LEGISLATIVE COUNCIL

Tuesday 16 October 1990

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

PETITION: KENSINGTON PARK COLLEGE OF TAFE

A petition signed by 51 residents of South Australia praying that the Council urge the South Australian Government to revise its decision to close the Kensington Park College of TAFE and to sell off the Lossie Street campus site was presented by the Hon. R.I. Lucas.

Petition received.

REDEVELOPMENT OF ADELAIDE MAGISTRATES COURT

The PRESIDENT laid on the table the following interim report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Redevelopment of the Adelaide Magistrates Court.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—

- Department of the Premier and Cabinet—Report, 1989-90.
- Lotteries Commission of South Australia—Report, 1990.

By the Minister of Tourism (Hon. Barbara Wiese)—

- Soil Conservation Council—Report, 15.3.90-30.6.90.
- Office of the Commissioner for the Ageing—Report, 1989-90.
- Woods and Forests Department—Report, 1989-90.
- Fisheries Act 1982—Regulations—Recreational Net and Pot Fees.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—

- Fair Trading Act 1987—Regulations—Retirement Villages.

By the Minister of Small Business (Hon. Barbara Wiese)—

- Small Business Corporation of SA—Report, 1989-90.

By the Minister of Local Government (Hon. Anne Levy)—

- Coast Protection Board—Report, 1988-89.
- Department of Environment and Planning—Report 1989-90-June, 1990.
- Department of Lands—Annual Report 1989-90.

By the Minister for the Arts (Hon. Anne Levy)—

- Reports, 1989-90—
  - Adelaide Festival Centre Trust
  - Carrick Hill Trust
  - Parks Community Centre
  - Riverland Cultural Trust
  - The State Opera of South Australia

By the Minister of State Services (Hon. Anne Levy)—

- State Services—Report 1990.

QUESTIONS

NATIONAL CRIME AUTHORITY

The Hon. K.T. GRIFFIN: My questions are to the Attorney-General:

1. Has the Attorney-General or the Government been advised of the resignation of Mr Dempsey from the National Crime Authority or otherwise that he will not continue in office; and, if he or they have been so advised, when was that advice received and what reasons were given?

2. What is the consequence for the South Australian operations of the National Crime Authority of a resignation from Mr Dempsey or of his not remaining in office?

3. Will this further delay reports on South Australian reference No. 2 under investigation by the National Crime Authority?

The Hon. C.J. SUMNER: I have not been advised that Mr Dempsey has resigned or intends to resign and, as far as I am aware, neither has the Government. The statement issued yesterday by the National Crime Authority is as follows:

> Mr Dempsey is on sick leave. At the moment the date for his return to work is uncertain. In so far as there have been suggestions in the media that he has resigned, these suggestions are not correct.

That is the only information that I have from the NCA in relation to this matter.

The Hon. K.T. GRIFFIN: As a supplementary question, in the light of that press release and Mr Dempsey's absence on sick leave, does that have any consequences for the South Australian operations of the NCA and will it cause delay in reporting by the National Crime Authority on South Australian references?

The Hon. C.J. SUMNER: I cannot say whether it has any consequences on the operation of the NCA in South Australia, although normally when people are on sick leave there is some difficulty with completing the work that that individual is doing, whether it be the Hon. Mr Griffin in Parliament, a Minister of the Crown, a public servant or a member of the National Crime Authority. Obviously, whether Mr Dempsey's sick leave will interfere with the operations of the NCA in South Australia is something which the Government will have to check with the NCA.

However, I should add that there is a team of investigators in South Australia headed by a Chief Investigator. There is also a counsel assisting the NCA in relation to its references and present inquiries, so the fact that Mr Dempsey is not here and is on sick leave does not mean that the whole of the work of the NCA in South Australia comes to a halt. Clearly it does not: the work goes on. In so far as the coersive powers of the NCA may be needed, that does require a member to sit and, as in any other area of Government or private sector operation, if someone is on sick leave, some questions must be raised as to whether or not the work is being done as quickly as it might otherwise have been.

I want to emphasise that the fact Mr Dempsey is on sick leave does not mean that the operations of the NCA in South Australia have stopped. Quite clearly, they have not. There are investigators, a Chief Investigator and counsel assisting who will no doubt be continuing the work. Also, it should be noted that the NCA's work does not involve a continual use of the coersive powers and the hearings which would require the presence of the member. Much of it is investigative work on the ground which involves investigators. So I cannot specifically answer the honourable member's question as to the consequences of Mr Dempsey's sick leave on the operations of the NCA in South Australia, except to say that they will continue. I believe that the Government should contact the NCA to ascertain whether there are any long-term difficulties with Mr Dempsey's sick leave and, if there are, perhaps some alternative arrangements will have to be made.

The Hon. R.I. LUCAS: Was the Attorney-General consulted in any way in the appointment of Mr Dempsey to the NCA? Secondly, if Mr Dempsey was forced to resign, for whatever reason, what involvement, if any, would the Attorney-General insist upon in the appointment of a replacement?

The Hon. C.J. SUMNER: I will have to obtain details of the State Government's involvement in the appointment of Mr Dempsey. As I recollect, it was a proposal which came from the National Crime Authority in Melbourne through the Federal Minister's office. The South Australian Government was advised of the intention to appoint Mr Dempsey, and the South Australian Government agreed to it. I will check the precise details of the Government's involvement in that appointment and bring back a reply to the honourable member.

As to the appointment of any future member, I assume that the Government would have a similar involvement. But, clearly at this stage, that is not a matter that is on the agenda because, as I have indicated, Mr Dempsey has not resigned.

FESTIVAL CENTRE TRUST

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Adelaide Festival Centre Trust.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier this afternoon the Minister tabled the 1990 annual report of the Adelaide Festival Centre Trust, and I note with considerable interest the report of the Chairman, Mr Rod Wallbridge, which, in part, states:

> The Adelaide Festival Centre Trust currently faces two major issues which must be resolved if our organisation is to meet many new challenges ahead.

One of those issues is noted as follows:

> . . . the current lack of capital funds needed to maintain the Festival Centre on a day-to-day basis. These funds are sorely needed as operational equipment first installed some 16 years ago comes to the end of its working life, particularly in the areas of lighting and sound. Unless we are able to replace this vital equipment in the near future the Festival Centre faces the prospect of becoming the 'poor cousin' of the Australian arts centres, to the eventual detriment of our income-earning areas.

Therefore, I ask the Minister: is the Government prepared to see a situation where the Adelaide Festival Centre does become the poor cousin of the Australian arts centres and, if not, what help, assistance and efforts are being made to ensure that in the near future the centre will be able to replace the six year old lighting and sound equipment?

The Hon. ANNE LEVY: Funding for the Festival Centre, both recurrent and capital, is discussed at meetings between members of the Festival Centre Trust and the Arts Finance Advisory Committee (AFAC), and the interest in capital funding for the centre has been raised by the Festival Centre Trust with the Arts Finance Advisory Committee. I point out that over the past four years, I think, the Government, through AFAC, has provided $2 million to the Festival Centre Trust for capital purposes. The expenditure of that money has been determined by the Festival Centre Trust, and it has drawn its own priorities as to how that $2 million should be spent.

That $2 million, while it was called 'capital' funding, obviously has been used for maintenance and upgrading purposes as well as for what might more truly be termed capital expenditure. I stress that there has been the provision of $2 million, the spending of which has been entirely at the discretion of the Festival Centre Trust. This year, as I am sure all members would have noted in the budget papers, there has been no capital allocation to the Festival Centre Trust. However, there is an allocation under recurrent expenditure for maintenance of not only the Festival Centre complex but also all the Government-owned theatres, and that of course includes the four regional cultural centres, Her Majesty's Theatre and the Lion Theatre.

It has been decided to regard that maintenance and upgrading funding as recurrent rather than capital expenditure. However, it is really just a shift from one part of the budget to another, although it appears as if capital expenditure has been reduced and recurrent expenditure greatly increased. Simultaneously, a study is being done of the maintenance and upgrading requirements of all the theatrical buildings for which the Government is responsible, and this is being done with the assistance of Sacon. A detailed schedule will be prepared of the maintenance and upgrading requirements not just of the Festival Centre but of all Government-owned theatres. This will enable a proper priority list to be drawn up and consideration of necessary funding given in the budget process for the next financial year.

