Ayes.

Amendment thus carried; clause as amended passed.

Clauses 26 to 30 passed.

New clause 31—'Land tax not to be recovered from lessee.'

The Hon. S.J. BAKER: I move:

Page 16, after line 1, insert new clause 31 as follows:

31.(1) A retail shop lease cannot require the lessee to pay land tax or to reimburse the lessor for the payment of land tax.

(2) However, the lessor's liability for land tax in respect of the premises may be taken into account in the assessment of rent.

(3) This section does not apply to a retail shop lease entered into before a date fixed by regulation for the purposes of this section.

This provision was put in place in more recent years and provides some level of protection for the tenant.

New clause inserted.

Clauses 32 to 35 passed.

Clause 36—'Determination of current market rent under options to renew.'

Mr EVANS: I want to clarify the fact that the valuation taken is the valuation of the shop when put to the same use for which it is already used. If the shop is a butcher shop, do the valuers value it as a butcher shop, not for a use that may gain a higher rental?

The Hon. S.J. BAKER: I will take some advice on this matter. The issue really depends on whether it is being used as a butcher shop or whether it has potential to be used as a butcher shop. If the premises are being used as a butcher shop, I would presume it would be valued according to its current use. That is my understanding. There is a problem, of course, at the end of a lease or at the beginning of the lease—and you want a renewal at the end or you want a contract at the beginning—of what is the valuation of that space on its potential use.

If there is a piece of land, the Valuer-General values it to whatever its zoning is and to the average prices that prevail in the area. The Valuer-General might say, 'That block of land is worth $60 000.' Someone coming through the door might say, 'I don't want to use it as a normal residential dwelling, so to me it is only worth $55 000.' Another person might say, 'I want to put two dwellings on that property, so to me it is worth $65 000.' The valuation is the value that person believes the property is worth. In terms of what valuation can be agreed upon, it is my assumption that if there is an existing relationship and its use is there and can be judged, it is the value of the property. If it is at the beginning of the lease or a renewal of a lease, and that is the time you want to value a property, I would presume it would be its highest and best use. I will just ask how the valuer actually values that property. That is my understanding of how it should be done. Whether that is the actual way it is done is another question.

Mr ATKINSON: With your indulgence, Mr Chairman, I just wanted to draw members' attention to the fact that not only is it the Ides of March but it is the 25th anniversary of Steele Hall's being deposed as Leader of the Parliamentary Liberal Party—

Mr Brindal: Twenty third!

Mr ATKINSON: Twenty third anniversary; sorry, I stand corrected by the member for Unley. After his deposition, he went to sit in that seat where the member for Coles now sits.

The Hon. S.J. BAKER: I have taken advice: the value is the use under that lease. That is reasonably consistent with what I said. Walking into a new relationship one would look at the value of the property according to its alternate uses, but that is basically an answer to clause 36 which deals with the issue. I was wrong when I said that, at the renewal of the lease, they would look at highest and best use. I am advised that, if it is an extension of a lease of a butcher shop, it would be valued as a butcher shop.

Clause passed.

Clause 37 passed.

Clause 38—'Harsh and unreasonable terms for rent.'

The Hon. S.J. BAKER: The Government opposes this clause. It is an issue that exercises the mind of every member of Parliament. When members are visited by a tenant who says, 'This is harsh and unreasonable', it is very difficult to form an opinion without understanding the conditions that prevail. The Government supports the inclusion of a provision in the Bill that allows for court intervention in connection with harsh and unreasonable terms for rent. This provision is not relevant, nor will it be necessary in relation to new leases entered into under the provisions of the new Bill.

This is due to the fact that parties will negotiate, at the time of entering into a rental shop lease, what type or formula of rent offered under the Bill will apply to their lease. In other words, they sign up on a contractual basis over whatever period it may be to meet a certain rental requirement. I hope everyone is clear. The Bill also prevents ratchet clauses. If a party selects current market rent as the formula applicable to their lease and the parties cannot agree on the amount of rent, the Bill contains provisions for the amount of rent to be determined by a valuation carried out by a valuer.

Information as to the rent and nature of rent increase will be known therefore at the outset of the lease. Any breaches of a lease agreement will be dealt with by the Commissioner or the tribunal. There is no need, therefore, under the terms of the new Bill, for tribunal intervention in the manner described under this provision. We are saying that, in a leasing arrangement, you agree on the terms and conditions. To suggest then that, having agreed to that, the court can interfere is, I would suggest, a breach of natural justice. The issue that becomes more important, as a number of members have mentioned, is what happens at the end of the lease, and that is not a matter that is canvassed in this amendment.

The Bill is saying *per se* that, if you have a lease and you think it is harsh and unconscionable and the rent is not appropriate, you can whiz off and get the court to determine the matter. We are talking about two different principles. We believe it is inappropriate to have this provision within the Bill, because no-one will ever know for what they have contracted and, at any stage, someone will be able to contest the rent to which they have already agreed.

Mr ATKINSON: There is no clearer repudiation by the Liberal Party of retail tenants than by the Liberal Party's seeking to delete this clause. The Small Retailers Association wrote to me about this matter, as follows:

> The Act should enable a tenant whose rent is demonstrably unfair to seek a remedy if the landlord won't consider the matter. There is a wealth of information now available to enable the fair rent for any business in any situation to be assessed, and this association is now in the process of establishing a data bank of rentals which will enable a fair assessment of rent.

The Australian Labor Party and the Australian Democrats got together to put this clause in the Bill. It is a fair clause. The Government, under this Bill and others, is establishing a tenancies tribunal, or a division of the Magistrates Court, which is capable of hearing these applications. The Liberal Party's opposition to this clause is nothing less than a repudiation of retailers by the Liberal Party.

The CHAIRMAN: The Chair is of the opinion that this could be regarded as consequential to clause 3, which has already been tested by division, whereby the Committee voted to leave out the definition of 'Magistrates Court', and there have been other cases where the matter has been tested.

Mr BRINDAL: I rise on a point of order, Mr Chairman. I do not mind sitting late in this Committee in the course of passing good legislation but, in the spirit of camaraderie, I would hope that the contributions of the member for Spence improve in the next hour or so.

The Hon. S.J. BAKER: There is some confusion as to when people lose their right of free negotiation, and that is the issue: at what point can someone have placed upon them conditions which they would normally not enter into in full knowledge? It is a matter about which the Attorney has heard from members on our side of the Committee: how do you handle a harsh and unreasonable contract without potentially destroying all contracts as soon as someone is dissatisfied with something for which they have signed up? This is not a competent amendment as it stands. We are willing to look at the issue of what is harsh and unreasonable.

Is it harsh and unreasonable during the bargaining period, or is someone being forced to take up harsh and unreasonable conditions because they lack bargaining power, or, during the contract, does it become harsh and unreasonable due to particular circumstances? A number of issues need a little more contemplation than we have been able to give them, and that is why this provision was not in the original Bill. I know that all members have raised instances where their constituents have felt aggrieved about issues relating to their rent or their terms of lease. I was involved in a situation about a year ago where a landlord promised that a certain shop would be the only shop of its type in the centre. The arrangement was signed up yet, within the time of the lease, a competitor with a similar shop appeared in the centre.

We are talking about rent. Everyone wants to pay $1 for rent and get $100 worth of value but, in the middle, we have an arrangement whereby, if it is commercially responsible, people have the capacity to negotiate. I hear what the member for Spence is saying, and I have heard what a number of my colleagues have said about this issue. It may well be that in conference we have a greater capacity, if this is rejected, to come up with something that is workable. Quite frankly, at this stage it is not workable.

Mr BASS: Clause 38, which deals with harsh and unreasonable terms for rent, obviously has been inserted to look after the lessee. If clause 38 is removed, will the Government address the problem that has occurred at Westfield Tea Tree Plaza, which is in my electorate, where on occasions a lease has expired and Westfield has offered the tenant conditions which are both harsh and unreasonable? I cite the example of a small business which had been built up over five years and which was successful. When the lease was up for renewal not only was the shopkeeper charged a substantial increase in rent but also Westfield wished to remove 20 per cent of the person's business because it said that it no longer wanted him to sell a particular article because a shop around the corner was going to sell it.

