HOUSE OF ASSEMBLY

Wednesday 5 July 1995

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

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

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

That the sitting of the House be continued during the conference with the Legislative Council on the Bill.

Motion carried.

GRANITE ISLAND

A petition signed by 2 501 residents of South Australia requesting that the House urge the Government to direct the Development Assessment Commission to limit the proposed development on Granite Island so as not to mar the island's natural beauty and unique appeal was presented by the Hon. Dean Brown.

Petition received.

EUTHANASIA

Petitions signed by 13 534 residents of South Australia requesting that the House urge the Government to maintain the present homicide law, which excludes euthanasia while maintaining the common law right of patients to refuse medical treatment were presented by Messrs Atkinson, Kerin and Olsen.

Petitions received.

OLD PARLIAMENT HOUSE

A petition signed by 471 residents of South Australia requesting that the House urge the Government to recognise the cultural and educational importance of Old Parliament House and support its continuation as a museum for the people of South Australia was presented by the Hon. M.D. Rann.

Petition received.

EUTHANASIA

A petition signed by 33 residents of South Australia requesting that the House urge the Government to oppose any measure to legislate for voluntary euthanasia was presented by the Hon. M.D. Rann.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Deputy Premier (Hon. S.J. Baker)—

Regulations under the following Acts—
- Liquor Licensing—Barring Persons from Premises—Forms.
- Plumbers, Gas Fitters and Electricians—Primary.
- Retail Shop Leases—Primary.
- Pay-Roll Tax—Exemption—Momentum Films.

By the Treasurer (Hon. S.J. Baker)—

- Southern State Superannuation Act—Regulations—Primary.

By the Minister for Infrastructure (Hon. J.W. Olsen)—

Regulations under the following Acts—
- Electrical Products—Various.
- Electricity Corporations—Remove 'Trust' and insert 'ETSA'.
- Public Corporations—
  - ETSA Power Corporation.
  - ETSA Energy Corporation.
  - ETSA Transmission Corporation.
  - ETSA General Corporation.
- Sewerage—Variations—Plumbers, Gas Fitters and Electricians.
- Waterworks Hot Water Installation.

By the Minister for Housing, Urban Development and Local Government Relations (Hon. J.K.G. Oswald)—

- Local Government Act—Regulations—Variations—Accounting.

By the Minister for Mines and Energy (Hon. D.S. Baker)—

Regulations under the following Acts—
- Gas—Interpretations.
- Natural Gas Pipelines Access—Definition and Information.

By the Minister for Primary Industries (Hon. D.S. Baker)—

Fisheries Act—Regulations—
- Abalone Fishery—Licensing.
- General—Fees.
- Lakes and Coorong Fishery—Renewal of Licence.
- Marine Scalefish Fishery—Fees.
- Miscellaneous Fishery—Licensing.
- Prawn Fisheries—Licensing.
- River Fishery—Licensing.
- Rock Lobster Fisheries—Licensing.

By the Minister for the Environment and Natural Resources (Hon. D.C. Wotton)—

- Catchment Water Management Act—Regulations—Plans, Information and Interest Payable.

QUESTION TIME

SCHILLING, MR MICHAEL

The Hon. M.D. RANN (Leader of the Opposition): My question is directed to the Premier. Did Mr Mike Schilling receive a special performance bonus prior to his position as Chief Executive Officer of the Premier's Department being terminated and following criticism of the Premier's choice by his Ministers; and will the Premier confirm that Mr Schilling's combined termination salary and superannuation settlement will exceed $600 000?

The SPEAKER: The Premier.

The Hon. M.D. Rann: Superannuation—part of a closed scheme.

The SPEAKER: Order! The honourable member has asked his question.

The Hon. DEAN BROWN: First, as I have indicated in this Parliament previously, Mr Schilling was employed on a performance contract—

The Hon. M.D. Rann: And he gets a bonus.

The SPEAKER: Order! The Leader is warned for the first time. The Premier.

The Hon. DEAN BROWN: —and the Government decided that in respect of all CEOs—in fact, anyone on an executive salary who had a performance component—their

performance would be assessed by an independent group of three people chaired by the Commissioner for Public Employment, who, as the honourable member would realise, is an independent person. That committee has made a recommendation. In fact, it has made a recommendation that Mr Schilling, for his first year, receive a bonus.

The Hon. M.D. Rann: He got a bonus and then was sacked.

The SPEAKER: Order!

The Hon. DEAN BROWN: I indicated to the House yesterday that Mr Schilling had done a very good in bedding down the new Government, that he had focused on the important issues, which were making significant changes within the public sector, and in making sure that we brought about the reduction in the size of the public sector, because of the financial constraints we inherited from the previous Government, of which the Leader of the Opposition was a senior Minister, and the huge debt of $9 billion that been placed around the necks of all South Australians. I said that I appreciated the very significant work that Mr Schilling had done. I also pointed out yesterday that a new phase was under way in the South Australian Government. That new phase was very much about achieving performance in terms of economic growth, in terms of making sure that we put in place both our economic and social policy. I said that I wanted to see a change in management style of the South Australian Government and that I was determined to achieve that.

The Hon. M.D. Rann interjecting:

The SPEAKER: Order! The Premier will resume his seat. I warn the Leader of the Opposition for the second time. This is complete defiance of the Chair. If it happens again, he will be named.

The Hon. DEAN BROWN: I pointed out that I did not believe that Mr Schilling was the appropriate person to achieve that fundamental change in management style within the public sector. As I read to the House yesterday, that was the basis of my discussion with Mr Schilling on Monday night. The size of the pay-out is still being negotiated by the Crown Solicitor, but I can assure the honourable member his figure is way, way too high. Under the contract, he would be eligible for less than one year's salary and, therefore, would be eligible for less than a payment of $200 000. That is being negotiated by the Crown Solicitor.

ECONOMIC DEVELOPMENT

Mr BASS (Florey): Following the publication of the Morgan and Bank survey, indicating that South Australia will show the biggest growth in jobs in the nation during the next three months, can the Premier say whether any other recent indicators also point to growth in this State's economy?

The Hon. DEAN BROWN: It was a very encouraging survey, indeed, from Morgan and Bank. That survey showed that South Australia was leading the rest of Australia in terms of prospects for employment growth over the next quarter. It showed that a third of the companies in South Australia were expecting to take on additional employees. The area that showed the greatest strength was engineering, where 83 per cent of employers said that they expected to take on additional people; in tourism, 50 per cent; information technology, 50 per cent; and electronics, 50 per cent.

The survey showed that we were ahead of every other State of Australia in terms of the outlook for the next three months. It showed that in South Australia job vacancies were now 40 per cent higher than a year ago. It also showed that there had been a 20 per cent rise in average weekly overtime paid and that we were the highest in Australia in that regard. Whilst we had a 20 per cent increase in the amount of overtime paid on a weekly basis, the national average was a reduction of 8 per cent for the same period. So while the average across Australia was going down, our increase in overtime is going up by 20 per cent. It really raises some serious questions about these ABS growth figures, indeed. How can you have more people employed, more overtime being worked but produce a negative growth, based on the figures that they had through the ABS?

The figures also showed that retail sales in South Australia were higher, well above the national average. In fact, we rose by about 1 per cent more than the average per month for the rest of Australia. Our increase in retail sales was 13.6 per cent compared to a national average of 7.7 per cent. The number of motor vehicle registrations in May has risen sharply by 26 per cent; tourism accommodation has risen during the year to the end of March by 6.7 per cent; and, as a result of the strengthening tourism sector, employment in hotels, motels and guesthouses has risen by 7 per cent over the past 12 months. They are very encouraging survey figures indeed, and they substantiate the fact that this Government is getting the fundamentals right in terms of fixing up the economy. However, some dark thunder clouds are hanging over the whole of Australia as a direct result of the Federal Labor Government's policies, one of which is the substantial increase in interest rates, which absolutely has knocked the real estate and housing industries. We have had the lowest housing start in South Australia for 26 years, not because of any policy of the State Government but purely because of the rise in interest rates imposed by the Keating Federal Government.

The other area that absolutely has hit a brick wall is the real estate industry where I understand sales across the whole of Australia are down to an alarmingly low level. One Elders company which has a staff of six and which is located in northern New South Wales had only one successful contract in the first six months of this year. In the Gold Coast area in south-eastern Queensland, home units dropped in value by 30 per cent in the first six months of this year, and that highlights the crisis that is occurring, particularly within real estate around Australia.

Now we have the current account deficit for Australia—the $2.9 billion—on top of figures that have been bad for the past two years. The other night as I was going to bed I happened to open up the *Economist* and I read some of the comparisons on current account deficits. I found that Australia has had the worst current account deficit of any country in the world for the past two years. Our current account deficit is worse than Mexico; it is worse than every other developed country in the world as a percentage of the gross national product, and that highlights a major concern about what is occurring throughout Australia. No nation can sustain the current account deficit that Australia currently has; yet, the Federal Government in Canberra has done nothing to change policy direction to rectify that problem.

DUNDON, MR R.

The Hon. M.D. RANN (Leader of the Opposition): Does the Premier still have full confidence in Ray Dundon, the Chief Executive Officer of the Office of Information Technology, and has the Premier told Mr Dundon that he is

dissatisfied with the progress he has made with the EDS negotiations?

The Hon. DEAN BROWN: I have confidence in Ray Dundon, and I have not told him that which is claimed by the Leader of the Opposition.

TOBACCO REVENUE

Mr CAUDELL (Mitchell): Can the Treasurer please inform the House of action that the Government is taking in view of the public war on cigarette prices being carried out between various tobacco companies? A number of articles in recent weeks indicate that South Australia is at the centre of a price war between the tobacco companies. The articles have referred to the potential impact on the Government in terms of revenue collections from the taxes on cigarettes.

The Hon. S.J. BAKER: As the Treasurer of the State, I get very alarmed when I lose revenue, and the tobacco taxation for the Government is $25 million down on what we estimated it should have been for the 1994-95 year. The member for Playford asked questions about that situation during the Estimates Committees. I said at the time that my level of tolerance had disappeared and that action was to be taken to ensure that our revenue base was maintained—

Mr Foley: You are very tolerant.

The Hon. S.J. BAKER: I am a very tolerant person. However, on this occasion, $25 million later, I said that enough was enough. Indeed, the position prevailing in relation to the sale of cigarettes or tobacco products has been that the companies have been using South Australia as a war ground, and they have been using South Australia to test their muscle in terms of market share. They have not been willing to take it on in the national arena because it would cost them far too much.

South Australia has been used as the experimental ground for shifting market share in the current environment. This has been happening since last year. Each time I have asked a question about our tobacco revenues the response has been, 'Yes, these wars go on. They normally last a very short time because they are costly to everyone concerned.' This particular war has gone on long enough, so I called the tobacco companies in and said, 'I can no longer tolerate the tax base being eroded.' They have been discounting off their wholesale price-list, which is the amount upon which we apply 100 per cent taxation.

A number of propositions were put forward and it was agreed that the tax would be applied off the price-list. It would not be applied off the suggested wholesale price that had been used by the tobacco companies. In other words, the taxpayers will no longer subsidise the tobacco companies in their price wars. That has been the case for far too long. They have not felt the full cost of their actions because they have not been paying the taxation at the rate that we would have assumed. We have been subsidising these price wars to the extent of 50 per cent or more. It will be coming off the price list. The price list has to reflect national wholesale prices. If there are further variations and the cigarette companies attempt to produce their own wholesale price-lists which do not reflect national prices, we will take further action. I am assured that I will receive cooperation in this area. If I do not, further action will be taken.

TOTALISATOR AGENCY BOARD

Mr FOLEY (Hart): My question is directed to the Minister for Recreation, Sport and Racing.

The Hon. M.H. Armitage interjecting:

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

Members interjecting:

The SPEAKER: Order! The Minister for Tourism and the Minister for Health are aware of Standing Order 137.

Mr FOLEY: Will the Minister explain why he failed to inform the Premier and the Parliament that during the past 12 months he was kept fully informed by the TAB of plans for the new contract for the TABForm guide? Yesterday the Premier claimed the Government had been misled. However, in a statement issued today by the Chairman of the TAB, Mr Bill Cousins, he states that during the past 12 months—

Mr Ashenden interjecting:

The SPEAKER: Order! The member for Wright is out of order.

Mr FOLEY: —the Minister was supplied with documents indicating the options being considered by the TAB Board on three separate occasions and was telephoned almost two weeks ago and advised that these arrangements were close to being finalised—three times.

Mr Brindal interjecting:

The SPEAKER: Order! The member for Unley is not answering the question.

The Hon. J.K.G. OSWALD: I put on the public record one thing—and I will put it on the public record once. The honourable member can understand it, analyse it and then he may decide to be more accurate in his quotations and the information he has been fed by the board. Here we have another example of where the TAB Board has fed the honourable member information which is fundamentally wrong. He is placing all of his argument around the fact that I received some racing information—that is all it was, racing information—on 30 May which was a loose, inconclusive document that certainly required far more research. That is the only piece of documentation that I have received with regard to racing information in respect of this subject. The honourable member wants to look at corporate plans and business plans, so I will refer to the latest business plan put out by the TAB. It states:

> Although the corporate plan anticipated 1995-96 as a start date, it is now thought that either of the options—

either to develop its own newspaper or to share the Western Australian newspaper—

> would take until at least midway through 1995-96 to implement.

The information I got from the board was that it was not contemplating moving to its own newspaper until 1996, which is a year away. This racing information paper is dated 30 May 1995. Its own business plan states that it is not planning to move to a newspaper before 1996. All I have available to me is the visit of the board Chairman on 7 June, when he gave me this racing information paper. After that, I received absolutely nothing until I took a telephone call on the twenty-first of the month. What happened after I received that telephone call is on the public record.

The honourable member cannot say that I had this concrete, cast iron information. Its own business plan says quite clearly that it was not planning to do anything before 1996. That was written in the clear knowledge that the *Advertiser* contract was coming up on 30 June 1995. There-

fore, it was a clear assumption on my part that it would have had to renew the contract with the *Advertiser* because its own business plan stated that it would not implement it until at least midway through the 1995-96 year, which takes it into 1996. They came to see me in 1995.

It is becoming very apparent that the TAB is feeding information to the honourable member opposite. The Chairman has obviously sent a copy of his letter to the honourable member to try to say that the information has been provided. The board's own information makes very clear in the business plan that nothing was going to happen before 1996.

EMPLOYMENT

Mr WADE (Elder): Will the Minister for Industrial Affairs inform the House of details of WorkCover's latest industry levy collection report and what this report indicates for jobs growth in South Australia?

The Hon. G.A. INGERSON: I thank the member for Elder for his question, which is an interesting follow-on question from the comments made by the Premier. We recently received advice for the first eight months of collection of levy data and, when compared with the eight months to April 1994, it can be seen that there was an increase of 7.6 per cent in levy collection across industry categories in South Australia. This has happened without an increase in average levy rate. It shows significant employment growth in communications, recreation, and finance and property of 21 per cent, 18 per cent and 12 per cent respectively. Other areas of significant employment growth include transport, mining, community services, retail, agriculture, manufacturing and construction.

Importantly, this private sector growth is not taxpayer funded: it is based purely and simply on the total remuneration figures which reflect growth in the number of hours worked by part-time and casual employees, as well as reflecting new jobs in South Australia. No longer do South Australian young people have to wait for jobs growth: it is occurring. Remuneration in WorkCover levy is a perfect example that growth is actually occurring.

TOTALISATOR AGENCY BOARD

Mr FOLEY (Hart): My question is again directed to the Minister for Recreation, Sport and Racing.

Members interjecting:

Mr FOLEY: The honourable member wants to be careful on that one.

The SPEAKER: Order! The member for Hart has the floor.

Mr FOLEY: Thank you, Sir. Why did the Minister fail to act to stop the new TAB form contract when he had been fully informed by the TAB Chair and Board on three separate occasions on the progress of that contract? A statement issued today by the TAB Chairman, Mr Cousins, states:

> Despite being advised earlier, at no time before our decision did the Minister express either verbally or in writing any concerns or objections in relation to the directions being taken by the TAB Board.

Members interjecting:

The SPEAKER: Order! If members continue to interject, they may like an early minute. I call the Minister.

The Hon. S.J. BAKER: On a point of order, Mr Speaker, the question from the member for Hart was remarkably similar to a question asked yesterday, and I take your advice on this point. That question was:

> . . . why did the Minister fail to direct Mr Edgar and the board not to proceed with the form guide. . . ?

That was remarkably similar to the question that has just been asked.

The SPEAKER: The Chair does not have the questions directly before it. Therefore, the Chair is of the view that the question is a follow-up question to a series of questions asked yesterday. It is the Chair's understanding that a public statement has been made. Therefore, I am prepared to allow the question.

The Hon. J.K.G. OSWALD: This is becoming very repetitive. The only information available to me—and obviously on which the Opposition expects me to have made a decision—was a racing information paper. The business plan states that nothing is going to happen before the beginning of 1996. It is clear from that business plan that, if I have a loose discussion paper (that is all it is and the matter was one of many items on the agenda that morning) it contains no conclusions or recommendations.

All members are aware of the bureaucracy providing a discussion paper which is simply a discussion paper and which is not to be drawn out on. The business plan tells me that nothing will happen before 1996. Therefore, the matter was not an issue. No-one from the TAB, including the Chairman or the General Manager, came to me saying, 'We're having a board meeting next Saturday morning.' No-one told me the agenda for that board meeting. No-one ensured that I had the briefing notes so that I could understand what was happening on that Saturday. In fact, the only way we got it was on the Saturday after the Estimates Committees when we had an opportunity to examine the contract: I sat down and wrote questions for the Chairman of the TAB and requested whatever information had been given to the board at that Saturday morning meeting. Out of that we found that the Premier and the Leader of the Opposition and other members who had received the letter had been seriously misled to the tune of $1 million.

A question was asked yesterday about the link between that and 5AA. I will tell members what that link is.

Members interjecting:

The Hon. J.K.G. OSWALD: It is not a smokescreen. Members will recall that a year ago I raised questions about 5AA and the narrow cast, and at the time I was criticised for that. I was told then that it was the way to go and that there would be savings of several million dollars. I am not going to disclose 5AA's finances because of confidentiality. That would be most improper of me and I have no intention of disclosing the figures in respect of 5AA at any time, because they are totally confidential to me.

The fact is that a year ago we were led to believe that the board's decision to go into 5AA was the correct decision and that it would be highly profitable to the TAB, to 5AA and to the Government. At the time, we were told that independent surveys would show that the ratings would increase significantly when race broadcasting was transferred to TAB Radio.

We were told that that would happen. There is a huge question mark over that. We were told that the Government and the racing industry would benefit to the extent of several million dollars—that we would all benefit from it and that the figures were conservative. We have now seen this happen twice. First, we had the great promise that that board decision would be the salvation of TAB and 5AA race broadcasting,

but because of the confidentiality aspect we were committed to silence. However, we will not be committed to silence when the annual report comes out on 30 June, because it will then become a public document and we will be able to see how the advice stacked up and whether the advice tendered (through rose-coloured glasses) to us a year ago has come to fruition.

I think members will find that what I am telling them today will, in fact, eventuate and that it will be seen that we were misled at the time. We were also misled about the permanency of the licence and about many other matters. That is why I have instigated an inquiry in respect of the TAB and asked a consultant to investigate what is happening and to give future directions and sound business advice to the board. I thought that I was doing the right thing by giving the board the opportunity of appointing its own consultant, because it seemed to have the confidence to do that. However, we find, as I stated yesterday, that it appointed the father of the 5AA Program Manager.

We have a situation which gives us real cause for concern when the TAB Board Chairman states in a letter that we will save $1 million and, when we eventually get the information, we see a potential loss involving a figure somewhere between break-even and $3 million.

Mr Foley interjecting:

The SPEAKER: Order! The member for Hart knows the Standing Orders.

The Hon. J.K.G. OSWALD: No-one has taken into account what will happen if the 2.9 per cent downturn that the board has factored into its figures continues or gets worse. They are living in hope, as they did with the 5AA decision, that things will get better. They are living in hope that people will get used to paying 55 cents to have the paper thrown over the front fence, that after a while they will live with it and there will be the potential for an increase in turnover.

On behalf of the racing public I have every right to ask those questions, as I had every right to ask the questions of 5AA a year ago in this Chamber. I defy anybody to say that I do not have that right. I also have every right, as does the Premier of this State, to question a letter from the TAB Chairman forecasting a $1 million saving when everyone of us in this Chamber knows what has happened regarding the 5AA decision, which I imagine will be revealed shortly when the annual report comes out.

Mr MEIER (Goyder): Will the Minister for Recreation, Sport and Racing advise the House of the nature of his communication yesterday with the Chairman of the TAB Board, Mr Cousins?

The Hon. J.K.G. OSWALD: Yesterday I wrote a confidential letter to Mr Cousins seeking his resignation in the light of recent events. I asked Mr Cousins to reply to me by 10 a.m. tomorrow. I have been advised that Mr Cousins now intends to give a media interview this afternoon in which he will criticise the Government. In the circumstances I believe statements made by Mr Cousins need to be seen in the context of my communication to him yesterday. I no longer have confidence in the information he is providing to me. This is important financial information dealing with a business that has a turnover of more than $500 million a year. I have made clear to Mr Cousins my concerns with his performance in this matter, and I will be making a further statement to the House tomorrow afternoon.

Mr FOLEY (Hart): Following that statement by the Minister that he has sought the resignation of the Chairman of the TAB Board, will he seek the resignation of all members of the TAB Board?

Members interjecting:

The SPEAKER: Order! These are important questions. The Chair wants to hear the questions and the answers. There are too many interjections. The honourable Minister.

Mr Foley interjecting:

The SPEAKER: Order! The Chair has been more than tolerant with the member for Hart, who was given ample warning yesterday. I suggest that he now listen to the answer. The honourable Minister.

The Hon. J.K.G. OSWALD: In my previous reply I advised the House that I would make a full statement tomorrow, and I adhere to that.

The Hon. H. ALLISON (Gordon): Can the Premier advise the House whether the Chairman of the TAB Board, Mr Cousins, has today sent a letter to the Premier? If so, can the Premier detail to the House some of the claims made in that letter?

The Hon. DEAN BROWN: The Chair of the TAB Board has issued a public statement and I understand is to hold a press conference shortly. In that public statement he accuses me of personally attacking him in the Parliament yesterday and states that he rejects that personal attack. He also states that he has written to me, and I point out to the House that I do have a letter from the Chair of the TAB Board, Mr Cousins. That letter contains some interesting things which I would like to relate to the House. The second sentence of Mr Cousins' letter states:

> I have never faxed anything to Mr Foley in my life, let alone on 22 June 1995.

Yesterday I had in this House a letter from Mr Cousins which was faxed direct to the member for Hart (Mr Foley), with the fax identification at the top of the letter, plus the date and time it was sent, and it was sent from the TAB Board. How can Mr Cousins, as Chair of the TAB Board, send a letter to the member for Hart knowing that it was being faxed from the TAB and not take personal responsibility for that? It is like the board of the State Bank saying that it had nothing to do with the collapse of the State Bank, or that it did not know what Marcus Clark was doing, even though they sat around the same table with him. Here is Mr Cousins, the man who wrote that letter to me and the member for Hart, now trying to deny that it was sent to the member for Hart.

The Hon. S.J. Baker: Faxed to him on the 22nd.

The Hon. DEAN BROWN: It was faxed to him, in fact, 1½ hours before it was sent to me. Mr Cousins' letter continues:

> The letter you refer to was prepared in my name as Chairman of the board as the board had instructed at its meeting of 17 June 1995 that such an advice be sent after the contract was signed.

We have looked at the board minutes of 17 June 1995 and there is no reference in them whatsoever to sending that letter to the Leader of the Opposition, to me, to the member for Hart or to the Minister. Again, it would appear that Mr Cousins is having real difficulty understanding what his own board's minutes show—and they certainly do not show any instruction that his letter should be sent to me or to the member for Hart. The next sentence in this letter is very interesting reading, and states:

> Instructions were given by management that the correct protocol was for a copy to the Minister, yourself and then to other persons.

In other words, TAB management apparently are under the misapprehension that it is their responsibility to send correspondence to anyone they think appropriate. They apparently think that it is appropriate to inform the member for Hart and the Leader of the Opposition of something 1½ hours before they inform the Premier of the State. I suggest that Mr Cousins, as Chairman of the TAB Board, should read the Act under which he is appointed; if he does he will see that it shows one thing and one thing only—that he is answerable to the Minister and not to the Labor Opposition or any other person. We cannot have a Chair of a Government authority who does not even understand his own Act.

On top of that we have the other serious misinformation given to me and the Minister by the Chairman of the board. He must take full responsibility for the letter that appeared under his name. That letter clearly stated that there would be a $1 million saving in 1995-96 by transferring to the TAB's own newspaper when, in fact, his own board papers and minutes showed that there would be a blow-out in costs and no savings made at all in 1995-96. For that reason, as the Minister has just indicated, he sent a letter to the Chair of the TAB Board. Mr Cousins is the Chair of the board. He must bear responsibility for the misinformation that was put in his letter.

Members interjecting:

The Hon. DEAN BROWN: No, it was Mr Cousins. Mr Cousins signed that letter. Mr Cousins also claims that the board told him to send that letter. Again, the board minutes show no such instruction to Mr Cousins whatsoever. Mr Cousins must bear the responsibility for that letter and the misinformation that is contained in it.

BEASLEY, MS M.

Mr CLARKE (Deputy Leader of the Opposition): Does the Minister for Industrial Affairs have full confidence in the abilities of his Chief Executive Officer, Ms Mary Beasley, and is it his intention that she continue in that position for the duration of her present contract or, like the Premier, will he give her a big thank you?

Members interjecting:

The SPEAKER: Order! The last part of the Deputy Leader's question is obviously comment.

The Hon. G.A. INGERSON: Yes.

BUSINESS RELOCATION

Mr BROKENSHIRE (Mawson): In light of the major increases in new business and investment in South Australia since 11 December 1993 and the recent media attention that has focused on attracting large interstate companies to set up in South Australia, will the Minister for Industry, Manufacturing, Small Business and Regional Development report on any other small but significant business relocation decisions which have taken place in recent weeks and which fit into the future high technology vision for South Australia?

The Hon. J.W. OLSEN: Further to the comments of the Premier and the Minister for Tourism about economic recovery and activity in South Australia, there is some further good news for this State. In the light of the Government's decision to establish an Electronic Services Business (ESB), which the Premier announced in recent weeks, and also the work undertaken by MFP Australia in the development of that ESB, I am pleased to indicate to the House that a smaller company, Pacific Access, will establish further facilities in South Australia. Pacific Access is a sales, production and marketing company for Yellow Pages. Currently, one of its principal offices in Adelaide employs about 98 people.