The Hon. DIANA LAIDLAW: As a supplementary question, as the Minister did not answer either of my questions, perhaps I can reword them in a manner that she can understand. Does the Minister agree that unless the lighting and sound equipment, now 16 years old, is replaced in the near future—as the Chairman has indicated in his report—the centre will become the poor cousin of arts centres in Australia? What sum of money is required to ensure that that is not the case?

The Hon. ANNE LEVY: I understood perfectly well what the honourable member said the first time: she does not need gratuitously to make such waspish comments.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I have not received from the Festival Centre Trust any indication of what sum it feels is required for the upgrading of the equipment. I am sure that it will have discussed that matter, and all its concerns regarding the Festival Centre, with the Arts Finance Advisory Committee. That is the proper place for it to have such discussions. I am sure that it has done so. However, if the honourable member wishes to know what figure the Festival Centre Trust has placed on that upgrading, I will be only too happy to request the information from it for the honourable member.

SHOP TRADING HOURS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Small Business a question about shop trading hours.

Leave granted.

The Hon. I. GILFILLAN: It was reported in today's *Advertiser* that the Minister yesterday toured the yet to be completed Remm-Myer site in Rundle Mall. During the course of the visit Remm's Marketing Manager, Mr Richard Zammit, told the Minister and assembled media that he would not be surprised if Sunday trading was introduced in Adelaide soon. According to the newspaper report the Minister said she hoped that all-day Saturday trading would arrive by the end of the year. She added that the Government would consider Sunday trading as well. She said, 'if there is sufficient demand and people are interested'.

I am informed that small traders find this statement and the comments by Mr Zammit alarming given that all-day

Saturday trading is not yet a reality. I have taken representation from concerned small business people, and it appears that one of their major worries is that, if all-day Saturday trading does go ahead, then Sunday trading will soon follow. They have indicated to me that the full impact of all-day Saturday trading cannot be gauged over a relatively short period and claim the Government, business people and trade unions will need considerable data before any decision on Sunday trading can be made.

In addition, they claim that accurate and worthwhile comparison of trading figures following on from all-day Saturday trading would need to be taken over a minimum period of two years. This view seems to be supported by many within financial circles who claim that business failures and trends take approximately two years to establish. With business bankruptcies running at record levels, any hasty decisions regarding Sunday trading would be inappropriate. My questions are:

1. Given the uncertainty of many business people on the impact of proposed all-day Saturday trading, will the Minister give small business people in South Australia the undertaking that, should all-day Saturday trading go ahead, there will be no consideration of Sunday trading for a minimum of at least two years after extended trading comes into effect on Saturdays?

2. Has the Minister or any member of the Government previously given the Remm-Myer group any undertaking that Sunday trading is on the Government's agenda?

3. Will the Minister give a full explanation of her statement yesterday by defining exactly what constitutes 'sufficient demand' and the interested people to whom she referred?

The Hon. BARBARA WIESE: I thank the honourable member for his question because I am very pleased to be able to clarify the points that I made yesterday. As is so often the case, only part of what I said was reported in the press, and it is important that I have the opportunity to clarify exactly what I said when I was interviewed yesterday. This matter was not raised by me, I might say. It was a question raised with me in the context of shop trading hours and their impact on tourism.

The Hon. L.H. Davis: By whom?

The Hon. BARBARA WIESE: By one of the representatives of the media. I was asked a series of questions.

The Hon. R.I. Lucas: You put your foot in it.

The Hon. BARBARA WIESE: No, I didn't at all.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The first question I was asked was whether I thought that Saturday trading—

Members interjecting:

The PRESIDENT: Order! The honourable Minister has the floor.

The Hon. BARBARA WIESE: —would be of advantage to the tourism industry, and that is a position that I have held for a very long time. I think that stores that cater for tourists will be able to do so more effectively and that it will be in the interests of tourists for extended trading hours to be a reality in South Australia. I was then asked whether Sunday trading would be considered by the Government. My reply to that was, if a request were made about Sunday trading, the Government would have to consider it, and whether Sunday trading occurred would depend on the demand within our community for Sunday trading. The same sort of agreement would have to be reached between retailers and the trade unions that has now been reached to allow Saturday trading to go ahead.

I added to that my view that it would be highly unlikely that such a request would be made for some time to come, because it seems to me that retailers, unions and the public will want to assess the impact of Saturday trading before Sunday trading is considered. If requests are made of the Government, it is the Government's responsibility to consider such requests. That is the only comment I made on that matter. To my knowledge the Government has not considered the question of changing the law relating to Sunday trading over and above the exemptions that have already been granted to particular categories of store holder to open on Sunday. As the honourable member is aware, many categories of retail traders are at liberty to trade on Sunday.

This is a policy issue that is the responsibility of my colleague the Minister of Labour, and I am certainly not in a position to speak for him. I imagine that he would consider any requests that came his way. As far as I am aware, no undertakings have been given to Remm or any representatives of that company concerning Sunday trading but—

The Hon. I. Gilfillan: Do you think Sunday trading would help tourism?

The Hon. BARBARA WIESE: I believe that it would be of assistance to tourism for certain categories of store to be open on Sunday. A large number of retail stores, which are open on Sundays, are already catering for tourists, and they are doing so very effectively.

There may well be other stores which are currently not open and which would wish to open on Sundays if the law were different. I do not wish to raise this as an issue that is likely to emerge tomorrow or next week. I would be very surprised if it does emerge because I think that the retail traders in South Australia, trade unions and others will be very keen to assess the impact of Saturday trading before any real thought is given to extending trading hours, particularly for the big retail stores in South Australia, on Sundays.

FESTIVAL CENTRE PLAZA

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Adelaide Festival Centre Plaza.

Leave granted.

The Hon. L.H. DAVIS: The Adelaide Festival Centre Trust Report for 1989-90 that was tabled today contains a report from the Chairman, Mr Rod Wallbridge. The report states that two major issues must be resolved. My colleague, the Hon. Diana Laidlaw, has dealt with one of those issues. I wish to question the Minister on the other major issue. I quote from Mr Wallbridge's report:

> Another ongoing problem which requires resolution is the standard of finish on the recently restored plaza area. While these works have solved the problem of water leakage into the buildings below, a number of patrons—

An honourable member interjecting:

The Hon. L.H. DAVIS: Mr Roberts, I suspect that you do not often go to the plaza. If you did, you would share my concern. The report states:

> While these works have solved the problem of water leakage into the buildings below, a number of patrons have already expressed concern at the appearance of the plaza. We are now undertaking discussions on this matter with the South Australian Department of Housing and Construction . . . [which relishes under the name of Sacon] and the project's client, the South Australian Department of the Arts.

So, it is entirely appropriate that I direct this question to the Minister who I hope shares my concern about this matter. I first raised the matter of the Festival Plaza in May

and I have since raised the matter publicly on two further occasions. The fact is that on an inspection of the Festival Plaza this week there were still gaps 2.5 centimetres wide. There is great unevenness between the concrete slabs and its appearance is still unacceptable and second rate. An area of particular danger is on the Torrens River (northern) side of the plaza. That is an area which I pointed out to journalists on two previous occasions. It remains totally untouched by Sacon.

There is a gap of 2.5 centimetres. The concrete slab slopes sharply and dangerously, leaving a most uneven surface. It would be a lethal combination on a pleasant summer's night. On the plaza, gaps of up to 2.5 centimetres are not uncommon, which is more than double the width allowed by the standard specifications set by the Government and Sacon. In the old language that is a gap of an inch. Sacon promised that the plaza would be fixed by the end of June but, clearly, it is not. The view of the Adelaide Festival Centre Trust, expressed strongly and forcefully in Mr Wallbridge's report tabled today, is shared by others to whom I have spoken, including Adelaide architects and engineers. There is a widespread view that the plaza surface is not up to standard. It is inadequate and does not match the excellence of the architecture of the landmark Adelaide Festival Centre.

Quite clearly, the surface is moving and changing, and gaps that were not previously present are now there. My questions are: first, will the Minister for the Arts come and inspect with me the Festival Plaza to see at first hand—

The Hon. Diana Laidlaw: On one of those summery nights?

The Hon. L.H. DAVIS: It could be a summery night, but the Minister might prefer a midsummer's day.