It had already increased the rent and then it wanted to take away his ability to earn by telling him he could no longer sell an item that made up 20 per cent of his income. In my opinion that was harsh and unreasonable terms for rent. That person had no option but to either pack up and lose his business or accept the harsh and unreasonable terms. If Clause 38 is removed, will the Government undertake to look at providing some protection in this area in another place or at a conference?

The Hon. S.J. BAKER: I thank the member for Florey for the remarks he has made. I presume that every member of Parliament has had occasion when someone has walked through the door and said, 'I have to cop it sweet; this is all I can do; I have to sign up; it is my livelihood, but the

landlord is taking all the profit.' That has been said on a number of occasions. If we were to delve into the story on each occasion I think we would find some reasons that might modify our initial understanding of the problem. Clause 38 relates to existing leases, and I have made the point that, if we allow this to go ahead, any time a person gets themselves into financial strife they can say that the conditions are harsh and unreasonable. What is harsh and unreasonable? It is harsh and unreasonable if someone feels that they have been treated unfairly, but that may not be the situation that prevails.

A franchisee came to me and said, 'Mr Baker, I need your help. I am being treated very badly by a particular organisation.' I told him that I would find out what was going on and asked him for all the details. He said that he had to pay a franchise rent of $60 000 a year and that that was far too much for what he was getting and the promises that he was given. I did a bit of research and sent the information to the organisation, which told me that this person had gone into some land deals that had gone awfully wrong and that he was now looking at some way of avoiding his responsibility under the franchise. They told me that I should be aware that his business was one of the most profitable of these particular establishments, and everyone has been to one of these establishments in the past. He complained to me that his conditions were harsh and unreasonable, yet he had lost all his money gambling. In other words, it is an issue that in some cases is seen only in the eye of the beholder.

The member for Florey raised the issue of what happens at the end of the lease. That is not what we are talking about here: we are talking about what happens during the lease, and that is a different principle to clause 38. This is not an issue in which most members have a very strong interest. Unless they have been tricked or unless they have not read things properly, most members would agree that there should be a rental hierarchy at the beginning of the lease arrangement. There would be very few people who would then have a right to come back and say, 'I didn't know what I was doing; the rent was far too much.' The issue to me is not this clause because everyone at some stage has signed a contract and, if I sign a contract, I meet the terms and conditions of that contract. That is why I think this clause is misplaced.

In answer to the member for Florey's question, it is a matter about which we will certainly be deliberating long and hard in the time available during the passage of this legislation. The matter is being looked at by the Attorney, and he has been looking at this issue and the issue raised by the member for Florey since the introduction of the Bill in another place and since it has come to this Chamber. To date he has not come up with a workable alternative, but he is giving the issue further consideration. More importantly, if we cannot come up with a magic formula in the conference, I suggest that, as the issues really are quite complex and as we want to maintain balance, it is appropriate that those issues are considered in the forum of a select committee. So, the Attorney is looking at it and he will continue to look at it and if, following the conference, the issue still fails to reach a satisfactory conclusion, that is an issue that will be considered by a select committee.

Clause negatived.

Clauses 39 and 40 passed.

Clause 41—'Demolition.'

The Hon. S.J. BAKER: I move:

Page 21, lines 26 to 30—Leave out subclause (4).

We ask that this clause be deleted from the Bill as it is the view of the Government that a provision that requires tenants to be given a first option to lease a shop in a rebuilt shopping centre after demolition has occurred is totally unreasonable and would place an unwarranted burden on the landlords or the lessors. It would mean that the landlord was constrained to the extent that he or she would be precluded from making a decision in connection with his or her investment, tenancy mix or what might be achievable in the market place in terms of rent.

The Government is also of the view that the current definition of 'demolition' is clear and unambiguous and does not give rise to the concerns that were raised in another place. It does not happen very often, as we are all aware. People do not go around demolishing good shopping centres, quite frankly. It is just not on.

I have had one example in my electorate where there was an arrangement in place, the shopping centre was falling apart, it was demolished and a new shopping centre was built. There was a commercial arrangement made between the tenants—and the gap between the building being demolished and rebuilt was six or nine months. At that stage the tenancies had run down to monthly rentals so they were not on a continuing contract of three years. The landlord had structured the deal to inform the tenants exactly what his intentions were. Of the four tenancies of the old, falling down shopping centre, which was replaced, two were given new tenancies and two did not want to pay the rent, so they went elsewhere and set up shops. That is the only experience I have had in my area. You do not demolish something that is strong and viable.

Mr ATKINSON: The Opposition supports the subclause. The difficulty we have with the Government's position is the definition of 'demolition' in the Bill, which we feel will give landlords a right to expel tenants for demolition well short of what the common man regards as demolition. The Retail Traders Association wrote to me about this matter and stated that the clause on demolition ought to contain a provision to provide for a tenant in a centre to be offered a lease in the event the centre is rebuilt as a shopping centre. This is particularly required given the definition of 'demolition'. The Small Retailers Association wrote to me and stated:

> The word 'demolition' has been given new meanings in the part—meanings which wouldn't be anticipated by any reasonable person on reading 'demolition' in a lease. This change in definition will permit gross abuse of this part of the Act and in fact create a very easy method for the unscrupulous landlord to evict a tenant and 'steal' the business. There are many repair jobs that could require a very short term vacancy of premises—this clause allows the landlord to evict for whatever reason is deemed to require a vacancy, that is—

perhaps they mean for instance—

> simply replacing a ceiling.

I ask the Deputy Premier to respond to these concerns by the Retail Traders Association and the Small Retailers Association.

The Hon. S.J. BAKER: The response is in two parts. First, nobody questioned the definition of 'demolition', and so the term demolition, as described in the Bill, remains. It provides:

> 'demolition' of a building of which a retail shop forms part includes a substantial repair; renovation or reconstruction of the building that cannot be carried out practicably without vacant possession of the shop.

Nobody questioned the issue of demolition. If there was to be some movement on what is demolition under the definition

which led to the fears that have been outlined by the member for Spence, I would have thought there would be activity regarding the definition of 'demolition', because to do otherwise raises the issue whether someone has the first right when a building is flattened for five years and a new building is constructed in its place. It does not make sense. The notes state that there was agreement in respect of demolition: there was disagreement from two of the organisations as to whether there should be a first right to take up a new lease.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: No, it does not. It provides that, if a building is completely demolished, if it is not rebuilt for, say, five years and if I want a lease, I also want the first option.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: That is totally impractical.

Mr Atkinson: The retailers do not think so.

The Hon. S.J. BAKER: Can I say that the retailers should have looked at the definition of 'demolition'. They did not question the issue of demolition. My advice is that they did not look at the issue of demolition. Again, I was not at the meeting and the member for Spence was not at the meeting.

Mr Atkinson: As a matter of fact I was at one of those meetings.

The Hon. S.J. BAKER: My best advice is that the definition of 'demolition' was not subject to criticism. We then get further down the track and you are imparting rights that are totally impractical. As the member for Spence would understand, if the shop does not need to be vacated and a person is forced to vacate, there are clear penalties. They can be pursued. If it is unreasonable for vacant possession to be taken, clearly the legislation provides protection. That seems to be the issue. However, under normal circumstances regarding the issue of first option when the lease has run out or vacant possession has been taken because of demolition, it is a hard ask on anyone to say that this person has the first option. The member for Spence refers to an issue that does occasionally occur. I am not sure that he has the right solution or that he and his compatriots in another place have the right solution with this amendment. It is incompetent in its total breadth but I can understand what the member for Spence is trying to achieve. So there is a difference of opinion. It is a matter that we can look at further.

Mr ATKINSON: I have a feeling of tremendous warmth being understood by the Deputy Premier for probably the first time during this debate. But his understanding does not take retail tenants very far. In fact, the Small Retailers Association raised just the point I am raising: on page 4 of its letter to me, the association stated:

> Demolition must mean to destroy, pull or throw down, which are common English meanings.

