LEGISLATIVE COUNCIL

Wednesday 15 February 1995

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

MATTERS OF INTEREST

The PRESIDENT: I lay on the table the Standing Orders Committee report relating to the provision for members to raise matters of interest, together with minutes of evidence.

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

That the report be printed.

Motion carried.

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

That, for the remainder of the session, Standing Orders be so far suspended as to provide that, at the conclusion of the period for questions without notice on Wednesdays, members may make statements on a matters of interest. Up to seven members may speak for a maximum of five minutes. The President may order the member to resume his or her seat if, in the opinion of the President, the member infringes Standing Orders governing the rules of debate.

It is with much pleasure that I move this motion for the consideration of members in this Chamber. As members would know, this issue has been of particular interest to me as well as to other members who have supported this notion. I recall early in my Parliamentary career many years ago now arguing the case for such a procedure in the Legislative Council. I acknowledge that other members, both in my Party, in the Labor Party and perhaps in the Australian Democrats, have also argued for a similar provision. It makes a lot of sense and gives an opportunity for members of the Legislative Council to, in effect, use a procedure to speak on a matter of interest.

We may well have a shorthand version, a grievance procedure, but it is a matter of interest not restricted by other forms of the Chamber in having to move a motion, as occurred in the past on occasions and may be occurring at the moment, where members had to manufacture motions to put on the public record a statement or issue of great concern to them and the people they represented. On other occasions in the past, and perhaps on occasions now (although I will not comment), members have had to pad out their explanations for questions to again put on the record views that constituents have put to them or views that members might have. They must be careful because they say that 'people have expressed this view to me' to put on the record a particular viewpoint.

We hope this procedure will give the opportunity to all members of Parliament—Government, Opposition and Australian Democrats—to raise a variety of issues. They may be issues of criticism of the Government or Commonwealth Government of the day or a range of other issues or matters of public interest raised by members on occasions.

As with all sessional order or Standing Order changes, it is certainly a convention of this Chamber that they be agreed by the Parties represented here. We have worked hard over the past month to try to come to some agreement. I accept that there are some varying views from members as to the precise nature of this procedure. We have settled on a compromise between all Parties.

I have indicated that it is certainly my view and that of the Government that after an appropriate period, which we would see as being 12 months, we all sit back and review how the sessional order has worked, how it has been treated, whether it has been abused in any way or whether it can be improved in any way. Then we can make a judgment at that stage about whether to continue with it; if we continue with it, in what form; or whether we consider making it a change to the Standing Orders of the Legislative Council.

However, the procedure we are adopting will provide us with the flexibility at the end of that 12-month period to sit down collectively as all members of Parliament and to make a judgment about how well it has worked or, if it has not, what changes might be introduced. One of the issues about which there has been discussion is that of the access to this matters of interest procedure for Ministers of the Crown. Again, a compromise position has been reached. I have 30 seconds, have I?

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I will speak very quickly then. The position that has been arrived at is that Ministers—

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Exactly, we can't keep it short enough. Ministers will have access to the matters of interest procedure. However, as I have indicated to the Leader of the Opposition and to the Leader of the Democrats, certainly I as one Minister envisage—and I know that the other two Ministers agree—that it will be rarely used. Whilst we will have a slot, this will be taken up by our other colleagues.

The detail of procedures will be worked out between the Whips representing the three Parties. There have been discussions already. I understand that a range of agreements has already been entered into. On behalf of the Government we are quite happy to work with the Opposition and the Democrats if there are any problems to try to make the arrangements as smooth as possible.

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports this measure. We believe that it has been worked through very sensibly and we are pleased to support the spirit of compromise that has been reached. I understand that the Whips together will work out the fine details and finetuning behind the scenes, as they usually do. I think it is important that members of this Chamber have the opportunity to express the views of their electorate. After all, we do, unlike the other House, represent the views of the whole of the State, each one of us individually. There are often instances where matters arise and it is not necessarily appropriate to deal with them by way of questions or the time is not always there to deal with them in Question Time.

As the Minister has explained, the question of moving a motion has sometimes in the past, I believe, been abused in order artificially to raise an issue. I believe that this is a sensible measure. I will be pleased to look at it again in 12 months to see how it has worked out. I thank the Government for moving the motion and we are pleased to support it.