The Hon. Diana Laidlaw: *Midsummer Night's Dream!*

The Hon. L.H. DAVIS: Well, I'm not sure about that! Will the Minister come and inspect with me the Festival Plaza to see at first hand the inadequacies and dangers of the plaza? Secondly, does she accept the justifiable concern of Mr Wallbridge, the Chairman of the Adelaide Festival Centre Trust, who described the Festival Plaza as a major issue; and, thirdly, when will the plaza be fixed?

The Hon. ANNE LEVY: I fear I must decline the very public invitation from the Hon. Mr Davis for a midnight stroll with him on the plaza, or anywhere else. I can assure him that invitations of that sort are not usually made quite so publicly. While I hate to offend, I think such a public invitation deserves a similarly public response and so, politely, I will decline his offer for a midnight stroll.

The Hon. L.H. Davis: What difference if I asked you privately?

The Hon. ANNE LEVY: A private invitation would get a private response. Turning to more serious matters, I am aware of the concerns expressed by the Chair of the Festival Centre Trust in his annual report. I point out that the Chair's report, which is contained in the annual report of the Festival Centre Trust, refers to the situation to the end of June 1990, and that annual reports do not refer to anything that occurs subsequent to 30 June.

The Hon. L.H. Davis: That is not true.

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. ANNE LEVY: Since 30 June, there have been numerous discussions between Sacon, the Festival Centre Trust and the builders responsible for the renovations to the Festival Centre Plaza. There have been added complications in that one of the construction firms has gone bankrupt. Consequently, discussions need to be held with the receivers and, obviously, this will complicate the discussions that Sacon is undertaking on behalf of the Government in relation to this matter.

I understand that a complete list of the defects in the plaza has been considered and discussed at these meetings. These defects have been put into different categories: those due to faulty work and those that may be regarded as requiring ongoing maintenance and hence not the responsibility of the builder. I understand that agreement has been reached on the specified tolerance.

Members interjecting:

The PRESIDENT: Order! If remarks are addressed to the Chair we will get on better.

The Hon. ANNE LEVY: The specification related to the maximum gap tolerated. It has been agreed that in areas of heavy traffic no gap must be greater than the specified tolerance, while in the areas of the plaza that are rarely frequented, even by Mr Davis at midnight, the tolerance criterion will be taken as an average—

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation. Both sides of the Chamber will come to order.

The Hon. ANNE LEVY: As I was trying to say before Mr Davis got at it again, it has been agreed that the tolerance limit for the parts of the plaza which are rarely frequented and which are not main thoroughfares will be treated as an average, with not an exact tolerance for every paving stone that has been laid. Discussions and work are continuing. The Festival Centre administration feels much more confident now about the outcome than it did several months ago.

There are other problems relating to leakage of water. Problems have arisen with some of the membranes, which were installed under guarantee, and discussions are occurring to make the supplier of the membranes live up to the guarantee. However, in other areas, where there is still some leakage on occasions, no membrane has been laid and attention is given to these areas as and when problems arise. At this stage, I do not have an indication as to when work can finally be taken to be completed or, perhaps more accurately, when redevelopment may be taken to have ceased and maintenance started, but I will attempt to obtain a date for the honourable member if he wishes.

LOCAL GOVERNMENT STRUCTURAL CHANGE

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister of Local Government a question about structural change.

Leave granted.

The Hon. J.C. IRWIN: In her statement to the Council on 22 August, the Minister of Local Government announced a proposal to establish a time limited committee on structural change. It is proposed by the Minister that this committee will conduct further research on the key issues on the micro-economic reform agenda especially in relation to boundary reform. The Minister's proposal is that the costs of the committee would be shared between the State Government and local government. Members would be aware of the Premier's statement in the budget and the publicity surrounding the proposed demise of the Department of Local Government as we know it now. My questions to the Minister are:

1. For how long has the Minister been discussing with the Local Government Association a major restructuring of local government in this State?

2. Has the committee on structural change been established yet? Who is on the committee? Has cost sharing been agreed?

3. Is the committee the body which will negotiate the major changes to the Department of Local Government, including the method by which council boundary changes will be considered in future?

The Hon. ANNE LEVY: In relation to the first question, it depends on how one defines 'a major restructuring of local government'. In his budget speech in late August this year, the Premier announced that major discussions would be held regarding State Government and local government relationships and their organisation, financing, and so on. Since that time, discussions have occurred between officers of the Department of Local Government and the Local Government Association. In fact, I had a meeting with the President of the Local Government Association two hours ago at which these arrangements and possibilities were discussed in a very cooperative and friendly manner.

These discussions of course are ongoing and are expected to continue for some time. The committee on structural change has not yet been established. I have discussed this matter with the Local Government Association and I understand that its senior executive has discussed the matter but it has not yet come back to me on this point. I am not in any way blaming it or casting aspersions for the fact that this has not been raised in our discussions to this time because I realise that we, on both sides, have had many important things to discuss. I am not surprised that this has been put slightly on the back burner as a result. I hope to take up that question in the near future when other matters have been finally resolved.

The answer to the third question is 'No'. The negotiation process regarding the State Government's responsibilities with regard to local government and the inter-relationship and apportionment, if you like, of functions between State and local government levels is still under discussion. At this stage it is expected that it will involve officers from both State and local government levels who will undertake negotiations and report back to their respective elected members—in other words, to the Government and to the executive of the LGA. I would not want that to be taken as being set in concrete. This is one of the matters still being discussed with the LGA. However, I expect finalisation to be reached on this matter—and I may say with complete cooperation and agreement on all sides—in the very near future.

The Hon. J.C. IRWIN: As a supplementary question, because of the rather unclear beginning of the Minister's answer to the first question: I understand that no major negotiations or discussions with the Government had taken place before the Premier's announcement in the budget. Exactly when did they start? Was it following the Premier's speech or was the Minister discussing with local government some time before the budget announcement the need for a major restructuring of local government?

The Hon. ANNE LEVY: I am not trying to be evasive at all: it is a question of understanding just what has been referred to in the question. If by 'restructuring of local government' the honourable member means boundary changes for local government, obviously there have been ongoing discussions on that issue for a long time.

The Hon. J.C. Irwin: The department.

The Hon. ANNE LEVY: The Department of Local Government is, of course, a matter for the State Government. It is one of our agencies and what the State Government may or may not do with the Department of Local Government is its responsibility. The Premier announced a complete review of the relationship between State Government and local government. While that may involve a particular structure of the Department of Local Government, it is very much wider than that. It involves the whole relationship between the two tiers of government and on what basis this relationship should exist. The review was announced in the Premier's budget speech. There had been no discussion prior to that time. I cannot tell the honourable member on what date the actual discussions began, but certainly it was not long after the Premier's announcement in the budget speech. That was the signal for these discussions to be considered and to take place.

ABORTION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question in relation to abortion facilities in South Australia.

Leave granted.

The Hon. M.J. ELLIOTT: At present most of South Australia's 4 000 abortions each year are being performed at the Queen Elizabeth and Queen Victoria Hospitals. In 1994, the Queen Victoria and Adelaide Children's Hospitals will merge as a single facility on the existing site of the Adelaide Children's Hospital. There has been much speculation as to whether abortions, which are currently being performed at the Queen Victoria Hospital, will be done at the Adelaide Children's Hospital site after the amalgamation. There has been some suggestion that that will not happen.

It has also been reported that Queen Elizabeth Hospital does not want to become the only major hospital offering an abortion service. In an article in the *Advertiser* of 10 October, the possibility was raised that a new abortion clinic, within a pregnancy advisory centre, may be set up at Queen Victoria Hospital, and conflicting comments were reported. One member of the Queen Victoria Hospital administration was quoted as saying that the clinic was one option being considered so the hospital could continue to offer an abortion service similar to that at the Queen Victoria Hospital.

A member of the board of the new combined Adelaide Medical Centre for Women and Children was quoted as saying that plans for a pregnancy advisory service at the QVH were not even being considered or being looked at as an option. The *Advertiser* itself claimed that an official working party had been established to examine the proposal. My questions are:

1. Is any consideration being given to a proposal to establish an abortion clinic within a pregnancy advisory centre at the Queen Victoria Hospital?

2. If such a plan is being considered, will the new clinic relocate to the Children's Hospital site in 1994 when the two hospitals amalgamate?