So the Small Retailers Association wanted this to be handled by changing the definition of 'demolition'. However, there is another way of dealing with this matter and that is the way it was dealt with in another place, that is, to retain the different and new definition of 'demolition' which the Government introduces in this Bill but to insert subclause (4) of clause 41 which the Government now seeks to remove. The retailers were happy to accept the definition of 'demolition' provided they were given protection from what they saw as an unnecessarily broad definition of 'demolition' in the Bill. Subclause (4), which the Liberal Party seeks to delete, provides:

> If a retail shop lease is terminated because of the proposed demolition of the building of which the retail shop forms part, and a new retail shop is to be located in the same (or substantially the same) place, the lessor must, at the request of the lessee made before the termination takes effect, enter into an agreement giving the lessee a right of first refusal for a lease of the new shop premises on reasonable terms and conditions.

So, that provision solved the problem, so far as the retailers were concerned, of the expanded and new definition of 'demolition'. Retailers generally are worried that, although the Bill gives them some new and valuable rights, they are afraid that landlords will evade these rights and protections by terminating tenants' leases in an underhanded way. One way of terminating a tenant's lease in a roundabout way is for the landlord to arrange for renovation—remember, renovation is part of 'demolition', unusually in the definition—of the tenant's premises in a way that requires vacant possession and by that means get the tenant out.

The landlord can say that he or she does not particularly like the provisions of the new law and seek to punish the tenant by arranging just enough renovation of the tenant's premises to require vacant possession. Once that vacant possession is achieved, the tenant is out. The Labor Party and the Democrats are saying, 'If you do that to a tenant, the tenant will have a right of renewal on reasonable terms or at least first refusal.' We think that that is justice and we oppose the Government's seeking to delete this provision from the Bill.

Mrs ROSENBERG: A couple of issues are raised under this clause. The expanded definition of 'demolition' to encompass renovation and reconstruction has caused the Retail Traders Association to write to the member for Spence because it sees a possible excuse to move the tenant out. I find that difficult to accept because, if the landlord is really uncomfortable about a tenant, many other provisions could be used to terminate a lease validly. Is it valid to assume that a landlord would go to all the trouble of a renovation, refurbishment or demolition simply to remove a tenant when there are many more cheaper ways of achieving that?

Mr Evans interjecting:

Mrs ROSENBERG: Whatever, so long as it does not cost as much. As I question that reasoning, I question the reasoning of the association in suggesting that. However, there is validity in the comment that the provision could be used and perceived as being used as a means of eviction. Can the Deputy Premier guarantee that further consideration be given to this provision in a conference and/or a select committee? Perhaps a time limit could be applied, such as three months. Clearly, three months is a reasonable time but five years, as was cited, is not reasonable. A reasonable time could be considered.

The Hon. S.J. BAKER: I will say 'Yes' to the honourable member's suggestion. We have to sort out what is actual demolition, as that issue is germane to the whole argument of what is fair and not fair. Provisions in the Bill relate to 'demolition', which is wide ranging. It must be substantial: it cannot be just knocking down a wall to get rid of a tenant, because that would not be right and anyone who carried on with that caper would find themselves in court.

Mr Atkinson: How will they find themselves in court?

The Hon. S.J. BAKER: The Bill provides that sort of protection. I refer to clause 41, which provides particular protections in relation to demolition. Clause 42 provides:

> . . . a retail shop lease contains provision that enables the lessee's business to be relocated, the lease is taken to include provision to the following effect:

There are relocation and demolition provisions designed to give general protection. There are circumstances as to what is in the broad and what is in the particular and whether the Bill covers some situations that members would wish to have debated more fully. There are circumstances where there might be a common view about what is right and what is unfair but, because of the broad definition of 'demolition', the commitment and placement of some restriction or constraint upon the owner of the property in the way that members are suggesting would be harsh and unconscionable.

Whether there is another set of words that can accommodate what members believe is appropriate, I am sure we are willing to consider: that will certainly be looked at. As to the wider issue, a landlord could say, 'I want to completely revamp my shopping centre or one side of the centre and I want to change its concept completely.' That has happened in a strip shopping centre not far from my premises and there is then the issue of whether the landlord should be forced to accept the original tenants back into the premises. That is a matter of judgment.

I refer to this shopping centre where part of the centre was dead space, although I am not sure what happened to the tenants in the process. Some of the walls were knocked out and changes were made. New tenants were brought in who provided food, such as pasta, and a sit-down service; it was very successful. There had been a number of tenants who simply failed. One week we would look and see a florist, the next week a health food shop and then a condiment shop. It changed about three times in the space of a year until the landlord got wise and saw that it was time to change the concept. We have to grapple with those issues and determine what is fair and reasonable. This will be looked at again but I cannot readily conclude that we will find a natural solution.

Amendment carried; clause as amended passed.

Clause 42—'Relocation.'

The Hon. S.J. BAKER: I think that this matter can be satisfied easily. The Government opposes this clause in its present form and proposes new clause 59A as its replacement. It is a matter of positioning and context within the Bill.

Clause negatived.

Clauses 43 to 49 passed.

Clause 50—'Notice to lessee of lessor's intentions at end of lease.'

The Hon. S.J. BAKER: I move:

Page 25, lines 30 to 37, and page 26, lines 1 and 2—Leave out subclauses (2) and (3).

This is the issue about which many people have a very strong conviction. It is the issue as to whether there should be permanency in a tenancy: that a person has a natural right of tenancy over the rights of the investor. This issue has invoked strong feelings among a number of members. We can appreciate and understand the feelings of tenants as well as the position of landlords or lessors in terms of how they believe they can get appropriate returns from their properties. The issue was exceptionally well debated during the second reading. The extent to which a tenancy should go on became the centrepiece of the debate. The present position is that a tenant has prior rights over the investor in the investor's property. The Government obviously cannot accept that position. However, this issue will necessarily have to be looked at in a less hothouse atmosphere than the Parliament so that we can get a better balance, given the time for consideration, for example, of a select committee.

Ms HURLEY: As the Deputy Premier said, these issues have been extensively debated. However, the Opposition cannot let the Bill go through without again expressing its strong belief that these sorts of clauses should be included in any Bill which seeks to protect tenants in a reasonable fashion. Indeed, they are couched in very reasonable and mild terms. It does not give the tenant or lessee the constant right to stay in the tenancy, but it guarantees reasonable notifications and terms and conditions if there is a renewal or extension; and, if there is not, there is provision for a reasonable explanation. Contrary to what the Deputy Premier said, I think the Parliament is the best place to debate legislation. The Opposition has put forward a very strong argument, which the Deputy Premier has acknowledged, as to why these clauses should remain.

Mrs ROSENBERG: Earlier I mentioned that some of the Democrats' amendments which came from the other place did not improve the situation. I believe that example (3), 'The lessor requires the premises for demolition or refurbishment,' is covered adequately elsewhere, as is also example (4), 'The lessee has not complied with the terms of the lease'. However, the one part about which I feel strongly and have stated so in my previous contribution relates to a tenant who has carried on a business having the right to match the next tenancy that is being offered on the same conditions as the tenancy might be offered to another person wanting to come into those premises. That does not seem unreasonable, because it gives coverage to the landlord. The landlord can raise the rent, decide what refurbishment has to be done in the premises and a whole range of things, draw up a lease in those circumstances and offer it freely.

The Bill provides that he must have all those things available to offer to any prospective tenant. Therefore, he can offer them freely to anyone, including the current tenant. I believe that needs to be further considered, whether in compulsory conference or in a select committee. All other things being equal, I think we are disadvantaging the tenant by not letting the current tenant have an opportunity to compete with a new person coming into that tenancy.

Mr BASS: I also wish to put on record my concern that there is not a right for tenants to have a new lease offered at the expiry of an existing lease. In my second reading speech I said that I was not looking for perpetual leases, and I do not think that anybody is. All that people are looking for is a fair and equitable way of ensuring that the landlord and the tenant or lessee get a fair deal, or have the opportunity to take the matter to an independent arbitrator. I cannot understand why this has not been included in the Bill. I am not saying that they must have a right of renewal, but I think they should have the opportunity to extend their lease after five years and five years if they have done the right thing.

Earlier I referred to the Landlord and Tenant Act 1954 (originally enacted in 1927 and in operation in England and Wales all these years), the effect of which has been that business tenants, including retailers, are able to trade from a property in the knowledge that generally at the end of their lease they will be able to continue to trade from the same property unless they have defaulted on the terms of their current lease or unless the landlord can establish the right to reclaim possession for reasons which, in general, relate to an intention to redevelop the property or the interests of good property management.