The proposed facility expansion by Pacific Access will be at Technology Park within the MFP community, it will employ an additional 25 people and involve an investment of $5 million. The proposal is that Pacific Access will make a significant contribution to Telstra's Electronic Services Business by extending the Yellow Pages from printed to electronic form. That dovetails into the strategy that the Government and the Premier have put down regarding focusing on and building up niche markets and further economic activity in South Australia. It is another important step forward in establishing the State of South Australia as distinct from other States in respect of economic activity.

A further two companies will either expand or relocate in South Australia. The first is Consolidated Apparel Industries at Holden Hill which manufactures jeans and employs about 150 people. It recently won two big contracts with supermarket chains, which will lift its turnover from $14 million to $18 million a year. It is putting in place extra production equipment and a new computer-based general apparel business system. In addition, those new contracts and the upgrading of systems and equipment will lift its turnover by 30 per cent and add about 40 new jobs to its work force. The Government, through the Centre for Manufacturing, has assisted Consolidated Apparel to focus on those opportunities.

Another company which has been attracted to relocating in South Australia is Frederick Duffield Pty Ltd, a New South Wales based manufacturer of high pressure hydraulic hoses. Through the efforts of the Economic Development Authority, we have encouraged and been successful in getting that company to relocate its Singapore production operation to Salisbury North. That is expected to result in an investment of between $6 million and $7 million over the next five years, creating 25 new full-time jobs, expanding to 50 within the next two or three years.

Mr Atkinson interjecting:

The Hon. J.W. OLSEN: It is interesting to hear the member for Spence's criticism of the creation of jobs in South Australia. This Government has done more in 18 months to achieve job growth and job creation than the former Labor Administration. It lost jobs; we are creating jobs in the State of South Australia—and well should the Opposition be embarrassed about that fact.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. OLSEN: Whilst these two companies will create only 25, 40, and 25 jobs, respectively, what this does is to bring important new manufacturing and production facilities to South Australia in the textile and clothing industries which have had difficulty expanding and growing throughout Australia. In addition, it reinforces the position of South Australia in the electronics industry. So, we have three further good news stories which underpin the report in the newspaper today about the new confidence in South Australia. They certainly underpin the policy thrust to which the Premier referred, and they underscore the Minister for Tourism's remarks in the House today about economic activity starting to gather pace in this State.

POLICE FORCE

Mr QUIRKE (Playford): Does the Premier share the views of the Minister for Emergency Services expressed on radio station 5AA when he said:

> I don't wish to shatter any illusions that some of your listeners may have, but regrettably the Police Department is not a well managed organisation?

The Hon. DEAN BROWN: I do not know the context in which the Minister said that this morning. It would be interesting to see the full context in which that comment was made. In fact, I appeared on 5AA this morning, and I was asked a range of questions, one of which was about the police. I pointed out that we have the best Police Force of any State of Australia, that we have the highest level of policing on a *per capita* basis of any State of Australia, that we are negotiating an enterprise agreement with the police at present, and that, under that enterprise agreement, not only will we deal with issues about salary increases but very important issues relative to the management and operation of the Police Force.

There are issues relating to the management of the Police Force that must be dealt with, because I believe—and perhaps this is what the Minister was referring to—that changes should take place in the management that would be of benefit to the South Australian community and the Police Force itself. I refer, in particular, to the structure of the management, the operation of some aspects of the pay claim, and the level of administration in some areas. I highlight one area. I understand that 30 people are employed in the pay section of the Police Department. In this era of modern technology and data processing, there are 30 people. Why? There is a fundamental problem if you need 30 people to be responsible for the pay of the Police Force in South Australia.

It would be far more effective to make sure that we streamline that area and put those people and the money involved out into other areas that lead to increased policing. They are the sorts of issues that are being tackled as part of the enterprise agreement. They are the sorts of issues that I know are on the table for negotiation at present between the Minister for Industrial Affairs and his staff and the Police Association. Therefore, I welcome the cooperation that the Police Association has been showing in those negotiations to bring about some of that reform.

MODBURY HOSPITAL

Mrs KOTZ (Newland): Will the Minister for Health inform the House whether the contract for the private management of services at Modbury Public Hospital is operating effectively? Specifically, do comments by the Leader of the Opposition accurately reflect the state of hospital services at Modbury?

The SPEAKER: Order! I point out to the Minister that the last part of the explanation was clearly comment.

Mr Foley interjecting:

The SPEAKER: Order! It is still out of order, for the benefit of the member for Hart.

The Hon. M.H. ARMITAGE: I thank the member for Newland for her question and for her interest in Modbury Hospital. I am delighted to inform the House that the private management of the public facility of Modbury Hospital is performing very well. What I am surprised about is that the Leader of the Opposition has written a letter to the now Minister for Health in Queensland in which he makes a number of fairly unusual allegations.

An honourable member interjecting:

The Hon. M.H. ARMITAGE: Indeed, fabrications. He talks about a number of things, such as how a number of the beds have been removed since the private management contract was let. Of course, the fact is that knowing the number of beds in a hospital used to be a very crude way of indicating the size, but it is no longer used because it does not say anything about the efficiency or the activity of the hospital. Under the previous public management of Modbury Hospital, activity fell from a peak in 1992-93. Under the new contract, the new managers of Modbury Hospital must lift the activity of the hospital to at least that of 1992-93, which means that the public of South Australia will get another 1 500 what are termed weighted separations; in other words, 1 500 cases done during 1994-95. That is fantastic for the people of the North-East.

The Leader of the Opposition complains about the subcontracting of anaesthetic and intensive care services. The Modbury Private Hospital people have made absolutely clear that it is in their interests to enhance the reputation of Modbury Public Hospital, so they have entered into a contract with Adelaide University to make the head of Modbury's anaesthetic and intensive care services a university teaching position. Healthscope has paid extra for that service, because it believes that it will enhance the reputation of the hospital. Apart from that, it has increased the number of hospice beds by two; waiting times in physiotherapy have decreased by 75 per cent; there are more ENT outpatient clinics; and there is now an occupational therapist to help psychiatric patients, and so on.

The statement of the Leader of the Opposition saying that we face a lot of up-front costs is, unfortunately, only half the story. Perhaps that is exactly why he told only half the story. What he does not acknowledge is that a lot of those costs, things like long service, annual and sick leave and so on were accruing to the system and would have been paid whether people were employed in the public or the private sector. As a result of this contract with Healthscope, the taxpayers of South Australia will save more than $120 million over the life of the contract.

The Leader of the Opposition also said that in opposition we denied that we would privatise hospitals. I looked at the policy today, and I found that the policy we took to the last election says that the State's hospital services would be opened up to competitive tendering. It goes on to say that we would encourage involvement with the private sector, recognising the savings which can be generated. As I said, Modbury Hospital is a $120 million shining example of just how much can be saved for the taxpayer by going down the private route. It is important to point out that the Leader of the Opposition's colleague, the former Tasmanian Premier, Michael Field, outsourced all public maternity for north-western Tasmania to a private company. You will never guess who—

Members interjecting:

The Hon. M.H. ARMITAGE: The Deputy Leader of the Opposition says that he is a Tasmanian; that is the answer. I am sure all the Tasmanian people will love to hear that, and I will make sure that they do. You will never guess which private company Michael Field chose to be the outsourcer—Healthscope. Further, it collocated a private hospital on their Burnie hospital site, and the company that owned the private hospital was Healthscope. The Tasmanian Labor Government

outsourced the Ulverstone public hospital to a private company. You guessed it: Healthscope. It was a Labor Health Minister who in February this year made a number of comments which were reported in the *Australian*, as follows:

> The Queensland health system faces widespread introduction of private servicing into public hospitals, with the [then] Minister for Health Mr Heywood declaring yesterday he would not limit private medical investment if it could cut waiting lists.

In that article, the Queensland Government also went on to say:

> It plans to encourage more private hospitals to share facilities with public hospitals in high growth areas.

A very good strategy. Mr Heywood, the then Queensland Labour Minister, went on to say:

> The cooperation between the State hospital system and private health providers was the best way to improve medical services. The sick person is the one we should be focusing on in this debate rather than some notion of public versus private empires.

It was the previous Labor Government which set up the framework for the private investment in Modbury Hospital.

Mr Atkinson: There's more!

The Hon. M.H. ARMITAGE: No, there's only one little bit more. The *coup de grace* is that the Leader of the Opposition Mr Rann has written to the Minister for Health in Queensland. He starts the letter off, 'Dear Jim,' and then goes on with all these things about how terrible it is to put health work out into the private sector. I know why he did not write to the Premier, because the Premier of Queensland, Mr Wayne Goss, at the Premiers Conference, held here earlier this year, was in full agreement with the sorts of things we were doing, and he said on the public record that he looked forward to doing similar things in Queensland.

KENNAN, MR R.

Mr QUIRKE (Playford): Does the Minister for Infrastructure have full confidence in the Chief Executive Officer of the MFP Mr Ross Kennan, following criticisms of Mr Kennan's performance by the new Chairman of the corporation, Sir Llew Edwards, and does he believe that Mr Kennan should serve out the duration of his contract?

Mr Lewis: Hey, John, have you got full confidence in Mike?

Members interjecting:

The SPEAKER: Order! The member for Ridley is out of order.

The Hon. J.W. OLSEN: I thought members opposite were going to go right along the front bench and ask every minister how they are getting on with their CEOs. I have a cooperative working relationship with Mr Ross Kennan. I am certainly not aware of the comments, if they were made publicly, of Sir Llew Edwards. Perhaps the honourable member will supply them to me.

FISHERIES, COMPLIANCE

Mr KERIN (Frome): Will the Minister for Primary Industries inform the House of the results of the increased compliance activities in the State's fishing industry?

The Hon. D.S. BAKER: I thank the honourable member for his question and for his on-going interest in fisheries matters. It is with sadness that we note that quite a few people do not comply with the rules and regulations of the fishing industry. In the past 12 months we have increased our surveillance activity.

It is quite interesting to note that this year is a record year for the compliance officers, as 180 offenders have been apprehended and charged for some 547 offences, and that is more than double the number for last year. Everyone should understand that the fisheries are a finite resource; they are shared by recreational people as well as professional people. If that finite resource is to be maintained—and it is the Government's role to maintain it—people must understand that they have to comply with the rules and regulations that are put in place, because they are put in place only to ensure that we have a sustainable resource for everyone to use and for future generations to share. Two other programs that have been put in place are Fish Watch, which allows the public—

Members interjecting:

The Hon. D.S. BAKER: Hold on; there is definitely more to this answer, and members opposite are included in some of it. In relation to Fish Watch, if members of the public see an offence—

Members interjecting:

The Hon. D.S. BAKER: —and even if they see a fish, they can ring a compliance officer to ensure that no-one is breaking the rules. There is a very good fisheries volunteer group that attends jetties and boat ramps to talk to people and educate them about the rules and regulations and bag limits. But there is another program—

An honourable member: There is more.

The Hon. D.S. BAKER: There is more. For the Deputy Leader's personal benefit, we have just completed Operation Undersize. More than 1 000 people have been checked during a 10 day blitz: 40 were cautioned, 12 were issued on the spot fines and 4 will be prosecuted.

HEALTH DISPUTE

Ms STEVENS (Elizabeth): Is the Premier concerned about the worsening dispute between the Health Minister and doctors in the Spencer Gulf region, and what action will he take—such as asking the Minister for Industrial Affairs to intervene—to resolve the dispute? I have received a letter from a senior medical officer written on behalf of general practitioners in Port Augusta, Whyalla and Port Pirie. The doctor disputes strongly the claims made by the Minister for Health in the Estimates Committee that costs for casualty services in the region have increased from $200 000 to $1.2 million. The doctor states that the Minister for Health:

> . . . also threatens to withdraw privileges of doctors who refuse to staff casualty. Such arrogance and high handedness does nothing to facilitate a resolution of the current dispute.

The Hon. M.H. ARMITAGE: The Minister for Industrial Affairs and I have not had a discussion about this matter until just now, when we tried to refresh each other's memory as to whether we had made even a passing comment on it, and we have not. Constructive dialogue is taking place today between the doctors and the Health Commission, and I would expect a resolution to this matter. Indeed, several local members from the area have told me that a number of those doctors are actually recognising that some of the costs have been rather high given the costs for similar procedures in the metropolitan area as a general practice.

I have had a number of discussions externally from the commission with people who were involved in the brokering of the original deal which, as I said, was at a $200 000 limit, with 50 per cent paid by the Commonwealth and 50 per cent paid by the State, with the Commonwealth contribution phasing out. In other words, that was a $200 000 total in the

late 1980s; that is now at $1.2 million, which is an exorbitant amount.

PATAWALONGA

Mr CONDOUS (Colton): Will the Minister for Housing, Urban Development and Local Government Relations provide an update on the negotiations with the Federal Airports Corporation with respect to the cover of the sludge ponds associated with the Patawalonga clean-up?

The Hon. J.K.G. OSWALD: I thank the honourable member for his question, and certainly acknowledge his ongoing interest in the West Beach area. He has certainly been very active in pursuing the concerns of local residents. I am pleased to be able to report that agreement has now been reached between the Urban Projects Authority, the consultants, the contractors and the Federal Airports Corporation regarding the bird management issue. It has been agreed to utilise an open weave cover known as hail netting to cover the ponds. This is more open and consequently lighter than the shade cloth originally proposed. A lighter post and wire support system is being used with a subsequent significant reduction in cost compared with the previous proposal. In fact, we expect that the cost will be less than half the original quote of $1 million for the shade cloth.

I believe that the delay of a few days to explore the less costly alternatives to the $1 million 'pergola' originally asked for by the FAC has been worthwhile and certainly justifies my intervention. The hail netting will be suspended over the ponds at the level of the top of the surrounding earth mounds or bunds.

I am pleased at the positive and cooperative approach that has been shown by all those involved, and I congratulate those who have brought this to a satisfactory agreement. We are very close now to the completion of the earth works and I believe that the commencement of the dredging will get under way very shortly. I would ask that, instead of members being highly critical, they get behind the project, as it is a major project for the western suburbs and indeed for the whole of Adelaide. As members can see, the savings in the vicinity of $500 000 more than justified the delay of one week while we carried out further negotiations.

SUICIDE VICTIM

Ms STEVENS (Elizabeth): Will the Minister for Health confirm that the person who committed suicide yesterday in a city building had made two unsuccessful suicide attempts at the same site on the previous day and was taken away in an ambulance? If so, what treatment did the person receive following the suicide attempts, and was a proper assessment made as to whether that person was a danger to themselves?

The Hon. M.H. ARMITAGE: I have the answer ready but before I give that answer, I must say that I am appalled at the fact that the shadow Minister chose to raise this matter publicly on the radio yesterday within minutes of this most unfortunate death. It is an appalling use of the political process, with no concern shown whatsoever for the child, for her parents or for her family, and it is an outrageous example of how low the member for Elizabeth will stoop; she will let all standards go in her attempt to make a political point. A number of people have telephoned my colleagues and their electorate offices about this issue and I am sure that, if the honourable member actually asked her own colleagues about this, she would find that they are getting the same feedback. It is an appalling use of the political process—

An honourable member interjecting:

The Hon. M.H. ARMITAGE: As the Minister for Family and Community Services says, she is only too happy to prey on the tragedy of other people. It is disgraceful. The answer is as follows: in this most unfortunate case, the victim's notes record over 20 past drug overdoses and, in fact, she had attempted suicide by slashing her wrists on a number of occasions. She had been assessed as a chronic suicide risk since 1992 by hospital specialists as well as by her private psychiatrist. Between 29 March 1992 and 20 July 1994 she had had nine admissions to Hillcrest Hospital. She was admitted for a seven month period to a private hospital in late 1993, and active suicide attempts have been liberally documented in her public notes. She has had a number of drug overdoses resulting in medical intensive care admissions.

On 3 July she had been taken to Glenside Hospital where she was detained at Brentwood North after discussion with her private psychiatrist who felt that, whilst admission should generally be avoided, a very brief hospital stay might temporarily reduce her chronic suicide risk. In hospital her mood settled and she socialised with other patients. Her detention order was reviewed on 4 July 1995 and she presented as settled in behaviour and reactive in mood, and she denied ongoing acute suicidal feelings. She had no new symptoms that had not been present since her first admission in March 1992. As she did not have a psychiatric disorder for which acute hospitalisation was indicated—and indeed on previous hospitalisations she had become worse when hospitalised—and she stated that she wished to return to her community residence and denied ongoing suicidal plans, her detention order was cancelled and she was allowed to leave. On leaving the ward she was noted to be smiling in a relaxed and happy manner.

Although Brentwood unit has had a number of patients in it this week and acute adult open ward beds have been difficult to find, this fact had no influence on the assessment or the decision to discharge the patient. I repeat, this is a very sad episode and it is an appalling example of just how low the member for Elizabeth will stoop to make a political point.

GRIEVANCE DEBATE

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

The Hon. M.D. RANN (Leader of the Opposition): Today we saw the headline 'Brown Warns PS Chiefs'. The truth is that this was again about the Premier attempting to put a good PR spin on a ministerial vote of no confidence in his choice as head of his department. On Monday night, following Cabinet, Mike Schilling was told that he had been terminated as Chief Executive Officer of the Premier's Department. By being sacked he would get more money and therefore the Premier hoped to buy his silence. The fact is that Mr Schilling had the Premier's confidence until quite recently, despite a concerted effort by members of the Premier's staff, and by Matthew O'Callaghan, to undermine Mr Schilling with other Ministers. Mr O'Callaghan was

joined by Kristine Charles and Yasmin King in the white-anting of Mr Schilling. Richard Yeeles, the Premier's chief political adviser, also was feeling aggrieved for being left out of the Schilling policy loop. There was a resentment because Mr Schilling's partner, Jan Andrews, had been appointed to a position in the Office of Public Employment as deputy to Graham Foreman. But that was when things were going well for Mr Schilling.

The Premier is very keen to escape any bad news. Whenever bad news comes, he publicly blames the Federal Government or blames the former State Labor Government. If ABS figures are bad, he blames the ABS. Privately, if things are bad, he blames his Ministers or permanent heads. It is always someone else's problem, someone's else responsibility, never his. The Premier respects those he employs if they pander to his ego, if they tell him he is doing a good job. He does not respond well to criticism. So he employs a chorus of 'yes' men and women who tell him how good he is and how bad others are, how disloyal the Minister for Infrastructure is, and how that Minister actually gets out and does things and achieves results with more substance than the Premier's photo opportunities.

A group of Ministers went to see the Premier a few weeks ago to express their concern that the EDS deal was no longer on track. There were not only deals, but also the pre-announced economic and employment benefits were starting to crumble. The wheels were starting to fall off the deal the Premier had hurriedly announced to replace his much advertised deal with IBM. Schilling was being blamed privately, and so was Ray Dundon. Eventually, hype and reality had to collide. The Ministers, knowing how fragile the Premier's ego is, increasingly began to direct their concerns to the performance of Mike Schilling, the Premier's number one man. Their complaints were quickly and viciously supported by Mr O'Callaghan, Mr Yeeles, Kristine and Yasmin. But a good spin had to be put on a bad story. After all, Schilling was the Premier's choice and he had spent a year praising Mr Schilling's performance to anyone who would listen. His performance was so good that he was given a performance bonus before he was sacked.

But, after telling Mr Schilling that he was no longer needed, but assuring him of a huge payout because he would be terminated in the job, the sacking of Mr Schilling had to be put in the best possible light. A number of the Premier's staff suggested that all permanent heads could be summoned to the Premier's office for a 'ticking off', and that that would make the Premier look really strong even if it was not true. So, the *Advertiser* was tipped off and photographers were located at both doors of the State Admin to photograph the hapless chief executive officers before they were given their so-called blast. But the blast did not come. It was a whimper. The Premier simply appealed for better cooperation and coordination, and referred to the problems he had in getting departments to work together closely on his Granite Island development. The chief executive officers had a giggle together afterwards. 'Premier Bland' had become 'Premier Whimp'.

Meanwhile, the chief executives officers' mug shots were faxed from the *Advertiser's* head office down to Parliament House so that the Premier's staff could assist in the identification of which chief executive officer was which. Now the Premier's office is spreading rumours about Ross Kennan's future. Mary Beasley is being blamed for the inadequacies of her Minister. That is because in South Australia we have a Government, and a Premier, who refuse to take responsibility for their own actions and prefer instead to choose scapegoats.

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

The SPEAKER: The member for Unley has a point of order.

Mr BRINDAL: I listened with interest to what the Leader of the Opposition said, and I acknowledge in grievance debates his right to say anything about the Premier or any permanent head of staff, but the substance of his debate concerned political staffers of the Premier's office. I ask you, Mr Speaker, to consider whether that is in line with the normal usages of this House and whether it transgresses Standing Orders in any way.

The SPEAKER: The honourable member who makes the comments has to accept the responsibility for the remarks. That always has been the ruling of the Chair and the Standing Orders provide for that. Therefore, I cannot uphold the point of order, except to say that every member should be aware that, when they make comments on any particular individual in the House, they bear the responsibility for the accuracy, or otherwise, of those comments. The member for Colton.

Mr CONDOUS (Colton): Last Saturday morning at a meeting of the residents of West Beach—and I suppose we should consider ourselves very privileged—the member for Ross Smith came down to visit our electorate. I noted in his debate yesterday that he kept on using the word 'toxic dump waste' for the residents. I wonder, if he is so concerned at the toxic levels, why we are not doing something about protecting the workers on the site: or is it that we use the word 'toxic' as a means of trying to create fear within the community instead of addressing what is going on out there correctly. The honourable member referred to the size of the area as being two football parks in size. I am willing to put up a grand that I can get a footballer from the Crows who will not take five kicks to get from one end to the other.

The point is that this work is not being carried out right next to residents: it is on West Beach Road across from the residents. I would say that the closest resident is about 200 to 300 metres away. As a responsible member for the electorate, I am keeping my electorate fully informed on what is going on there every inch of the way. The honourable member keeps on saying that maybe the Government is playing into their hands in their winning the seat of Colton. I will tell the honourable member now: it will take a better bloke than he is to win the seat of Colton for the Labor Party, and I intend to hold on to it. What you do after I—

Mr Clarke: Are you going to be firmer on this than you were on shop trading?

Mr CONDOUS: Guaranteed—money down. Let us give credit where credit is due. I am asking questions on behalf of the residents, because it is important that they know exactly what is going on, and any fears they have must be addressed and answered. This Government made a promise to the people that it would clean up the two most important waterways in the metropolitan area, namely, the Sturt Creek catchment and the Torrens River. We are not going to shirk that issue: we will address it. This is a project that each and every member of Parliament, regardless of what side he or she is on, should support, because the natural path of politics is that one day you are in Government and at some time in the future you are in Opposition. This is not playing politics. This is about being responsible to the future community of South Australia—to our children and our grandchildren—to return to them something that previously existed in this State,

namely, two waterways that are safe to swim and play in. When I was four or five years old, having been born in the West End of Adelaide, I had nothing to fear from playing down at the Torrens River, because the waterway was clean.

This project is under the strict control of the Environment Protection Agency. Last evening I brought into the House six residents from Colton to sit down and talk to 10 administrators and ask questions on the safety issue. Some 30 conditions have been laid down. A base of impervious clay has been put down to stop any heavy metals penetrating. Rather than frightening the community, we should be explaining to people exactly what is happening there, and we should all be responsible members of Parliament. We should not play politics on this subject. We should get behind it and support it. This problem should have been addressed 20 years ago when the then member for Hanson (Heini Becker) asked Ministers to address the issue of the filth in the Patawalonga, but the Government at the time decided that it was too hard and completely shelved it. I have the utmost confidence in this State Administration, and in the project manager, Kinhill, which is one of the leading companies in the world, to carry out this project properly.

Eventually, the soil will be transferred to form nine new holes on the golf course. The people of West Beach and, more importantly, the people of South Australia will benefit. The MFP will sell this technology to the rest of the world and, in cleaning up the two waterways, the message to the rest of Australia will be, 'We might be small but we are smarter than the rest of you.' I intend to make clear to the constituents of West Beach that I am monitoring every move that the Government is making to ensure that there are no health hazards or any worries for the community.

Ms HURLEY (Napier): I should like to address my remarks to an answer that the Minister for Family and Community Services gave yesterday regarding the incidence of child abuse in South Australia. The Minister is making all the right noises about preventing child abuse but doing the opposite. He has said that he wants to look at programs that focus on the prevention of child abuse, and he said yesterday that he wanted to look at ways to coordinate services between the Minister for Health and the Minister for Education and Children's Services. I have to tell the Minister for Family and Community Services that he need look no further than at an existing service, Carelink, operating in the northern suburbs. Carelink, which is a model for the sort of programs that the Minister is talking about, combines the services of Family and Community Services, the Department for Education and Children's Services and CAFHS. Carelink uses the services of the schools in the local area and is well accepted in the community. During the Estimates Committee, in answer to a question on child abuse, the Minister said:

> Only a small percentage of notified abuse matters require statutory intervention. The majority of matters might better be described as child welfare. In other words, they are matters of family functioning, parental discipline and child-raising practices, for example.

In another answer during that Committee he said:

> First of all, FACS will maintain a commitment to early intervention services in the area by ensuring that remaining resources are targeted to priority needs in a way that links into other initiatives and services for this group of people.

Carelink already does that exceptionally well. It is recognised as a model and is regularly visited by people from other programs to see the good work that the staff are doing in the suburbs. What has the Minister done? He has axed Carelink. Carelink will not exist from August. The Minister has left a void, which he says can be filled by FACS; yet in his answers to questions in the Estimates Committee, he said that the sort of intervention FACS gives is not required in most cases.

What we are looking at is a place where families can go on a long-term, ongoing basis and receive help with their problems. They do not need short-term intervention by FACS, which occurs only where there is a crisis, and then FACS lets the matter go. It has to be a serious problem before FACS will treat it. Carelink, with its ongoing vacation care program and preventive measures, works sensitively with families to ensure that multiple problems within a family are addressed so that child abuse does not happen. It is well accepted by the people in that program. They use it and leave it, and go on to function as a stronger and better family, but the Minister has ensured that this program will continue no longer. FACS has to pick up this program with no more staffing and no more resources to do so.

Later in the Estimates Committee, the Minister spoke about this and other programs in the north being cut, adding, 'The north still receives the largest proportion of metropolitan money—almost $343 000 compared with the next largest proportion in the south of $237 000.' The people in the north are sick to death of being investigated and reported on, but it is well documented that there is a very high level of need in the north, and that is why these people get slightly more money than people in other areas. There have been several major authoritative reports, such as the Radislovich report, which was done several years ago, and the work of the Elizabeth/Munno Para Social Justice Unit, which shows that in the north there is serious disadvantage, which is compounded by the distance those people have to travel to get to the service agencies in the city. The north has a lot of young families, there is high unemployment, ageing infrastructure and facilities and a high proportion of Housing Trust houses. Families in those areas are struggling under multiple disadvantage and need a service like Carelink.