The Hon. M.J. ELLIOTT: I also indicate our support. This has been discussed for a number of years. I am not sure why we have taken so long to reach a conclusion, but I am glad that we have. I agree with the previous speakers that it will probably mean that some matters that people have otherwise tried to handle by way of explanation of question or by moving a motion may be handled here. That will probably mean that the efficiency of this place might actually be improved, even though we are giving up a bit over 30

minutes of our time each week to allow it to occur. I should imagine that the Liberal Party backbenchers as much as anyone would appreciate it because backbenchers in Governments of any persuasion often have limited opportunities in Parliament. I am sure that they will welcome it, as do all members in this place. It is a good measure and we will have an opportunity to look at it again in 12 months.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the seventeenth report 1994-95 of the committee.

TAFE STUDENTS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made today in another place by the Hon. Bob Such (Minister for Employment, Training and Further Education) on the subject of expulsion of TAFE students.

Leave granted.

FRUIT-FLY

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Primary Industries in another place on the subject of Mediterranean fruit fly—Encounter Bay.

Leave granted.

HINDMARSH ISLAND BRIDGE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of the Hindmarsh Island Bridge court decision.

Leave granted.

The Hon. K.T. GRIFFIN: The Federal Court handed down its judgment in the case *Chapman v Tickner & Ors* today. The court has adjourned the proceedings to a date to be fixed. The court ordered that the decision of the Federal Minister for Aboriginal and Torres Strait Islander Affairs dated 9 July 1994 be quashed with effect as from the date on which the decision was made. The court also quashed a decision of Professor Saunders dated 8 July 1994 with effect from that date. The decision of Professor Saunders was the provision of a report to the Federal Minister.

There were three main reasons for the court's decision. The most decisive factor was that the public notification (which was required to be given by the Minister) that he had been called upon to make a declaration was seriously deficient and that the deficiency was so fundamental that it could not be rectified by further consideration by either the Minister or Professor Saunders. Accordingly, the decisions were quashed from the date of their making. The other factors which influenced the court were that:

1. There had been a fundamental failure by the Federal Minister to comply with the statutory obligation that he consider representations before deciding to exercise his power (and a great number of such representations had in fact been received and were provided to the Minister by Professor Saunders).

2. He did not consider material contained in secret envelopes relating to information of a confidential nature provided by Aboriginal women. The judge held that the Minister made his decision as a result of that information but did not read it or receive any briefing as to what the information was.

The Federal Court will consider the matter again on a date to be fixed. The State Government does not know what the parties to the decision are likely to do but notes the possibility that there may be applications for appeals and, if so, the decision may be stayed pending appeal.

In September 1994 the State Government established a Cabinet subcommittee to examine the practical and legal consequences of the Federal Minister's declaration prohibiting the construction of the bridge. The subcommittee's responsibility was also to draw together the differing portfolio interests affected by the Hindmarsh Island development and endeavour to resolve the legal and practical issues affecting it. Clearly, one of the factors affecting the final resolution of this complex matter is the decision of the Federal Court, and that decision has become known only today. There is further uncertainty, as I have already indicated, because of the possibility of appeals and other steps that might be taken by the parties.

The Government's Cabinet subcommittee authorised the Crown Solicitor to have discussions with Westpac Banking Corporation, a financier of Binalong Pty Ltd, in order to explore various options. Those discussions did not reach any finality largely because of the then pending court case and decision.

The State Government will consider the effect of the Federal Court decision on its legal obligations and also what further action may be taken, whether by the Government or by the parties to the court decision, to resolve the matter. The Premier has already written to the Prime Minister seeking urgent discussions on the matter. The Government has been concerned that the Federal Government's intervention in the Hindmarsh Island Bridge matter after the State Government had made its decision highlighted a serious lack of coordination between Federal and State Aboriginal heritage protection regimes.

The Minister for Aboriginal Affairs raised this matter at the Ministerial Council on Aboriginal and Torres Strait Island Affairs in November 1994 and successfully moved for the establishment of a working party of officials to examine and report to Ministers on a national framework of guidelines to promote the cooperation of State, Territory and Commonwealth heritage legislation and decision-making processes. The framework is to cover matters including the need for clarity, consistency and efficiency in approval and appeal processes.