Mr Atkinson: It worked very well in Warwickshire when you were a child.

Mr BASS: That is correct: in my old home county. It goes on to say why landlords cannot remove tenants from their properties without good reason. The Act does not protect bad tenants, so the landlord is faced with the situation in which only reasonable tenants can claim the right to retain possession. The Act also provides for a landlord to receive the full market rental of a property under a statutory lease, so the landlord should be no worse off financially than if he obtained vacant possession of the property and relet it on the open market. Indeed, the landlord will have continued occupation without many of the costs associated with reletting a vacant property. The next part is most important. It states that there have been no perceivable adverse effects on the United Kingdom property development market nor on the property investment market.

Vast sums of money have found their way into both property development and property investments since the end of the Second World War. Additionally, apart from during the occasional recessions which affect property markets throughout the world, business properties, including retail properties, have consistently produced good income flows and good capital growth. I ask the Minister to consider including in the legislation an arbitrator—a third person—who can listen to both the landlord and the tenant and make sure that they are not doing the wrong thing. Just a simple arbitrator is all it needs. It is not difficult; it has been done in England and Wales. I had thought that the only good things to come out of England and Wales were you and I, Mr Chairman. It is a good and workable Act which has worked for a long time and which should be introduced here.

The Hon. S.J. BAKER: I thank the honourable member for his constructive suggestion, and I know that on more than one occasion he has raised the issue of how we break the nexus. The simple answer is that I do not believe that this issue will be satisfied in conference, but I may be quite surprised. The information that we have available to us is that more than 95 per cent of leases in regional centres are renewed. So, if there are two willing parties (and we presume the two parties are willing), on 95 per cent of occasions the wedding is completed. The issues of arbitration and what is fair, reasonable and unconscionable are not necessarily satisfied by the wording of this Bill. What primary right does a person have over his or her own property? It is his or her own property: that person or company owns that property.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: If the member for Spence had a tenant on his property, I do not think he would say that that person had a right of tenancy for life. If he took on a boarder who said, 'I want a two year lease and I want a right of renewal' and at the end of two years they said that they now wanted another two, four or six years, on the same principle the member for Spence would say, 'That's fine. I hate you, but I really feel compelled to do it.' It is the same issue. What rights does a person have over the property they own? It is not a piece of public property: it is a piece of privately owned property. I think that if we start to depart too far from that principle we might as well say, 'Put a tag over it, this is subject to State Government control and you must walk through an inspector's or arbitrator's door.' I thank the member for Florey for his suggestion, which I do not really think is workable, basically because the Bill as it stands makes a number of assumptions in this context.

Clause 50(2) provides that the lessor must offer the lessee a renewal or extension of the lease at a reasonable rent and on reasonable terms and conditions unless the lessor has reasonable grounds for not doing so. I thought, 'That sounds like a Democrat amendment to me.' Four points of law are contestable on this issue: the lessor must offer reasonable rent, reasonable terms, reasonable conditions and reasonable grounds. That is absolutely impossible. Four matters have to be decided. The matter is not straightforward or clear; in the majority—95 per cent—of cases if a person who has a lease wants to renew it, a successful arrangement is made.

This clause tips the balance so far on the wrong side that it will not achieve the fairness that members have suggested it may achieve, and replacing it by establishing an arbitrator under the conditions specified in the Bill will not satisfy my concerns about a person's right over his or her own property. At the end of the day we must make some decisions about that. What seems to be happening here is that, as long as the tenant is looked after, the landlord—the owner of the property—does not have any rights at all. We can make up our minds about that.

I know that the member for Spence has already made up his mind, but I think the people of South Australia would be horrified if, for example, someone came to live with them who had a right of life occupancy provided they were a reasonable person. We should just take it back to simple principles. I have some reservations. I understand the concerns, and the matter can be canvassed. It is not a matter that can be satisfied overnight by calling up an arbitrator or placing someone in the middle of the negotiating team. I am not sure that that is the answer.

I am not sure that we need significant change to the provisions we have at the moment. However, I am sure that if we are going to reach some constructive resolution on this issue, which has grabbed most members if any one issue has, then it needs to be thought through a lot more carefully than what we have here, where we have four points of law to be decided by the—

An honourable member interjecting:

The Hon. S.J. BAKER: They are. I think I have covered the issue.

Mr ATKINSON: This is the guts of the Bill. All the good things that are achieved by this Bill, all the new and valuable rights that are given to retail tenants under this Bill could be negated—

Mr Evans: When their contract ends.

Mr ATKINSON: Yes. All the good things can be negated by capricious non-renewal of a lease. So, all the rights that are created for tenants under the Bill are at risk if this subclause is lost. Indeed, the Hon. Mike Elliott in another place said just that: the Bill hangs by this subclause. I am glad that the argument on this has been taken up to the Deputy Premier by Liberal dissidents such as the member for Kaurna and the member for Florey. I am glad that the argument has been taken up to the Deputy Premier by people within his own Party. Let me say to the member for Kaurna and the member for Florey that the Labor Party is in solidarity with them on this question. The Small Retailers Association wrote to me about this matter also and said:

> Of all the disputed issues one stands alone: the matter of a tenant's/landlord's rights at the end of a lease. The current Act [the Landlord and Tenant Act] in not addressing this singularly significant issue has provided landlords with the ultimate power, the power arbitrarily to destroy an income, an investment, a business and an employer. It is little wonder that tenants are haunted by the likelihood of non-renewal and literally live in fear of the landlord. Just visit any shopping centre and talk to tenants.

Mr Venning interjecting:

Mr ATKINSON: The member for Custance says it is unbelievable. He says that he does not believe the testimony of the Small Retailers Association. I hope the association circularises its members in the Custance electorate to tell them of their own local member's rejection of their plea. The Small Retailers Association continues:

> We are not arguing the case for perpetual leases, simply a system that enables fair play and what should be every tenant's right to be able to protect their business, which is their investment. Banks cannot steal an investment but a landlord can.
>
> If this matter cannot be resolved then, notwithstanding many of the good provisions of the proposed Act, nothing will in fact change because no tenant can afford to take any action or do anything which may result in a landlord's taking revenge via a refusal to renew a lease.
>
> The stance of small retailers on this and other contentious issues is not one of taking absolute advantage. We simply ask for fair play after having suffered for so long the harsh and often unconscionable treatment permissible under the current Act. Enough is enough and now is the time for every politician, regardless of political ideologies, to create a future for everyone in the retail industry, which is an important part of our economy and a major employer.

The Deputy Premier tries to claim that the member for Florey, the member for Kaurna and I, in defending subclause (2) of clause 50, are trying to create perpetual leases, that we are trying to destroy property rights. That is not true. If one looks at the grounds for requiring renewal under subclause (2), one will see that they are carefully enumerated. Since the Deputy Premier did not mention them, I will. The clause provides:

> The lessor must offer the lessee a renewal or extension of the lease at a reasonable rent and on reasonable terms and conditions unless the lessor has reasonable grounds for not doing so.

The clause goes on to enumerate those reasonable grounds. We are not left in any doubt. I know that the members for Mitchell and Davenport are disturbed by the number of times the word 'reasonable' is used in those clauses, as well they might be, because it could create uncertainty if there was no aid to interpretation. However, there is no uncertainty because the clause goes on to say on what grounds a landlord can refuse to renew the lease. Those conditions are:

> (1) Another person has genuinely offered the lessor a higher rent for the premises, the lessee has been given an opportunity to match the higher rent, and has declined to do so.
>
> (2) The lessor proposes to use or lease the premises for a different kind of activity or business.

How general is that? It seems to me that that could allow the landlord to dispose of a disliked tenant quite easily. Further conditions are:

> (3) The lessor requires the premises for demolition or refurbishment.
>
> (4) The lessee has not complied with the terms of the lease.

They are the grounds. I would like the Deputy Premier to tell the Committee if there are any other reasons why a landlord would want to get rid of a tenant, because it seems to me that that covers the field.

Mr Caudell interjecting:

Mr ATKINSON: The member for Mitchell interjects, out of his place, that another reason might be that the tenant has gone broke. If that is so, ground four will apply, that the lessee has not complied with the terms of the lease. It is interesting that the member for Mitchell is back, because earlier in the evening, on one of the earlier clauses on the application of the Act he was proved to be completely wrong in his interpretation about 1 000 square metres and $200 000. I refer readers of *Hansard* to that clause, and I inform them that, shortly after making his erroneous allegations, the member for Mitchell left the House so was not in a position to be corrected, otherwise than on the record.