Mr MEIER (Goyder): This afternoon we witnessed an extraordinary tirade from the Leader of the Opposition about an article in today's paper concerning chief executive officers. The Leader of the Opposition tried to make funny strings attach from one department to another, and very unsuccessfully. It is quite clear that the Leader of the Opposition has backed himself into a corner and he realises that he has to create some distraction in order to survive as Leader of the Opposition in the coming year or so. Having known him for many years, I found his contribution extraordinary and very untypical of the Leader. It disturbs me that he has to keep carping at and knocking the State Government all the time. It is extraordinary how he has now knocked the chief executive positions; but what did this Government inherit from the previous Government?

We inherited a situation in which the previous Government had tied up the contracts of some chief executive officers for five years and there was nothing this Government could do. There was no performance-based contract in those days. Those officers were there for five years and if they wanted to sit on their tail and literally do nothing they had that option.

This Government has taken the hard decisions. We have told the CEOs and other key officers, 'You are there on a performance-based contract. If you don't perform, you will have to be reassessed after 12 months,' or whatever period

of time is specified.' It is clear from the way in which this State has started to go ahead in the past 18 months—and the figures to which the Premier alluded today highlight that point—that we have people in the top positions who are getting things done at long last and after years of neglect.

There is no doubt that the Leader of the Opposition is becoming the also ran rather than Mr Rann. It has been clear to us on the Government benches for some time. When the member for Playford asked one of our Ministers whether he had confidence in a certain person, there was an interjection from the Government benches asking, 'Have you got confidence in your own Leader?' There was a roar of laughter at that, including laughter from Opposition members. It is clear that they are thinking of restructuring their own ranks.

It is just a matter of time before we find out who the new Leader might be. I guess that the member for Playford has every chance of taking over because, while the member for Elizabeth was put forward by the press earlier as a potential Leader, the way in which she has got her facts wrong in relation to hospitals time and time again means that there is no way she could assume that position in the foreseeable future.

Members interjecting:

Mr MEIER: Someone has just interjected and asked, 'What about the member for Hart?' He was also touted by the press as a possible Leader, but I think he has mucked up that chance once and for all. He has been the biggest knocker that I have seen in this establishment.

When this State managed to grab the Westpac deal a couple of weeks ago, in addition to bringing another company into this State to establish, what did we hear from the member for Hart? He said, 'I've heard that they are going to bring some jobs here from interstate. How outrageous.' The member for Hart was an adviser to a Government which saw thousands of people move from this State over a period of years. We now have an opportunity to bring people back into the State, but he knocks it. He says that that is not right and he wants to keep those jobs just for South Australians.

We can think back to that time when storm damage caused havoc on some of our State's jetties. The Brighton jetty was put out of action and it remains out of action. The member for Hart had the gall then to say, 'What about the Semaphore jetty?' He presided over a Government which had done nothing to the jetties for decades. Now that they are rotting and falling apart because of his Government's ineptitude, he has started to blame our Government. The member for Hart will not be a contender in future. He has also been knocking privatisation.

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

Mr MEIER: May I seek an extension of five minutes?

The ACTING SPEAKER: No. The honourable member's time has expired.

Mr FOLEY (Hart): Following that absolute savaging from the member for Goyder, my career has probably been set back permanently.

I rise to refer briefly to the further developments in what is rapidly becoming a fiasco for this Government and that, of course, is the TAB form guide issue. What concerns me greatly, and concerns all members of this House (perhaps with the exception of the Minister for Recreation, Sport and Racing), is the damage that the present fiasco is doing to the racing industry in South Australia. The racing industry is the third largest industry in this State and it is a very significant generator of employment. It needs to be well led and led by a strong and firm Minister. It does not need to be led by a Minister who does not inform his Cabinet colleagues or the Premier on major issues affecting the organisation concerned. The Chairman of the TAB, Mr Bill Cousins, has issued a statement today in which he states—

Mr Brokenshire: Is he a member of the Labor Party?

Mr FOLEY: No, he is not a member of the Labor Party. I think that Mr Cousins would be happy for me to assure the member for Mawson that he is not, even though other members of the TAB Board are card carrying members of the Liberal Party.

Mr Brokenshire: Rubbish.

Mr FOLEY: That is not rubbish: it is fact. In his statement, Mr Cousins said:

> During the past 12 months, the responsible Minister was supplied with documents indicating the options being considered by the TAB Board on three separate occasions and was telephoned almost two weeks ago on 21 June this year and advised that arrangements were close to being finalised.

He went on to say:

> Despite being advised earlier, at no time before our decision did the Minister express, either verbally or in writing, any concerns or objections in relation to the directions being taken by the TAB Board.

That is an absolute indictment of the handling of the issue by the Minister for Recreation, Sport and Racing. The Minister was in possession of all that information (we are talking about a contract affecting $3 million worth of TAB expenditure) but he did not have the courtesy to inform his Cabinet colleagues and the Premier of this State. That is astounding. It is one of the gravest errors that a Minister can make, in that he was responsible for decisions of that enormity but simply did not advise his Premier or his Cabinet colleagues in a Cabinet meeting.

The indictment of the Minister becomes more damning because he said that, following a meeting on 7 June when he had received a board minute, he was extremely concerned and said that he was alarmed about the content of the proposal that he was given to tender out the printing. He was alarmed. However, he did nothing about that. He did not telephone the Chairman of the TAB or write to him. He did not seek a meeting with him. He did not speak to his Cabinet colleagues. He did not seek a meeting with the Premier to get his advice. He did not even seek a meeting with the Attorney-General to obtain Crown Law advice on his legal rights before the contract was signed.

As I stated yesterday, I have no objection to the questions that the Minister wanted asked. The point is that they should have been asked before the contract was signed, and he had plenty of time then. Bill Cousins, the TAB Chairman, received a terrible attack yesterday and today from the Premier. That attack has clearly been refuted here in Parliament. The issue of my receiving a minute before the Premier did so has been explained: it was the result of a TAB management instruction that staff should formally advise the Leader and the shadow Minister, the Premier and the Minister. That is normal protocol and I am aware that it occurs in many Government utilities, as the Premier also would be aware.

Members interjecting:

The ACTING SPEAKER: Order. The member for Mawson is out of order.

Mr FOLEY: The person who was given that responsibility inadvertently faxed me before the Premier—

The ACTING SPEAKER: Order! The honourable member's time has expired. The member for Lee.

Mr ROSSI (Lee): I want to comment on a leaflet which I found at the Port Adelaide Health Centre. Last Thursday, after the Estimates Committee's examination of the health portfolio, I received telephone calls from some elderly residents in my electorate concerned about their treatment received at the Queen Elizabeth Hospital. I asked for a copy of the leaflet, and I picked one up from the Port Adelaide centre which I faxed straight to the Minister for Health. It reads:

There is strong indication that the Queen Elizabeth Hospital will be closed in the next few years! What will that mean for you and your family in an emergency? Discussions are already on the way to amalgamate the clinical services sections from QEH to Lyell McEwin Hospital. Later down the track there is talk that a new hospital will be built at the Levels and QEH closed. Do you want to travel to The Levels or Lyell McEwin for medical treatment? If this concerns you do something about it. Contact your local MP or council members.

Mr Atkinson interjecting:

The ACTING SPEAKER: Order! The member for Spence is out of order again.

Mr ATKINSON: On a point of order, Sir, I understand that under Erskine May the expression 'Hear, hear!' is in order, if made from an honourable member's seat.

The ACTING SPEAKER: Order! The honourable member was spoken to regarding interjecting. While a member has the call, other members must not interject.

Mr ROSSI: The pamphlet does not say who wrote it, who printed it, from where it came or who supplied the paper. In my estimation, it was printed by members of the Labor Party. They use the centre for their political gain, and they use Government paper for political gain. The administration of the centre was well aware that this pamphlet was put in the office. It is irresponsible.

I wrote a letter on Friday afternoon after the Minister of Health denied the accuracy of this pamphlet at the Queen Elizabeth Hospital. This morning I turned up at the Port Adelaide Health Centre to see whether it had abided by the request in my letter to remove the pamphlet from the counter. It was still there. I cannot represent a group of people who put out these pamphlets with contempt and lies before they contact me to find out what the Government is doing with health services. If the administration of the health centre had anything to do with this, it should be sacked because public servants are there to abide by the Acts and regulations and not to be involved in political manipulation. If the Labor Party and the member for Hart had anything to do with this pamphlet, they should be ashamed of it because there should be an authorisation by the printer and an authorisation by the person who worded it.

Mr Atkinson interjecting:

The ACTING SPEAKER: Order! The member for Spence.

Mr ROSSI: The evidence is that the pamphlet was distributed at a community health centre, and it is anti-Government. It would be as a result of the allegations of the member for Elizabeth—

Mr ATKINSON: On a point of order, Sir, the member for Lee has alleged that the member for Hart has issued a pamphlet which makes false allegations and used the facilities of a Government instrumentality to do it, but there is no evidence on the face—

The Hon. S.J. Baker: That is not a point of order.

Mr ATKINSON: It is a point of order. There is no evidence on the face of the leaflet or in any of the remarks of the member for Lee that that is so. Such an allegation should be made by way of substantive motion if it is against a member of the House.

The ACTING SPEAKER: Order! I think the honourable member said 'the member for Hart', but I believe it was the member for Elizabeth who was mentioned. The honourable member can make any necessary explanation at a later date, if she sees fit. The honourable member's time has expired.

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

The Legislative Council informed the House of Assembly that, pursuant to section 15E(2) of the Parliamentary Committees Act 1991, it had appointed the Hons M.J. Elliott, R.D. Lawson and R.R. Roberts as members of the committee.

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

That Messrs Clarke, Ingerson and Wade be appointed to the committee, and that a message be sent to the Legislative Council transmitting the foregoing resolution.

Motion carried.

STATUTES AMENDMENT (RECORDING OF INTERVIEWS) BILL

Second reading.

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

That this Bill be now read a second time.

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

The ACTING SPEAKER: Is leave granted?

Mr ATKINSON: I rise on a point of order, Mr Acting Speaker. It is not necessary for the Minister to seek leave to insert the second reading explanation in *Hansard* without reading it because the Government took that away from the House by vote earlier this session.

Over the past decade—perhaps for even longer than that—there have been two aspects of a movement towards the introduction of a comprehensive system for electronically recording interviews of suspects by police. The first aspect of that movement can be seen in the recommendations of official reports and inquiries into police practices and the law of criminal investigation. Examples of reports that have recommended electronic recording of police interviews include the reports of the *Mitchell Committee (1974)*, the *Australian Law Reform Commission (1975)*, the *Australian Institute of Judicial Administration/ Victorian Bar Association Shorter Trials Committee (1985)*, the *Coldrey Committee (1986)*, the *Gibbs Committee (1989)*, the *New South Wales Law Reform Commission (1990)* and the *National Committee on Violence (1991)*.

The reasons why there has been this sustained and unanimous chorus of support for the idea are not hard to find. They include—

- reduced interview times;
- an increase in the number of guilty pleas;
- earlier indication of guilty pleas;
- fewer police officers required to attend court;
- shorter and more focused trials;
- fewer appeals and retrials.

The second aspect of that movement occurred in the courts. Courts function less strategically and are, properly, more concerned with the rights and wrongs of the individual case. Many criminal trials are characterised by contests between police witnesses, who

allege a significant confession or admission by the accused, and the accused, who alleges that the confession or admission was fabricated or coerced.

The evidence that concoction or coercion has, on occasion, occurred cannot be disputed. Over the years, it became more and more obvious that the courts in general, and the High Court in particular, were becoming concerned about the quality and reliability of the evidence of police interviews that were coming before them. A series of High Court cases culminated in 1991 when a bare majority held, in a case called *McKinney and Judge* (1991) 171 CLR 468, that a trial judge must warn a jury that it is dangerous to convict on the basis of an alleged confession or admissions made while in police custody unless there is reliable corroboration. Signing the record of interview does not suffice for that corroboration. The High Court made its message clear by referring to developments in electronic recording of such interviews and saying—

> 'The central thesis of the administration of criminal justice is the entitlement of an accused person to a fair trial according to law. It is obvious that the content of the requirement of fairness may vary with changed social conditions, including developments in technology and increased access to means of mechanical corroboration.'.

Technology now exists to electronically record all police interviews for, at least, serious offences. It is relatively inexpensive, simple to operate, portable, reliable and secure. Electronic recording of interviews is now taking place in all Australian jurisdictions. In Victoria, the practice is backed by legislation. In Queensland and New South Wales, the practice has been put into place administratively, although New South Wales has a Bill in the public domain. In Western Australia, legislation to enforce the practice has been passed but not yet proclaimed and in South Australia, it has been the practice for some time to electronically record some police interviews.

In 1991, the Commonwealth Parliament enacted the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991* which required, in relation to Commonwealth offences, the electronic recording of police interviews with suspects. If South Australia does not move in the same direction—the direction being taken all over Australia—the untenable situation would be reached in which the set of rules for investigating Commonwealth offences would be markedly different from the rules applying to the investigation of State offences. That would lead to complexity, expense and the possible escape of offenders in such overlapping areas as fraud and drug offences.

The *Statutes Amendment (Recording of Interviews) Bill* aims, therefore, to set the electronic recording of police interviews for indictable offences into a legislative framework with clear cut rules to be applied during investigation. This is achieved by inserting a new Part into the *Summary Offences Act 1953* and by amending the *Summary Procedure Act 1921*. Other amendments consequential on the passage of this Bill are required to the *Magistrates Court Act 1991*, the *District Court Act 1991* and the *Supreme Court Act 1935*.

The objectives of this legislation are—

- to promote and enhance the visible integrity of the criminal justice system; and
- to ensure that consistent rules apply to the investigation of both Commonwealth and State offences in South Australia and to prevent anomalies arising between jurisdictions; and
- to minimise the necessity for *voir dire* hearings and for judicial warnings to the effect that it is dangerous to trust in the veracity of police officers; and
- to enhance the quality and efficiency of police interviewing techniques.

In doing this, it is contemplated that the system, once in place, will generate the kinds of savings and cost benefits referred to in the reports which recommended the system. In order for that to occur, the Bill is framed with three explicit assumptions—

- that the legislation applies only in relation to persons suspected of having committed an indictable offence; and
- that the recorded interviews will only be transcribed in limited circumstances; and
- that the setting up and capital costs are phased in over at least three years.

The most recent methodical attempt to quantify the cost benefits of such a system occurred in Western Australia in 1990-91. In summary, the report from that State's trial project concluded that electronic recording of police interviews could reduce criminal jury trials by as much as 50 per cent with a reduction in backlog and a saving in court trial costs in excess of $2m per year. The report also predicted that the system would save the police force 6 000 person/hours per year covering 3 000 interviews at a saving of between $75 000-$90 000 per year.

At the second annual *Australian Institute of Judicial Administration Meeting of Australian Higher Courts on Case Management and Delay Reduction* conducted in November 1992, Underhill J of the Supreme Court of Tasmania said—

> 'The need for case flow management in criminal cases has been reduced, if not eliminated, by the introduction throughout the State of video recording of interviews with accused persons. Initially, video facilities were only available in the southern part of the State. Cost was said to be the bar to their introduction in other areas. The bar was overcome in late 1991. The result during the 1991/1992 year was an increase of pleas of guilty from 55 per cent of persons indicted to 64 per cent. After allowance for cases which were not proceeded with after committal, only 17 per cent of committals resulted in trial.'.

This Bill is the result of a great deal of thought and consultation between the South Australian Police Department, the Attorney-General's Department, Courts Administration, Treasury, the legal profession and the judiciary. It promises to result in many benefits to the criminal justice system as a whole.

I commend the Bill to honourable members.

Explanation of Clauses

PART 1—PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

A reference in this Bill to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2—AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 4: Substitution of heading preceding s. 67

The Division (comprising sections 67 to 74B) is proposed to be headed—*Police powers of entry, search, etc.*

Clause 5: Insertion of Division

A new Division (comprising new sections 74C to 74G), headed *Duty of investigating officers to record interviews*, is proposed to be inserted in the principal Act.

74C. Interpretation

New section 74C provides definitions of 'interview' and 'investigating officer' for the purposes of the new Division.

74D. Obligation to record interviews with suspects

New section 74D provides that an investigating officer who suspects, or has reasonable grounds to suspect, a 'suspect' of having committed an indictable offence and who proposes to interview the suspect must—

- if it is reasonably practicable to record the interview on videotape—make a videotape recording of the interview;
- if it is not reasonably practicable to record the interview on videotape but it is reasonably practicable to record the interview on audiotape—make an audiotape recording of the interview;
- if it is neither reasonably practicable to record the interview on videotape or on audiotape—make a written record of the interview as soon as practicable after the interview, read aloud the record to the suspect and record the reading on videotape. During the recording of the reading aloud, the suspect must be given the opportunity to interrupt to point out errors or omissions.

At the end of the reading, but while the videotape recording continues, the suspect must be again invited to point out errors or omissions in the record. If the investigating officer agrees that there is an error or omission, the officer must amend the record to correct the error or omission. If the officer does not agree that there is an error or omission in the record, the officer must make a note of the error or omission asserted by the suspect in an addendum to the record of interview.

If the suspicion, or a reasonable ground for suspicion, arises during the course of an interview, the investigating officer's obligations under this new section arise then and apply to the interview from that time.

The following matters should be considered when deciding whether it is reasonably practicable to make a videotape or audiotape recording of an interview:

· the availability of recording equipment within the period in which it would be lawful to detain the person being interviewed;
· mechanical failure of recording equipment;
· a refusal of the person being interviewed to allow the interview to be recorded on tape;
· any other relevant matter.

As soon as practicable after a tape recording is made under this new section, the investigating officer must give the suspect a written statement of the suspect's right—
· if a videotape recording was made—to have the videotape played over to the suspect or the suspect's legal adviser (or both) and to obtain an audiotape recording of the sound track of the videotape; or
· if an audiotape recording only of the interview was made—to obtain a copy of the audiotape recording.

Arrangements must be made, at the request of a suspect, for the playing of the videotape at a reasonable time and place. Fees may be fixed by regulation for the cost of obtaining an audiotape recording under this new section.

74E. Admissibility of evidence of interview

New section 74E provides that in proceedings for an indictable offence, evidence of an interview between an investigating officer and the defendant is inadmissible against the defendant unless the investigating officer complied with this new Division or the court is satisfied that the interests of justice require the admission of the evidence. However if, in the course of a trial by jury, the court admits evidence of an interview conducted by an investigating officer who did not comply with the new Division, the court must—
· draw the jury's attention to the non-compliance by the investigating officer; and
· give an appropriate warning in view of the non-compliance,

unless the court is of the opinion that the non-compliance was trivial.

74F. Prohibition on playing tape recordings of interviews

New section 74F provides that a person must not play to another person a videotape or audiotape containing an interview or part of an interview recorded under this new Division unless the videotape or audiotape is played—
· for purposes related to the investigation of an offence; or
· for the purposes related to legal proceedings, or proposed legal proceedings, to which the interview is relevant; or
· with the permission of a court before which the videotape or audiotape has been tendered in evidence.

74G. Non-derogation

The new Division does not make evidence admissible that would otherwise be inadmissible nor does it affect a court's discretion to exclude evidence.

Clause 6: Insertion of heading before s. 75

The new heading *Arrest* is proposed to be inserted before section 75 of the principal Act.

Clause 7: Substitution of s. 85

The current section 85 of the principal Act is obsolete and it is proposed that a new section 85 that provides that the Governor may make regulations for the purposes of the Act be substituted.

PART 3—AMENDMENT OF SUMMARY PROCEDURE ACT 1921

The amendments to this Act are consequential on the amendments proposed to the *Summary Offences Act 1953*.

Clause 8: Amendment of s. 4—Interpretation

This provides for the insertion of the definition of investigating officer into section 4.

Clause 9: Amendment of s. 104—Preliminary examination of charges of indictable offence

This clause provides for the repeal of subsections (3), (4) and (5) of section 104. The proposed substituted subsections (3) and (4) deal with the preliminary examination of charges of indictable offences and the filing in court of material relevant to the charge.

Proposed new subsection (3) provides that a statement filed in the court—
· must be in the form of a written statement verified by declaration in the form prescribed by the rules; and
· if the statement is tendered for the prosecution and relates to an interview between an investigating officer and the defendant that was taped under the proposed new Division of the *Summary Offences Act 1953*—must be accompanied by a copy of the tape recording.

Proposed new subsection (4) provides that there is in exception to the rule of new subsection (3) if the witness is a child under the age of 12 years or a person who is illiterate or suffers from an intellectual handicap. In that case, the following provisions apply:
· the witness's statement may be—
in the form of a written statement taken down by an investigating officer at an interview with the witness and verified by the officer as an accurate record of the witness's oral statements at the interview so far as they are relevant to the subject matter of the charge; or
in the form of a videotape or audiotape record of an interview with the witness that is accompanied by a written transcript verified by an investigating officer who was present at the interview as a complete record of the interview;
· if a videotape or audiotape is filed in the Court under paragraph *(a)*(ii), the prosecutor must—
provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession on a later date, as soon as practicable after the tape comes into the prosecutor's possession; and
inform the defendant that the defendant is entitled to have the tape played over to the defendant or his or her legal representative (or both) and propose a time and place for the playing over of the tape; and
· the time proposed for playing the tape must be at least 14 days before the date appointed for the defendant's appearance to answer the charge or, if the tape comes into the prosecutor's possession at a later date, as soon as practicable after the tape comes into the prosecutor's possession (but the time and place may be modified by agreement).

SCHEDULE—*Consequential Amendments*

The schedule contains minor amendments to the *Summary Offences Act 1953*, the *Magistrates Court Act 1991*, the *District court Act 1991* and the *Supreme Court Act 1935* consequential on the passage of Part 2 of the Bill.

Mr ATKINSON secured the adjournment of the debate.

RESIDENTIAL TENANCIES BILL

Adjourned debate on second reading.

(Continued from 1 June. Page 2499.)

Mr ATKINSON (Spence): The Government introduced the Bill because it believes that an imbalance exists between the rights and duties of landlords and tenants. The Liberal Government believes that the balance has swung too far in the direction of tenants and that it is the duty of the Government to change the law so that the balance swings back towards landlords. A number of provisions in the Bill increase the rights of landlords at the expense of tenants. The Opposition will take a measured view of this change in the balance. The parliamentary Labor Party does not agree with the position publicly enunciated by the Australian Democrats. For the benefit of the House, I will inform members of the Australian Democrats' position.

Mrs Rosenberg interjecting:

Mr ATKINSON: The member for Kaurna interjects that it is unusual for the Democrats to have a position. I assure the member for Kaurna that on this Bill the Democrats do have a position, and I will inform the House of what it is. The Democrat spokesman on housing (Hon. Sandra Kanck) says that no law can ever give tenants too many rights. The Hon. Sandra Kanck has said that landlords must always own two or more houses; therefore, they will always have an excess or surplus of housing and that a tenant by definition does not have a roof over his or her head unless he obtains one from a landlord; and, therefore, given this structural imbalance, the law can never favour the tenant too much. The Parliamentary

Labor Party does not agree with that formulation by the Australian Democrats.

In my electorate many people, through their labours, have saved enough money to buy a second house and they rent it out. These landlords are often working-class people. They are often people of Greek, Italian, or Serbian descent, and they rely on the income from the house which they rent out. They deserve the protection of the rule of law—a protection which the Australian Democrats would deny them.

Another major aspect of the Bill concerns jurisdiction. In its original form the Bill sought to abolish the Residential Tenancies Tribunal and vest its jurisdiction in the Magistrates Court. The Australian Labor Party is a supporter of the Residential Tenancies Tribunal. We were in Government when the tribunal was inaugurated back in 1978. We believe that the Residential Tenancies Tribunal has done a good job in the intervening time and that it ought to continue in its current form. The members of the tribunal are casual employees: they work for $40 an hour.

Mr Brindal interjecting:

The ACTING SPEAKER: Order!

Mr ATKINSON: To take away their jurisdiction and give it to a magistrate is to give it to someone who earns $100 000 a year and who requires a great deal of support staff, thereby costing even more.

The Hon. S.J. Baker interjecting:

Mr ATKINSON: The Deputy Premier interjects that there might be a difference in the expertise. I think that that is an unwarranted reflection on the Residential Tenancies Tribunal, which has acted in accordance with the spirit of the rule of law and which has given justice impartially, speedily and at low cost to thousands of South Australians. The Residential Tenancies Tribunal is a cost-efficient and self-funding tribunal that has done justice to its job over the past 18 years or so.

Hearings before the Residential Tenancies Tribunal go for an average of rather less than an hour and only one attendance is required by the parties in order to get a result. If the Liberal Party believed that the Residential Tenancies Tribunal had procedures that were unfair, that there was a lack of procedural fairness, I would have thought that that could be addressed by changing the rules of the Residential Tenancies Tribunal.

Mr Brindal interjecting:

The ACTING SPEAKER: Order! If the member for Unley wishes to discuss it across the Chamber I can arrange for him to discuss it outside.

Mr ATKINSON: Mr Acting Speaker, thank you for your protection from the member for Unley. It seems to me that there is no allegation by the Liberal Party—

Mr BRINDAL: I rise on a point of order, Mr Acting Speaker. The House has no provision in its Standing Orders for the mention of political Parties. There is a Government and an Opposition in this place. The member for Spence deliberately is trying to politicise his speech along Party lines. He has not once referred to the Government: he has referred to the Liberal Party and the Australian Labor Party.

The ACTING SPEAKER: I do not accept the point of order. Every member has a chance to speak after the member for Spence has finished his contribution. If the honourable member just listened, he would have the chance to make his contribution sooner.

Mr ATKINSON: A fine ruling, Sir. I cannot imagine what would happen to debate in this place if, as the member for Unley alleges, we were unable to refer to the Liberal Party and the Labor Party: there would be rather large gaps in *Hansard*! There is no allegation by the Liberal Government—that will please the member for Unley—that there is a lack of procedural fairness in the Residential Tenancies Tribunal. The Deputy Premier interjected earlier that some of his constituents had complaints about outcomes in the tribunal.

The Hon. S.J. Baker interjecting:

Mr ATKINSON: The member for Waite says that his constituents who are landlords have had their houses trashed by tenants and that the Residential Tenancies Tribunal has done nothing about it. If that is so—and I do not doubt that from time to time this does happen—it is not because of the procedural rules of the Residential Tenancies Tribunal but because the law or the evidence does not allow the tribunal to act. It is one thing to change the law; it is another to abolish a quasi judicial tribunal, which, in the view of the Opposition, has worked well within the law given to it by Parliament. If the law needs to be changed to give landlords better protection against unruly tenants, the Parliamentary Labor Party will cooperate in that to the fullest extent possible.