3. If there are no plans for a new clinic at the QVH, where will the QVH's current quota of abortions be performed after the amalgamation on the ACH site?

The Hon. BARBARA WIESE: I, too, am aware of some of the concerns that are being expressed by various people about the proposals once the new hospital is established. I will be very happy to refer the honourable member's questions to my colleague in another place who, I am sure, will be able to clarify these matters to us.

COUNTRY ROAD TRANSPORT COSTS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Local Govern-

ment, representing the Minister of Transport, a question about country road transport costs.

Leave granted.

The Hon. PETER DUNN: In recent months freight rates in country areas have risen dramatically and much quicker than other services; in fact, they have increased by 10 per cent in the last six to nine months. For example, rates for transporting grain from silos on Eyre Peninsula other than those that are serviced by railway have increased by 10 per cent, and there is an allowance for further increases should fuel prices rise by more than the 35 per cent that they have already risen. Also, transport operators inform me that wages have risen 20 per cent and that the WorkCover levy has increased by 66 per cent, from 4.5 per cent to 7.5 per cent. Also, because most operators have had a few claims—and after all, operating a truck is very physical so there are likely to be claims—that levy has now risen to 8.2 per cent. However, the hit is that prime mover registrations have risen by 15 per cent and trailer registrations by 500 per cent from $49 to $250.

I notice from local papers that a businessman in Cummins has two prime movers, six trailers and stock crates for sale. Bearing in mind the dramatic downturn in primary producers' income, particularly in the live sheep trade and in wool and grain prices, the Government should be endeavouring to hold its costs. Therefore, I ask whether the Minister will lower Government costs and, if so, what action he will take? If not, will he review the registration costs of prime movers and trucks?

The Hon. ANNE LEVY: I will be happy to refer that question to my colleague in another place and bring back a reply.

VIDEO MACHINES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about video poker machines.

Leave granted.

The Hon. J.C. BURDETT: Members will be aware that in this Council and in the other place there are two disallowance motions on notice in regard to the regulations to allow video poker machines. In the Council there have already been some speeches on one of the motions, namely, that of the Hon. Mr Elliott, which have indicated support for the disallowance motion. Of course, these regulations, like any other regulations, do have the force of law unless and until they are disallowed.

However, when the members of the Joint Committee on Subordinate Legislation went to the Casino to view the premises where these machines were to be installed, we were told that the machines would not be purchased until the regulations had gone through the whole parliamentary process, that is, until the time of 14 days for the disallowance of motions had expired or until any motions that were given notice of—and in fact there were two in each House—had been disposed of. We were told that the machines would not be purchased until the procedure had been exhausted.

The Hon. Diana Laidlaw: And have they been?

The Hon. J.C. BURDETT: No. As I have just said, there are two disallowance motions on notice in this place and two on notice in the House of Assembly. The machines themselves will cost $8 000 each, and the initial purchase was to be 800 machines and, if that worked out, possibly 1 400 at a later stage. While I have not received any reports that the machines have been purchased, the stands for the machines have been purchased and were yesterday outside the Casino and were taken into the Casino. Today, video recorders to be used in conjunction with the video poker machines arrived and were taken into the Casino. My questions are:

1. Will the Minister confirm that the stands for the poker machines have been purchased and delivered, and that video recorders for use in conjunction with the poker machines have been ordered and delivered?

2. Have the poker machines been ordered and, if so, how many; and, if so, when is the expected date of delivery?

The Hon. C.J. SUMNER: I will refer those questions to my colleague in another place and bring back a reply.

GOVERNMENT VEHICULAR ACCIDENTS

The Hon. J.F. STEFANI: My questions, which are directed to the Minister of State Services, are as follows:

1. Could the Minister advise the number of Government vehicles involved in accidents during 1989-90?

2. What was the cost to repair these Government vehicles?

3. What costs were incurred to repair third party vehicles involved in accidents with Government vehicles as a result of negligence by Government employees?

The Hon. ANNE LEVY: I do not have that information with me, but will certainly try to obtain it. I would point out to the honourable member that Government vehicles come in two categories. First, there are those that are owned by State Fleet and leased to Government agencies. I am sure that I can readily get information regarding those vehicles. However, there are agencies that for many and varied reasons purchase their own vehicles, and these reasons were discussed in great detail during the Estimates Committee if the member would care to look that up in *Hansard*. It would be fairly difficult for me to obtain this information regarding these vehicles as it does not have to be recorded or given to State Services. However, in relation to the Government fleet, I can certainly obtain that information which is held by State Fleet as part of the State Services Department. I have no responsibility for vehicles owned by Government agencies other than those owned by the Department of Local Government and the Department for the Arts.

SELECT COMMITTEE ON ADELAIDE CHILDREN'S HOSPITAL AND QUEEN VICTORIA HOSPITAL (TESTAMENTARY DISPOSITIONS) BILL

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

That the time for bringing up the committee's report be extended until Tuesday 20 November 1990.

Motion carried.

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 October. Page 941.)

The Hon. C.J. SUMNER (Attorney-General): The Hon. Mr Griffin has raised a number of concerns in relation to this Bill. Prior to examining these matters in detail, I would like to note by way of general information that the rule of evidence relating to the admissibility of documents, known

as the 'best evidence rule', was first formulated in an era when documents were all hand-written or printed and where the only means of copying a document was by hand or resetting of the type. In recognition of the possibility of error in these instances, the courts required the original document to be produced as the 'best evidence' available. Since those times, the advent of technology and the fast and accurate photocopier have altered the basis upon which the 'best evidence rule' was conceived. In addressing the concerns raised, it is important to keep in mind the current sophistication of reproduction technology and the importance of reflecting this progress in our legal processes.

The honourable member raised a number of points:

1. The Bill will apply not only to SGIC but also to any organisation which desires to dispose of its hard copy documentation after having put it on computer.

The impetus for this Bill was indeed the desire of SGIC to transfer its hard copy files to computer retained documentation. However, the opportunity was taken to update the law in this area, to take account of modern reproduction technology and to make the advantages available to a broad range of litigants. The imaging system installed by SGIC utilises scanning technology which is akin to photocopying each document with the exception that the output from the process is a digitised image instead of a paper copy. This digitised image is then stored on optical disc and displayed for claims processing purposes or when a hard copy of the image is required. Although document imaging is a relatively recent advancement in technology, there are already over 20 000 users around the world, and experts forecast that it is likely to be the fastest growing industry of its kind with application in various areas of the business world. SGIC has chosen to adopt this new technology to reduce the necessity for storage of vast volumes of hard paper files and the desire to contain the costs of what is, in effect, a public fund.

2. What happens if SGIC believes that there has been fraud in the completing of a claim form or a witness becomes hostile?

There will be those matters where there is some real possibility of forgery, or some doubt about the authenticity of a document, and it will be necessary for the court to look to the original for clarity. However, those cases will only ever form a tiny minority of the matters coming before a court.

An immense amount of trouble and expense is incurred in obtaining originals in cases involving no genuine dispute about their authenticity. As the Government is committed to reducing the cost of litigation by avoiding unnecessary expense wherever it is practicable to do so, the modifications to the 'best evidence rule' will relieve the gratuitous and unnecessaary burdens on parties to litigation while possessing enough qualifications to ensure a just result. In any event, the words of the Victorian Chief Justice's Law Reform Committee in 1962 in its report on microfilm evidence are worth bearing in mind. He said:

> We recognise the possibility that our proposal may occasionally prove of assistance to a determined evil-doer bent on fraud or forgery. Cases may be supposed, and examples given, in which the fact of forgery can be detected only by examination of an original document. As against this, however, we believe that the good which the community will derive from our proposal will far outweigh any possible evil effects in an occasional isolated case. Indeed, we are by no means convinced that the present law provides much more in the way of safeguards than would be provided if our proposal is adopted. Moreover, if the original document has been lost or destroyed, inspection of it is no longer possible.

It is to be noted that the new provisions merely make the accurate reproduction of the document admissible. The effect of this is clearly stated by Millhouse J. in *ANZ Banking Group v Griffiths* (1990) 153 LSJS 368 at 370, where he said (in relation to section 46):

> The record simply becomes admissible the accuracy of its contents may still be challenged and, as I put it last time (at p. 338), 'its weight must still be assessed by the court'.