The Retail Traders Association has also written to me about this very matter, and I quote:

> One of the difficult issues for many tenants in exercising their rights is the threat of non-renewal of lease if they do not comply with the demands of the landlord. This threat can even result in activities being undertaken that are barred by law but which will not be complained about because of fear of non-renewal of the lease. Both the current Act and the proposed Bill [that is the Government's Bill, the Liberal Party's Bill] allow a landlord total freedom without any reason needing to be given to deny a retailer an opportunity to continue in his business once his lease expires. There is an absolute denial of any rights for the tenant to secure a return on his often significant investment in shop fittings and fixtures, not to mention goodwill.

The association continues:

> Therefore, one or more of these reasons must be provided to the tenant—

and they are referring to the reasons that the Labor Party has inserted into the Bill—

> in writing at the time the landlord provides notice. This in turn provides an opportunity for the tenant to take the matter to the Tenancies Tribunal should he believe that the reasons given by the landlord are not valid in terms of the four criteria identified above. It is our view that this form of accountability would reduce the extent of capricious non-renewal of leases, ensure much greater effectiveness of the Bill and not significantly reduce returns to landlords.

Will the Deputy Premier please tell the Committee what other criteria there would be for a landlord reasonably refusing to renew a lease other than those which are now specified in the Bill and which he seeks to delete?

The Hon. S.J. BAKER: I thought that the member for Spence was a reasonably intelligent person and had a little bit of imagination—

Members interjecting:

The Hon. S.J. BAKER: I thought he had a little bit of imagination, I was not giving him too much credit. I would say to the member for Spence that there are at least two flaws with this argument. The first is, as the Bill stands, there are four issues raised in subclause (2) that have to be satisfied. In the examples, and they are not meant to be limitations but they are shown as examples—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: I can give him a few more to go with them if he wants to put them in.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: If the landlord thinks that the person has been consistently dishonest; if the landlord thinks the person does not behave properly to other tenants; if the landlord believes he is being paid slowly to the point where he has not been given—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: No. The member for Spence says that he has four criteria that describe the world but I say that there are a hell of a lot of other criteria, and what becomes fair and reasonable? That was the challenge. I have just completed the challenge. I just simply make the point that the honourable member got it wrong. I can think of a whole lot of other issues that may come up.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Of course he complied with the terms of the lease.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Paid slowly. There is nothing about behaviour in there or about the treatment of co-tenants. You could say that this is a list of examples, but there may be

150 others that tenants can dream up as being unfair and unreasonable.

Mr Atkinson: There are only four in the Bill.

The Hon. S.J. BAKER: Again the member for Spence does not read his law. Quite clearly, without getting into an argument as it is 11.30 p.m., it has examples. It does not say 'i.e.'—it says 'e.g.', and it lists certain things, but there may be 150 other things people believe may be unreasonable.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: It is an important issue. When the problem of what could be done about this renewal issue was put forward to this group, the Retail Traders Association said that the best working provisions for tenants was in New South Wales. That was the one with which everybody felt comfortable and the one on which many of the changes in this Bill have been built. Certainly some of the principles have been taken from that legislation. We were given the criteria that have worked particularly well in that State.

The proposition was laid on the table and was enthusiastically endorsed by all and sundry except, I believe, the small retailers. I am not sure where they were at the time. They wanted the New South Wales provision whereby we are fair about the intention of the landlord at the end of the lease term so that it gives people the opportunity to make other arrangements or to go back to the landlord and talk about it so that they can establish a good working relationship if it is not already in place.

All that was laid on the table during the negotiations—and this was enthusiastically endorsed by the retail traders—was the issue of communication of the intentions of the landlord in relation to the renewal; in other words, not leaving it up to the last five minutes so that the tenant was left in an impossible position. That is the background, and the member for Spence is probably well aware of that background. The fact is that a few horses have been changed in the process. No Government in Australia has seen fit to take this provision, because it is absolutely impossible—

Mr Atkinson: No Parliament.

The Hon. S.J. BAKER: No Government.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: The member for Spence can argue the toss of the coin, but I suggest that the Government at the end of the day introduces the legislation, proclaims it and then enacts it. Ultimately, it is the Government that determines the disposition of the Bills. Suddenly we have come out of the woodwork, having perhaps been a pace off what is happening in other jurisdictions, and we have streamed straight past and destroyed virtually any rights the landlord may have had in the process. They are all contestable. It is a matter of degree, because they could be subject to significant litigation. The issue of leases and their renewal has been raised. We thought, perhaps naively, that having taken on the most appropriate legislation in Australia we had the problem fixed. We are now getting an amendment which, frankly, cannot be accepted in any shape or form. Some members will say that it sounds like a terrific idea, so let us go for it.

It is full of flaws; it does not do the job the honourable member would wish it to do. The honourable member is saying that every piece of private property should now be public property. That is what he is saying. The member for Spence is saying that anyone who owns land should have no rights over it. I wonder how many other people agree with him. We must get that balance back. We may have the capacity to derive a useful solution to it, but I do not believe we will be able to do it in the short time available today. I understand the genuine concerns of members.

If members believe they are living up to the responsibilities of their tenants by simply saying that an investor has no rights over anything on his or her property, I cannot contemplate what will happen in respect of investment in South Australia if this clause prevails. There must be some other way of getting a semblance of what people would wish to see without taking away from people the right of discretion as to how their property should be operated.

Mr EVANS: I wish to place on record some concerns I have about the views expressed by the member for Florey. I support the Deputy Premier on this issue. I am in an unusual position in that I am a retail tenant in three shops; at times I have been a retail tenant in four shops. Prior to my entering Parliament I sold a business, so I am now down to three shops. I have some concerns about the view that once your legal contract expires you have an automatic right to renew that legal contract. That is certainly the way I would interpret this Democrat amendment from the other place.

I do not know of any other legal contract where you get an automatic right of renewal at the end of that contract. Anyone who enters into a retail lease, in my view, is doing nothing more than entering into a legal contract for a specified time. Certain terms and conditions apply: the price you pay; what you can do with the premises, etc., but ultimately one of the terms and conditions of the legal contract, called a lease, is that it is of fixed duration. So, the person making a business decision—as I have done on different occasions—must weigh up what happens to their business at the end of that lease: will the landlord increase the rent and, if so, do I build that into my costs or my business plan?

Alternatively, do I build into my business plan the fact that, at the end of my lease, I may have to bear the cost of moving my shop to a different venue? They are all business decisions for the tenant. If tenants go into a lease without making those judgments, that is not the landlord's fault and, in the cold, hard light of day, it is not the landlord's concern. The landlord and the tenant both have the right to make a profit. The landlord makes a profit by the rent received on investment; the retailer makes his or her profit from the sale of goods. Just as the retailer argues that he or she has a right to sell their goods to make a profit, at the end of the day the landlord has the right to make a profit from the rent charged.

When that legal agreement is concluded, that is the landlord's opportunity to judge whether they wish to increase or decrease rent to get their market return, and that is a fair judgment in my view. In fact, on two of my leases I have been fortunate to negotiate a rent decrease—it depends on how good your relationship is with your landlord. At the end of the day, if my landlord comes to me and says, 'Iain, you have been a tenant of mine for 10 years but I do not wish to renew your lease,' I have no right to say to the landlord, 'Hang on; I have been here 10 years; I know my legal contract is ending, but I want to go for another 10 years and you must let me.'

An honourable member interjecting:

Mr EVANS: Or even another one year—it does not matter. The landlord has just as much right to make a profit off their investment as does the retailer off their investment. This problem comes about from the fact that many years ago the Parliament of the day regulated what space was going to be available for retail. As soon as it did that, it put the landlords and tenants at war because the land available for

retail became restricted. Therefore, the landlords were always going to have what the tenants would perceive as an upper hand in any negotiation. So this underlying problem that has been raised needs to be looked at in the long term, because certainly the problem was created years ago when it was decided that the planning laws would restrict only certain areas of land to be retail areas. If we look at who owns most of the retail land in South Australia we will understand where some of the problems are coming from.