I want to give one example of the Parliamentary Labor Party's creativity on this point of defending not only landlords but neighbours against unruly tenants. Taking up the Deputy Premier's interjection, clause 59 of the Bill provides:

> It is a term of a residential tenancy agreement that—
>
> (a) the tenant must not use the premises, or cause or permit the premises to be used, for an illegal purpose; and
>
> (b) the tenant must not cause or permit nuisance; and
>
> (c) the tenant must not cause or permit an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

The Hon. S.J. Baker interjecting:

Mr ATKINSON: For the Deputy Premier's information, a neighbour can apply to the tribunal for the eviction of a tenant on the basis of a breach of clause 59—a clause put there by the Parliamentary Labor Party with, I am pleased to say, the agreement of the Government.

The Hon. S.J. Baker: What's the penalty? Three months later. What a joke!

Mr ATKINSON: The penalty is eviction. If the clause is a joke, why did the Attorney-General agree to its inclusion? The Opposition is sceptical of the need to abolish the Residential Tenancies Tribunal and transfer its jurisdiction to the Magistrates Court. We worry about possible interference with judicial independence. We think that merely folding up courts and reconstructing them elsewhere, losing their personnel in between, is undesirable. The Australian Capital Territory recently had its Law Reform Committee look into the various models for arbitrating residential tenancy disputes, and that committee said this about our Residential Tenancies Tribunal:

> The committee considers that the coordination of tenancy services in South Australia and in New Zealand makes each service more efficient and effective. The combination also appears to give the Adelaide centre a high profile in the Adelaide community as the place to go with tenancy difficulties. It is noteworthy that the South Australian tribunal is made use of by large numbers of both lessors and tenants. The South Australian tribunal appeared to hear matters promptly, that is, within two weeks of application, conduct hearings in a helpful, clear but not overly formal manner.

The Parliamentary Labor Party's approach to this is rather conservative: we believe that if a Government agency or a tribunal is functioning well we need not change it.

We are anxious about clause 112 of the Bill which gives very wide power to the Minister to make regulations, and we are worried that the authority to make regulations may be too

wide. We worry that this clause may give the Minister power to take a dispute away from whichever tribunal is hearing the case and allow the Minister to decide the case himself. We hope that this very wide power will not be used in that way.

In clause 51, the Government makes provision for the security bond lodged by a tenant to bear interest. Part of that interest is to be paid to the tenant on the refund of the bond. The mischief that this was intended to address was that, towards the end of their tenancy, some tenants cease to pay their rent on the assumption that when the tenancy finishes the money they owe by way of rent can be recovered from the security bond. The Government reasons that paying interest on the security bond will be an incentive for the tenant to abide by the terms of the lease and recover the bond in the normal way together with any interest that has accrued. However, I must say that the interest that is likely to accrue will be only about $10 or $20, and I do not see that as being a sufficient incentive to avert this misbehaviour by tenants. We do not think that this clause will be effective. Moreover, much of the interest that is earned on security bonds lodged with the tribunal will be spent on funding the tribunal itself. So the interest that the tenant will receive on return of the security bond will be only a fraction of the interest earned.

Under clause 61, the Government tries to deal with the problem of billing tenants for water. As things stand under the old water rating system, the arrangement for apportioning the cost of water between the landlord and the tenant is simple. The landlord now pays the connection fee and the tenant pays for excess water. The Government has changed the water rating system so that now householders pay for water from the first kilolitre onwards. The concept of excess water no longer obtains. Clause 61 provides:

> In the absence of an agreement—
> (a) the landlord will bear the rates and charges for water supply up to a limit fixed or determined under the regulations; and
> (b) any amount in excess of the limit is to be borne by the tenant.

It would be helpful if, in Committee, the Deputy Premier would indicate what that limit, which will be fixed in the regulations, will be. The Opposition assumes that the landlord will meet the cost of water charged at the minimum rate but, if so much water is used that the cost goes up to the second or third rate, at that point the tenant will be expected to pay, but it would be handy to have confirmation of that by the Deputy Premier.

Under clause 73, the period of notice required to be given for termination by a landlord for no reason is reduced from 120 days to 90 days. The Parliamentary Labor Party does not see any compelling reason for that reduction.

Another clause in the Bill which is interesting is that which relates to the Government's introduction of vicarious liability on tenants for damage to premises caused by people who are invited onto the premises by the tenant. We think that is a sensible clause, and we support it. As the Deputy Premier said earlier in the debate, there are many examples of tenants and their friends trashing premises, so anything that makes those people personally responsible for the damage that is caused is something that the Parliamentary Labor Party, unlike the Australian Democrats, will support.

A further feature of the Bill is that, for the first time, the Government adopts a regulatory role in respect of rooming or boarding houses. In my electorate of Spence, which covers the Hindmarsh, Brompton and Ridleyton areas, there are quite a few rooming houses. Rooming houses are common in Taylor and Coglin Streets, Brompton. I visit these rooming houses quite often because it is my practice as the local member of Parliament to get a list of my new constituents—people who have moved into the electorate of Spence. I hop on my bicycle and ride out to show my face at the door. Very often when I show my face at the door of a rooming house it can be awkward, because the real front doors in rooming houses are not the front doors themselves but the doors which lead to the boarders' bedrooms. Anyone seems to be able to walk in or out of the front door of a rooming house, so one must hop inside the hallway without knowing what lies down the corridor. Very often when I arrive to greet my new constituent, that constituent has already moved on, even though I may be visiting only one week after receiving notification of the enrolment.

I make those remarks to explain why I am often in those boarding houses. It is fair to say that some boarding houses are better than others and that some boarding house landlords are better than others. Some boarding house landlords adopt an attitude of responsibility towards their neighbours. Those landlords try to suppress unruly behaviour by their tenants that affects their neighbours. Other landlords could not care less: they just want to collect the rent and leave any disturbances to the police. Boarding houses are a necessary feature of our society. There will always be a requirement for them, because there will always be a clientele, mainly unemployed men who have no other place to go, no other place that they can afford on the unemployment benefit or the invalid pension.

There have been some criticisms of the code of conduct for rooming houses by Mr George Romeyko, who styles himself as the president of boarding house landlords. I do not think that Mr Romeyko's criticisms of the code of conduct proposed by the Government are fair. I have read the code of conduct carefully, and I think it is a sensible and measured response to the situation. There was one aspect of the code that I thought was unrealistic, and that is the requirement that landlords not require rooming house tenants to pay rent more than one week in advance. Most rooming house tenants are on the invalid pension or the unemployment benefit, and they are paid once a fortnight. If they were required to make their payment weekly, the likelihood is that they would pay in the first week, they would then spend the remainder of their dole or pension check and be unable to pay in the second week. I put this point of view to the Government on behalf of a rooming house landlord in my area. I am pleased to say that the Government accepted my representation, so rooming house residents may be required to pay fortnightly in advance, which, in my view, is a sensible provision.

In conclusion, I should explain that in another place the Government's original Bill has been so heavily amended that it corresponds with the joint position of the Parliamentary Labor Party and the Australian Democrats. Just how the Parliamentary Labor Party reached an agreement with an extremist like the Hon. Sandra Kanck, I am not sure. But the Bill as it comes before this House is in a form that is acceptable to the Australian Labor Party. The Deputy Premier, on behalf of the Government, will be seeking heavily to amend a Bill which the Australian Labor Party regards as mostly satisfactory. It is a somewhat unusual situation before the House today.

I suppose the Opposition could resist every change which the Deputy Premier seeks to make in Committee but, in the interests of the smooth functioning of the House and in the knowledge that the Government has a crushing majority in this House, it is sensible for the Opposition to acquiesce during Committee to the Government amendments and to

resume the battle in the conference of managers of the two Houses which will undoubtedly ensue.

Mr ANDREW (Chaffey): I support this Bill. During the 1980s I spent a number of years involved in the real estate industry, so it does have an interest for me for that reason. Overall, I particularly commend the task undertaken by this Government to review the regulatory framework in general. I support the principles underlying the Bill. It clarifies the landlord-tenant relationship, reforming those areas where we believe abuses have occurred over recent years. It improves the administrative process that faces landlords and tenants, and it encourages a resolution of disputes before resort to the costly legal system.

There is a widespread public perception that tenants have greater rights than landlords in such issues as who has legal possession, when is a tenancy agreement entered and when is there risk of personal injury or damage to the property. Notwithstanding my earlier comments about my interest in this matter, I took the trouble to check within my electorate, and I discovered that more than 25 per cent of people in the Riverland live in rented accommodation. Therefore, the relationship between tenants and landlords is undoubtedly important in my electorate, as I guess it is across a wide spectrum of other electorates in this State. Importantly, this legislation does not impinge upon the tenant's rights to live securely in rented accommodation, balanced against the rights of landlords who need to feel that their property is secure and that they can gain access under prescribed circumstances in appropriate situations.

One of the most common concerns of landlords relates to the termination of agreements. We note that part IV of the Bill redefines when termination actually occurs and what is required in the prescribed notice by the landlord: it is not a requirement that the tenant hand over vacant possession or that the tenant be subject to an order by the tribunal before the agreement is ended. That is reasonable protection of the interests of the landlord, without infringing upon the tenant's entitlement to possession and enjoyment during the period of the tendency agreement.

Further, it is not reasonable in this case that the tendency agreement remain valid just because the tenants have not vacated, given that the landlord must follow certain processes in giving notice of termination. Specifically, I note that clause 43 prescribes what landlords are able to do when they wish to terminate an agreement on the basis that a breach has occurred. That would result in a less bureaucratic procedure for the landlord. There are formal processes to be followed in dealing with the tenant. However, under this Bill the tribunal is to be the last resort in that process. Protection for the tenant is retained with the right to apply to the tribunal for an order overturning the landlord's notice of determination, so that that opportunity and right will still be additional protection for the tenant. Clause 49 extends to tenants the opportunity to terminate agreements within 21 days without specifying grounds, and this continues. Their rights are maintained in this area as before.

The period of notice that a landlord must give without citing reasons for wanting to vacate possession, while being decreased from the current 120 days to 90 days, does not threaten the position of tenants. All it does is to give a better balance to what is arguably a fair arrangement, particularly on behalf of the landlord in this case. The public's general dealings with the bureaucratic processes will be improved under this Bill. I can cite examples. The payment of security bonds and the retrieval of the bonds where there is no dispute will, under clauses 24 to 26, occur through the Commissioner for Consumer Affairs, thus it will be a quicker and more efficient system.

Mr Atkinson: Why?

Mr ANDREW: Well, they can go straight to the Commissioner. It is a simpler process: they just walk in, get the signature and receive the security bond.

Mr Atkinson: Simpler than what?

Mr ANDREW: Simpler that the process at the moment.

Mr Atkinson interjecting:

Mr ANDREW: I can cite examples where that process has been held up unduly. For example, a constituent has pointed out that the signature on the bit of paper was not right because it was done by an agent, and the bit of paper has had to go back and forth about three times. A further example of reduction of the bureaucratic process is that interest will accrue while the bonds are held by the Commissioner. Despite the member for Spence's indicating earlier that it may be only $10 or $20, it is not unreasonable. It is quite an acceptable incentive: tenants will acknowledge that $10 or $20 is some incentive to procuring the bond early and quickly.

Clause 32 relate to tenants' responsibilities for cleanliness and damage, providing a clearer and fairer guidance as to whether the property is in a reasonable condition. Also, the tribunal will become involved only when there is a dispute between the parties. Again, there is a streamlining: if there is a normal and operative agreement between the tenant and the landlord, the third party and the bureaucracy will not be involved. The tribunal is to be a new division of the Magistrates Court, which sits in country areas, so it will provide improved access for the rural population. I emphasise that it is important that this mechanism be available in country and regional centres to serve community need.

In conclusion, this Bill will ensure a fairer balance between the rights of both the tenant and the landlord. It reduces bureaucratic control and involvement, and it will streamline the mechanism for managing the current arrangements between landlords and tenants. I commend the Bill to the House.

Mr LEWIS (Ridley): I support the Bill. There is a growing problem in the marketplace for rental accommodation to which I wish to draw the attention of the House, and that is the practice whereby a small but rapidly increasing number of people, who are perpetual tenants by design and not by need, have chosen as a lifestyle to exploit a system set up to cater for the needs of the less fortunate in society. They have chosen to be less fortunate in terms of cash income, living on, as it were, deceit. They take rental premises where the bond in their poverty stricken State is paid for either in part or completely by Government agencies, such as the Housing Trust. They move into partly or fully furnished premises if they can get them and, on taking up residency, they sell off some if not all of the furnishings in a garage sale.

They pay no rent and they avoid any due process being served upon them, or the landlord undertaking any inspection of the premises, simply by not being there when they make appointments with the landlord to be present for that purpose. After three or four months when finally, through due process, the landlord obtains an order to have them evicted, these people trash the place and flog off anything that can be sold, and we find they already have made arrangements to move on to other premises.

They have unstable personal relationships; they often use many aliases; and they will use one or more of their transient relationships with others as the basis on which to establish a new tenancy arrangement and get another start in life. Through our taxes, we pay for these people. More importantly, and worse still, they give all tenants a bad name in the eyes of landlords, and it causes landlords to seek to require prospective tenants to show conclusive proof of identity and to provide other evidence of reliability and responsibility in the way they will use the landlord's premises. However, to date the landlord has been prevented from obtaining at least some of that information, and this Bill goes some way towards addressing that deficiency.

It saddens me that the Hon. Sandra Kanck and other Democrats believe that you can never give too many rights to tenants. That is daft, because the implication is that rights are the same as privileges. All tenants need to know that they are privileged by the system of law in our society to have dignified, well established housing in which they can lead dignified lives and raise their children, if it is their desire to have them, in a responsible way. For the process to be abused in the fashion that I have just described, it does no service whatsoever to the needs of the majority who accept responsibilities and do not expect rights arising from the law through this process. I know other members share my concern and, by varying degrees, they have come across the circumstances to which I am referring.

I believe that we have to go further in addressing that problem; it will not be sufficient to increase penalties and fines, and it will not be appropriate to impose prison terms. There has to be another way, perhaps by imposing compulsory community service in some form or other, to stop this growing tendency. As I have said, these people engage in trivial and temporary dalliances, they use deceit to obtain rental premises and they abuse the law as it stands. When they are eventually caught, if someone takes them to court and into bankruptcy at their own expense, these people do not mind because they have already been declared bankrupt previously and are quite happy to be declared bankrupt as many times as is necessary to continue doing what they are doing. They have no conscience in that regard.

Recently one such tenant came to me complaining that they had been sprung and that they could not get into the premises they thought they were going to be leasing. On investigation I discovered that they already had been declared bankrupt many times before. When I advised the person concerned of my findings that person, with their life partner, simply stood up in my office and said, 'What the hell! At least I could give it a go', and left, as though it were their right to do so. It has been our responsibility, along with the landlords more particularly, to pick up the cost and cop the consequences without having any redress whatsoever. With those remarks and trusting that there is a way through which we can address this kind of problem, I hope that this House will amend these laws and give this Bill swift passage through the Parliament.

Mr CUMMINS (Norwood): I rise in support of this Bill. A couple of matters arising from the Bill concern me but I think other aspects of it are excellent. On the face of it, the Bill does not apply to the Housing Trust, and that is set out in clause 5(2) of the Bill, which states:

> This Act applies to a residential tenancy agreement, or residential tenancy, under which the South Australian Housing Trust is the landlord only to the extent that the application of this Act is expressly extended to such an agreement or tenancy by this Act, or by regulations made under this Act.

In other words, it is envisaged that in the future there will be some application of the general provisions of the Act to the South Australian Housing Trust. As a member representing a district in which there are many Housing Trust residences, it causes me some concern that this Act does not apply to the Housing Trust. I know that the member for Kaurna who sits next to me in this House shares my views about that.

Mr Atkinson interjecting:

Mr CUMMINS: I do not know about you but in electorates such as mine and the member for Kaurna's people constantly come in with problems. To some extent those problems relate not to the trust itself—although I suppose they do in the sense that the trust will not take action—but to disputes between Housing Trust tenants themselves. I had a situation recently—

Mr Atkinson interjecting:

Mr CUMMINS: The honourable member opposite says that he gets two complaints a week, and I probably would get about the same number. I have had great difficulty in the past in getting the trust to do anything about troublesome tenants, although I had a great victory a couple of weeks ago where a particular tenant literally had been harassing people in a Housing Trust development for years, and the trust actually got rid of the woman. I was quite shocked about that actually. All the tenants telephoned and congratulated me. This Act must be amended so that the Residential Tenancies Tribunal has direct jurisdiction in relation not only to normal tenancies but also to agreements between the Housing Trust and tenants.

But, it simply cannot go that far, either: it seems to me that it has to extend to the relationship between tenants in a particular Housing Trust development. I note that injunctive proceedings are available under this Act, and I would have thought the solution to the problem would be to allow Housing Trust tenants who are being harassed by another tenant to go to the Residential Tenancies Tribunal and apply for an interim injunction, and then perhaps a permanent injunction, with a provision in the Act under which a breach of that injunction leads to the termination of the lease with the trust, so that the troublesome tenant can then be evicted. I must say that, as a member in a Lower House seat, I am sick and tired of having to try to help people who are being harassed by tenants. We had examples in Marden, in my electorate, where the trust let one of its units to armed bank robbers. These fellows were renting the unit and using it as their residence from which to go out and rob banks. We had another Housing Trust development where—

Mr Atkinson: Most of those live in Spence.

Mr CUMMINS: Do they? We have some where I am, too. We also had prostitutes who were working out of another Housing Trust development in my electorate.

Mr Atkinson interjecting:

Mr CUMMINS: We will see about that; I have not made my mind up about that yet. That Bill has to be tidied up a bit, but we will talk about that when the time comes. It is just not good enough for the Housing Trust to avoid that problem. I have been corresponding with the Attorney-General on this issue now for some 2½ years, commencing prior to becoming a member, and I am glad to say that he has finally written to me and informed me that he is referring the issue to the Legislative Review Committee. Fortuitously for me, I happen to be a member of that committee, so unless something is

done about that issue I can promise members that there will be a minority report to this House recommending that the Act be amended to protect the rights of tenants as against tenants and also to protect the rights of tenants as against the Housing Trust.

I understand from one of the members of this House that a certain member in another place is saying that this Act is a licence for landlords. I must say that I find that absolutely amazing that she should say that. I conclude two things from that: either she has not read the Act or, alternatively, she has read the Act and she has not understood any of the provisions whatsoever. I suspect, having read what has been said in another place by this member, that it is probably the latter rather than the former.

As I understand it, the Government is being attacked on the basis that this Act does not support tenants. Under section 24, relating to the procedures and powers of the tribunal, it is obvious that the jurisdiction is an informal jurisdiction. The reason for that is to protect the tenants, because they do not have to go to a lawyer and they can save costs. Section 25 provides for the court to cure irregularities. In fact, if something happens and certain procedures under the Act are not complied with, the court is entitled to cure that irregularity. Obviously, once again, that provision is meant to protect a tenant who may make some sort of mistake in bringing proceedings, not being familiar with them and not being a lawyer. Once again, it is designed to protect tenants and to protect them as against cost.

Another interesting provision in relation to tenants is that contained in section 38, which provides that the costs of preparing a written residential tenancy agreement, or a document recording its terms, must be borne by the landlord. I practised law for 25 years and, acting for a landlord, it was always the case that the tenant paid, not the landlord. Of course, tenants were receiving the conveyance and, therefore, they paid. So much for protecting the landlord, who not only is affected by the provisions of this Act but also has to pay for the document which to some extent, I suspect, stitches him up—and one may say rightly so. Why should the tenant not be in a better position than the landlord? Generally speaking, there is a different bargaining position between the landlord and the tenant. That is why the law has always sought to protect those who are in a lesser bargaining position, and that is exactly what this legislation does.

Mr Brindal interjecting:

Mr CUMMINS: That is right. Section 40 prevents discrimination against tenants with children. Any of us who live in the real world would know that a lot of landlords are reluctant to rent to families particularly with young children. Section 40 specifically provides that a person must not refuse to grant a tenancy to another on the ground that it is intended that a child should live on the premises, and there is a penalty of $1 000. The other interesting provision—and it basically incorporates the way equity has been developing for a long time—is contained in section 64, which provides that the tribunal may on application by a tenant make an order rescinding or varying terms of residential tenancy agreement if satisfied the term is harsh or unconscionable. That sort of relief is based on the equitable principle of constructive fraud; it has been incorporated in the law and has now been incorporated into statute. Basically, it deals with a situation where the intrinsic nature of the subject matter or a transaction is such that it is suspected, in colloquial terms, that someone is being done in.

Once again, I note that the legislation protects a tenant in this position, because normally, as I said earlier, the tenant is in a less bargaining position than the landlord. For example, under section 64 one could apply to rescind or vary the terms of an agreement if there is material inequality for some reason, if it is necessary to protect, say, the legitimate interests of a party to a contract, or if because of economic circumstances, educational background—illiteracy—there was an unfair bargaining position between the parties, or undue influence, unfair pressure or tactics in relation to the execution of an agreement. Therefore, to say that this agreement does not protect tenants and is a licence for landlords, as I understand has been said in another place, quite frankly, astounds me. It is totally and utterly inaccurate and shows ignorance—in fact, one could say gross ignorance—of the provisions of this Act.

I return to this issue of the trust. Certain provisions of the Act apply to the trust, and I refer her to Part V, Division 2, commencing at section 68 but excluding, I think, sections 70 and 73. In other words, in relation to notice of termination by a landlord and termination by the trust, various provisions exist dealing with those issues and also to the limitation of a right to terminate. I come back to what I said earlier. I hope that something will be done to ensure that the rights of tenants as against each other in Housing Trust developments are protected. As I have suggested, the way to do that would be to extend the injunction proceedings in section 27 to allow a tenant as against another tenant to obtain an injunction, that injunction being interim and permanent; and obviously an interim injunction would be obtained on the basis of affidavit evidence.

We could also incorporate a provision into the Bill so that, in the event of a breach of that injunction, the tenancy agreement comes to an end and the tenant can be evicted forthwith, because time and again members on both sides of this place and I have had problems with people coming to us who are harassed and who are living in hell, basically, in Housing Trust developments, and we all know that some of them are fairly close to each other. Something should be done about it, and I can assure the members of this House that, when the matter is referred to the Legislative Review Committee, I will attempt to do something about it.

Mr CLARKE (Deputy Leader of the Opposition): The Opposition's lead spokesperson, the member for Spence, has clearly set out the Opposition's position with respect to this matter. However, I want to deal briefly with a subject that crossed over a point made by the member for Norwood, that is, the obligation by tenants to live as part of the community, to fit in with normal community mores and to get along with one another. As the member for Norwood would be aware, my electorate also has an extensive number of Housing Trust tenants within it, and one of the constant complaints I get, along with most other members of Parliament, concerns disputes with neighbours occupying rented premises, whether they be Housing Trust or private, and the concerns that arise for people who live alongside what could be described as neighbours from hell. I do not believe that anyone should have to put up with that type of behaviour.

It is often said that members of the Opposition, particularly, are not able to influence the course of events a great deal, but I am pleased to see clause 59, which provides tenants with some protection with respect to landlords who do not care two hoots about their neighbours. This issue arose when a constituent came to see me earlier this year complaining

about neighbours living in private rental accommodation immediately opposite them. I could only describe the landlord as a slum landlord. He lived well outside my own electorate. The block of three units or flats that were being rented out were in appalling condition. There were very few amenities, and they were filthy. The landlord did not care too much as to the quality of the tenants that he placed within those units because, as far as he was concerned, as long as they were prepared to pay the rent, he did not care much what they did because the premises were already in a shabby enough condition.

There was a succession of tenants over a number of years and, on a regular basis, they caused endless trouble for a lot of senior citizens living nearby with loud parties and music going all night, and they used foul language directly to the neighbours when they went over to complain, to ask them to turn down the music or in some other way conform to the norms of society. The police were called on a number of occasions. However, at the end of the day, despite complaints to the landlord directly concerning the behaviour of the tenants, the landlord abused the neighbours and said that he did not care what his tenants did. I took the opportunity to telephone this person to represent the interests of my constituents. I spoke to the wife of the landlord and I was roundly abused by her. There was no way that I could get through to his wife that the tenants were behaving in a totally unacceptable fashion and that something would have to be done about them. I was told in no uncertain terms and in very clear language that the landlord did not care.

When I checked out with some lawyers and with the Residential Tenancies Tribunal as to whether the neighbours could force these tenants to be evicted or whether there was some obligation on the landlord to compel the tenants to do something, I found that the Residential Tenancies Act imposes obligations only with respect to the landlord on tenants not to permit a nuisance to other tenants. There is a gap in terms of obligations on the landlord to ensure that tenants are not a nuisance to neighbours in adjacent properties. I discussed with another lawyer the remedies that might be available, and I was told that these neighbours could take action in the civil court for nuisance. The problem with that is the cost of the action and the time it takes for an order to be made.

When this Bill came before the Parliamentary Labor Party Caucus, I suggested an amendment, which was picked up by Caucus and which was adopted by the Attorney-General in another place, I am pleased to see, with respect to clause 59. When this Bill is passed, under the Residential Tenancies Tribunal, neighbours living alongside noisy tenants will have a comeback against the landlord to insist that the landlord treats them no differently under the law than noisy tenants disrupting other tenants of the same landlord. The Residential Tenancies Tribunal will have authority to impose those obligations on the landlord. I support the retention of the tribunal because I believe it provides a relatively quick and efficient service, and it is inexpensive for the average person in the street to be able to take these sorts of complaints through to an authoritative body and have these matters resolved without unnecessary form or expense.

Quite frankly, as the member for Norwood has pointed out, many people will want to avail themselves of these legal remedies and see that slum landlords pay some regard to their neighbours and insist that the type of tenants they have behave themselves appropriately or face eviction. That is why I am very pleased to see that the Government has picked up that suggestion. As I said earlier, there are times in Opposition, particularly with the House as it is now, when I feel that there is very little that I can do to effect change in legislation. The fact that we have been successful in having the Government adopt our amendment to clause 59 gives me no small pleasure, especially as it will redress a problem for constituents of mine and other members of Parliament who have to deal with unreasonable landlords who do not care too much about the behaviour of their tenants and their interaction with adjoining neighbours.

Mr BECKER (Peake): At long last there has been a substantial review of the landlord and tenant legislation, for probably no other piece of legislation has caused more concern or worry for many of my constituents. I have received many complaints over the years in relation to the units of accommodation made available by my constituents to the public. After they were vacated by certain tenants, the state of those units left a lot to be desired. I have seen flats in Plympton, Glenelg, Novar Gardens, Torrensville and Thebarton which have been absolutely trashed by tenants. However, when the landlords approached the Landlords and Tenants Tribunal to seek compensation, they were virtually given the wipe. The tribunal has been inconsistent in compensating landlords.

I get the impression that, over several years, many landlords in South Australia have tried to lobby governments and members of Parliament to get some sanity into the legislation. I therefore give the Attorney-General full marks for trying to do just that. Tragically, two people in another place got hold of the legislation and put in their personal social justice views. They must be the most ignorant people I have ever come across. I do not think they know very much about life. Certainly neither of them has represented an electorate in respect of which they have had to deal with tenants and/or landlords concerning the kind of situations that I have had to face. Surely no-one could be so stupid as to amend the legislation in this way.