3. It is not good enough for the determination of what should be an approved process to be left to a notice by the Attorney-General in the *Gazette.*

The honourable member does not agree that the Attorney-General should be able to approve a process. For many years under legislation in Victoria, Western Australia, New South Wales and Queensland Attorneys-General have been approving reproduction machines.

4. I answer the alleged defects in the Bill raised by a lawyer, as follows:

1.1 Different shades, pressures, markings, etc., need not feature in a document tendered under the proposed section 45c, and in many cases the result will be to hinder, not advance, proof.

The image scanning system proposed for use by SGIC is a sophisticated piece of equipment which takes a clear and accurate digitised image of the original document before it. As we are all aware, modern photocopies reproduce handwriting and marks on the paper and in the columns, accurately and clearly, but not pressures and such like.

In by far the majority of cases, the court will not be concerned with the subtleties of shading or pressure, but will want to be satisfied that the document before it is an accurate copy of the original document. It would be in a minority of cases that such minute accuracy would be relevant.

1.2 It does not matter if the original is available. In the vast majority of cases whether the document is the original or an accurate copy is of no moment at all. Unless there is some real debate as to the genuineness of the original, an accurate reproduction would serve just as well. Section 15 of the Companies Code is an example of another provision allowing the production of a copy regardless of whether the original is available.

In these times of fast and accurate copying, it is unnecessary to require litigants to go to the effort of producing the original document if there is no dispute as to the accuracy of the copy. Where the original document is in existence, and a party seeks to rely on it, it will be a matter for that party to produce the original for the court's consideration.

1.3 *(a)* and *(b)* There is no requirement that the court disclose to the parties what it has discovered. There is no requirement that the court disclose to the parties the nature and extent of its 'own knowledge' about processes.

The Bill extends the well-established principle that a court may take judicial notice of certain matter. If the court takes judicial notice of a particular fact which is incorrect, this fact will emerge from the statement of reasons which the court is required, upon request, to provide.

(c) There is no thought given as to how the court might determine whether any person certifying has proper or adequate knowledge or experience.

It will be a matter for the court in its discretion to decide as to the 'proper or adequate knowledge or experience' of the person certifying the process by which the reproduction was made, and make its decision accordingly. The criteria by which the court will judge expertise will be exactly the same as for any other expert evidence.

(d) There is no requirement that the person (who has compared the contents of both documents and found them to be identical) needs any qualifications to do so.

I believe I have provided an answer to this concern in my previous reply.

(e) If a person is in a position to make such a comparison, one may assume that the original is available. If it be said that the comparison is made after the contents of a document have been stored in a computer (for example), but before the original is destroyed, one may doubt that the document sought to be tendered was the document with which the original was compared.

Where the original has been destroyed (and the presumption is that subsection (4) does not operate), the court will obviously need to be satisfied by some form of evidence that the original once existed, the problem is no different from the problem that exists at present where a document has been destroyed and secondary evidence is admitted of its existence and contents.

1.4 The needs of SGIC could be met by minor amendments to sections 45a and 45b.

In framing the new section 45c, consideration was given to amending section 45a or section 45b. However, this approach was considered inappropriate as both these sections allow the court to call for the original of the document. In the present case the Government is satisfied that SGIC's processes are reliable and not susceptible to dishonest tampering. This justifies the new section 45c under which the copy will have almost the same status as an original. The provision is not unique. For example under the Companies Code photographic reproductions of documents lodged with the Corporate Affairs Commission are to be treated as if they were originals.

Further, under sections 45a and 45b there is a discretion in the court to exclude a reproduction if it is of the opinion that: the person by whom or by whose direction it was prepared can and should be called; the evidentiary weight of the document is slight and outweighed by the prejudice that might be caused to any of the parties; or the admission of the document is otherwise contrary to the interests of justice to admit the document in evidence. These sections rely principally on judicial discretion and thereby involve uncertainty. So long as that uncertainty exists businesses will not, with confidence, be able to take advantage of modern technology with resultant cost savings due to reduced storage costs and easier retrieval of documents.

The Hon. Mr Griffin also raised a number of concens regarding clauses 2 and 3 of the Bill. The first point relates to possible disputes regarding the identity of an instrument of which judicial notice is to be taken. He comments that, if there is any dispute, evidence will have to be called in order to establish that the instrument relied on answers the description in proposed section 35 (2). This is true but I do not see that the adoption of a definition of subordinate legislation will ameliorate the problem. It will usually be quite evident on the face of a document whether or not it is a form of subordinate legislation. If it is clearly subordinate legislation, the provision can apply without the need to call evidence. Therefore the purpose of the section will not be defeated in such situations.

The Hon. Mr Griffin has also indicated that he has concerns regarding proposed section 35 (2) *(d)*, as it will invest the status of judicial notice on any notice published in the *Gazette* whether or not the notice derives its legal significance from the provisions of an Act of Parliament. He has suggested an amendment to paragraph *(d)* by the addition of the words 'pursuant to and in accordance with a legislative instrument of the kind referred to in paragraph *(a)* above'. I am not convinced that such a qualification is necessary. The adoption of such an amendment would limit the occasions when judical notice may be taken of notices in the *Gazette*. For example, if only notices deriving legal significance from the provisions of an Act of Parliament are to be covered, notices such as judicial commissions would be excluded from judicial notice. I do not consider it to be inappropriate for judicial notice to be taken of such matters.

Finally, the Hon. Mr Griffin queried the inclusion of 'administrative acts' in proposed section 37. He is concerned at the uncertain nature of the term and that the proposed section will provide a means of creating evidence of 'administrative acts' whether or not they occurred or whether or not they occurred at a relevant date by the simple expedient of notifying them in the *Gazette*. I do not share the Hon. Mr Griffin's concerns. Proposed section 37 is a provision dealing purely with the admissibility of certain matters. It allows for a notice published in the *Gazette* to be admitted into court as evidence of an act, that is, it facilitates the giving of evidence of the act. However, it does not provide that such evidence must be accepted as irrebuttable, not does it affect the weight to be given to the evidence. If there is any reason to doubt the nature of the act the court can take that into account or the act itself can be challenged.

Bill read a second time.

ACTS INTERPRETATION ACT AMENDMENT BILL

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Prescribing matters by reference to other instruments.'

The Hon. K.T. GRIFFIN: The Opposition is not prepared to support this provision, and I outlined some reasons for that at the second reading stage. In his reply, the Attorney-General made a number of observations. The first was that section 14b (3) *(a)* of the Acts Interpretation Act already provides that, where in an Act reference is made to some other Act, such reference should be construed as a reference to that other Act as amended from time to time. He went on to say:

> This provision has exactly the same 'vice' attributed to proposed section 40 (a) by the honourable member, but it does not appear to have caused any problems in the past.

From looking at section 14b (3) *(a)* of the Acts Interpretation Act, it does not appear to me, with respect to the Attorney-General, that it is on all fours with the provision we are now considering in this clause. All that it says is that where there is reference to another Act, it shall be reference to that other Act as amended from time to time. That is not a particular problem. Various pieces of legislation refer specifically to other Acts, either to pick up the specific provisions in them, or otherwise to create exceptions, or for other reasons.

All this existing section does is refer to that Act or a part or provision of some other Act, including any amendments which may be made from time to time. That is not the argument which I presented against this clause. The argument I have against this clause is that it allows the Executive to promulgate regulations which pick up material contained in any other instrument or writing as in force or existing when the regulations, rules or by-laws take effect or as in force or existing at a specified prior time.

Whilst the preamble to proposed section 40 refers to an Act authorising provision to be made for or in relation to a matter by regulation, it seems to me that that Act may

not necessarily refer to a code of conduct, United Nations declaration or some other writing, being specifically picked up by regulation and given the force of law.

The concern I have about the proposal is that, although an Act of Parliament may allow regulations to be made in relation to a matter, which could be very broadly described and not specifically defined, that then enables the Executive to promulgate regulations which pick up instruments or writings, not necessarily in statutory form or in regulation form, and to adopt them *in toto*. That may be by a particular title reference or it may be in full. I suggest that it is particularly difficult if that is done only in the context of referring to a title or reference rather than to picking them up in full.