To me it is no different to another industry in which I have worked, namely, the building industry. I was a subcontract carpenter for seven years. As such, my income relied on a contract with a builder and, when that contract finished, there was no obligation on the builder to give me more work, just as there should be no need for the landlord to provide to the tenant a guaranteed source of income from that particular site. Once the legal agreement is finished, that is the end of the argument: it is finished.

I have some concerns with the arguments of the member for Florey, and I raise these just for further consideration, as I understand that possibly there will be further debate about this matter in a conference. If the matter goes to arbitration, we must ask ourselves first, whether the arbitration will be compulsory and, secondly, whether it can be generated by both parties. If the arbitration is to be compulsory and if it can be generated by both parties, I assume that the member for Florey is saying that, if the landlord wants to keep the tenant, he can say to the arbitrator, 'This tenant wants to leave at the end of his lease, but I do not want him to. I am appealing to you to make him stay.' That is the same right for the landlord as for the tenant being able to say to the arbitrator, 'This landlord will not keep me and I want to stay.' I do not understand why a Parliament would ever want to give one side of that legal contract a bigger advantage than the other side. So, if it is to be compulsory and the matter must go to arbitration, both parties should be able to take it to arbitration ultimately, and not just the tenants.

If it is not to be compulsory, it should be remembered that that system is available to anyone in the market place today by getting an independent valuer to value the rent and the conditions. Thousands of companies will do it. So, if you are going to arbitration but not making it compulsory, you do not need to raise that idea now because that is available to those in the market place. In fact, I used the service myself as recently as four or five months ago. So, I have some major concerns about this concept of going to arbitration. Basically, I wish to place on record that I am against the concept of perpetual leases, and there is no doubt in my view that this is the concept of perpetual leases.

Also, the member for Spence raises these examples and, as the Deputy Premier points out, that is all they are: simply examples. To my knowledge they are not an exhaustive list. If they were intended to be an exhaustive list and the only grounds, the amendment should say that. In my view the amendment does not say that because it lists them only as examples, and we could list another 50 if they existed. So, if the Opposition was serious about making those the only grounds on which a landlord could seek not to accept the tenant, it would have worded the amendment that way. So, I support the Deputy Premier on this issue and I put my concerns on record.

Amendment carried.

The Committee divided on the clause as amended:

AYES (27)

Andrew, K. A.	Armitage, M. H.
Ashenden, E. S.	Baker, D. S.
Baker, S. J. (teller)	Becker, H.
Brindal, M. K.	Brokenshire, R. L.
Buckby, M. R.	Caudell, C. J.
Evans, I. F.	Greig, J. M.
Gunn, G. M.	Hall, J. L.
Ingerson, G. A.	Kerin, R. G.
Leggett, S. R.	Lewis, I. P.
Matthew, W. A.	Meier, E. J.
Olsen, J. W.	Penfold, E. M.
Rossi, J. P.	Scalzi, G.
Such, R. B.	Venning, I. H.
Wotton, D. C.	

NOES (11)

Atkinson, M. J. (teller)	Bass, R. P.
Blevins, F. T.	De Laine, M. R.
Geraghty, R. K.	Hurley, A. K.
Quirke, J. A.	Rann, M. D.
Rosenberg, L. F.	Stevens, L.
White, P. L.	

PAIRS

Brown, D. C.	Clarke, R. D.
Kotz, D. C.	Foley, K. O.

Majority of 16 for the Ayes.

Clause as amended thus passed.

The Hon. S.J. BAKER (Deputy Premier): I move:

That Standing Orders be so far suspended as to enable the House to sit beyond midnight.

Motion carried.

Clauses 51 to 59 passed.

New clause 59A—'Relocation.'

The Hon. S.J. BAKER: I move:

Page 29, after line 24—Insert new clause as follows:

59A. If a retail shop lease contains provision that enables the lessee's business to be relocated, the lease is taken to include provision to the following effect:

(a) the lessor cannot require the relocation of the lessee's business unless and until the lessor has provided the lessee with details of a proposed refurbishment, redevelopment or extension sufficient to indicate a genuine proposal that is to be carried out within a reasonably practicable time after relocation of the lessee's business and that cannot be carried out practicably without vacant possession of the lessee's shop; and

(b) the lessor cannot require the relocation of the lessee's business unless the lessor has given the lessee at least three months written notice of relocation (a 'relocation notice') and that notice gives details of an alternative shop to be made available to the lessee; and

(c) the lessee is entitled to be offered a new lease of the alternative shop on the same terms and conditions (excluding rent) as the existing lease except that the term of the new lease is to be for the remainder of the term of the existing lease[1]; and

(d) if a relocation notice is given the lessee may terminate the lease within one month after the relocation notice is given by giving written notice of termination to the lessor, in which case the lease is terminated three months after the relocation notice was given unless the parties agree that it is to terminate at some other time; and

(e) if the lessee does not give a notice of termination under paragraph (d), the lessee is taken to have accepted the offer of a lease unless the parties have agreed to a lease on some other terms; and

(f) the lessee is entitled to payment by the lessor of the lessee's reasonable costs of the relocation, including legal costs[2].

[1]Paragraph (c) only specifies the minimum entitlements that the lessee can insist on. It does not prevent the lessee from accepting other arrangements offered by the lessor when the details of a relocation are being negotiated.

[2]This section does not prevent the parties negotiating a new lease for the purpose of relocating the lessee. Paragraph (f) only specifies the minimum entitlements that the lessee can insist on and the parties can come to some other arrangement for the payment or sharing of the lessee's relocation costs when the details of a relocation are being negotiated.

This is a relocation matter.

Mr ATKINSON: Will the Deputy Premier explain to the Committee the difference between the Government's relocation clause and the relocation clause 42 in the Bill as it was received from another place.

The Hon. S.J. BAKER: The relocation has been relocated, I understand. It was its position in the Bill. We are moving it back to where it should have been. It was next to demolition, but that was inappropriate positioning in the Bill, so now it has been placed appropriately. As far as I am aware, the provision is the same.

New clause inserted.

Clauses 60 to 66 passed.

Clause 67—'Stay of proceedings.'

The Hon. S.J. BAKER: I move:

Page 31—
Line 12—Leave out 'a court, the court' and insert 'the Tribunal or a court, the Tribunal or court.'
Line 15—after 'The' insert 'the Tribunal or.'

Amendments carried; clause as amended passed.

Clause 68—'Statements made in the course of mediation proceedings.'

The Hon. S.J. BAKER: I move:

Page 31, line 19—After 'before' insert 'the Tribunal or.'

Amendment carried; clause as amended passed.

Clause 69—'Power to intervene.'

The Hon. S.J. BAKER: I move:

Page 31, line 22—After 'before' insert 'the Tribunal or.'

Amendment carried; clause as amended passed.

The Hon. S.J. BAKER: I move:

Heading—
Page 31, line 26—Leave out 'MAGISTRATES COURT.'

Amendment carried.

Clause 70—'Jurisdiction of the Magistrates Court.'

The Hon. S.J. BAKER: I move:

Page 31—
Line 29—Leave out 'Magistrates Court' and insert 'Tribunal.'
Line 30—Leave out 'Magistrates Court' and insert 'Tribunal.'
Page 32—
Line 7—Leave out 'Magistrates Court' and insert 'Tribunal.'
Line 9—Leave out 'Magistrates Court' and insert 'Tribunal.'
Line 10—Leave out 'Magistrates Court' and insert 'Tribunal.'

Amendments carried; clause as amended passed.

Clause 71—'Substantial monetary amounts.'

The Hon. S.J. BAKER:I move:

Page 32—
Line 15—Leave out 'Magistrates Court' and insert 'Tribunal.'
Line 16—Leave out 'Magistrates Court' and insert 'Tribunal.'
Line 19—Leave out 'Magistrates Court' and insert 'Tribunal.'

Amendments carried; clause as amended passed.

Clause 72 passed.

Clause 73—'Application of income.'

The Hon. S.J. BAKER: I move:

Page 33, line 15—Leave out 'Magistrates Court' and insert 'Tribunal.'

Amendment carried; clause as amended passed.

Clause 74 passed.

Clauses 75 to 78 negatived.