If anyone thinks that being a landlord and renting out a property is something to be proud of today and that that will make you very rich, that person is fooling himself. It is probably the worst financial risk you can take. I can understand why George Romeyko is concerned about the addition of the rooming house and lodgers provisions. Many people provide an essential service for certain people within the community, and they will now be regulated as much—

Members interjecting:

Mr BECKER: The member for Spence carries on like the former member for Mitcham who is now Judge Millhouse. It is a terrible tragedy that the member for Spence has not really had enough experience of life to understand what is going on.

Let us consider the good book—the Auditor-General's Report for the financial year ending 30 June 1994. I am waiting for the current Auditor-General's Report. The report states that security bonds lodged in the previous 12 months amounted to $23.9 million, while rent received pursuant to tribunal direction was $9 000. Interest was $513 000. I looked at that and it did not seem right to me. With a turnover of nearly $24 million, they have collected only $513 000 in interest. According to the explanation in the report, under 'Public Trustee Investment', it states that the fund has $36 million invested with the Public Trustee and has earned $1.8 million interest. However, as at 30 June 1994, that money had not been received. I would like to have the

opportunity in Committee to find out what happened and why. I do not know whether anyone has followed up that matter. However, in the previous year interest of just over $2 million was earned.

Something like $21.2 million worth of security bonds have been refunded while, as I said, $23.9 million of security bonds were lodged. Administration costs amounted to $2 569 000. That is absolutely disgraceful: it costs $2 569 000 to administer the sum of $24 million. Bearing in mind the number of people renting accommodation in South Australia, we need to have a close and detailed look at the final aspect.

That gives some idea of the sums of money we are dealing with. The private sector handles about 70 000 units of accommodation. About 55 000 would be single owners letting out properties. The remainder would be professional people working through land agents and who have more than one unit of accommodation. This is big business. If we include the Housing Trust, that is an extra 63 000 units. All up, we are looking at about 125 000 units of accommodation covering about 24 per cent (quite a large percentage) of the population.

As other members have said, it is the behaviour of some tenants which is ruining it for everyone else. For the genuine fair tenant, it can be a wonderful way of affording accommodation. The vast majority of landlords have been able to provide accommodation at a fair and reasonable price, and they have probably been fortunate to make a very small profit.

The problem is the brute tenant and the tenant who decides to play the law to the nth degree. These are the tenants who have absolutely no skills in looking after a house, unit or flat. It annoys me that, through our education system in our modern society, a vast number of people have no house living skills. I have been into accommodation where the septic system has failed and nothing has been done to it. The tenant has been living in what I can only describe as pigsty-type accommodation.

We have a community service group of women at Henley Beach. I have often had to call on them for help and say, 'Look, I've got a young supporting mother here who obviously has bed sores. She can't feed her poorly clothed children.' Those women go around to that accommodation and they strip the place. They put in new bedding and linen. They clean and fumigate the place and do all sorts of things like that.

A large number of people need daily and weekly supervision with regard to house living skills. It is a shame that, at this stage, governments, and particularly the two so-called experts in another place, are not aware that certain tenants need a lot of help out there. The tendency is to throw the responsibility back on the landlord. However, if the landlord goes to the tribunal for assistance because his place has been trashed and thousands of dollars worth of damage has been caused, he cannot expect much sympathy from the tribunal.

If the legislation leads to the removal of everyone associated with the tenants tribunal, I would be delighted. The stories that I have heard and the reports that I have read involving decisions taken by the tribunal lead me to believe that it is about time that it was abolished and that the people put in charge of the responsibility for sorting out disputes between landlords and tenants understand the real issues involved and are more sympathetic towards the landlord. When the Bill was introduced, the Minister said:

> The Bill seeks to achieve balance between the rights of the landlord and the rights and needs of the tenant, providing more efficient and less time-consuming (and unreasonable) bureaucratic processes to achieve that balance.

This is the opportunity to achieve that. However, it will probably never stop some of the complaints which have come to my office. Probably one of the worst complaints that I have received involved an academic tenant who rented a unit. Within a few weeks, he claimed that someone had broken into his flat and that all his beautiful compact discs, valued at thousands of dollars (actually probably worth only hundreds of dollars) had been stolen. That person, through the tribunal, was able to obtain compensation because the landlord had not changed the keys. The landlord was accused of being negligent in relation to the keys. That is why the responsibility of keys has been included in this legislation.

If ever there was a set up, if ever a landlord was taken to the cleaners, it was that case. I do not care on what the tribunal based the assumption, because I know that the landlord did not get a fair go. If a landlord was ever set up, that was the case. It is to the discredit of the tribunal that it ruled in that way. The compensation that the landlord had to pay out was several thousand dollars, plus what he lost in legal fees and so on. If that is the way we will run a tribunal to look after accommodation for people in this State, then the State can provide all the accommodation. We will not then be losing $100 million a year through the Housing Trust: we will be losing $200 million plus.

Private landlords have saved the taxpayers of this State tens of millions of dollars and in many cases have assisted and provided worthwhile and affordable accommodation for young people getting their first start in life. They have never had any reward or much assistance. Occasionally the rogue tenant does something wrong and the landlord goes to the tribunal, as they believe is their right under the legislation. Certainly they have the right, but forget the tribunal, because it is rare for it to make decisions that are overly favourable to the landlord. That is the conflict we have established between the landlord, the tenant and the tribunal. Those problems have been further increased in this legislation.

The Bill put to the Legislative Council was designed to eliminate those problems but it was heavily amended by members in the other place—one representing less than 4 per cent of the voters in my electorate. It is scandalous for somebody to stand up in a Parliament and say that they have the balance of power or balance of reason when they represent only 4 per cent of the voters in a particular electorate. They do not come across the problems of rogue tenants getting bond money or of tenants being skilled and educated by radical left-wing organisations on what they can do or what they should do to ensure that they do not pay the rent. When they borrow the bond money from the Government, they then skip their rent and leave when they believe that the bond money has been cut out in rent. It is then up to the landlord to fight for his rights and to try to recoup some of that bond money from the tribunal, and the landlord does not get a fair go from the tribunal. It is the only way to sum it up.

It is the lousiest piece of legislation ever debated in this Parliament and it is a disgrace to the previous Government that it allowed it to continue for so long with the damage and harm done to so many people who were genuinely concerned—good landlords who tried to help people and were hurt in that process. The member for Norwood said that he is pleased that the Housing Trust has been swept into it too. I can tell him that the bulk of Housing Trust tenants in my

area were good people, although you got some rogues amongst them. At least we now have somebody with the courage to deal with them and we took them on a couple of years ago in insisting that Housing Trust tenants realise how fortunate they are in having accommodation provided for them.

Another aspect of the legislation that concerns me as much as does the landlords issue is that dealing with those who need to rent a room—the boarding house people. Not too many people in this House would be prepared to stand up and admit that, when they first started in working life (particularly those of us from the country) and were moved from one country town or city to another, they had considerable experience in boarding houses. I was transferred around in the bank, as stockbrokers and agents were transferred, as the Deputy Leader should know. He should be a little more concerned for the welfare of those in the stock firms. There were insurance company and oil company representatives, school teachers and police as well as those involved in many of the public and private enterprises represented throughout the country. Decentralisation means that you must deploy staff from the city into the country and from the country into the city. It was necessary for employers in the country to find rental or boarding house accommodation for their staff.

Once we start regulating in that area, we will start to walk into a minefield. Once we start looking into the area of those with intellectual disabilities and consider boarding house accommodation, we are walking into a bigger mine field. There is a large boarding house in my area that supplies what I consider to be fairly good accommodation for the intellectually disabled. The supervision of that boarding house by a former registered certificated nursing sister is quite good, and part of her responsibility is to supervise the medication for the boys. It takes a particular dedicated type of person to look after the welfare of so many people, whether they be men, a mixture of men and women or women only.

I am very concerned that we will try to regulate and control those organisations. Occasionally we might be able to point to cases where the landlord does not provide five-star accommodation for some of these people, but many of them have very poor living, domestic and health skills. It takes a special type of person and we cannot measure that in legislative or financial terms. These people meet a need and make a provision in the community for these people. I warn everybody to be extremely cautious when dealing with this area, because we do not want to put these tenants' accommodation in jeopardy.

It is frightening to go to cities like London, Los Angeles and other parts of the Continent where people sleep in doorways and walk around with all their possessions in one little bag, obtaining accommodation wherever they can. The only wash they get is if they get caught in the rain. It is a poor living standard, they have poor living skills, and they usually have a short life. We should give those who want to provide this type of accommodation some leeway and latitude and we should not be dogmatic unless we are prepared to establish institutions for people commonly known as vagabonds—we are better off providing farms for them—as such people are virtually nursed throughout their life. We cannot do it. It goes against social justice and human nature.

This is a Committee Bill and each clause needs to be carefully considered. I hope that this House will send the message to members in another place that we are far from satisfied with what they have attempted to do to this legislation proposed by the Government.

The Hon. S.J. BAKER (Deputy Premier): I thank all members for their contribution to the debate. Inevitably in this sort of debate there is a significant amount of emotion because we have all had to deal with difficult cases involving landlords and tenants. Most members tend to forget on occasions that we are dealing with human beings. When the ALP takes a particular stance against landlords, it forgets that some of these people are very strong supporters of their own Party. They are people who have saved money, invested in property and look for some return on that property. Some use it as a means of providing income so that they do not fall upon the Social Security system. Others use it as a means of paying for a house whilst they are absent interstate or overseas. Some of them use it simply as an income stream. There is a whole range of reasons why people own property excess to their personal requirements and why they rent that accommodation. Each electorate has people who own excess accommodation for whatever reason (and I have outlined most of those to the House).

The vast majority of people who own property are decent, well-meaning human beings: by the same token, most of the tenants who occupy those premises are decent, well-meaning human beings. Unfortunately, there is an element which is more significant amongst tenants than landlords (because of the difference in numbers) who cause problems for everyone, and this has led to some regulation by way of the legislation which we see here now, which we have seen here for some time in various forms and which has been amended over the years—and this is the most significant amendment to the original legislation that was put before this Parliament.

The situation is not satisfactory for a number of people. I remind the House that the vast majority of complaints that residents make to their local MP involve tenant behaviour. There are landlords who do not meet their obligations, and should those circumstances exist the tribunal in the past has issued orders. In some cases where the premises are not up to scratch, it has placed specific orders against those premises and there has been a resultant decrease in rent if those orders have not been complied with. So there has been, if you like, an imbalance in the way in which the market has operated.

There are circumstances where landlords have had their properties trashed or where tenants know exactly what the tribunal will do—and those tenants are known to the tribunal. These tenants diminish their tenancy accommodation by smashing doors, disrupting hot water systems or taking globes out of light fittings and say that it is the landlord's fault, and they then get a cheaper rent and demand that the landlord fix it up. In other circumstances, landlords do not live up to their obligations and tenants can find that they are genuinely without power on occasions, that some of the electrical equipment does not work, or that there are infestations of pests and problems with salt and water damp. However, the vast majority of tenancies work. We are only dealing with a relatively small component of complaint which has led to legislative oversight of the rental tenancy market.

I repeat: in the main we are dealing with good human beings in the form of both landlords and tenants, and I would ask all members to remember that when they are considering legislation of this nature. The issue of a bad tenant has been a matter of complaint to all members of Parliament. I am aware of very few complaints about landlords: there may be complaints in other electorates about landlords but the vast majority of complaints that come to me arise from situations which involve tenants who do not live up to their responsibili-

ties under their agreements with the landlord and under this legislation.

In the past it has been difficult and time consuming to remove the tenants and get justice for those concerned for a whole range of reasons, and to date the Residential Tenancies Tribunal has tended to err on the side of the tenant in many of its deliberations. I have a number of landlords in my area and they are people of high standing and goodwill, and some of the stories they have told me about the behaviour of tenants are matters of considerable concern. They do not feel that the Residential Tenancies Tribunal has met their needs. Some landlords have sold their properties and that has reduced the potential for renting in the open market: others suffer the problems and hope that somehow they can make a reasonable living from renting their properties.

It is a difficult task for any Parliament to regulate the retail tenancy market to the extent where it offers protection for both the landlord and the tenant, because conflicting interests are involved. The problems are never simple and quite often relate to differences of opinion between neighbours and are hard to settle. I have received a few complaints about inappropriate behaviour in some of the medium and high density dwellings in my electorate, and they relate to both public and private ownership. They are not easily solved because, when people live in close proximity, matters such as animals, noise and behavioural problems become very significant.

What the Government has decided to do is to get balance back into the market place, restore some pride for the landlords and ensure that the tenants are protected: we will try to reach that very fleeting pinnacle of balance. We all want balance so that the rights of those who have genuine complaints are protected and those who err in their responsibilities do not gain an advantage as a result of their behaviour—and far too much of that exists today.

I will now briefly address some of the comments of members. With regard to the issue of water, obviously tenants who use water should pay for it, and a scheme is being introduced in this Bill to allow that to happen. As every member would recognise, in most circumstances the volume of water used by tenants in medium-high density accommodation is relatively small but when we are talking about houses it is of greater consequence, and the scheme will allow the tenant and landlord to reach agreement on that matter. The member for Spence made some remarks about the Minister's powers of regulation, but it should be pointed out that the regulation power still remains with the Governor.

Mr Atkinson: What's the difference?

The Hon. S.J. BAKER: There is a difference. If it was with the Minister, it would not have to go through Executive Council, so you would have far wider and more intensive scrutiny—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: It is far more intensive scrutiny of any changes proposed under the regulations.

Mr Atkinson: Pull the other one!

The Hon. S.J. BAKER: The member for Spence was aware of what happened under the previous Government. I assure him that under this Government these matters are scrutinised. If changes are proposed, they have to go through the appropriate process: they are put under far more extensive scrutiny than if the Minister had the sole decision making power. So, there is a filter on the system.

Mr Atkinson: '. . . to be determined, dispensed with or regulated by the Minister', that is the wording. Read clause 112.

The Hon. S.J. BAKER: I will debate clause 112 when we get to the Committee stage, and the honourable member can ask questions at that time.

Mr Atkinson interjecting:

The DEPUTY SPEAKER: The Chair would prefer that the member for Spence restrained himself until the Committee stage of the Bill.

Mr Atkinson: I was provoked.

The DEPUTY SPEAKER: The member for Spence was no more provoked than was any other member of the House.

The Hon. S.J. BAKER: Under clause 109, the Minister has the capacity to exempt agreements and types of premises by notice in the *Gazette*. That is very different from the power to make regulations, and I am sure that the member for Spence understands the difference. The Minister has exemption powers under other Acts such as the Real Estate Act, which was proclaimed in June. That power of exemption would not permit the Minister, for example, to exempt all rental premises, because it is limited to specific classes, so they would be targeted. Regarding the issue of interest, obviously we want to encourage people to act in a responsible fashion. In the case of long-term tenants, because their bond money has been tied up for a long period we believe there should be some return to that person.

A number of other issues have been raised. It will be somewhat of a disappointment to certain members that under the Government's scheme the Housing Trust will not come under the auspices of this Act. The reason for that—and I will explain it very carefully—is that the Housing Trust now operates under Government regulation: it is the responsibility of the Government to regulate that part of the industry. In terms of residential tenancies, it was always meant to be confined to the private residential market. There are examples in the Bill of clauses which people would wish to apply to Housing Trust tenants. Many of those are applied to Housing Trust tenants, because they provide the conditions under which properties are rented to those people. Whether the Housing Trust is galvanised into acting on those regulations on occasions has been the subject of complaint, but that is a different issue, and of course there is always room for improvement. So it is the intention of the Government to ensure that the exemption remains but obviously with an undertaking that the matters that have been canvassed by members receive far greater scrutiny in respect of the operations of the South Australian Housing Trust.

What the Government says by way of this Bill—and it will move a large number of amendments—is that it wants balance in the system. The amended Bill that we see today does not conform with the wishes of the Government. It maintains the Residential Tenancies Tribunal. We believe there is a far more effective mechanism than that which prevails today, and that is to do the same as we have done with the Commercial Tribunal. Basically, however, the Bill will allow justice to be done more speedily and more effectively with better balance for both participants, namely, the landlord and the tenant.

I thank members for their contribution to this debate. The Government wishes this matter to progress as quickly as possible. We have made changes in relation to the Commercial Tenancies Tribunal, and these amendments are consistent and cooperative with those changes to alter the jurisdiction to cover some of the areas which today are not satisfactorily

dealt with under the current arrangements. We believe that this is a more effective way of doing things. I refer to those country people who invariably have had to travel to Adelaide. I think that, of about 4 000 issues or complaints that have had to be dealt with by the Residential Tenancies Tribunal relating to rural or country people, all except about 250 have been dealt with in Adelaide. That has not given much justice to country people at all, whereas under these provisions it will be possible for many of those items to be dealt with effectively outside the Adelaide metropolitan area. I commend the Bill to the House not in its current form but in the form in which the Government seeks to have the measure passed through all stages.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, after line 19—Insert—

'relevant Act' means an Act (other than this Act) that confers jurisdiction on the tribunal;

This is the key issue that members wish to debate, involving the matter of whether the tribunal should exist in its current form or should be placed within the court system. A number of matters have been canvassed in another place. We are reasserting our intention that the tribunal as it exists today shall not be there tomorrow but that a more effective mechanism shall be put in place.

Mr ATKINSON: As a courtesy, will the Deputy Premier say how the change that he proposes will make the system more effective?

The Hon. S.J. BAKER: It is proposed that the tribunal be a participating court for the purpose of the Courts Administration Act 1993. That issue has been clearly debated in relation to the Commercial Tenancies Tribunal. Its membership will comprise the Chief Magistrate, who will hold the office of President of the tribunal, and all magistrates who hold office under the Magistrates Act will become members of the tribunal as well as such other persons who may be appointed by the Governor upon the nomination of the Minister. Any one of those additional people must be a legal practitioner of at least seven years standing. The President will have the power to delegate any of his or her powers or functions to another member of the tribunal.

We will now have a body that has a vast and significant amount of knowledge not only in terms of the issue before it, which is residential tenancies, but also in the law that must be exercised. As the honourable member would recognise, there have been a number of instances where people have actually broken the law in other respects that have never been taken into account by the Residential Tenancies Tribunal. There are a number of issues associated with this package which I think the member for Spence should note. The package of amendments proposes that contested proceedings be referred, in the first instance, to a conference of the parties to explore the possibility of resolving the matter at issue by agreement without the need for recourse to a court hearing. Rather than going to a tribunal which is quite formal in its structure and operation, there will be a conference, and we believe that perhaps 80 or 90 per cent of matters can be resolved in that way.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: I hope that is the situation, that where there is a difference of opinion it can be resolved. If that does not occur in 80 or 90 per cent of cases, let us hope that it does in 50 per cent, otherwise we will have to—

Mr Atkinson interjecting:

The Hon. S.J. BAKER: I think that many of those matters can be resolved by an independent party. When people's rights and responsibilities are clearly explained to them in a non-court or non-tribunal atmosphere, I believe that resolution can be reached, because people can clearly understand the ramifications if they proceed. Most people will see reason under those circumstances.

Certainly, once this new arrangement has been put in place, we will be able to gauge the success or otherwise of this measure. The member for Spence would know that, once people understand their rights and responsibilities a little better than they do now before they reach the tribunal, we might get an easier resolution to the vast number of complaints currently dealt with by the tribunal. We do not believe that there is anything special about the tribunal itself. We maintain that, if we can put a more effective mechanism in place, we should do so. The tribunal has a number of deficiencies, as is recognised and has been mentioned in debate in this House. We believe most of those deficiencies can be met by this jurisdictional change. The legislative review team recommended that this change was required, and this measure implements that recommendation.

The issue of dealing with matters quickly has been raised. Obviously for country people that is not the case, and when there have been delays, for whatever reason, that also is not the case. Under the proposal, with a wider capacity to operate in this area, conceivably one could suggest that dispensing with cases would be far more efficient and effective than it has been in the past. As to the issue of cost, we do not believe that because of a step-wise progression or dealing with the hard cases only at tribunal or court level will make the system more costly. Although some people would ask, 'What is more effective than being free?' the matter of its being free does not necessarily guarantee rights.

The honourable member would recognise that we have perpetual trouble makers in the system. The Residential Tenancies Tribunal has been operating on a card system for the past 10 years and has not improved its operations. The Attorney has made a significant effort to improve the capacity of the tribunal to check on previous clientele other than by a card system: we believe that providing for a more proactive system than is currently in place is an essential part of any reform, and the court system is already geared up to make that possible. We would see an improved financial and audit system and controls to prevent fraud. That has not been the case in the past, and a number of malcontents have slipped through the system with gay abandon.

In terms of handling disputes, in the period to 1993 a number of complaints were made to the Minister for Consumer Affairs involving the Residential Tenancies Tribunal—more significant than the number received involving the Commercial Tribunal. There is some suggestion that, if you complain, the next time you go up there you will not get justice. That should be avoided, and that is the issue: irrespective of whether or not that has happened in the past, that is a matter that has to be satisfied in a very professional fashion. The current tribunal system is more informal than a court, but it is not informal. Of course, in some areas the attendance of one or either party may not be essential to the hearing. The current tribunal system imposes costs for people who sometimes may be at work or living in outlying areas:

when the matter does not require the attendance of an individual, the new system will facilitate this matter.

About 4 000 cases were listed for court hearing in 1994, only 263 of which were heard in the country, and the rest were heard at 50 Grenfell Street. That clarifies a matter to which I alluded previously; I may have the statistics wrong in terms of how many people actually applied from the country but, looking at those statistics, we see there is obviously an imbalance. Many more complaints emanate from the country which, for various reasons, have to be heard in the city. This will allow a better arrangement to be put in place and, with the magistrate courts in various jurisdictions, there will be greater convenience to both landlords and tenants. We believe that there have been some improvements in the tribunal's administration but, quite frankly, we do not believe that the tribunal, as it is constituted, is appropriate in this day and age. We want to make sure that the level of informality that assists in cooperation and mediation is in no way affected by this change, but we also wish that professional determination be of the highest order.

The time for preparation of written determinations has been significantly reduced now to the extent that there is no backlog, whereas previously there was a considerable delay, amounting to days—sometimes weeks—in hearing these cases, and the removal of a tenant—a malcontent—could be a long and arduous task, involving considerable trauma for the people involved, whether they be other tenants putting up with that person's behaviour or the landlord losing rental and seeing his or her premises being destroyed in the process. We intend that the teleconferencing facilities will add a new dimension and again will allow greater flexibility and convenience to all concerned.

Obviously, this new system will allow the repayment of bonds much more quickly than has been the case in the past by the Residential Tenancies Tribunal. The level of conciliation was very low previously; we would expect that to increase dramatically. The information provided to the staff and the professionalism will increase as a result of this change in jurisdiction. There is a better capacity to deal with matters of law than has previously been the case within the Residential Tenancies Tribunal. Of course, there is a ready dispute settling mechanism. A whole range of other benefits could conceivably flow from this change, but principally the Government believes that the strengths of the Residential Tenancies Tribunal have been retained but that the weaknesses will be overcome by the change.

Amendment carried.

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

Page 3, after line 5—Insert:
'Rules' means the rules of the tribunal;

This amendment is consequential.

Amendment carried.

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

Page 3, line 28—Leave out the definition of 'Tribunal' and insert:
'Tribunal' means the Residential Tenancies Tribunal of South Australia.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5—'Application of Act.'

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

Page 5, Lines 6 and 7—Leave out paragraph (h) and insert new paragraph as follows:

(ga) an agreement under which the South Australian Housing Trust confers a right to occupy premises for the purposes of residence[1]; or

[1] However, the Tribunal has jurisdiction to hear and determine claims arising under South Australian Housing Trust tenancies—see section 13.

In speaking to this amendment I will also address the next one. This is the jurisdictional issue of whether or not the Housing Trust should be brought under the provisions of this legislation. As I explained to the Committee, there have been a number of relevant observations about the operations of the Housing Trust and the extent to which it should be brought under the general umbrella of the law which applies in the private sector. I point out to the Committee that the Minister would seek exemption on a whole range of matters contained in this legislation, simply because those matters operate now under the legislation and regulations of the Housing Trust. Obviously members may reflect that they are inadequate in certain circumstances, but it may well be that it is not the legislation or the regulations that are inadequate but that it is the capacity of the system to respond to those circumstances.

The Housing Trust rental system is highly regulated; the Government is the landlord, and it would seek to continue in its role as the legal operator without having to conform to these provisions and the associated regulations. Obviously the Government will look at this matter to ensure that there is balance between the private and public sectors. However, if members look at the Housing Trust regulations and the regulations under this legislation, they will see that there is probably a higher level of regulation on the Housing Trust under the responsibilities of the Government than there is in the private sector. Of course, some issues do have some convergence, and they are matters upon which we will reflect further.

Mr CLARKE: I gather from what the Minister has said that the Government understands some of the concerns about the Housing Trust and the way in which it handles the business of evicting tenants who are troublesome, particularly to their neighbours and the like. I understand also that the Minister is willing to take that on board, think about it and that he hopes to do something about it at some time in the future. It seems to me that the Bill, as it has come down from the other place, particularly with respect to subclauses (2) and (3), does allow tenants, through the Residential Tenancies Tribunal, to be evicted under the provisions of the legislation from about clause 68 onwards.

I do not know how many Housing Trust homes are in the electorate of Waite or in Burnside, but I have a considerable number in my electorate, as would the members for Elder and Mitchell, and a number of other members of Parliament, including the member for Gordon. Ministers in the Legislative Council may not have had to face distraught Housing Trust tenants complaining about harassment. Only a week ago, I was approached by a woman and her husband who were the original tenants in their house and who had been tenants of the Housing Trust for 44 years. A couple moved in nearby nine months ago, and they have made life hell for that woman and her husband for that whole period. This woman would be 70 years of age or over, and the male tenant has threatened to physically attack and assault her husband who, himself, is in his 70s.

When they contacted the Housing Trust, the officers said, 'Look, we will try to move you.' In this situation that suggestion was good because at that time these people wanted to move because their existing home was a bit too large given their age, but rather than attacking the source of the trouble, which was these antisocial individuals who did not deserve

to live in a Housing Trust home because of their type of behaviour not only towards this couple but to other neighbours as well, the officers suggested moving this couple. When I talked to the Housing Trust about it, the officers said that their difficulty was that, at the end of the day, if the disruptive neighbours knew their rights the Housing Trust would end up having to take them to the Supreme Court before it could throw them out. That is an absolutely appalling situation. The members for Norwood, Elder and Peake know that, and anyone who has Housing Trust homes in their electorate knows that.