It seems to me that picking up and referring in full to other writings in regulations would be creating an undesirable precedent because, when considering the regulation-making power of a statute, one would normally consider the matters that are to be dealt with by regulation and perhaps raise some exception to them and even amend that clause. However, if a matter is referred to in broad terms as being able to be dealt with by regulation, I would suggest that that opens a Pandora's box to a wide range of subordinate legislative activity which might otherwise not be contemplated by the Parliament. It is correct that the regulations can be the subject of review by the Joint Standing Committee on Subordinate Legislation and, ultimately, by either House of Parliament. I suggest that the option then is only disallowance or no disallowance and, if a writing is picked up in a regulation as part of other regulations which are desirable, it is quite possible that those writings may not be able to be disallowed for a variety of reasons.

In summary, the argument I put is that, if there is to be a wide regulation-making power which may allow the adoption of instruments or writings other than another Act or another statutory instrument, we ought to consider that in every case when a statute is before Parliament and not allow this blanket provision to be inserted which I suggest is much wider than one would reasonably expect for subordinate legislation. I know that there is a similar provision in the Commonwealth Acts Interpretation Act. That does not necessarily make it right that that should also be adopted in South Australia.

By way of an aside, these days there is a growing trend to deal with more than just the implementation or administration of statutes by regulation. We currently have that argument in relation to video poker machines. What concerns me about this proposal in clause 5 is that we may be heading in the same direction.

It seems to me that the Attorney-General has not shown that any particular administrative difficulties would be created if the reference to other instruments or writings specifically relating to particular matters under particular statutes is required. For those reasons I have difficulty in accepting clause 5 and indicate the Opposition's opposition to it.

The Hon. C.J. SUMNER: I have responded to the honourable member's queries. I still do not believe that his point is justified. First, any regulation made will have to be within the power available under the principal Act—within the power to make the legislation—and obviously will have to be relevant to the purposes of the principal Act.

The honourable member objects to the fact that a design standard or an Australian standard may be referred to in the regulations without the necessity of having to include *en bloc* the whole of that particular standard. It is important to note that the reference is confined to the particular writing or standard that was in force at the time the regulations were made, so it is not automatically updated by any change to the standard. The regulation will refer to the standard or the design rule at the time that those regulations, rules or by-laws come into effect or at some specified prior time, but it will not mean that regulations will automatically be amended by subsequent changes to the design standard or whatever the instrument to which we are referring.

So, it seems to me to be a perfectly reasonable approach to the regulation-making power by providing that the regulation may refer to a specific rule, a specific design standard or a specific standard of another kind by reference to another document, and that that then becomes part of the regulation; the design standard being the one that is in force at the time the regulation is made. Obviously, if there is any subsequent amendment to the design standard it will be up to the Government to update it by way of regulation if it wants to incorporate the new standard. Of course, the alternative is that the regulation will incorporate the whole of the standard in the actual document.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is the principal purpose of what is being proposed. So I do not see any particular evil in it. The power provided by the principal Act obviously must be for the purposes of the principal Act and, in any event, as with any regulation, it is subject to the scrutiny of Parliament.

The Hon. K.T. GRIFFIN: As I see it, this clause is not limited to merely picking up by title such things as design standards, although I suppose that the principle is the same whether it is picked up by title or description or whether the whole lot is picked up. There is already specific legislation that allows the adoption of particular codes of conduct or trade standards. The Fair Trading Act allows codes of conduct; the Land Agents, Brokers and Valuers Act allows codes of conduct to be prescribed, presumably in full; and the Trade Standards Act deals with the adoption of particular standards. So, whilst one cannot quarrel with those specific powers being given in specific statutes, it seems to me that this provision is very much wider than that.

I sympathise with the view that an Act of Parliament allows power to make regulations to adopt standards of the Australian Standards Association—I have no difficulty with that, and it has been adopted in other statutes—but, if the provision allows regulations to be made for the general purposes of a statute, I would have thought that the interpretation of this provision is such that, if something comes within the general ambit of the Act, the regulations may encompass just about anything provided, of course, that they relate in some way or another to the ambit of the Act. It was that sort of breadth which concerned me and which I think is much too wide, and that is why we oppose this particular provision.

The Hon. I. GILFILLAN: I feel attracted to the procedure because it reduces the amount of legislative time that quite often would be required, certainly on the face of it, for the introduction of non-controversial material or a predictably uncontroversial amendment in legislation, and for that reason we view it sympathetically. I have listened to the Hon. Trevor Griffin's concern that it may go wider—and I respect that concern—but, on balance, I believe that it offers an advantage, so it is my intention to support it.

The Hon. K.T. GRIFFIN: With respect to the Hon. Mr Gilfillan, I do not believe that this proposal will save any legislative time. I suggest that it will enable a wider range of executive activity in the promulgation of regulations than is presently available unless specifically provided in a particular statute. I do not want to take up further time of the Committee so if, in the light of the intention by Mr Gilfillan,

I am not successful on the voices, I will record my dissent but I will not call for a division.

Clause passed.

Title passed.

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: The matter on which I raised objection is, in my view, the principal provision of the Act, and I indicate that, although I will not call for a division in view of the numbers and the indication by the Hon. Mr Gilfillan, the Liberal Party opposes the third reading of this Bill.

Bill read a third time and passed.

LANDLORD AND TENANT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 October. Page 940.)

The Hon. BARBARA WIESE (Minister of Consumer Affairs): I thank members for their support for this Bill and for their thoughtful contributions to the debate. The Government is anxious to protect commercial tenants in a reasonable manner without interfering with genuine negotiations conducted by parties well able to look after their own interests. The Bill before us, which has been the subject of discussion and negotiation over a number of years, is an attempt to reach that position.

I agree with the Hon. Mr Griffin's statement of general principle, made during his contribution to the debate that:

> Not only must the unscrupulous be regulated but also the expectation of tenants is that they will be properly protected from the unscrupulous landlords.

Proper protection also involves closing loopholes which, as the honourable member acknowledged, is another reason for some of the provisions of this Bill.

I shall now deal with the issues of concern identified specifically by the Hon. Mr Griffin and provide further background, which I hope will allay some of his concerns. As to the scope of the Act and the proposed insertion of a monetary limit in the Act itself rather than in the regulations, the Government welcomes the Opposition's support for its proposed method of establishing the threshold and its recognition of the appropriateness of the cut-off figure of $200 000 annual rent.

The honourable member's concerns about the potential overlap of jurisdiction between the Licensing Court and Commercial Tribunal in the case of hotel leases have not manifested themselves in any major practical difficulties in the five years that the commercial tenancies provisions of the Landlord and Tenant Act have been operating. The Government is, however, considering a very detailed and carefully argued submission as to the possible consequences of the apparent overlap and it may be that further exemptions along the lines of the regulation mentioned by the honourable member may be appropriate; that is, it may be appropriate to exempt specific hotel landlords or tenants or premises from specific provisions of the Act in limited circumstances, subject to the Government's being satisfied that the protection of the Act is not needed or that equivalent or better protection is available in the circumstances.

These questions are best dealt with on a case-by-case basis and after extensive consultation with the hotel lessees affected as well as landlords or their tenants. Of course, proposed new section 56 is also designed to avoid overlap with other jurisdictions and clarify the procedures where a claim is found to be commenced in the wrong forum. The Government agrees with the honourable member's suggestion that Federal, State and local governments do not need the protection of this legislation as tenants. They are 'big enough and carry enough clout to be able to look after themselves', as the honourable member contends. Similarly, banks, building societies and insurance companies, which are not public companies, do not need the protection of this legislation and, whereas they may have been 'filtered out' by the previous annual rent limit, they are now more likely to be caught, as tenants, by the Act.

When looking at the other bodies mentioned by the honourable member as being able to 'look after themselves'—that is, to negotiate at arm's length, as a truly equal party, with sometimes large national or multi-national landlords—the situation is not so clear-cut. For example, there are many small cooperatives and credit unions which are not able to negotiate from a position of equality, let alone strength. Even among building societies, one society, although not arguing against the exemption, has urged caution and cited examples of difficulties in achieving reasonable conditions in its tenancy agreements. The Government rejected requests for exemption from landlords five years ago when the initial protection was extended to cooperatives, credit unions and friendly societies. There is no justification for removing that protection now.