Clause 79—'Special provision about franchises.'

Mr ATKINSON: I am disappointed that the Government has opposed a number of clauses and removed them with its massive majority. Could the Deputy Premier pay the Committee the courtesy of explaining why these provisions need to be removed. I am not terribly fussed about part 11 'Industry Advisory Committee', but I would have thought that the Deputy Premier would want to explain why the Government was moving to delete the protection for subtenants in the Bill. I accept that I have missed that clause, but perhaps the Deputy Premier in his mercy might explain during this related clause 79 why he seeks to delete both clauses 78 and 79. Surely it is a normal courtesy when the Government deletes clauses from a Bill that the Minister explains why he asks the Committee to vote for the deletion.

Clause 79 was a matter of great concern to retailers. Their worry is that many retailers are now operating under franchise agreements and it may be that the head tenant is the franchisor and the subtenant is the franchisee. It may be that McDonald's decides to take a stall in Westfield Arndale and enters into a lease agreement with Westfield Arndale. McDonald's manages to find a franchisee to run the business and later McDonald's wants to withdraw from Arndale and go elsewhere, or perhaps the franchisor goes out of business.

In either of those situations there is no protection for the franchisee running the business. In inserting this clause in the Government's Bill, the ALP and the Democrats hoped to give some protection to the franchisee in such circumstances. The franchisee can go to the landlord and say, 'I know McDonald's has pulled out of the lease, but I am willing to stand in the place of McDonald's and continue to run a business here selling food to the people who shop at Arndale.' In principle, what is wrong with the subtenant or the franchisee standing in the place of the head tenant or franchisor and fulfilling all the obligations to the landlord that are required under the lease?

The Hon. S.J. BAKER: The member for Spence has conduct of the Bill for the Opposition and saw our amendments on the table. He was under no illusion about which clauses would be supported, opposed and amended. He then has the cheek to suggest that I should explain each clause. He then said, 'I was not too fussed about the Industry Advisory Committee.' He did not require me to explain that clause because he knew what I was on about. The member for Spence should take his responsibility for carriage of the Bill seriously. If he has missed something on the way through, he can ask my indulgence to go back on past history.

Mr Atkinson: I now ask for your indulgence.

The Hon. S.J. BAKER: Okay. The member for Spence has answered his question about the Industry Advisory Committee: it is just another committee and does not serve anyone a good purpose. As I said consistently, if we have a good look at this whole area we might get some agreement or legislation in place that takes the industry beyond the situation of the bickering that we now see.

Clauses 78 and 79 deal with subleases, and 79 deals also with franchises. In fact, the sublease does deal in part with the franchise operations and is meant to cover the franchise operators. The Government is of the view that the Bill is aimed at retail leases but not at franchise agreements: simple, straightforward. Comments have been made to the Government that the Bill provides no protection for a franchisee simply because they are not legally recognised as a tenant.

The Government does not agree with this proposition. Franchisees clearly gain the protection of the Bill if they fall within the definition of a lessee under the Bill. 'Lessee' is defined to include a person who has a right to occupy a retail shop under a retail shop lease either as head tenant or as sublessee.

So, the key issue is that we are dealing with retail leases; we are not talking about franchises under this Bill. Franchise agreements are often the subject of separate agreements from retail shop lease agreements. This is due to the preference on the part of the parties to the lease to prepare retail lease agreements in registrable form. In such instances, the provisions of the Retail Shop Leases Bill would apply only to the retail shop lease, which grants the franchisee a right of occupancy to the premises. The terms and conditions of the separate franchise agreement would not be impacted upon in this instance by the provision of the Bill. Further, in cases where the lease agreement is incorporated into the franchise agreement, the Government is of the view that the Retail Shop Leases Bill would apply only to that portion of the agreement that relates to the retail shop lease and not to the agreement as a whole.

So, we are talking about a retail shop lease: we are talking about a Retail Shop Leases Bill. Making it an omnibus Bill and putting in franchises was not the intent of the Bill. It never has been the intent of the Bill. If members want to think about how they would like to look after people involved in franchises, that is another question. That was not the issue at hand. It has now been tacked on but it is inappropriate to do so, because the franchise agreement is quite different from the tenant agreement we are tackling under this Bill. In its crudest term it is a bastardisation, an add-on that really has no relevance except where there is a concurrent arrangement in relation to the franchise and the lease.

Mr CAUDELL: In my second reading contribution I noted that I could support clause 79 as amended by the Upper House and that I had had discussions with the Attorney-General, and was continuing to have such discussions, that clause 79 be looked at again during the conference, with a view also to deleting clause 16(3)(h) and 52(3)(d), for two reasons. The first is the scenario that occurred in relation to Westfield Marion, where a franchisee came to see me with a problem that he had. All of a sudden he had no guarantee of lease. The lease was part of the franchise agreement. The person who had the State rights for the franchise in South Australia had gone bust, the franchisor in the State of Queensland became the lessee and the proprietor at Westfield Marion, the franchisor, was the sublessee. The problem was that the franchisor was not providing those items that were detailed in the franchise agreement.

He was not receiving the advertising support, the training support or support for the negotiations with Westfield and the city of Marion in relation to having tables located outside his shop. The provisions associated with the sale of coffee were excluded by the landlord, but were included in the franchise agreement. The person who had the franchise rights in South Australia had gone bust, he had paid the rent money to the State franchisee, and the money was not transferred to the landlord, so he had a problem sorting out the funds with the liquidator for the State franchisee. The State franchisor stopped paying funds to the franchisor in Queensland, so the landlord was unable to accept the funds from the franchisee for payment for the lease, because those funds came from Queensland. This person was put in an invidious situation and he asked me to help. Unfortunately, Westfield was also in an invidious situation because its lease was with the franchisor, not the franchisee. As a result, it had to negotiate with the franchisor, so there was an enormous problem.

Another area of concern is the service station industry. This goes back to 1987 when the oil industry decided that it would no longer use the term 'leases' but would call them franchise agreements. As a result of calling them franchise agreements, they in turn charged service station dealers between $70 000 and $100 000 for the right to renew a lease which they had previously renewed on a regular basis. The result was that they were facing a fee. I was offered a franchise for $90 000, but I told the oil company where it could put the lease, and I sold the service station. There was no way in the world that I would pay a premium associated with the renewal of a lease.

There is a problem with regard to the percentage of the franchise agreement that has a premium on it and the part that is a lease and has no premium on it. Under the proposed law, any franchise agreement is exempt from the prohibition associated with paying a premium. I am saying that there should be a differentiation between a franchise document and a lease document. A lease agreement should be a lease agreement, a franchise agreement should be a franchise agreement, and the two should be separated. There should be no premium associated with the renewal of a lease agreement. As regards a franchise agreement, it is up to the proprietor. In the first instance, he would have negotiated the franchise agreement with terms and conditions, the fee payable up front, the ongoing royalty fee and what he receives in return. There is no Federal or State legislation associated with a franchise agreement. It is for negotiation between the parties.

However, I feel that the lease represents a separate situation. If there is a failure to take up a separate document for a lease and a separate document for a franchise, the oil industry's lead will be followed by other industries and suddenly the lease will no longer be a lease but will be a franchise agreement and again we shall have a premium being paid up front for the lease of the premises. Section 57 of the Landlord and Tenant Act precluded a premium from being paid for a lease of a commercial tenancy, but unfortunately the Supreme Court decided that key money was not a premium for renewal of a lease and was allowable, so the oil industry was able to bypass the Landlord and Tenant Act by calling it a franchise agreement and claiming that it was key money.

I am sure that other people will be able to follow the precedent that has been set in the Supreme Court in this area. Hence, I will continue my negotiations with the Attorney-General in the hope that he will change his mind in the conference session and establish separate lease and franchise agreements.

The Hon. S.J. BAKER: I think the member for Mitchell knows a lot more about this subject than I do, and I congratulate him on what I found to be a very confusing argument. I am still confused, but I felt that the honourable member knew exactly what he was talking about, although I do believe he got 'franchisee' and 'franchisor' confused on one or two occasions. I believe the honourable member was saying that there can be different arrangements in the relationship between the person who has the franchise, the franchisor, and the franchisee and then the landlord. One can be a lease which is held presumably by the franchisee and which I imagine would be quite normal in shopping centres if a new arrangement is put in place; I am not aware of that. If there is an ongoing relationship and a store or a building has been

set up and Pizza Hut or Hungry Jack's is operating, or whatever the case may be, it would seem more likely that the lease would be held by the franchisor.