Unfortunately, whether the Government or the Minister for Health, in particular, likes it or not, with the closing of Glenside and Hillcrest Hospitals, people who are not able to fit in socially are moving into predominantly Housing Trust homes in low income areas and creating an absolute nightmare for their neighbours, many of whom have been good Housing Trust tenants for decades. When you talk to the Housing Trust managers they say that they never get to service or see the good Housing Trust tenants—the 98 per cent of Housing Trust tenants who go about their lawful tasks and look after their homes. They spend all their time trying to deal with people who are basically social misfits because we have a policy that says we will empty out Glenside and Hillcrest and supposedly we will put resources into the local community so that these people can be absorbed into it, and we will have the infrastructure support in place to look after them. That does not happen, and there is absolute mayhem in some suburbs, and my electorate is one of them.

As I have said, because of the house prices in the electorate of Waite and in Burnside you do not get many Housing Trust homes there, and I am fed up with my electorate turning into a repository for social misfits who end up being located alongside good, solid citizens who want to do the best by their State and by the Housing Trust and whose lives are made absolute hell because of the pussy-footing around by the trust. To give the Minister for Housing, Urban Development and Local Government Relations some credit, I understand that he has tightened up that policy and is giving the trust greater flexibility in terms of being able to get rid of these types of tenants. I give him credit where it is due in that he has done something towards achieving that. However, fundamentally we need some access other than through the Supreme Court to enforce the rights of citizens and for the trust to be able to get rid of disruptive tenants. This problem is increasing and I would say that, particularly in Labor electorates which have a heavy preponderance of Housing Trust homes, not only daily but hourly our electorate offices are being flooded with these sorts of complaints.

I understand what the Minister has said, but the whole thing lacks teeth. At least the Bill, as it comes to us from the other place, gives us an opportunity to begin to remedy the situation. It might not be ideal as far as the Minister is concerned, but it is a hell of a lot better than what we have currently and at least it gives the Housing Trust some teeth. Also, is the Aboriginal Housing Board covered under the exemptions mentioned by the Minister in respect of the Housing Trust, and does it fall under the Residential Tenancies Bill?

The Hon. S.J. BAKER: This Bill does exactly what the honourable member wants, and I will just take him through it so that everyone can understand what the Bill will attempt to do in its amended form. Under clause 13 the Housing Trust and its tenants have the capacity to use the tribunal. I assure the honourable member that the cases he refers to are exactly the cases that we want to put before the tribunal because of the convoluted system that we have in place now. In relation to the removal of undesirables, the Housing Trust will have the capacity to have that dealt with by the tribunal. We want that to happen. The problems that the honourable member mentions were created by his own Government, and we are having to sort out the mess.

Allowing people who previously occupied mental institutions to live in the community began under the previous Government. We are putting in a lot more effort to provide a level of support that was not available under the previous Government. Obviously, in some cases, it is not totally effective. I do not think you can ever be totally effective in these circumstances. Every member knows that some of the horror cases occurred simply because people were being dragged out of Hillcrest or Glenside and told, 'Look, you can live on your own and you will be all right.' We know that that is not the case.

Mr Clarke: How do your amendments improve it?

The Hon. S.J. BAKER: I will come to that in a minute. I am explaining some of the problems created by the previous Government which we are having to deal with now. This issue of so-called social justice for the under-privileged, no matter what sort of bastards they may be—excuse my French—was vigorously pursued by the previous Government. It set down the rules and said, 'Look, irrespective of your behaviour, irrespective of your background, irrespective of whether you trash a house or a flat, you have a right to accommodation.' I have a totally different view on that. I know that the Minister is working to ensure that the behaviour of these people is appropriate, otherwise they can find a car somewhere off the beaten track and not put the public housing system or the private rental system at risk. That is what this Government was left with, and everybody knows that. We are trying to make it more reasonable and more responsible. So what—

Mr Atkinson: How?

The Hon. S.J. BAKER: Just listen very carefully. Our amendment to clause 13 allows the Housing Trust and its tenants to access the tribunal. I assure the member that these are some of the areas in which it will be operating. I will explain it very carefully so that the honourable member can understand the difficulty in this transition and what we want to do when we bring the Housing Trust under the jurisdiction of the tribunal. As we would recognise, a number of policies are pursued by the Housing Trust under the heading 'social justice' which, in a normal tenant-landlord relationship, would not necessarily be recognised as appropriate balance. For example, the trust has the ability to forgo rent for a particular period if tenants, because of circumstances beyond their control and for a very good reason—not having spent their money on the pokies or having done something outrageous—cannot pay.

Mr Clarke: He has really paid the Government, anyway, if he has played the pokies.

The Hon. S.J. BAKER: He has returned something to the Government. We have a public housing policy which is not necessarily consistent with a professional tenant-landlord relationship.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: Just be aware that the Opposition says it wants all those rules to prevail, but it does not want these rules to prevail. There are complications that the member for Spence has to accept. Under those circumstances, the Housing Trust would want exemptions from things such

as a security bond; from the termination provisions that would prevail under this legislation; from the excessive rent provisions under the legislation; from certain aspects relating to a landlord's responsibility for cleanliness and repairs; and from the provisions giving a tenant the right to assign or sublet. I will not debate the merits or otherwise of the trust's stance on this issue. By the time you dealt with the specific relationship that the Housing Trust enjoys with its tenants, as opposed to those renting in the private sector, you would have to interpose some other criteria in the system, and that has not been brought together.

We are suggesting to the Opposition that we can have the best of both worlds. We can have a Housing Trust policy which is sensitive to the particular clientele served by that policy, and we can also have a tribunal system which recognises the rights of tenants and landlords as set down in the legislation. I am not saying it is perfect by any means, but I am saying we can get the best of both worlds and we can certainly improve in some of the areas that already have been outlined here today.

Mr ATKINSON: I thank the Deputy Premier for that lucid explanation. However, there is one matter that I cannot let go, and I refer to his attack on the previous Government in respect of unruly tenants. During the last Parliament we considered a proposal from the privacy select committee (on which I served) to provide householders with a remedy against unruly neighbours. If a householder wants to obtain an injunction against a neighbour to stop them from committing a nuisance, the householder has to go to the Supreme Court at a minimum cost of $3 000. The all Party select committee on privacy recommended that it should be possible to obtain an injunction in the Small Claims Court where these neighbourhood disputes could be heard before a magistrate inexpensively. The Liberal Party killed the proposal.

The Hon. S.J. BAKER: I would have to check the record. If the member for Spence has come up with something sensible, which we would all question—

Ms Stevens interjecting:

The Hon. S.J. BAKER: Don't you talk to this Committee.

Ms Stevens interjecting:

The Hon. S.J. BAKER: Well, if you are going to interject, you should sit in your seat.

The CHAIRMAN: The honourable member is interjecting away from her place.

The Hon. S.J. BAKER: As the member for Elizabeth would recognise after her performance today, I would have thought that she would stay out of all debates for quite some time and hang her head in shame. However, the issue of privacy has some parallels here because we are dealing with the matter of unruly behaviour. I am not aware of where the select committee finished and whether it was defeated in another place.

Mr Atkinson: You voted against the proposal.

The Hon. S.J. BAKER: I am unaware of the specific matter. I am more than happy, if the matter has some potential appeal to the member and it does make some sense, for the Government to re-examine it. That is not a problem for me, if the member has a useful and helpful initiative which was previously defeated—for whatever reason—and, if it is still relevant, it is a matter that we can re-examine. If the member wants to re-present his case, I am more than happy to take it up with the Attorney. We are removing the Housing Trust from the jurisdiction of the tribunal to try to achieve balance in the Bill. Matters that seem to be fairly germane to the debate in respect of fairness in tenancy, the capacity for people to live happily together and close by each other, and to perform to the level of the contract can be heard by the tribunal in a much more efficient and effective fashion than occurs today.

Amendment carried.

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

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

Page 5, lines 7 to 14—Leave out subclauses (2) and (3).

This is consequential on the previous amendment.

Mr ATKINSON: Before the dinner adjournment, we were discussing the policies and performance of the major Parties in regard to the eviction of unruly tenants. It would be fair to say that there was some one-upmanship with both the Liberal side and the Labor side claiming to be tougher on unruly tenants than the other. Whatever the outcome of that one-upmanship—

The Hon. S.J. Baker: You were like pussy cats.

Mr ATKINSON: The Deputy Premier said that we were like pussy cats, but I do not think that is fair. However, one thing we can say is that unruly tenants, those who behave in a criminal fashion and those who drive their neighbours crazy, have only one friend in the South Australian Parliament, and that is the Australian Democrats.

Amendment carried; clause as amended passed.

Clauses 6 to 10 passed.

Clauses 11 to 35.

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

Page 7—Leave out these clauses and heading to part 3 and insert new clauses as follows:

Clauses 11 to 35—Leave out these clauses (and the heading to Part 3) and insert new clauses (and heading) as follows:

PART 3

RESIDENTIAL TENANCIES TRIBUNAL OF SOUTH AUSTRALIA

DIVISION 1—ESTABLISHMENT OF TRIBUNAL

Establishment of Tribunal

11. The Residential Tenancies Tribunal of South Australia is established.

Seals

12. (1) The Tribunal will have the seals necessary for the transaction of its business.

(2) A document apparently sealed with a seal of the Tribunal will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Tribunal.

DIVISION 2—JURISDICTION OF THE TRIBUNAL

Jurisdiction of the Tribunal

13. (1) The Tribunal has—

(a) the jurisdiction conferred by this Act; and

(b) subject to the regulations, jurisdiction to hear and determine claims or disputes arising from tenancies granted for residential purposes by the South Australian Housing Trust; and

(c) the other jurisdictions conferred on the Tribunal by statute.

DIVISION 3—MEMBERSHIP OF TRIBUNAL

Membership of Tribunal

14. (1) The Tribunal consists of—

(a) the Chief Magistrate (who is the President of the Tribunal); and

(b) the other magistrates who hold office under the Magistrates Act 1983; and

(c) other persons (if any) appointed by the Governor on the nomination of the Minister as additional members of the Tribunal.

(2) A person is not eligible for appointment under subsection (l)(c) unless the person is a legal practitioner of at least five years standing.

(3) A person may be appointed under subsection (1)(c) for a term and on conditions specified in the instrument of appointment.

(4) The Minister must consult with the Chief Magistrate before a term or conditions are determined under subsection (3).

(5) A person appointed under subsection (l)(c) ceases to hold office if the person—

(a) reaches the age of 65 years; or

(b) resigns by written notice addressed to the Minister; or

(c) in the case of an appointment for a fixed term—completes the term of appointment and is not reappointed; or

(d) is removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily duties of office.

(6) A person appointed under subsection (1)(c) is entitled to remuneration, allowances and expenses determined by the Governor.

(7) The President may delegate a power or function under this Act to another member of the Tribunal.

(8) A delegation is revocable at will and does not derogate from the power of the President to act himself or herself in a matter.

DIVISION 4—ADMINISTRATIVE STAFF

Tribunal's administrative staff

15. (1) The Tribunal's administrative staff consists of—

(a) the Registrar (who is the Tribunal's principal administrative officer);

(b) any other persons (including deputy registrars) appointed to the staff of the Tribunal .

(2) The Tribunal's administrative staff will be appointed under the Courts Administration Act 1993.

(3) A member of the Tribunal's administrative staff may hold office in conjunction with another office in the public service of the State.

DIVISION 5—CONSTITUTION OF THE TRIBUNAL

Constitution of the Tribunal

16. (1) The Tribunal is constituted for the purpose of hearing and determining proceedings of a single member of the Tribunal.

(2) However, a member of the Tribunal will sit with assessors selected in accordance with schedule 1—

(a) if the President of the Tribunal so determines; or

(b) if the regulations, the Rules or a relevant Act so provide.

(3) The Registrar, or a deputy registrar, may—

(a) exercise the jurisdiction of the Tribunal if specifically authorised to do so by this Act or a relevant Act; and

(b) subject to direction by the President of the Tribunal, exercise the jurisdiction of the Tribunal in respect of classes of matters, or in circumstances, specified by the regulations or by the Rules.

(4) The Tribunal may, at any one time, be separately constituted for the hearing and determination of a number of separate matters.

DIVISION 6—GENERAL PROVISIONS ABOUT THE TRIBUNAL'S PROCEEDINGS

Time and place of Tribunal's sittings

17. (1) The Tribunal may sit at any time (including a Sunday).

(2) The Tribunal may sit at any place (either within or outside the State).

(3) The Tribunal will sit at such times and places as the President may direct.

(4) Offices of the Tribunal will be maintained at such places as the Governor may determine.

Adjournment from time to time and place to place

18. The Tribunal may—

(a) adjourn proceedings from time to time and from place to place; or

(b) adjourn proceedings to a time, or a time and place, to be fixed; or

(c) order the transfer of proceedings from place to place.

Sittings generally to be in public

19. Subject to a provision of an Act or Rule to the contrary, the Tribunal's proceedings must be open to the public.

Duty to act expeditiously

20. The Tribunal must, wherever practicable, hear and determine proceedings within 14 days after the proceedings are commenced and, if that is not practicable, as expeditiously as possible.

Proceedings to be conducted with minimum formality

21. (1) The Tribunal's proceedings must be conducted with the minimum of formality and in exercising its jurisdiction the Tribunal is not bound by evidentiary rules and practices but may inform itself as it thinks appropriate.

(2) The Tribunal is bound by evidential rules and practices in proceedings related to a contempt of the Tribunal.

Tribunal to give reasons for its decisions

22. The Tribunal must, at the request of a party to proceedings, give written reasons for its decision.

Special powers in relation to orders and relief.

23. (l) The Tribunal may make an order in the nature of an injunction (including an interim injunction) or order for specific performance (even if such remedy would not otherwise be available).

(2) Although a particular form of relief is sought by a party to proceedings before the Tribunal, the Tribunal may grant any other form of relief that it considers more appropriate to the circumstances of the case.

(3) The Tribunal may make interlocutory orders on matters within its jurisdiction.

(4) The Tribunal may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

(5) The Tribunal may, in the exercise of its jurisdiction, make ancillary or incidental orders.

DIVISION 7—CONFERENCES

Conferences

24. Contested proceedings before the Tribunal must be referred, in the first instance, to a conference of the parties to explore the possibilities of resolving the matters at issue by agreement if—

(a) a member or officer of the Tribunal determines that it would be appropriate for a conference to be held; or

(b) —

(i) the proceedings are of a class prescribed by regulation; or

(ii) a relevant Act provides for the operation of this Division,

subject to the qualification that a conference need not be held if a member or officer of the Tribunal dispenses with the conference on the ground that the conference would serve no useful purpose or there is some other proper reason to dispense with the conference.

Presiding officer

25. A member of the Tribunal, the Registrar, or another officer of the Tribunal nominated by the President will preside at a conference.

Compulsory attendance and participation at conference

26. (l) The Registrar must notify the parties by letter of the time and place fixed for a conference.

(2) A party must, if required by the presiding officer, disclose to the conference details of the party's case and of the evidence available to the party in support of that case.

Procedure

27. (1) A conference may, at the discretion of the presiding officer, be adjourned from time to time.

(2) Unless the presiding officer otherwise determines, the conference will be held in private and the presiding officer may exclude from the conference any person apart from the parties and their representatives.

(3) A settlement to which counsel or other representative of a party agrees at a conference is binding on the party.

(4) The presiding officer may refer a question of law arising at the conference to a member of the Tribunal's judiciary for determination.

(5) The presiding officer may record a settlement reached at the conference and make a determination or order to give effect to the settlement.

(6) A determination or order under subsection (5) is a determination or order of the Tribunal.

Restriction on evidence

28. Evidence of anything said or done in the course of a conference under this Division is inadmissible in proceedings before the Tribunal except by consent of the parties.

DIVISION 8—EVIDENTIARY AND PROCEDURAL POWERS

Tribunal's powers to gather evidence

29. (1) For the purpose of proceedings, the Tribunal may—

(a) by summons signed by a member, Registrar or deputy registrar of the Tribunal, require a person to attend before the Tribunal;

(b) by summons signed by a member, Registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;

(c) inspect books, papers or documents produced before it, retain them for a reasonable period, and make copies of them, or of their contents;

(d) require a person appearing before the Tribunal to make an oath or affirmation that the person will truly answer relevant questions put by the Tribunal or a person appearing before the Tribunal;

(e) require a person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant questions put by the Tribunal or a person appearing before the Tribunal.

(2) If a person—

(a) fails without reasonable excuse to comply with a summons under subsection (1); or

(b) refuses or fails to comply with a requirement of the Tribunal under subsection (1),

the person is guilty of an offence and liable to a penalty not exceeding $2 000.

Entry and inspection of property

30. (1) The Tribunal may enter land or a building and carry out an inspection that the Tribunal considers relevant to a proceeding before the Tribunal.

(2) The Tribunal may authorise a person to enter land or a building and carry out an inspection that the Tribunal considers relevant to a proceeding before the Tribunal.

(3) A person who obstructs a Tribunal, or a person authorised by a Tribunal, in the exercise of a power of entry or inspection under this section commits a contempt of the Tribunal.

Procedural powers of the Tribunal

31. In proceedings the Tribunal may—

(a) hear an application in the way the Tribunal considers most appropriate;

(b) decline to entertain an application, or adjourn a hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement of matters in dispute between the parties;

(c) decline to entertain an application if it considers the application frivolous;

(d) proceed to hear and determine a matter in the absence of a party;

(e) extend a period within which an application or other step in respect of proceedings must be made or taken (even if the period had expired);

(f) vary or set aside an order if the Tribunal considers there are proper grounds for doing so;

(g) adjourn a hearing to a time or place or to a time and place to be fixed;

(h) allow the amendment of an application or other proceeding;

(i) hear an application jointly with another application;

(j) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;

(k) adopt, as in its discretion it considers proper, the findings, decision or judgment of a court that may be relevant to the proceedings;

(l) generally give directions and do all things that it thinks necessary or expedient in the proceedings.

DIVISION 9—APPEALS AND RESERVATION OF QUESTIONS OF LAW

Appeals

32. (1) An appeal lies to the District Court from a decision or order of the Tribunal made in the exercise (or purported exercise) of its jurisdiction or powers.

(2) An appeal is to be commenced in the manner prescribed by the rules of the District Court.

(3) On an appeal, the District Court may (according to the circumstances of the case)—

(a) re-hear evidence taken before the Tribunal, or take further evidence;

(b) confirm, vary or quash the Tribunal's decision; and

(c) make any order that should have been made in the first instance; and

(d) make incidental and ancillary orders.

Reservation of questions of law

33. (1) The Tribunal may reserve a question of law for determination by the District Court.

(2) If a question of law is reserved, the District Court may determine the question and make consequential orders and directions appropriate to the circumstances of the case.

DIVISION 10—MISCELLANEOUS

Mediation

34. (1) If before or during the hearing of proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of settling the matters in dispute between the parties, the person constituting the Tribunal may—

(a) appoint, with the consent of the parties, a mediator to achieve a negotiated settlement; or

(b) itself endeavour to bring about a settlement of the proceedings.

(2) A mediator appointed under this section has the privileges and immunities of a member of the Tribunal and may exercise any powers of the Tribunal that the Tribunal may delegate to the mediator.

(3) Nothing said or done in the course of an attempt to settle proceedings under this section may subsequently be given in evidence in proceedings except by consent of all parties to the proceedings.

(4) A member of the Tribunal who attempts to settle proceedings under this section is not disqualified from hearing or continuing to hear further proceedings in the matter.

(5) If proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

General powers of the Tribunal to cure irregularity

35. If in proceedings before the Tribunal it appears to the Tribunal that—

(a) there has been a failure to comply with a requirement of this Act or other law that affects the matter to which the proceedings relate; and

(b) it would not be unjust or inequitable to exercise the powers conferred by this section,

the Tribunal may excuse the failure by ordering that, subject to such conditions that may be stipulated by the Tribunal, the requirement be dispensed with to the necessary extent.

Immunities

35A. (1) A member of the Tribunal exercising the Tribunal's jurisdiction has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

(2) A non-judicial officer of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

Contempt of the Tribunal

35B. A person who—

(a) interrupts the proceedings of the Tribunal or misbehaves before the Tribunal; or

(b) insults the Tribunal or an officer of the Tribunal acting in the exercise of official functions; or

(c) refuses, in the face of the Tribunal, to obey a lawful direction of the Tribunal,

is guilty of a contempt of the Tribunal.

Punishment of contempts

35C. The Tribunal may punish a contempt as follows:

(a) it may impose a fine not exceeding $2 000; or

(b) it may commit to prison until the contempt is purged subject to a limit (not exceeding six months) to be fixed by the Tribunal at the time of making the order for commitment.

Enforcement of orders

35D. (1) An order of the Tribunal may be registered in the Magistrates Court and enforced as an order of that Court.

(2) A person who contravenes an order of the Tribunal (other than an order for the payment of money) is guilty of an offence. Maximum penalty: $2 000.

Issue and service of Tribunal's process

35E. (1) Any process of the Tribunal may be issued or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office

Rules of Tribunal

35F. (1) Rules of the Tribunal may be made—
(a) regulating the practice and procedures of the Tribunal; and
(b) regulating costs; and
(c) providing for the service of any process, notice or other document relevant to proceedings before the Tribunal (including circumstances where substituted service in accordance with the rules or an order of the Tribunal will constitute due service); and
(d) dealing with other matters specified under this Act or necessary for the effective and efficient operation of the Tribunal.
(2) Rules of the Tribunal may be made by the President.
(3) The Rules take effect as from the date of publication in the *Gazette* or a later date specified in the rules.
Fees
35G. (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Tribunal.
(2) The Registrar may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.
Costs
35H. The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—
(a) all parties to the proceedings were represented by legal practitioners; or
(b) the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

Mr ATKINSON: Will the Minister advise the Committee how the principle of judicial independence is upheld by the amendment that he has moved? What is the tenure of the judicial officers who will be administering the legislation pursuant to this part?

The Hon. S.J. BAKER: One of the benefits of the change that has taken place is that we utilise what is already in the system, namely, magistrates. The usual appointments that relate to magistrates will apply in this circumstance. That is why we get economies of scale.

Amendment carried.

Clauses 36 to 50 passed.

Clause 51—'Repayment of security bond.'

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

Page 19—
Line 22—Leave out '10' and insert 'seven'.
Line 27—Leave out '10' and insert 'seven'.
Page 20, line 13—Leave out '10' and insert 'seven'.

If there is some discontent with a ruling, these amendments relate to the time at which an appeal can be lodged.

Mr ATKINSON: How did we end up with so many cute little notes at the bottom of most subclauses to this clause? Under subclause (4), footnote 1 states, 'If the application was made by the landlord, the tenant is the respondent; if the application was made by the tenant, the landlord is the respondent'. Do these cutesypie little notes purporting to explain clauses in the Bill form part of the text of the law or are they explanatory notes? Whose idea was it to include them and will they be a regular feature of Bills?

The Hon. S.J. BAKER: As the member for Spence would recognise, notes have been used previously, but I cannot remember the first Bill in this place in which an explanatory note was provided. It is common practice in New South Wales and in the Commonwealth to have explanatory notes. It makes it clearer to all parties concerned exactly what is meant and provides an interpretation of the legalese, if the honourable member can understand that, into something that sounds a little more sensible. It forms part of the Bill. It is a clarification of the clause, so there is no misunderstanding by any party to a dispute as to what the legislation intends. I cannot recall the Bill in which it first appeared, but it was when we were in Opposition. The initiative was taken by the previous Government, and I applaud it.

Mr ATKINSON: Has it ever struck the Deputy Premier that, if notes were necessary to clarify the clause, it might be a good idea to rewrite the clause so that it does not contain ambiguity?

The Hon. S.J. BAKER: I hear what the honourable member says. From 1982 when I was first elected, I have alluded to the fact that the law is put together by lawyers for the benefit of lawyers. A person with reasonable intelligence cannot be expected to understand the laws which operate in this land. However, that is one of the time-honoured systems. The member for Spence has legal training so he has an advantage over everyone else. As a mere mortal, I struggle my way through the legislation and I seem to understand most of it. However, that is not the case with the majority of the citizens of this State.

It is my fond belief that we should have plain English in the law and that has been alluded to over the past 10 or 20 years. It has not occurred so far. There are accepted terminologies which continue under this legislation. There is consistency in the wording relating to various parties and there are other circumstances where terminology which is time-honoured and recognised has been used. When we will make the breakthrough and have language which is simple, straightforward and easily understood—

Mr Atkinson: It is not that easy.

The Hon. S.J. BAKER: That is exactly right. It is not that easy, but we pray for the day when the law can be read and understood.

Mr ATKINSON: To my way of thinking, the Minister's answer is rather unsatisfactory. What is the difference between clause 51 (3) and the note which follows it which is longer than the text of subclause (3)? What is the difference in status between the two? Why is one in ordinary print and the other in italics? What is the difference between the two? Why cannot it be read as one clause continuously? Does not the Deputy Premier agree that, if we have a clause in a Bill and we try to explain it in a footnote, there is a danger that in trying to explain it you create ambiguities which might not have been there in the first place?

I read a lot of legislation which comes into the House. It is my job to do that, but I do not recall many Bills in the recent past which have had notes. However, this Bill is riddled with notes. Why is this Bill riddled with notes? What is the difference in status? Why cannot there be a continuous clause, in one type, with no notes?

The Hon. S.J. BAKER: I simply put it in the context that the Bill affects a vast number of people virtually on a daily, weekly or monthly basis when they become tenants. The Government has tried to recognise that there is terminology in the law which will not change overnight so that we do not create a new dispute through the change of terminology. However, there is an explanation of that terminology. As I say, the world is imperfect.

I would have thought that the member for Spence would applaud the change. I am sure that he will be aware that, when members of the public are distressed, either from the point of view of being a landlord or as a tenant, they might be able to read the legislation and actually understand it. That is not what we have seen in other areas.

The area is so broadly encompassing, and it affects so many lives, that there is obviously a commitment to make it understandable without losing the flavour of the law which

has been accepted by various jurisdictions since the State was established. That is the best comment that I can make under the circumstances. I would have thought that there was some advancement and perhaps, in the process, the italics will become part of the Act and the legalese will disappear over time.

Amendments carried.

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

Page 20, after line 21—Insert new subclauses as follows:

(8A) If—

(a) security for the performance of obligations under a residential tenancy agreement is provided by a third party prescribed by the regulations in circumstances prescribed by the regulations; and

(b) the landlord makes application to the Commissioner for the payment of the whole, or a specified part, of the amount payable under the security,

then—

(c) if the application is made with the consent of the third party—the Commissioner must pay out the amount as specified in the application;

(d) in any other case—the Commissioner must give the third party and, if the tenant is still in possession of the premises, the tenant, written notice of the application (in a form the Commissioner considers appropriate) and—

(i) if the Commissioner does not receive a written notice of dispute from the party or parties to whom the notice of the application was given within seven days after the date on which the original notice is given—the Commissioner may pay out the amount as proposed in the application;

(ii) in any other case—the Commissioner must refer the matter to the Tribunal for determination.

(8B) If a payment is made under subsection (8A), the third party must reimburse the Fund to the extent of the payment.