As to the minimum five-year term, it is simply not true to assert that the Bill effectively provides a guarantee of a minimum five-year term. The Bill leaves it up to the parties to negotiate on an appropriate term and if they cannot agree the matter can be submitted to the Commercial Tribunal for it to impartially decide.

By virtue of proposed section 66a (1) *(b)* where agreements currently allow for a renewal or extension (as most do), those disputes will be settled by reference to existing section 67 (which includes the words—inserted by the honourable member when this question was debated five years ago—'having regard to the terms of the agreement'). When agreements are silent on these questions, what could be fairer or more equitable than leaving them to be decided by an impartial tribunal—the tribunal which comprises equal representatives of experienced commercial landlords and tenants and an independent judicial chair.

As the Law Society pointed out in making a submission on last year's draft provisions:

> The section does not make provision for five-year terms. It gives a tenant who has less than a five-year term the right to request the landlord for an extension for up to a total of five years. If this is not agreed to, the tenant may apply to the tribunal which may extend the term for so long as it considers just or may refuse any extension.

Both the Law Society and the Building Owners and Managers Association criticised the original proposal for giving the tribunal no guide as to when it should order an extension. This has been reflected in the current Bill by the insertion of subsection (9) under which the tribunal would be directed to consider each of the matters raised by the honourable member. Thus, a tenant could not 'insist' on an extension. If negotiations had established a lesser term, the tribunal would take those negotiations into account. A landlord with other plans for the tenancy would be able to have those plans recognised. A tenant's inadequate performance will be taken into account and may amount to proper grounds to deny an extension. Proposals to change a big centre's tenancy mix would certainly be relevant as would a landlord's wish to demolish or renovate its premises. This Bill directs the tribunal to take those matters into account.

The honourable member's suggestion of three-year terms is proposed without justification. Indeed, in suggesting that most commercial leases were of three years duration, he

was contradicted by the Hon. Mr Davis. His colleague pointed out that professional office leases are typically of five year's duration—with a five-year option to renew. Three years has never been mentioned in the course of the working party's deliberations. I remind members that the working party was made up of landlords, tenants and agents' representatives, and was chaired by the Commissioner for Consumer Affairs. In fact, it recommended the Bill's major content. Nor has it been suggested by any body or person commenting on the working party's report or any of the three Bills in which this proposal has been placed before Parliament. It is inconsistent with the Building Owners and Managers Association sponsored Draft Code of Practice under the New South Wales Fair Trading Act which simply provides:

> *(a)* the first lease to a lessee of retail premises must be for a term of not less than five years;
>
> or
>
> *(b)* if for a lesser term, must provide for options so that a total occupancy of five years will be assured to the lessee.

The Queensland, Victorian and Western Australian Acts all mention five-year terms, so it is a period of time that has fairly general acceptance in Australia.

The interstate legislation covers those retail tenancies with problems in this area, as in South Australia. The honourable member acknowledges that premises other than retail shopping tenancies do not have a problem: most landlords seek long-term leases—at least five years and more likely 10 years or more. It is therefore appropriate to follow the interstate example. Legislation has been in place in Queensland since 1984, in Western Australia since 1985 and in Victoria since 1986.

The Building Owners and Managers Association has called for five-year terms by their sponsorship of the draft New South Wales Fair Trading Act Code. Opposition members, in debating the original commercial tenancies protections inserted in the Landlord and Tenant Act in 1985, pointed out the difficulties faced by tenants in getting reasonable lengths of tenancy. The member for Bragg in another place called it 'one of the major concerns' not covered by the original Bill. The Government is now addressing those concerns. There is general agreement that five years is an appropriate time.

The honourable member points out that it may be in the tenant's interests in certain circumstances to negotiate a shorter term. The Bill will allow tenants to do so and, if they later change their minds without justification and to the prejudice of the landlord's interests, the landlord will be able to raise that in the Commercial Tribunal.

The short-term tenancy provision inserted into the Bill during the recess in response to concerns expressed by the Building Owners and Managers Association does allow genuine stop-gap tenancies for the situations mentioned by the honourable member, that is: before a long-term tenant moves in or before demolition or extensive renovations. It covers the 'Cheap as Chips' type of operation mentioned by him and it does so without introducing loop-holes of the type likely to be used by the unscrupulous landlords he mentioned. If the period of permitted short-term tenancies is extended—especially to the six months contemplated by the honourable member—the likelihood of abuse will be increased. The temptation to set up a series of short-term tenancies—with disastrous consequences for the stability of tenants genuinely seeking longer terms—will be great.

The proposal that a tenant should be bound to a term less than five years provided that he or she obtains independent legal advice and provides a certificate from the person who gave that advice is extremely cumbersome and unnecessary. If a landlord offers a short six-month term to a tenant and makes it perfectly clear that there can be no extension of this term because the landlord intends to demolish the premises or use them himself or herself, the tribunal would not grant an application by the tenant to extend the term. The extension of family arrangements suggested is logical and therefore supported.

Another proposed amendment, arising out of the perceived problems with the subleasing of space in expectation of later expansion, is misconceived, because its main premise—'the fixed term that is ultimately provided in the Bill' (to quote the honourable member)—does not exist. These matters are left to the tribunal if the parties cannot agree and an agreement entered into with full understanding of the needs of the landlord and with adequate notice will be recognised by the tribunal.

It has also been suggested that the Bill must exclude from the five-year provisions sub-tenancies which extend beyond the term of a head lease. This suggestion has been resisted on the basis that it provides a loophole which has been used interstate. In the words of one commentator:

> This furnishes one of the several ways in which this particular provision can be avoided; the freeholders may grant a lease for the desired term plus one day and the intermediate lessee then grant a sublease to the shopkeeper for the desired term.

The intermediate lessee is, of course, a stooge or agent for the landlord. This provision is not needed since genuine situations will be recognised by the tribunal.

Turning to the powers of the Commercial Tribunal, the Government strongly opposes the suggestion that the powers of the tribunal be amended and limited to 'those matters which are specifically regulated by the Landlord and Tenant Act rather than give the Commercial Tribunal what is, in effect, a power at large to do virtually what it will with the lease when the matter comes before it'. Apart from the fact that this is gratuitously insulting to the integrity of the tribunal, the suggestion is simply not workable. In the first place, it is almost impossible to categorise what matters are 'specifically regulated by the Landlord and Tenant Act'. For example, is the tenant's obligation to pay rent regulated by the Act? It would be ludicrous if the tribunal could not make an order for payment of rent by the tenant. Even if one could categorise properly what matters are regulated by the Act, few disputes would involve only those matters.

As pointed out, the tribunal's jurisdiction appears in specific sections in relation to specific powers called forth by specific problems. I look in turn at each of the examples given by the honourable member. Clause 7 gives a power which renders the consequences of non-disclosure of information much more certain than in interstate legislation. New section 62 (10) permits the South Australian tribunal to be much more selective in choosing an apt sanction for non-disclosure. Clause 10, likewise permits the tribunal to extend or deny the extension of leases flexibly in response to specific circumstances. It allows appropriate decisions to be made for a wide range of circumstances. Clause 12 amends section 68 to give the tribunal the powers it needs to address any relevant issue that may arise in proceedings.

It is absurd to suggest that the tribunal would take the opportunity presented by an application to remake agreements or attempt to impose orders unrelated to the matters in dispute between the parties. The heads of subsection (2) of section 68 make it clear that orders will be strictly related to agreements or grounded in settlement of disputes about them. Thus, orders under subsection (2) *(b)* must relate to 'breaches of the agreement' or 'performance of the agreement' or 'compliance with the law'; orders under subsection (2) *(c)* must relate to amounts 'payable under the agreement'; orders under subsection (2) *(d)* can only relate to 'loss or

damage' caused by a 'breach of the agreement'; orders under subsection (2) *(da)* must grant relief from the operation of a provision of the agreement, not simply deny its operation; and orders under subsection (2) *(db)* must be made on just terms in relation to forfeiture or termination of rights conferred by the agreement.

The Government agrees that, with this Bill's clarification of the tribunal's exclusive jurisdiction and the grant of appropriate powers, it is also appropriate that appeals as of right be granted to litigants. The honourable member's proposed simple solution to the vexed question of the cost of preparing lease agreements is superficially attractive but it represents a sharp break with existing practices. The Government's proposals are the result of a great deal of consultation and discussion with all interested parties.