QUESTION TIME

SCHOOL EXPULSIONS

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

Leave granted.

The Hon. CAROLYN PICKLES: Last Saturday the Minister announced that principals would be given the power to expel unruly students for up to 18 months. The Minister said that principals would be instructed to reserve expulsions for the extreme end of behaviour such as violence towards teachers, sexual abuse offenders and drug related offences. Yesterday, in another place the Minister for Employment,

Training and Further Education made some very strong remarks in relation to the expulsion of students. He said:

> The principles of natural justice which must be followed—and I have consulted Crown Law—are that the student must have the right to put his case.

The Minister also said:

> In relation to what happens in schools, due process has to be followed as well.

My questions to the Minister are:

1. What process will be followed by principals before a student is expelled?

2. Will principals be able to obtain legal advice and will it be obligatory for them to do so?

3. Will students be able to be represented and will the students' parents be consulted?

4. Will the student be able to appeal?

5. In the case of reportable incidents relating to violence, sex and drug related offences will the expulsion process proceed ahead of any police action?

6. How many students were suspended during 1994 for violence or sex and drug related offences that would now attract expulsion?

7. Has the Minister consulted with the Minister for Youth Affairs and Family and Community Services on support programs for children expelled from school and what are the details?

The Hon. R.I. LUCAS: I will be pleased to take those questions on notice and bring back a considered response to the seven questions that the Leader of the Opposition has asked in relation to expulsions. Certainly, there is a process of appeal. The decision will be taken by the principal. From our viewpoint, principals are responsible persons. These are not the sorts of decisions that will be taken in any knee jerk fashion, and certainly due process will need to be followed. It is envisaged that there will be an appeal from the decision of the principal to the Minister which has to be lodged within seven or 14 days—a period like that.

Certainly, in relation to the detail of the member's questions, I will be pleased to bring back a considered response. However, I can assure the member that due process will be followed, as I indicated. There will be an appeal mechanism. The essence will be that these sorts of decisions will now be taken at the local level by the people who are in charge of the situation at the school. We see that as being the principle. It is a responsible position, and we believe that our principals have the ability, the authority and the responsibility to their local communities to be more involved in taking these sorts of important decisions.

ROYAL ADELAIDE HOSPITAL

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the need for a helipad at the Royal Adelaide Hospital.

Leaved granted.

The Hon. R.R. ROBERTS: When the portfolios were handed out to members of the Opposition, one of the portfolio areas that was identified originally by Lynn Arnold was one of rural affairs, which was given to me. Although this is not necessarily reflected in the Government, it is a matter that brings me into contact with many issues which affect people specifically living in rural areas.

Mr President, I also am aware of your activities and those of the Hon. Caroline Schaefer in supporting people in remote areas. One of the issues of great concern is the difficulty of getting proper medical facilities for people living in rural areas. It is difficult to get medical professionals to live in the areas, and country hospitals in particular are being burdened with the same cost restraints as are those in the metropolitan area.

I have been approached by a number of people involved in the medical profession and people living in country areas concerned about what they perceive as the lack of commitment of the incumbent Brown Liberal Government to the construction of a helipad at the Royal Adelaide Hospital. Members would be aware that a retrieval helicopter is often used to transfer critically ill patients from country areas to the Royal Adelaide Hospital. They do not necessarily have to be critically ill, but in some instances the only way treatment can be administered is by retrieval. In fact, at Port Pirie, in a major regional hospital, a female in confinement for twins is not able to be processed through that hospital, but that is another issue.

I have been informed that the nearest available landing space for helicopters retrieving patients from country areas is at Victoria Park Racecourse, with the patients then being transferred by ambulance to the Royal Adelaide Hospital. I understand that many residents in the immediate area around Rose Park have expressed their displeasure about the noise generated by these helicopters. I understand that the Royal Adelaide Hospital has considered the establishment of a helipad on the hospital roof.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: An engineering study has been completed which indicated that the roof of the building required no reinforcing—I emphasise: it requires no reinforcing—but that a new lift would need to be installed to carry the patients and the staff from the helipad. I have been assured that the hospital has identified a number of advantages in having a helipad on the premises. First, there is no need for double handling of critically ill patients; secondly, the proposed landing site is directly above the casualty department; and, thirdly, the flight path is clear, with no obstructing powerlines or trees and, as I understand it, no commercial flight paths are in that immediate vicinity. I believe the State Government has rejected the price tag of $1.5 million for this project as excessive and has told the hospital to shelve the project. My question to the Minister representing the Minister for Health is: will the Government give a commitment to the provision of a helipad site at the Royal Adelaide Hospital to ensure that critically ill patients in particular are dealt with in the most expeditious manner possible and, if not, why not?