Mr ATKINSON: This is an odd Committee, because the Deputy Premier continues to move quite substantial amendments but he does not tell us why he is moving them. Perhaps he could enlighten us now.

The Hon. S.J. BAKER: I assumed that the member for Spence was so gifted in the law that he would have understood the amendment. I did not think that it was necessary for me to explain, but I will.

This clause was in the original legislation and it is now being reinstated. It is designed to make provision for the procedures for payment out of security bonds in situations where a third party, in circumstances prescribed by the regulations, has given security for the performance of obligations under a residential tenancy agreement. For example, the Housing Trust has emergency bonds and someone might be standing guarantor for another person.

Amendment carried; clause as amended passed.

Clauses 52 and 53 passed.

Clause 54—'Security of premises.'

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

Page 21, after line 34—Insert:

(4) The regulations may prescribe conditions under which a landlord may limit the landlord's civil liability under subsection (1)(a) and, if a landlord complies with those conditions, the maximum amount that a tenant may recover if it is found that the premises are not reasonably secure.

Amendment carried; clause as amended passed.

Clauses 55 and 56 passed.

Clause 57—'Tenant's responsibility for cleanliness and damage.'

Mr ROSSI: I move:

Page 23, after line 13—Insert new subclause as follows:

(1a) A tenant who contravenes the term of the agreement arising under subsection (1)(c) is guilty of an offence.

Maximum penalty: $1 000.

The liability to be prosecuted for an offence is in addition to civil liability for breach of the agreement.

I move this amendment as I feel that tenants are not encouraged to change their behaviour in respect of causing damage to a landlord's premises. Therefore, the penalty of $1 000 should be included in the Bill.

The Hon. S.J. BAKER: The Government will support the amendment.

Mr ATKINSON: Clause 57 relates to the tenant's responsibility for cleanliness and damage. It contains the quite sensible provision that the tenant must keep the premises in a reasonable state of cleanliness and must notify the landlord of damage. The tenant must not intentionally or negligently cause or permit damage to the premises. The clause also contains a provision that, at the end of the tenancy, the tenant must give the premises back in a reasonable state of cleanliness subject to wear and tear.

It is one thing to require that of the tenant. I support the clause as it stands. I support a landlord's right to bring an action for breach of statutory duty against the tenant to recover costs for any damage caused by the tenant's failure to live up to the conditions under clause 57. What I cannot support is the addition of a criminal penalty, with a maximum penalty of $1 000. I know that the member for Lee is sometimes outraged by the condition in which tenants leave premises, especially Housing Trust dwellings, and he wants to seek a provision in the law that would prevent that. I understand that and sympathise with it. In fact, I share his anger at the condition in which some tenants leave rented premises. I have had four years more experience dealing with those problems than has he, so I understand how he feels. However, I do not think that the addition of a criminal penalty will deter that type of tenant from doing the damage they do, and I do not think that a criminal penalty will help compensate the landlord.

I support the landlord's having the right to bring an action for breach of statutory duty to recover any damage the landlord has suffered to his premises at the hands of the tenant, but to require a further criminal penalty of $1 000 seems to me a waste of time. Let me tell the Committee why. The kind of tenants who do the damage that the member for Lee deplores are the kind of people who do not have $1 000. They are likely to be on welfare benefits and it will be very difficult to recover this penalty from them.

If that were the only problem, I would still vote for the amendment, but it is not the only problem. If these matters come before the Residential Tenancies Tribunal or before a tenancy division of the Magistrates Court, it is my belief that this section will be interpreted more narrowly now with the amendment moved by the member for Lee than it would have been interpreted previously. It is a habit of lawyers to interpret criminal provisions very narrowly in order to preserve the liberty of the subject. That is a tradition of the interpretation of the criminal law.

If it were just a civil penalty, as it now is under clause 57, the clause would be interpreted generously and in favour of the landlord. But, if you attach a criminal penalty with a potential maximum of $1 000, the magistrate or member of the tribunal will say, 'This is a criminal penalty, this is a criminal section and we have to interpret the law very strictly as against the tenant.' So, more tenants will find themselves getting out of actions brought against them under clause 57 than previously, because the member for Lee is criminalising clause 57: that is the problem. The member for Lee has very

good intentions in this his debut participation in Committee after 18 months here, but in my opinion he would narrow the interpretation of clause 57 in a way that would let guilty tenants get off scot-free.

The Hon. S.J. BAKER: I am glad that the honourable member did not make the Bar or have the opportunity to defend anybody because he is defeated by his own logic, and I will tell him why. His own logic says that these people do not have any money. That is the point: they never suffer penalty because they run down their bond or stay there until they have aggravated the situation to the point where the bailiff comes to the door and tosses them out. The landlord never has the capacity to get back some money. All the landlord has to rely on is the bond money. That is the situation that prevails in the majority of these cases, as the honourable member would well recognise, so the person suffers no penalty whatsoever. He can stiff the system as much as he likes. I say 'he' because that is what most of them are.

During the Bill's passage between the two Houses we can look at it to see whether it involves a level of complication to which the honourable member alludes. We have a certain type of clientele here: they never suffer penalty, they wander from tenancy to tenancy and at the next one they do the same thing. An issue of privacy has arisen as to whether that person's record can be made public and therefore he gets absolutely no—

Mr Atkinson: There should be an agent who handles it.

The Hon. S.J. BAKER: That is right. The difficulty is that this person has reward for trashing places at the end of a tenancy and is able to utilise the full social security cheque because he is not paying his normal rental bill. This amendment says that the landlord will not pursue him because it is a waste of time, energy and money. He is not getting anything out of the system, and here is the capacity for that person to face a court. Even if the court says that it will impose not the full $1 000 but only $500 and in default community service will be performed, at least the person concerned has come before the system, whereas under the alternative that person still misses out on coming before it. I am happy to have the thoughts expressed by the honourable member examined during the Bill's passage between the two Houses to see whether this causes a level of clumsiness, capacity for misinterpretation or a narrowing of the law as the honourable member would suggest. If it does, there may well be something we can do.

Mr ROSSI: My reason for including the provision is not for obtaining reasonable damages but for dealing with those cases involving graffiti and wilful damage, which is beyond reasonable use of the property. Even damage done by children to walls is trivial compared to that done by some adults breaking windows, breaking down doors, using paint and putting graffiti on everything they come across and using the front room for repairing their motor cycle, which is beyond reasonable use and therefore not necessarily associated with the occupation of the dwelling. These people are the same people who affect public property away from where they live—further down the street. They target letter boxes and Government buildings. This habit has to be curbed. Any legislation that will try to correct this behaviour, no matter where it is used, should be encouraged.

I find no other way of penalising these undesirable people than by placing a financial burden on them whereby the State chases them up. If they cannot meet the financial burden, and I agree with the member for Spence that many cannot, at least they can be forced to do community service. Under the present system they have no criminal records, they move from landlord to landlord as many times as they like and nothing happens to them—absolutely nothing. When individual landlords want to take legal action, the cost of that litigation far exceeds the cost of repairing the damage in the first place. However, that tenant goes on to the next landlord six or seven times a year, and if you multiply the $2 000 to $3 000 damage caused to each dwelling it involves a large sum of money. Not only do these people damage private property: they damage property of the Government and councils. They have to be controlled and I find no other way of achieving this. If the honourable member has a suggestion, I am happy to listen to it.

Mr ATKINSON: As I said before, I understand the outrage of the member for Lee about the conduct of these deadbeat tenants. I understand that they are counter cultural people who do not particularly care for the values of society and that they will go on doing this because it is very hard for society to impose a penalty on them. However, I wonder whether the member for Lee is going too far by imposing a criminal penalty in this clause. Remember, this clause provides:

> It is a term of a residential tenancy agreement that the tenant—
> (a) must keep the premises and ancillary property in a reasonable state of cleanliness;

I know that cleanliness is next to Godliness, but should uncleanliness be a criminal offence? That paragraph could cover conduct ranging from the trashing of a Housing Trust house, so that it is unfit for human habitation and will require three weeks and thousands of dollars in tradesmen's fees to clean up, to leaving a little bit of rubbish in the back yard or failing to mow the lawn before you leave. Paragraph (b) provides:

> (b) must notify the landlord of damage to the premises or ancillary property;

If it is a furnished flat and you leave one of the chairs broken, under the member for Lee's amendment you expose yourself to criminal penalties. The clause also provides:

> (c) must not intentionally or negligently cause or permit damage to the premises or ancillary property.

So, if you are mowing the lawn and knock over a bit of the corrugated iron side fence you have breached clause 57 and are subject to a criminal penalty. I can understand imposing a fine of $1 000 for trashing a flat or home, but clause 57 is not drafted in a way that contemplates criminal penalties: it is drafted in order to obtain a civil remedy and covers a breadth of conduct. It covers cleanliness and negligently causing damage to property. Fancy fining someone $1 000 for negligently damaging the side or back fence or letting the wire screen come off the front door?

The member for Lee has not thought this through. I think that he has been conned by some senior Liberals who have helped him with the drafting, Instead of a $1 000 maximum penalty it ought to be a division 8 fine so that it can move with the consumer price index and so that there can be a substitute of imprisonment in the case of the fine's not being paid. I think the member for Lee has a lot more thinking to do about this clause. I do not think the Committee ought to agree to his amendment in its current form.

Mr CUMMINS: I agree with my legal colleague opposite. With all respect, the proposed $1 000 fine for basically a civil liability is ridiculous. The amendment will mean that you can suffer a fine for not keeping a place clean

or for damaging property. When you walk down the driveway at night and you accidentally damage the landlord's light you can suffer a $1 000 fine. It is unbelievable stuff. Also, you have to notify the landlord of damage to the premises or to ancillary property. So, if a third party damages or breaks the property and you omit to notify the landlord you suffer a $1 000 fine. This amendment is totally unacceptable and I oppose it.

The Hon. S.J. BAKER: That leaves me in a very difficult situation. I might take the coward's way out here. At the risk of a division—

Members interjecting:

The Hon. S.J. BAKER: If the member for Norwood had been present for this illuminating debate, what I said was that in principle I would accept the amendment knowing that it would be subject to some machinations between the two Houses.

Mr Clarke: It was to be chewed over.

The Hon. S.J. BAKER: That is right. In the circumstances, my own side is having difficulty supporting the member for Lee in his attempt. I was going to use this as a trial amendment. Unlike the Attorney-General, I am not a purist on these things. I know that this Bill will be subject to debate and change before its final construction. Whilst it might be deemed to be bad law, I did not believe that it was a bad idea to put it into the system for further debate.

Now I have someone on my side who is more interested in the purity of the law and has spoken strongly against the amendment, so I will change my mind about accepting it. I assure the member for Lee that it is an issue for which there is considerable support in principle, but it is the practical interpretation within the framework of this law that needs some work. If the member for Lee is happy, I can ensure that this matter is brought to the attention of the Attorney-General so that it can be argued in principle and so that a more acceptable amendment can come back.

Mr BECKER: One of the biggest disasters is having solicitors elected to the Parliament.

Mr Cummins: I'm a barrister, not a solicitor.

Mr BECKER: That is even worse. I sympathise with the member for Lee. I know what he is trying to achieve. When I was the shadow Housing Minister I raised the issue of a house that was trashed at Enfield or Prospect and Minister Hemmings (at the time) was horrified and made worse statements than I did damning the tenants who had left the premises in that condition. The dilemma we face is that a number of people in our community have no house living skills whatsoever: in other words, they are not capable of looking after a household as the average citizen would do.

Mr Cummins: Or capable of paying a fine.

Mr BECKER: I believe so. The message we need to convey to the various Government agencies, particularly to Family and Community Services, is that a scheme funded by the Residential Tenancies Tribunal should be set up to provide help for those people who cannot look after a house or flat under normal conditions: in other words, we set up a scheme whereby people can provide counselling and help young supporting mothers particularly (but there are plenty of men in the same category) to undertake normal household chores so that properties do not get into that condition.

I believe that this has been missing for a long time in our education system. Our welfare and voluntary agencies—the Salvation Army, the St Vincent de Paul Society and the various community groups operating in each council area—are aware of the tremendous number of people crying out for help who are too frightened to come forward and ask for that help.

We should be assisting them with regular visits and with education and training programs which could be funded by the Residential Tenancies Tribunal. A large amount of money goes through that fund and is syphoned off (and I am not satisfied where it is going at present). If we were to use that money to undertake an education program we could avoid the social stigma for people who cannot look after houses and avoid threatening to send them to gaol, and at the same time we could give them help and encouragement to become responsible citizens.

I appeal to the Government to consider this issue carefully, and I appeal to the Opposition on a bipartisan basis on this occasion to look seriously at encouraging an agency to assist those who have poor household living skills. In that way we could avoid a lot of damage, trauma and problems, save money and in the long term make accommodation, whether it be Government or private, affordable. I think we ought to help these people. They do not need a penalty, they do not need to be bludgeoned or categorised, they just need a bit of community care and sympathy.

Mr CAUDELL: I oppose the amendment. I find the amendment to a certain extent to be draconian. Clause 57 quite capably covers the civil responsibilities of a tenant to a landlord, and there is no need to impose a maximum penalty of $1 000. I remember that, when I was a tenant in a flat—and I have done a lot of that in my time—a couple of times I burnt the lino near the sink, I left the fish in the fridge and I turned off the power. All those things amounted to negligence, and I paid compensation to the landlord through my bond or other measures. I do not believe that I should have paid a penalty under the law. I should have paid a penalty associated with fixing the problem but not a penalty under the law. This is a civil issue and as such should not be dealt with by the courts.

Mr ATKINSON: As I understand it, the member for Lee has given an undertaking to the electors in the State district of Lee that he will pursue this matter on their behalf. The member for Lee is most familiar to me because he is a constituent of mine. I well recall his previous career as a member of the Spence ALP sub-branch and on a number of occasions he was a candidate for the Majority Wishes Party. On those occasions when he stood for the Majority Wishes Party, he made clear that his platform was that he would represent his constituents in this place, that if he was elected to this place he would do their bidding. Despite the machinations of the parliamentary Parties and the corrupting influences of the Parliament, he said that he would stand up for their interests.

The member for Lee has moved an amendment with which I do not personally agree, but I am sure that the majority of his constituents would. So he does himself no damage by pursuing this amendment to its logical conclusion. I point out to the member for Lee that he should not let down his constituents by accepting the sophistry of me and the member for Norwood on this matter. He made a commitment, he ought to fulfil it, and the Committee ought to divide on the amendment to clear the air.

Mr ROSSI: I understand the direction which the member for Spence is taking. May I say that my time as a member of the Labor Party was for only weeks or months while my membership of other Parties has been for years. The Deputy Premier and Treasurer has given me an assurance—

Members interjecting:

The CHAIRMAN: Thank you members. The member for Lee has the floor.

Mr ROSSI: —that he will assist me and talk to my fellow members regarding how to make this legislation legally correct, because it is the lawyers with their legal jargon who make everything so complicated. I believe that this particular offence is already provided for in another Act; therefore, why should it be included in the Residential Tenancies Act? My understanding is that when landlords and tenants buy a copy of the Act they expect to find that it contains all their rights and the penalties. They do not want to have to refer to three or four different Acts, which lawyers such as the honourable member opposite read and then expect we normal civilians to understand everything that is going on. I will not oblige the honourable member by crossing the floor or going against my fellow members. I am assured by my fellow members that they will look into this matter before the Bill is enacted, and I have great faith in the Deputy Premier.

Amendment negatived; clause passed.

Clause 58 passed.

Clause 59—'Tenant's conduct.'

Mr ROSSI: My amendment to this clause is consequential, so I will not move it.

Mr ATKINSON: I think the member for Lee has been misled regarding clause 59, which is quite different from clause 57.

Mr Clarke: It stands alone.

Mr ATKINSON: As the member for Ross Smith says, it stands alone. Clause 59 is the Parliamentary Labor Party's clause in the Bill. It originated in another place at the insistence of the Parliamentary Labor Party, and particularly at the insistence of a noble member of that Party, namely, the member for Ross Smith who would have more constituents in his electorate who violate this provision than possibly any other.

Mr Cummins: You are talking about clause 59(a)?

Mr ATKINSON: Yes. Clause 59 provides:

> It is a term of a residential tenancy agreement that—
> (a) the tenant must not use the premises, or cause or permit the premises to be used, for an illegal purpose; and
> (b) the tenant must not cause or permit a nuisance; and
> (c) the tenant must not cause or permit an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

It seems to me that that clause could well have a penalty attached to it. It is quite different from clause 57. It does not cover the range of conduct which clause 57 covers. There are many gradations of violating clause 57, but clause 59 is different. So I urge the member for Lee to move his amendment in respect of this clause. Now is the time; do not be conned into withdrawing it—clause 59 is different from clause 57.

Mr CUMMINS: I urge the member for Lee not to proceed with his amendment. I am sure that my legal colleague opposite is familiar with the sort of business associated with clause 59(a), because he speaks of it with some fondness. The problem relates to clauses 59(b) and 59(c). The reality is that, under clause 59(b), one could put one's radio on and play it very loudly and end up with a $1 000 fine. Clause 59(c) would be the same, because it provides:

> The tenant must not cause or permit interference to the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

It is the same thing: make a noise, walk around the yard at night, shine the torch and you are up for a $1 000 fine. If the honourable member wishes to move an amendment, it would be appropriate to provide some injunctive procedure in relation to the behaviour mentioned in clause 59 rather than a fine. Perhaps the honourable member could move in that direction. I urge the honourable member not to proceed with his original amendment.

The CHAIRMAN: I point out to the Committee that the honourable member has already indicated his complete lack of intent to move his amendment.

Mr CLARKE: Whilst I did not support the member for Lee's original proposal with respect to the penalty he wanted to ascribe, I would have thought that, if he were true to his electorate, the penalty he would put down would be instant sterilisation of any offender—the instant sterilisation or spaying of anyone who transgressed this position. I wonder whether the member for Lee would like to rephrase his amendment to bring it into line with his own philosophy.

The CHAIRMAN: Order! The member for Ross Smith is straying into the realms of the objectionable.

Mr ROSSI: Again, I stress that I have withdrawn my amendment because I have been given an undertaking that the two amendments will be debated further. Therefore, I am quite happy to take further advice, based on an assurance from the Deputy Premier. I will not listen to members opposite who are here only to entrap me. They can try as hard as they like; it will not happen.

Mr ATKINSON: I want to reinforce the virtue of the Parliamentary Labor Party with respect to this clause. As it was originally drafted by the Government—and leaving aside the member for Lee's amendment for a minute—it gave only the landlord the right to enforce the clause. It was the Parliamentary Labor Party that gave neighbours of an offending tenant the ability to enforce this clause. So if a house is rented by a tenant who behaves in a way which causes nuisance to his or her neighbours and which violates their peace, comfort and privacy, the neighbours can approach the Residential Tenancies Tribunal or the Tenancy Division of the Magistrates Court, whatever is the outcome of our deliberations, and obtain a remedy against that tenant. That is a very important remedy for neighbours to have. As many members on our side know, when disputes arise between neighbours, it is common for a neighbour—and sometimes both neighbours—to approach the local member of Parliament in search of a remedy.

I am not quite sure why our citizenry expects members of Parliament to resolve these neighbourhood disputes, because certainly we have no authority to do so, and I do not think that quarrelling neighbours would accept our arbitration, anyway. However, we try to muddle through and help our constituents in their quarrels with one another. The clause gives a neighbour a remedy against a hostile neighbour who is a tenant. So now the offended neighbour can approach a tribunal and look for a judicial decision. That is a good thing. It has been done at the initiative of the Parliamentary Labor Party. We tried to do it in the last Parliament through the Privacy Bill, as I reminded the House earlier today, under which we would have given neighbours the ability to approach the Small Claims Court and get injunctions against one another if they could convince a magistrate that that was warranted.

The Parliamentary Liberal Party voted down that sensible provision. The Government did not do anything in the Residential Tenancies Bill to give neighbours a remedy. The

Parliamentary Labor Party has come to the rescue again and, if we can get this clause through both Houses, neighbours will have a remedy against a disruptive tenant. I note that it applies only to a disruptive tenant. If a disruptive householder happens to own their property freehold, there is nothing we can do. We are back to square one; there is no remedy.

The Hon. S.J. BAKER: I will respond, because the honourable member could regard it as a breakthrough. Again, I accept the reasons why the matter has been put forward. The honourable member deals with plenty of disputes that come across his desk, so he would know that when somebody approaches their local member and complains about their neighbour's actions, we often find that, by the time we get to the truth, the person complaining is the centre of the problem in the first place. That has been the case on numerous occasions. The honourable member should be well aware that often the genuine people do not come forward; they live with the problem. It is often the case that the people who actually cause the problem decide to go into defence mode and make up accusations when their neighbours start getting upset about their behaviour. That has happened on a number of occasions. What sounds like a good story at the start becomes a bad story, and to avoid counselling the wrong people you try to find out the truth and help them through the situation. We all finish up being mediators after a while.

It is horrifying to think of the courts being tied up hearing non-genuine disputes, but that is up to the wise minds to sort out. It may well be that the conciliation process does that without getting into some heavy work. I would not have thought that it was an appropriate place for the court to act. It has extended the role of the legislation. It does have some sense behind it. It provides protection in those circumstances where one individual causes trouble for their neighbours, but it also has a downside. If there is a refinement that assists us through the process, I am not aware of it. It is heading in the right direction, but it is not all gain, and it has a lot of problems associated with it.

Clause passed.

Clause 60 passed.

Clause 61—'Rates, taxes and charges.'

Mr ATKINSON: I am principally interested in subclause (2), which provides:

> However, rates and charges for water supply are to be borne as agreed between the landlord and the tenant.

Subclause (3) provides:

> In the absence of agreement—
> (a) the landlord will bear the rates and charges for water supply up to a limit fixed or determined under the regulations; and
> (b) any amount in excess of the limit is to be borne by the tenant.

Given that this Bill has been before Parliament since early February, the Government must have some idea what that limit will be. What is the intended limit?

The Hon. S.J. BAKER: I will take advice on that issue and ask the Attorney-General to respond directly. The issue of water sharing has been of interest to landlords for a long time. Under the capital component of the water and sewerage rates, it would be reasonably rare for those premises to incur an excess water bill. I am not aware of what the formula will be at this stage but I would presume that, whilst that capital cost remained, there would be some understanding that that normally would be borne by the landlord. In relation to the amount of water used above the capital contribution, I would expect that there would be a capacity to share that cost with the tenancies in the units. Whether it is a straight line method whereby the units and litres are used and that is the defined way of agreement or whether there is some other mechanism in the absence of an individual meter, which is quite often the case, particularly in some of the older style dwellings, is an issue that will be canvassed, and I will ask the Attorney to provide the honourable member with that information.

Mr ATKINSON: This Liberal Government is introducing a new water rating system. I would have thought that, as part of changing the water rating system and as part of changing the Residential Tenancies Act, it would know what it intends to do. The Deputy Premier should not have to ask the Attorney-General what the level is to be: he should know what it is to be because, it should be a Cabinet submission. Under the old water rating system, we were rated and we had a free water area. You paid your connection fee and then you got so much water with that connection fee, which was related to the value of your property, so you got the so-called free water allowance. You paid for that with the connection fee related to the value of your property, but notionally it was free water. So the landlord paid that fee.

Water used in excess of that allowance was known as excess water and under most leases in South Australia the tenant had to pay excess water. The Liberal Government is changing the system. In fact, it is changing the system in a way remarkably similar to the so-called socialistic system introduced by the Hon. Susan Lenehan when she was the Minister of Water Resources. The Liberal Government is charging for every litre of water used, thus the charge related to use will start from the first kilolitre. I would have thought that the Government had some policy on this since the change in the water rating system was its initiative. That is a pretty simple question to ask.

There are three different rates for paying water in South Australia: first, up to about 136 kilolitres you pay one rate; secondly, if you use above that allowance you pay a higher rate for all kilolitres over that limit; and, thirdly, you pay a bit more still if you use an amount over the second threshold. The question is: how do tenants and landlords pay for water as between themselves? I would have thought that the Government had some clear idea, because clause 61(2) provides:

> . . . the landlord will bear the rates and charges for water supply up to a limit fixed or determined under the regulations.

Surely, in contemplation of that provision the Government has some idea what it is going to do, because this is its Bill and the water rating system is its system.

The Hon. S.J. BAKER: The honourable member should get his foot out of his mouth and listen very carefully, because he is confused. The responsibility for paying water and sewerage rates remains with the owner of the land. How many times do I have to say it?

Mr Caudell interjecting:

The Hon. S.J. BAKER: It always has been and presumably always will be. Therefore, whether you have a block of 10 flats or three home units or whatever it may be, the bills will have to be paid by the owner of the property. This allows for the sharing of the cost from that first kilolitre of water.

Members interjecting:

The Hon. S.J. BAKER: That is not what the honourable member said: the honourable member got it all wrong. If you go back through the transcript of what he actually said, you see that he got it all wrong. The issue relates to the extent to which an agreement can be reached between the landlord and the tenant as to payment of 20¢ per kilolitre up to 136

kilolitres, 88¢ per kilolitre up to the 500 kilolitre mark and 90¢ per kilolitre beyond the 500 kilolitre mark. So there will be a meeting of minds on the issue of what appropriate water sharing arrangements will be put in place, and there will be discussions and negotiations. However, the fact remains that the landlord cannot charge out at the moment in most circumstances, so this will be a way of making it all possible. Whether that means a trade off in the rent or whatever, they are the sorts of issues that will be satisfied at a time when everyone is aware of what are the issues in relation to how that should be shared. I do not see that as a huge problem because, at the end of the day, one person is responsible for paying the bill, and that is the landlord. That is it; end of section.

Mr ATKINSON: With respect, I think that the Committee has been misled by the Deputy Premier.

The Hon. S.J. Baker interjecting:

Mr ATKINSON: I am sorry; I will rephrase that. I think the Deputy Premier has confused the Committee on this matter. I understand that a landlord and a tenant can make an agreement in contemplation of the new water rating system. Some of them will make agreements about it and it will be in the lease. However, you can bet that hundreds of leases in South Australia will be in the old form in contemplation of the old water rating system, namely a connection fee and excess water. Many of those leases will not be changed and so the question will then arise: how do we reconcile the interests of the tenant and the landlord under the new water rating system, because the lease does not say anything about it but relates to a different water rating system from the one that actually exists? So that clause in the old standard form leases will be frustrated in the legal sense by a changed water rating system which was not contemplated by the person who drafted the old standard form lease.

The importance of subclause (3) of clause 61 is that it gives the Government the authority to make regulations to resolve disputes where the landlord and the tenant have not made an agreement about the apportioning of the cost of water. There are two reasons why they might not have made an agreement about the apportionment: one is that they were using the old standard form lease, which did not contemplate the new water rating system; and the second reason is that they might not have thought much about water. So those landlords and tenants rely on the Brown Liberal Government to make a regulation to tell them what is a fair thing. This clause has been before the Parliament since February, and under the clause the Government makes regulations to decide what is a fair thing. It is now July, and I would think that by July the Liberal Government would have made a decision about what is a fair thing between landlord and tenant under the new water rating system, because there are going to be hundreds of landlords and tenants in South Australia who, for one reason or another, have not made an arrangement about water.