As to section 61a, the working party identified the Law Society as the main source of its recommendations about lease registration—following tenants' requests that the position with regard to registration be clarified. The Law Society considered that tenants should be encouraged to register their leases to obtain protection of their interests. It also recommended legislation to prevent known instances of landlords discouraging registration and to prohibit lease terms preventing registration. The Building Owners and Managers Association agreed that tenants for a term of more than one year should be able to insist that their leases be registered on the title.

In discussion on draft provisions and the two Bills tabled last year and earlier this year, the Law Society, BOMA, the Real Estate Institute and tenants' representatives all helped to improve the working party's recommended provisions by, for example, recognising the high cost and practical difficulties of registration, excluding licences and unregistered head leases and limiting the time when a request to register could be made.

Following this intense consultation and discussion, the Government is confident that its carefully considered proposals represent an acceptable compromise between the interests of landlords and tenants. Registration is encouraged and facilitated. Terms preventing it are prohibited. But, the parties are not forced to spend time and money on preparing for registration if they do not want to. The new disclosure requirements contained elsewhere in this Bill will alert tenants to the most important terms of the lease and provide a written record of those terms. This, of course, is no substitute for a lease in registrable form, but it does provide protection at the appropriate time without the extra expense and compulsion of the honourable member's proposals.

As to compulsion, it should be noted that none of the many people commenting on the working party and Government's proposals have suggested that it is appropriate to create offences to encourage the parties to secure their own interests in lease negotiations. The honourable member appears to have missed the point of the Government's proposals in section 61b. The new provisions propose that landlords should bear the costs if they require that the documentation be prepared by their representatives. The idea is that, if a landlord insists that a certain person do the work, the landlord should bear the cost. The landlord's alternative is to allow the tenant to arrange for his or her representative to do the work. In this way the tenant will have more control in relation to the cost of the work and can presumably shop around.

The Bill simply encourages tenants to seek independent advice and prevents landlords from insisting that their lawyer provide that advice. At present lessors may be easily exploited. If the lessors think that they will be paying their own costs of having the lease drawn up, they would certainly allow the tenant to do it. In practice, it is anticipated that lessees will arrange for leases to be drawn up themselves at lower rates. When landlords have the leases drawn up but do not have to pay for that work, there is no incentive to check whether the costs of preparation are excessive. Each party should be encouraged to seek their own independent legal advice and to pay for it themselves. As pointed out by one commentator on the Government's proposals:

> The fact that it has become customary for the tenant to pay both sides' legal costs is one more reason why so many prospective tenants seek little advice of any kind before entering into a lease.

Tenants are hardly encouraged to seek legal advice if they have to pay twice—first, for the landlord's solicitor and, then, for their own. The honourable member's proposal does nothing to address this problem. Tenants will still have to pay twice: half the landlord's solicitor's costs and half their own solicitor's costs. The temptation to rely solely on the landlord and not to seek independent advice is still there. Indeed, the temptation to pay only once is greater if the costs appear to be halved. In addition, there is no check on excessive preparation costs under this proposal. Neither party will pay the full costs of preparation, so neither will be encouraged to check whether they are excessive.

Turning to the proposed two-year time limit, this has been chosen not to delay the day of reckoning as the honourable member suggests but to recognise practical problems in detecting and prosecuting tenancy offences. Offences which occur at the commencement of tenancies are not reported until their end or when the landlord-tenant relationship breaks down. This is the reason for the two-year time limit in the Residential Tenancies Act. The offences in the Landlord and Tenant Act must now be prosecuted within six months—which means that these provisions are effectively a dead letter. There have been instances of serious offences which could not be prosecuted, because they were out of time before they came to the attention of the Commissioner for Consumer Affairs.

As to abandoned goods, these provisions were recommended by the tribunal, based on its experience of matters coming before it. The issue arose in the case of *A.H. Handley Pty Ltd v Brown.* In that case, the tenant had left some goods on the premises. The landlord gave the tenant ample opportunity to remove the goods, but the tenant did not take any action. The tribunal ordered the tenant to remove them. The question arose as to what could be done if the order was not complied with. The tribunal noted that the steps available to the landlord at common law would be most cumbersome and suggested that the Government should consider enacting legislation similar to section 79a of the Residential Tenancies Act.

These provisions introduce an element of fairness into the handling of tenants' property which is sorely lacking at the moment. Currently, agreements simply do not provide for this balanced, fair treatment of the question. They are all framed in the interests of the landlord and should therefore not supplant the balanced provisions proposed in this Bill. Furthermore, the parties in their agreement cannot confer rights or take away the rights of third parties in the matter that can be done by legislation—in particular, proposed new section 67a (4) and (10). It is far better to have a set of provisions which apply the same rules to all lawful owners of goods left on premises.

As to the honourable member's technical point, it seems that any costs and expenses up to the point of sale would be covered by the words 'reasonable costs of removal and storage' which are contained in the Bill, but the Government is willing to consider clarification by way of appropriate new wording.

As to the consequences of failing to disclose information properly to tenants, the honourable member's apparent objections to the power of the tribunal faithfully echo the Building Owners and Managers Association's objections to the Bill introduced in the last session. In response to those objections and in consultation with BOMA the Government inserted new subsection (11) giving guidelines to the tribunal on the exercise of its discretion. The honourable member's suggestion that the tribunal might order forfeiture of the lease because of some minor delay on the part of the landlord in providing a copy of it to the tenant is insulting to the tribunal.

The Government's proposals do not go as far as the BOMA-sponsored New South Wales Fair Trading Act Code, which provides that a potential lessee must not be committed to an initial lease of retail premises until the lessor has provided it with a disclosure statement. Under the Bill, where information or documents are not provided or if the information provided is materially false, the tribunal may act flexibly to deal with the consequences. This is similar to BOMA's suggested method of dealing only with materially false information in the code, which provides:

> If any material representation in the disclosure statement is found to be incorrect either party may refer the matter to the appropriate dispute settlement procedure.

As to investment of the Commercial Tenancies Fund, removal of the requirement to consult was recommended by the tribunal itself which thought it inappropriate given the quasi-judicial nature of the tribunal. Two annual reports on the Commercial Tenancies Fund, including audited reports detailing its make-up and the application of income, have been given by the Commercial Registrar and tabled by my predecessor as Minister of Consumer Affairs. I undertake to provide a photocopy of these reports to the honourable member.

As to proposed section 66ab, I look forward to the honourable member's foreshadowed amendments in relation to the section. The Government thinks that its proposals strike a reasonable balance which recognises the primacy of the parties' agreement and the right of landlords to move tenants unless there would be a significant seriously adverse and enduring effect on tenants' businesses. Tenants cannot deny moves on frivolous or capricious grounds or on the grounds that their businesses will temporarily be seriously affected.

As to the requirements of section 62 and delays in Government offices, I did not point out in the second reading speech introducing the new Bill that this problem had been addressed after consultation with BOMA during the recess. Proposed new section 62 (7) now contains the words 'and a copy made available for collection'. It is certainly not the Government's intention to make landlords responsible for delays occurring in Government offices.

Most of the requirements in section 62 are in the existing Act and have not been the cause of protests from landlords over the past five years. Far from failing to take into account the reality of the commercial leasing market and placing an undue and onerous burden on landlords, as the honourable member suggests, the increased disclosure provisions have been strongly supported by the Real Estate Institute and the Building Owners and Managers Association, which were most helpful in refining the provisions that appeared in successive Bills.

I think I have dealt with most of the major issues raised by the Hon. Mr Griffin in his second reading contribution. As I have indicated, I will be interested to see the terms of some of his amendments. I have already indicated that I will support others. I believe that in general terms the Bill before us is good and, as I have indicated, is the result of extensive consultation over a long period of time with all interested parties. It is generally agreed by those parties that this Bill strikes an appropriate balance between providing for the rights of tenants and landlords in commercial leasing arrangements. I hope that the passage of the Bill through both Houses of Parliament will be swift, and that we will be able to put in place the protections for small businesses in our community that are long overdue.

Bill read a second time.

MARINE ENVIRONMENT PROTECTION BILL

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

ADJOURNMENT

At 4.22 p.m. the Council adjourned until Wednesday 17 October at 2.15 p.m.