The Hon. DIANA LAIDLAW: I will ask the Minister for Health to provide an answer to that question, because I know there that there are people interested, both in country areas and nearby.

MOUNT GAMBIER PRISON

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about the Mount Gambier prison.

Leave granted.

The Hon. T.G. ROBERTS: During the break, I had the job of visiting some prisons in other States to look at how South Australia's prison system matched up against those in other States.

The Hon. T. Crothers interjecting:

The Hon. T.G. ROBERTS: I did have trouble getting out of the—

An honourable member interjecting:

The Hon. T.G. ROBERTS: I visited the private prison. But the honourable member asked how I got out. There was a lock-down in the Geelong gaol while I was there, and the prison officers were out discussing their new award, which made me a little nervous. But the management let me out so that I could complete other duties.

The Hon. K.T. Griffin: You didn't break the picket line.

The Hon. T.G. ROBERTS: No, I didn't break the picket line; I went out through a side door. The prisons I visited were Ararat and Geelong. In New South Wales, I visited the private prison in Junee and the prison at Goulburn. The prison administrative staff who showed me around those prisons impressed on me that the way to manage prison systems effectively and efficiently within a State and within a prison system itself was to have flexibility on how to arrange for the permutations of various categories of prisoners, and the ability to integrate, separate, isolate and, at various times, to match the behavioural patterns of some of those prisoners who were incarcerated. Most of these prisons had good educational facilities, training programs and work programs that allowed for flexible arrangements for those prisoners to be kept either busy through work or through education and rehabilitation programs. I was impressed with those prisons that I saw.

While I was away—I was in Wagga at the time, preparing for a visit to the private prison at Junee—I received the unfortunate news of a prison death in custody in South Australia. Within two days I had notice that there was another death in custody. Although they were unrelated—one was a suicide and one was the murder of an inmate—it raises the question of our ability to manage effectively the prison system in this State, in being able to have the correct permutations using the prison system that we have in South Australia.

The Minister has a difficult enough job as it is to get the permutations right. The Mount Gambier gaol has been built and completed. I visited that as well in its incomplete state. It is an excellent prison and has facilities that may have prevented one, in particular, if not two, of those deaths had the Minister had that prison available at his disposal. Unfortunately, the Mount Gambier prison, although completed, is not yet in the prison system to be able to manage those permutations to which I alluded earlier. My questions are:

1. When will the management structure for the Mount Gambier prison be finalised?

2. When will the prison open?

The Hon. K.T. GRIFFIN: I will refer those questions to the Minister for Correctional Services and bring back a reply.

WORKCOVER

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing Minister for Industrial Affairs, a question about WorkCover.

The PRESIDENT: You cannot ask that question. It is already on the Notice Paper.

The Hon. M.J. ELLIOTT: Can I not ask a general question about WorkCover? I am not discussing the legislation, Mr President, but am simply asking a question about WorkCover.

The PRESIDENT: I still think you are stretching your luck a bit. I will hear the question and determine whether it can be answered.

The Hon. M.J. ELLIOTT: Mr President, yesterday a question—which was in order in the other House yesterday—was asked of the Minister as to whether he would make available for public perusal a list of the 100 worst performing employers in South Australia so that the public can have an understanding as to what costs are being generated in relation to WorkCover by those employers. I have been told that the top 100 companies, out of 46 000 employers altogether, are generating 30 per cent of the claims. I simply ask—

Members interjecting:

The Hon. M.J. ELLIOTT: Do you mind if I finish? I am quite happy for that to be published without the names of the individual companies at this stage, but I would be most interested to know whether or not it is accurate that 100 companies are generating 30 per cent of the claims in South Australia. I would also be interested to know what costs are being generated by those companies in relation to the whole scheme. The Minister in the other place avoided the question totally. I would ask that he might return a reply within a week and, if that is not reasonable, could the Minister tell me why not.