Members interjecting:

Mr ATKINSON: The member for Mitchell knows that I am right.

The CHAIRMAN: The member for Mitchell is interjecting away from his place.

Clause passed.

Clause 62 passed.

Clause 63—'Vicarious liability.'

Mr ATKINSON: I understand this is a new clause in the legislation. In the past, if a tenant had guests on his premises and those guests tore the place apart, the tenant could say to the landlord, 'I did not know who those people were' or 'They just came around for a party and it was nothing to do with me.'

Mr Caudell interjecting:

Mr ATKINSON: As the member for Mitchell says, 'gatecrashers'—interjecting, as he is, from the member for Goyder's seat. Under this clause, if a person is on premises at the invitation or with the consent of the tenant, the tenant is vicariously responsible for an act or omission by that person that would have been a breach of the agreement had it been committed by the tenant. In my opinion, making the tenant liable for his guests and invitees is a good clause and I congratulate the Government for introducing it.

The Hon. S.J. BAKER: For the benefit of the member for Spence, the previous section in the Act related to their being lawfully on the premises with the same responsibility.

Clause passed.

Clauses 64 to 66 passed.

Clause 67—'Termination of residential tenancy.'

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

Page 27, lines 6 to 13—Leave out paragraphs (a), (b) and (c) and insert—

(a) the tenancy is for a fixed term and the fixed term comes to an end; or,

(b) the landlord or the tenant terminates the tenancy by notice of termination given to the other (as required under this Act); or

(c) the tribunal terminates the tenancy; or.

Amendment carried.

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

Page 27, lines 22 to 26—Leave out subclauses (2) and (3).

This amendment is consequential on the previous amendment.

Amendment carried; clause as amended passed.

Clause 68—'Application of part to SAHT.'

The Hon. S.J. BAKER: This is consequential on the Housing Trust issue and, for consistency, we seek to delete this clause.

Clause negatived.

Clause 69—'Notice of termination by landlord on ground of breach of agreement.'

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

Page 28, line 1—Leave out this clause and insert the new clause as follows:

69(1) If the tenant breaches a residential tenancy agreement, the landlord may give the tenant a written notice, in the form required by regulation—

(a) specifying the breach; and

(b) requiring the tenant to remedy the breach within a specified period (which must be a period of at least seven days) from the date the notice is given.

· If the breach is a failure to pay rent, it is not necessary for the landlord to make a formal demand for payment of the rent before giving a notice under this section.

(2) If the tenant fails to remedy the breach within the specified period, the landlord may serve on the tenant a notice of termination—

(a) terminating the tenancy; and

(b) requiring the tenant to give up possession of the premises at the end of a specified period (which must be a period of at least seven days) from the date the notice is given.

(3) The tenant may at any time after receiving a notice under this section, and before giving vacant possession to the landlord, apply to the Tribunal for an order—

(a) declaring that the tenant is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or

(b) reinstating the tenancy.

(4) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

· An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.

· On an application for an order reinstating the tenancy, the Tribunal may make alternative orders providing for reinstatement of the tenancy if specified conditions are complied with but, if not, ordering the tenant to give up possession of the premises to the landlord.

Amendment carried; clause as amended passed.

Clause 70—'Termination because possession is required by the landlord for certain purposes.'

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

Page 28, lines 20 and 21—Leave out 'give notice of termination of a periodic residential tenancy to the tenant' and insert ', by notice of termination given to the tenant, terminate a periodic residential tenancy'.

This is consequential.

Amendment carried; clause as amended passed.

Clause 71—'Notice of termination by South Australian Housing Trust.'

The Hon. S.J. BAKER: The Government opposes this clause. It is again consequential. It needs to be deleted consistent with our decision on the Housing Trust.

Clause negatived.

Clause 72—'Termination of residential tenancy by housing co-operative.'

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

Page 29, line 17—Leave out 'give notice of termination of a residential tenancy to the tenant' and insert ', by notice of termination given to the tenant, terminate a residential tenancy'.

This is consequential on clause 70.

Amendment carried; clause as amended passed.

Clause 73—'Termination by landlord without specifying a ground of termination.'

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

Page 29, line 23—Leave out all words in this line after 'may' and insert ', by notice of termination given to the tenant, terminate the tenancy'.

This is also a consequential amendment.

Amendment carried.

Mr ATKINSON: Why has the period of notice required of a landlord when the landlord is seeking to remove the tenant without specifying a reason been reduced from 120 days to 90 days, and what advantages does the Deputy Premier expect to accrue from that change?

The Hon. S.J. BAKER: The explanation recognises the point where a decision is taken and the point where it occurs for termination of the tenancy and the extent to which the bond is used up in the process. The 90 days was seen as a reasonable time for the quitting of a tenancy arrangement. It has advantages for both the tenant and the landlord, principally from the point of view of the utilisation of the money concerned. Obviously, from the landlords' point of view, they are not going to have 120 days, one-third of the year, during which they may well be operating on bond money which runs out in the meantime. It is quite common when there is a dispute for the payments to stop and the bond moneys to be eaten into and, therefore, erode the security of that arrangement. It was a compromise. The landlords would have liked something like 30 days, as the member for Spence could well understand, and the Government said, 'There is probably a better compromise that gives satisfaction to both parties, but not total satisfaction to either party.' So that was the compromise situation.

Clause as amended passed.

Clause 74—'Limitation of right to terminate.'

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

Page 30, line 2—Leave out 'give' and insert 'terminate the tenancy by'.

This is consequential.

Amendment carried; clause as amended passed.

New clause 74A—'Notice of termination on ground of breach of agreement.'

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

Page 30, after line 8—Insert new clause as follows:

74A. (1) If the landlord breaches a residential tenancy agreement for a fixed term tenancy, the tenant may give the landlord a written notice in the form required by regulation—

(a) specifying the breach; and

(b) requiring the landlord to remedy it within a specified period (which must be at least seven days) from the date the notice is given.

(2) If the landlord fails to remedy the breach within the specified period, the tenant may serve on the landlord a notice of termination terminating the tenancy at the end of a specified period (which must be at least seven days) from the date the notice is given.

(3) The landlord may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises (whichever is the later), apply to the Tribunal for an order—

(a) declaring that the landlord is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or

(b) reinstating the tenancy.

(4) If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

An order reinstating the tenancy under this section may be made on conditions that the Tribunal considers appropriate.

New clause inserted.

Clause 75—'Termination by tenant without specifying a ground of termination.'

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

Page 30, lines 10 and 11—Leave out 'give notice of termination of the tenancy to the landlord' and insert ', by notice of termination given to the landlord, terminate the tenancy'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 76 to 8l.

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

Page 30—Leave out these clauses and insert—

Termination on application by landlord

76. (1) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that—

(a) the tenant has committed a breach of the residential tenancy agreement; and

(b) the breach is sufficiently serious to justify termination of the tenancy[1].

[1]A tenancy may be terminated by a landlord by notice after a notice has been given allowing the tenant an opportunity to remedy the breach (see section 69). This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

(2) The Tribunal may, on application by a landlord, terminate a residential tenancy and make an order for immediate possession of the premises if the tenant or a person permitted on the premises with the consent of the tenant has, intentionally or recklessly, caused or permitted, or is likely to cause or permit—

(a) serious damage to the premises; or

(b) personal injury to—

(i) the landlord or the landlord's agent; or

(ii) a person in the vicinity of the premises.

Termination on application by tenant

77. The Tribunal may, on application by a tenant, terminate a residential tenancy and make an order for possession of the premises if satisfied that—

(a) the landlord has committed a breach of the residential tenancy agreement; and

(b) the breach is sufficiently serious to justify termination of the tenancy.[1]

[1]A tenancy may be terminated by a tenant by notice after a notice has been given allowing the landlord an opportunity to remedy the breach (see section 74A). This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

Termination based on hardship

78. (1) If the continuation of a residential tenancy would result in undue hardship to the landlord or the tenant, the Tribunal may, on application by the landlord or the tenant, terminate the agreement from a date specified in the Tribunal's order and make an order for possession of the premises as from that day.

(2) The Tribunal may also make an order compensating a landlord or tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy.

Amendment carried.

Clause 82—'Form of notice of termination.'

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

Page 33—

Line 9—After 'on which' insert 'the termination of the tenancy is to take effect and'.

Line 18—After 'on which' insert 'the termination of the tenancy is to take effect and'.

These are consequential amendments.

Amendments carried; clause as amended passed.

Clause 83 passed.

Heading.

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

Page 33, line 30—Leave out 'MISCELLANEOUS' and insert 'REPOSSESSION OF PREMISES'.

This division actually deals with repossession of premises, so the Government seeks to reinsert that into the heading.

Amendment carried; heading as amended passed.

Clause 84—'Compensation to landlord for holding over.'

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

Page 33—Leave out this clause and insert new clause as follows:

Order for possession

84. (1) If a residential tenancy—

(a) is terminated by a notice of termination under this Act; or

(b) is for a fixed term which expires and is not renewed,

the landlord may apply to the Tribunal for an order for possession of the premises.

(2) If the Tribunal is satisfied that the tenancy has terminated or has been terminated, the Tribunal may make an order for possession of the premises.

(3) The order for possession will take effect on a date specified by the Tribunal in the order, being a date not more than seven days after the date of the order unless the operation of the order for possession is suspended[1].

1. See subsection (4).

(4) However, if the Tribunal, although satisfied that the landlord is entitled to an order for possession of the premises, is satisfied by the tenant that the grant of an order for immediate possession of the premises would cause severe hardship to the tenant, the Tribunal may—

(a) suspend the operation of the order for possession for up to 90 days; and

(b) extend the operation of the residential tenancy agreement until the landlord obtains vacant possession of the premises from the tenant.

In extending the operation of a residential tenancy agreement, the Tribunal may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the tenant's financial obligations under the agreement).

(5) If the tenant fails to comply with an order for possession, the landlord is entitled to compensation for any loss caused by that failure.

(6) The Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under subsection (5).

Amendment carried; clause as amended passed.

Clauses 85 to 88 passed.

Clause 89—'Bailiffs.'

The Hon. S.J. BAKER: The Government opposes this clause and clause 90 because they deal with a Housing Trust matter.

Clause negatived.

Clause 90—'Enforcement of orders for possession.'

The Hon. S.J. BAKER: The Government opposes this clause.

Clause negatived.

Clauses 91 to 100 passed.

Clause 101—'Jurisdiction of the tribunal.'

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

Page 39, line 35—Leave out 'terminate a residential tenancy or'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 102 and l03 passed.

New clause l03A—'Substantial monetary claims.'

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

Page 40, after line 29—Insert new clause as follows:

103A. (1) The Tribunal has exclusive jurisdiction to hear and determine a matter that may be the subject of an application under this Act.

(2) However, the Tribunal does not have jurisdiction to hear and determine a monetary claim if the amount claimed exceeds $30 000 unless the parties to the proceedings consent in writing to the claim being heard and determined by the Tribunal (and if consent is given, it is irrevocable).

(3) If a monetary claim is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same tenancy may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.

(4) A court in which proceedings are brought under subsection (3) may exercise the powers of the Tribunal under this Act.

(5) If the plaintiff in proceedings brought in a court under this section recovers less than $30 000, the plaintiff is not entitled to costs unless the court is satisfied that there were reasonable grounds for the plaintiff to believe that the plaintiff was entitled to $30 000 or more.

This is consequential and relates to the tribunal issue.

New clause inserted.

Clause 104—'Representation in proceedings before the Tribunal.'

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

Page 40, line 33—After 'Tribunal' insert ', at a pre-trial conference'.

Amendment carried.

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

Page 40, after line 35—Insert—

(aa) the proceedings involve a monetary claim for more than $5 000; or.

Amendment carried; clause as amended passed.

Clause 105—'Remuneration of representative.'

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

Page 41, line 25—After 'Tribunal' insert ', at a pre-trial conference'.

Amendment carried; clause as amended passed.

Clauses 106 to 108 passed.

Clause 109—'Exemptions.'

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

Page 42, line 20—Leave out 'regulations may' insert 'Minister may, by order published in the *Gazette*'.

Amendment carried.

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

Page 42, after line 24—Insert—

(c) vary or revoke an order previously made by the Minister under this section.

Amendment carried; clause as amended passed.

Clauses 110 to 112 passed.

New schedule.

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

After page 43—Insert new schedule as follows:

Schedule I

Appointment and Selection of Assessors

1. The Minister must establish the following panels of persons who may sit with the Tribunal as assessors in proceedings under this Act:

(a) a panel consisting of persons representative of landlords;

(b) a panel consisting of persons representative of tenants.

2. The Regulations may provide for other panels of persons who may sit as assessors for the purposes of proceedings under other Acts that confer jurisdiction on the Tribunal.

3. A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

4. A member of a panel is, on expiration of a term of office, eligible for reappointment.

5. If assessors are to sit with a member of the Tribunal in proceedings before the Tribunal, the member of the Tribunal must—

(a) in the case of proceedings under this Act—select one member from each of the panels to sit with the member;

(b) in any other case—select one member from each relevant panel (as determined by the regulations) to sit with the member.

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

7. If the Tribunal sits with assessors—

(a) the member of the Tribunal will preside at the proceedings and determine any questions of law or procedure; and

(b) other questions will be determined by majority opinion.

8. If an assessor dies or is for any reason unable to continue with any proceedings, the Tribunal constituted of the member of the Tribunal who is presiding at the proceedings and the other assessor may, if the member of the Tribunal so determines, continue and complete the proceedings.

New schedule inserted.

Schedule—'Repeal, transitional provisions and consequential amendments.'

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

Page 44, line 1—After 'SCHEDULE' insert '2'.

Amendment carried.

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

Page 44, line 3—Leave out heading and insert—

DIVISION I—REPEALS

Amendment carried.

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

Page 44, after line 9—Insert—

'former Tribunal' means the Residential Tenancies Tribunal;

'RTTSA' means the *Residential Tenancies Tribunal of South Australia*

Amendment carried.

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

Page 44, after line 16—Insert—

(2) However, proceedings that would otherwise be (or continue) before the Tribunal will now be before the RTTSA.

(3) The RTTSA may—

(a) receive in evidence transcripts of evidence in proceedings before the former Tribunal before the commencement of this Act; and

(b) adopt findings or determination of the former Tribunal.

Amendment carried.

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

Page 44—Leave out this clause and insert new heading and clauses as follows:

DIVISION 3—CONSEQUENTIAL AMENDMENTS

Amendment of Courts Administration Act 1993

6. The *Courts Administration Act 1993* is amended by inserting after paragraph (e) of the definition of 'participating courts' in section 4 the following paragraph:

(ea) the Residential Tenancies Tribunal of South Australia; and.

Amendment of Retirement Villages Act 1987

7. The *Retirement Villages Act 1987* is amended—

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

'Tribunal' means the *Residential Tenancies Tribunal of South Australia*.;

(b) by striking out subsection (11) of section 14;

(c) by striking out section 20;

(d) by striking out clause 2 of schedule 3;

(e) by striking out subclauses (1), (2), and (4) of clause 5 of schedule 3;

(f) by striking out clause 7 of schedule 3;

(g) by striking out clause 9 of schedule 3.

Amendment carried; schedule as amended passed.

Long title.

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

Page 1, line 7—After '1978' insert 'and the *Residential Tenancies (Housing Trust) Amendment Act 1993;* to make related amendments to the *Courts Administration Act 1993* and to the *Retirement Villages Act 1987*.

Amendment carried; long title as amended passed.

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

That this Bill be now read a third time.

Mr ATKINSON (Spence): The Opposition is disappointed with the Bill as it emerges from Committee. We far preferred the Bill as it was introduced into the House. The changes which the Government has wrought on the Bill now cause us to oppose a Bill which we welcomed at the second reading stage.

The House divided on the third reading:

AYES (26)

Allison, H.	Andrew, K. A.
Armitage, M. H.	Ashenden, E. S.
Baker, S. J. (teller)	Bass, R. P.
Becker, H.	Brindal, M. K.
Buckby, M. R.	Caudell, C. J.
Cummins, J. G.	Evans, I. F.
Greig, J. M.	Hall, J. L.
Ingerson, G. A.	Kerin, R. G.
Kotz, D. C.	Lewis, I. P.
Matthew, W. A.	Oswald, J. K. G.
Penfold, E. M.	Rossi, J. P.
Scalzi, G.	Such, R. B.
Wade, D. E.	Wotton, D. C.

NOES (10)

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

PAIRS

Leggett, S. R.	Geraghty, R. K.

Majority of 16 for the Ayes.

Third reading thus carried.

ADJOURNMENT DEBATE

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

That the House do now adjourn.

Ms STEVENS (Elizabeth): Today in Question Time I raised some issues about a tragedy that occurred here yesterday. The issue of suicide and mental illness has caused and continues to cause much pain and suffering for many in our community. It would have been easier to have said nothing, but that has been the issue all along. Over recent months I have had dozens of contacts from people all around the State who are coping with their own mental illness, from people coping with the illness of a family member and from people who live next door to mentally ill people who are not coping in large part due to lack of support services. When I listened tonight to the debate in relation to the Residential Tenancies Bill, so much of this was repeated by many members.

One Sunday several weeks ago I attended a public meeting when Project 141 was launched by parents of people with intellectual disabilities. Again from those people came stories of pain, suffering and distress in attempting to cope with the situation in which they find themselves. Earlier this year, along with a large number of other people, including other members of this House, I was invited to the Riverland Health and Social Welfare Council when it launched its report entitled 'Mental Health: Advocacy of Project Report—A Consumer Perspective'. The report, which was compiled this year, was presented publicly in May. I will quote one small paragraph from its summation as follows:

> There is a huge disparity between a population that has been shown to have an enormous and desperate need for mental health services and the few services which are currently available.

I will also quote from the SACOSS budget submission for this year (1995-96) in relation to mental health, as follows:

> To date there has been minimal reallocation of resources as a result of the deinstitutionalisation of care of the mentally ill, and community based services are inadequately resourced to address the extremely demanding situation that currently exists with regard to appropriate provision of services to their clients. The Burdekin Report called on Federal and State Governments and the entire community to take responsibility for effecting drastic changes in attitudes regarding mental illness and to urgently address the tragic circumstances that confront people with mental illness and their families.

It goes on:

> In the South Australian context SACOSS is extremely concerned about the recommendations contained in the realignment report which was prepared by KPMG Peat Marwick for the South Australian Mental Health Service in 1994. The recommendations contained in the KPMG Peat Marwick report will see expenditure on mental health in South Australia reduced significantly over the next three budget cycles, with far-reaching implications for people with mental illness, their families and support networks. The projected decrease in funds to SAMHS in real terms is expected to be 12 per cent over five years, which will be further exacerbated by the expectation that SAMHS will absorb CPI and award increases over this period.
>
> There are fears that these budget constraints will have a serious impact on service delivery and may even lead to service closures. The establishment of 24 hour crisis teams and country services, which are essential to the provision of a basic level of care and to achieving community integration of care, is at risk within these unrealistic budgetary constraints. Expenditure on non-Government service in South Australia is now well below national averages and will remain so based on current plans, placing an additional burden on public services and denying access to services which are fundamentally important to improving the quality of life and well-being for the mentally ill and their families.

Earlier this year and late last year I was in regular contact with a group of people fighting the closure of the Willows Program. The Willows Program, as we probably all know by now, provided an intense therapeutic process for young people with multiple personality disorders, many of whom were suicidal. As recently as last week in the Estimates Committee I again raised this issue with the Minister. I also mentioned that that group of young people, having asked SAMHS for a list of community-based agencies to which they could go following the closure of this service, were given a list of 99 agencies in the metropolitan area. They interviewed 78 of those services and none of them had genuine services for clients with a personality disorder.

I want to say this because it has been said to me many times: what will it take before people take notice and do something about these things? How much suffering has to occur?

Members interjecting:

Ms STEVENS: That is something we need to take on board because, whether or not members opposite have heard it, I have heard it time and again.

Members interjecting:

Ms STEVENS: Rather than engaging in abuse and interrupting, members opposite should acknowledge that the deinstitutionalisation program in place in this State is totally inadequately resourced. It is not a matter of attributing blame and identifying who did this and who did that. All of us need to recognise that this is a problem in our community, that it is happening, that it is unacceptable and that it is something that every one of us—the Federal Government, the State Government and the community—need to address. The pain and suffering of many people in our community is immeasurable. It is time to acknowledge that this situation is happening in our community and then do something about it by making changes.

Mr BECKER (Peake): The one lesson all members should learn is that, when they want to indulge in cheap political gain or point scoring, they should be very careful that it never comes back to haunt them, as the question did today from the member for Elizabeth. I am very disappointed that the member for Elizabeth raised this issue today because of the impact it has had on the family of the person concerned. I hope that nobody in her family ever suffers from a mental or intellectual disability.

Ms Stevens interjecting:

Mr BECKER: You are talking to someone who has had 33 years experience of it, so do not start waffling on and trying to capitalise on it. The damage that has been done by the honourable member is incredible. In all the years I have been in this place we have never raised those issues: we have never raised what was raised today in Question Time because of the publicity that may or may not be given to it, which could cause a copycat incident. If you want to go back to see who has caused all the problems—

Mr Clarke: That's an absolute lie!

The SPEAKER: Order! The Deputy Leader of the Opposition should contain himself. I suggest that he withdraw forthwith the words that he uttered. I understand that the Deputy Leader said that that was a lie.

Mr CLARKE: I withdraw the comment, Mr Speaker. I simply say that there is a massive amount of untruths and hypocrisy on the part of members opposite—

The SPEAKER: Order!

Mr CLARKE: —given what they did to a police officer only a few months ago.

The SPEAKER: Order! I warn the Deputy Leader. I do not know whether the Deputy Leader of the Opposition wants to be named. He knows the consequences. I suggest to him that the Chair has been more than tolerant. I suggest that members cool it because I will have no hesitation in applying Standing Orders.

Mr BECKER: All members of Parliament, both new and old, should be aware that you do not raise certain issues in here. If you have concerns, you go to the Minister or the authorities and work it out, but you do not come in here trying to score cheap political points on issues which involve the mentally or intellectually disabled in this State. I have respected previous Governments because of the way they have handled those issues. Let that be a lesson to the member for Elizabeth. I am very disappointed in somebody whom I thought had great potential with respect to leadership aspirations on her side of the House.

What continues to amaze and worry me are the tactics of some of the new members and the young people who are coming up through the various political Parties. The candidate for the Labor Party in Hindmarsh has the courage to put out a pamphlet saying that he is the ALP candidate for that electorate, yet we know he is a public servant: he has a nice little contract with the State Government which we cannot do anything about. His pamphlet states:

> David Abfalter invites you to a street meeting. I will be in your neighbourhood this Saturday. If you have any concerns or problems or would like to speak to me, come along for a chat. I'm a local, born and raised in the area.

I do not know about that, but I do know that he has just moved his address to his electorate office. He has come from outside the area and his address is recorded as his electorate office address. As far as I know, he cannot be living or sleeping on those premises. His pamphlet states that on Saturday 8 July he will have his little caravan situated on the corner of Burbridge Road and Western Parade, West Richmond. They are parallel roads. I do not know how you can meet on the corner of parallel roads?

Members interjecting:

Mr BECKER: I think that this person, who claims to be a local, born and raised in the area, is lost. I cannot believe that any political Party would pick such a dumb candidate as one who would not know that within a kilometre of his campaign office these two roads run parallel and meet with Marion Road. He will not be able to put his little caravan on Marion Road, because the intersection near Burbridge Road is one of the busiest in the western suburbs, so anyone who wants to meet him will get absolutely lost. However, you have plenty of time to find him because he indicates in the pamphlet that his caravan will be there from 12 noon to 1 a.m.—13 hours campaigning! We all make mistakes—and I have made plenty—but when you put out information like this and you are trying to impress—

The Hon. G.A. Ingerson: Who's the candidate?

Mr BECKER: This is David Abfalter, the State public servant who has a five year contract and, because of the contract, we cannot move him outside the metropolitan area.

Mr Ashenden: Did he spell his name correctly? Did he get that right?

Mr BECKER: I do not know. I have his pamphlet here. Ever since he moved into the area there have been nothing but problems where my office is located, including a bit of vandalism, so they must have some nice old meetings at his office. We have 13 hours to find him and talk to him. Let us hope that people can find his little caravan, because we are not too sure where it will be.

Members interjecting:

Mr BECKER: Chris Gallus is doing all right; she does not have a worry in the world. What concerns me is the type of people who are coming into Parliament. For the benefit of the member for Ross Smith, Chris Gallus does live in the electorate at Byron Street, Glenelg—slap bang in the middle of the parish. She has no problems and represents the area very well. I love it when these people put out this sort of stuff.

This week the Glenelg Baseball Club and the Port Adelaide Baseball Club are hosting the Friendship Series. I am glad that the Minister for Tourism is present in the Chamber to hear this, because the local baseball teams, with West Coast baseball clubs, have provided the opportunity for several American college baseball teams to come to Adelaide. This year four senior teams will come to Adelaide to play four teams from the Australian Institute of Sport at Glenelg and Port Adelaide, and two junior teams of under 14 and under 16 Americans will come to Adelaide to play a carnival at the Seaton High School.

This series will bring in about 200 people from America, including young baseball players (all expenses paid), their supporters, team managers, physicians and some parents. Some will be here for two weeks playing baseball and taking in the sights of South Australia, Adelaide and its surrounding areas. It is something that we have built up over the past few years. Last year there were far more teams—I think something like eight or 11 teams came in from America. But they have had a strike, which seriously affected baseball in America. The attendances to normal league baseball matches are down by 50 per cent.

Here is a sport that has given us the opportunity to develop friendship with Americans. It will give us a wonderful opportunity to improve the standard of our baseball in South Australia and Australia and to benefit from the coaching tactics and competition with players from America. More importantly, all these players and officials are staying in Glenelg, at the Grand Hotel and the motels at Glenelg, and the boost to tourism and the local economy will be wonderful. The State has spent very little; as a matter of fact, I do not think the State will spend any money at all this time. Last time the Government provided a couple of buses to transport the players. It just shows that bit by bit South Australia is building up a reputation world wide.

The Americans want to come here. They love this time of the year. They love the facilities, they love the accommodation and they fit in extremely well with the local people who look after them and host them. As I said, they will use local accommodation. It is one of many issues that are gradually building up in South Australia. In this case sport, through the Friendship Series, will further enhance South Australia's opportunities. It is an opportunity for young South Australian players to improve their skills as well. My hat goes off to the Glenelg Baseball Club and the baseball league for what they are doing in that regard.

Motion carried.

At 9.30 p.m. the House adjourned until Thursday 6 July at 10.30 a.m.