The honourable member is saying that, because the franchisee does not have complete control in his performance of the contract with the landlord, some arrangements should be put in place to separate the leasing arrangement from the other contractual arrangements associated with the franchise. I still have a difference of opinion with the member for Mitchell about whether this is the right place to put it. As the member for Mitchell has explained to the Committee, there is no other place to put it, because it does not exist, so perhaps it worked particularly well without legislation; that is the only conclusion I can draw. Certainly we will look at that area again. The only way we will have integrity is with a separation, but by having a separation we reduce the flexibility of the franchise contract, and I think they are the sorts of issues that need to be resolved before we as politicians make a decision which we deem to be appropriate and about which the industry may say, 'Hang on; what you did with the best of intentions has caused us further problems.' So, yes, we can certainly look at it.

Mr ATKINSON: I was most impressed by the member for Mitchell's arguments. They are, of course, entirely right and he can achieve his objective by voting to retain the clause in the Bill.

Clause negatived.

Clause 80—'Abandoned goods.'

The Hon. S.J. BAKER: I move:

Page 36, line 24—Leave out 'Magistrates Court' and insert 'Tribunal'.

Amendment carried; clause as amended passed.

Clause 81—'Exemptions.'

The Hon. S.J. BAKER: I move:

Page 36, line 32—Leave out 'Magistrates Court' and insert 'Tribunal'.

Amendment carried; clause as amended passed.

Clause 82—'Annual reports.'

The Hon. S.J. BAKER: I move:

Page 37, line 7—Leave out '30 September' and insert '1 October'.

This is the issue of the annual reports, and there are a number of amendments on that page. We are standardising reporting. Members will remember that under clause 11 we had provision for annual reporting as well. We are trying to clean it up and make it consistent. The issue of the dates has been sorted out to the satisfaction of everyone.

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 37, lines 9 and 10—Leave out paragraph (a) and insert—

(a) containing a report on

(i) the administration of this Act during the financial year ending on 30 June in that year; and

(ii) the administration of the fund during the financial year ending on 30 June in that year; and

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 37, line 12—Leave out '30 September' and insert '31 October'.

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 37, line 14—Leave out 'Magistrates Court' and insert 'Tribunal'.

Amendment carried; clause as amended passed.

Clauses 83 and 84 passed.

Clause 85—'Amendment of the Landlord and Tenant Act.'

The Hon. S.J. BAKER: I move:

Page 38 lines 3 to 10—Leave out subclauses (2) and (3) and insert:

(2) However—

(a) the former legislation continues to apply (subject of modifications prescribed by regulation) to a retail shop lease entered into before the commencement of this Act; but

(b) if the retail shop lease creates a periodic tenancy, this Act applies to the lease as from the beginning of the first period after the first anniversary of the commencement of this Act as if there were a novation of the lease on that date.

(3) The regulations made for the purposes of subsection (2)(a) may provide that specified provisions of this Act apply to a retail shop lease entered into before the commencement of this Act.

It is important that we get our legislation reasonably consistent. From the time of the introduction the Governor has made it known that the existing legislation will continue to apply to a lease that is entered into before the date of proclamation, subject however to modifications prescribed by regulation. The modifications anticipated to be prescribed by regulations are a number of provisions of the new Bill.

Consultation is still occurring with industry in relation to what will be applied from the new legislation. Both landlord and tenant groups have indicated, with one or two minor reservations, that commercial arrangements currently in place between lessors and lessees that were freely entered into between the parties should be untouched by the provisions of the new Act. I presume that the Parliament agrees with that principle. An example of such a modification will be a provision that should bring existing tenancies under the new regime for settling disputes contained in the new Bill.

The existing provision would reverse the provision and result in all provisions applying subject to exclusions and modifications prescribed by regulation. If the Government is of a mind to do it in a particular way, which is a process whereby it is made quite clear what shall be excluded, we believe as a Government that we have a point of departure from the old provisions, new provisions, new contracts, new provisions. There are one or two transitional matters which people can feel quite comfortable applying.

Mr Atkinson: What are they?

The Hon. S.J. BAKER: I will get advice on that. Basically it operates around some of the tribunal parts of the court. A number of provisions in the Bill do not affect the contract in terms of the rent. I am told that there is a number of issues that do not form an integral part of this legislation that can apply from whatever date. In terms of the principle where the contract is in place, the suggestion from the Democrats that we have new provisions and they apply to all the old contracts is an unsustainable position. I think even the member for Spence would recognise that. We are saying, 'Let's do it the way we normally handle these provisions.' Given the way that the Bill has been drafted we have to write out all the exclusions to which it does not apply, which is a reverse way of doing things.

Mr ATKINSON: The principal objection to retrospectivity or retroactivity in legislation is that it is uncertain. One cannot arrange one's affairs according to the law if one does not know what the law will be at the relevant time, and that Parliament, after one has arranged one's affairs, can then subsequently pass legislation which changes one's rights and

obligations at the time before the legislation was passed. If the Deputy Premier had risen and made a bold statement that his Government was not going to tolerate retroactivity applying to contracts between landlords and tenants and therefore this Bill would apply only when the contracts ran their course and a new contract or a renewal was arranged, I could understand that. But what the Deputy Premier has told the Committee is that some things in this Bill will apply retroactively and some will not.

What is the criterion by which those which will apply retroactively and those which are not is determined? Well, it will be determined by regulations, and I would argue that to do this by regulations creates uncertainty, which is the very vice of retroactivity.

The Hon. S.J. Baker interjecting:

Mr ATKINSON: So, I would ask the Deputy Premier to do a couple of things. I would ask him to now tell the Committee, before it passes legislation which is partially retroactive, which features of the Bill will—

The Hon. S.J. Baker interjecting:

Mr ATKINSON: There is no need for the Deputy Premier to blaspheme before the Committee. I know it is late and I know he is not a believer. There is no need for him to blaspheme and be offensive because I am asking him a question.

The CHAIRMAN: There was no such comment from the Deputy Premier. I am not sure what the honourable member is listening to. I thought the Deputy Premier had said that the honourable member had done very well but, if that is blasphemy, I accept the honourable member's judgment.

Mr ATKINSON: No, the Deputy Premier informed his adviser that, for the sake of our Saviour, she should give me one example of a clause applying retroactively. That is not good enough. What I would like is to be told, before we pass this Bill, which parts of the Bill will apply prospectively from the date of proclamation of the Bill, and which parts of the Bill will apply retroactively. Since the Deputy Premier is so well advised by high powered counsel, he might explain to the Committee the difference between retrospectivity and retroactivity in its operation on this Bill.

The Hon. S.J. BAKER: Well, Sir, the member for Spence did a bit of a ramble. What I said previously to the member for Spence holds. If a commercial transaction is in place, that will not be affected until the new Act is proclaimed. I will clarify that because there seems to be some doubt. When a contract is in place which has been negotiated prior to the proclamation of this Bill, that runs its course before it comes under the provisions of this Bill, so the commercial transactions are not affected by retroactivity or retrospectivity. I use the word 'retrospective' consistently when referring to making a law that affects previous transactions or actions. That is what I call retrospectivity.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: I am not aware that there is much difference between retroactivity and retrospectivity, but I am sure, in response to the member for Spence, that he will clarify it. Clearly the Bill itself applies only when the commercial issues that are already in place have run their course. Part 9 of the Bill is a very good example of what can come into place right now.

Amendment carried; clause as amended passed.

Clause 86 negatived.

Schedule passed.

Long title.

The Hon. S.J. BAKER: I move:

Leave out 'and the Magistrates Court Act 1991'.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

GAMING SUPERVISORY AUTHORITY BILL

Returned from the Legislative Council with an amendment.

STATUTES AMENDMENT (GAMING SUPERVISION) BILL

Returned from the Legislative Council without amendment.

DOG AND CAT MANAGEMENT BILL

Returned from the Legislative Council with amendments.

ADJOURNMENT

At 12.36 a.m. the House adjourned until Thursday 16 March at 10.30 a.m.