The PRESIDENT: Order! I believe that the question has a direct relationship to the legislation that is before us. I will allow the Attorney-General to answer it, but in future I will not allow questions dealing with legislation that is before this Chamber. The Attorney-General.

The Hon. K.T. GRIFFIN: I do not think it is appropriate to put names on the table. The Minister for Industrial Affairs has not put the names of injured workers into the public arena. It does not seem appropriate—and in no event would it seem appropriate—that the names of so-called top companies be put into the public arena. I do not have any of that information. I will refer the matter to the Minister and, if there is a reply, I will bring it back.

PAWNBROKING

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about pawnbroking.

Leave granted.

The Hon. L.H. DAVIS: Yesterday's *Advertiser* carried a report about the pawnbroking and money lending industries and, in particular, allegations were made that pawnbrokers were handling stolen goods, that children as young as 11 years were pawning goods, that stand-over men were employed in the industry and that exorbitant interest rates as high as 300 per cent on an annualised basis were prevalent. Several other matters were raised in the front page article of the *Advertiser*. Representations have been made to some members of Parliament by the Pawnbrokers Guild seeking licensing of pawnbrokers. My questions to the Attorney-General are:

1. Does the Government intend to license pawnbrokers?

2. Does the Attorney-General have any comment on the *Advertiser* article of yesterday?

Members interjecting:

The Hon. K.T. GRIFFIN: I actually had with me some material yesterday in anticipation that the Opposition would be raising some questions about pawnbrokers.

Members interjecting:

The Hon. K.T. GRIFFIN: Most of your questions come from the *Advertiser*.

The Hon. Barbara Wiese: Mine don't.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: There are a few exceptions. It was a fair enough assumption on my part that there would at least be some question on the issue of pawnbrokers as it has attracted some media interest. It has been a matter of discussion between my officers, particularly in the Office of Consumer and Business Affairs, as well as by the Pawnbrokers Guild and secondhand dealers. I have had some meetings also with the Pawnbrokers Guild and with secondhand dealers who are anxious to have licensing re-established for pawnbrokers, although not so much for secondhand dealers.

Members will remember that the previous Government introduced legislation to repeal the Pawnbrokers Act of 1888, which meant no regulation. Also, secondhand dealers were dealt with. The only regulatory framework put in place was amendments to the Summary Offences Act, which does have a significant range of obligations placed upon secondhand dealers to keep records, provide information to the police when requested and so on. That, of course, applies equally to pawnbrokers as it does to secondhand dealers. There was some suggestion that pawnbrokers were not covered by the provisions of the Summary Offences Act, but that is not correct in my view because pawnbrokers deal in secondhand goods, although they may not be effectively buying and selling those goods.

I have been very reluctant to contemplate introducing a new licensing regime in relation to pawnbrokers and secondhand dealers. I am sensitive to the issues raised in the media by pawnbrokers themselves and by police about the extent to which pawnbroking may be an avenue for dealing with stolen goods. I make the point that it is not a question of licensing to control the stolen goods markets. Licensing will have little if any impact upon that. It is more the enforcement regime put in place in relation to policing which has the most important consequences for detecting breaches of the law. The fact is that, if there are offences, they are not the subject of any licensing regime but breaches of the criminal or statute law. Even the article that referred to the Mercedes Benz having been pawned and sold off for $5 000 might well be the subject of examination under the Consumer Credit Act, which would enable harsh and unconscionable contracts to be reviewed by the courts. There is also provision in the Summary Offences Act for anybody who does not comply with the regulatory provisions of that Act to be disbarred, suspended or forbidden by a court from carrying on business as a pawnbroker or secondhand dealer if those circumstances are established.

It is important to recognise that, in the list of complaints made over the years, in 1993 there were 16 complaints received by the then Office of Fair Trading in relation to pawnbrokers. From 1 January 1994 to 20 October 1994 there were 27 complaints and in the three years preceding 1993 only three complaints were recorded. So, it has not been a significant problem and I suspect that that is why the previous Government decided that there was no need to maintain the regulatory framework of the Pawnbrokers Act or the Secondhand Dealers Act. The then Liberal Opposition supported that. No justification has been demonstrated in my view for reinstating that regulatory framework. If secondhand dealers were to be regulated, you would have to look at garage sales, trash and treasure and a variety of other means by which secondhand goods are traded. Frequently those who trade through garage sales are technically secondhand dealers and those who go to trash and treasure are secondhand dealers. Although these places have some notoriety as being used for the passing of stolen goods, regulation will not stop that; only effective law enforcement policing will have a significant impact on that.

In terms of the Uniform Credit Code, as with the present Consumer Credit Act, pawnbrokers are not regulated, except in respect of the provision of the legislation to allow harsh and unconscionable contracts to be the subject of review.

SALES TAX

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, also representing the Treasurer, a question on the subject of sales tax exemption.

Leave granted.

The Hon. M.S. FELEPPA: The *Sunday Mail* of 8 January 1995 contained an article entitled 'School tax anger'. The report stated that a draft ruling of the Australian Taxation Office would end the sales tax exemption on computers bought by schools and used for a fee by students. Needless to say, computers are an essential part of everyday life in business and in the home. It is necessary now, and will continue to be essential in the future, that everybody understands the use of the computer technology and is able to speak to computers in computer language.

I understand that the fee charged to students represents only a small contribution to cover the cost of the computer hardware and software, the cost of maintenance and so on. It is obviously not a profit making scheme for the school but simply a means by which they are able to finance an expensive tool in learning, just as books and musical instruments have their place in learning. Schools are not in the business of hiring out computers to make a profit but, rather, to make them available for teaching and learning in the school environment.

The Australian Taxation Office says that a fee which appears designed to recoup the cost of purchase or lease means that the user is considered the owner and the sales tax exemption therefore is cancelled. A tax consultant estimates that the tax a large school may have to pay could be as high as $200 000 to $300 000 which, if enforced, would be passed on in one form or another to parents who are already struggling to educate their children. Private school authorities have given an example of schools buying 400 computers at $3 000 each: the sales tax on each computer may be $630 or $252 000 payable every few years as they are upgraded.

If the tax remains the schools will find it impossible to provide this new and necessary addition to the curriculum and technique and methodology of teaching. Will the Treasurer call on his Federal counterpart to have the tax office reconsider this tax exemption on school computers on which a fee for use is charged and so avoid the burden on parents and, at the same time, help schools that are endeavouring to teach modern day use of computers to their students?

The Hon. R.I. LUCAS: I will bring back a reply for the honourable member. My recollection was that we sought advice on the article and the advice was that there was not much to be concerned about from the viewpoint of Government schools and access to computers. That is going on my fading memory, so I will bring back a reply as soon as I can for the honourable member.

QANTAS FREIGHT PROGRAM

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Qantas freight program to Hong Kong.

Leave granted.

The Hon. J.F. STEFANI: I have been informed that in an effort to improve South Australia's export potential the State Government has been working in close cooperation with Qantas Airlines and a good number of South Australian companies involved in the export of products manufactured in our State. As a result of this excellent cooperation, I understand that the first of many flights departed from the Adelaide Airport yesterday afternoon carrying a cargo of export goods bound for Hong Kong. My questions are:

1. Will the Minister give details of any subsidy that the State Government has provided for this export freight initiative?

2. Will the Minister also provide the Council with the information regarding the program and the support that the State Government is providing and will provide in the future?

The Hon. DIANA LAIDLAW: I share the honourable member's enthusiasm for this initiative. I think all members in this place will be particularly pleased to learn that the flight that left yesterday from Adelaide to Hong Kong cost the State nothing. There was no subsidy, although we had made provision for such a subsidy. Members may recall that Qantas offered the Hong Kong freighter program in response to pressure from the South Australian Government and producers—not just manufacturers as the honourable member mentioned, but also horticultural, agricultural and aquaculture producers—because they were all keen to test South Australia's market ability to support a scheduled large aircraft freighter service.

Initially it was hoped that these services would proceed on a weekly basis from November to March. However, there have been terrible troubles and a lot of obstinacy by the Hong Kong Government. The Australian Government and Qantas were unable to secure what we originally hoped would be a weekly flight over a three-month period. However, some of those difficulties have been resolved. The Australian Government, our Government and Qantas have worn down Cathay Pacific and Hong Kong and the first flight left yesterday. I am thrilled that after all the uncertainty of recent weeks and the hot weather of yesterday, when there was some anxiety about the shorter runway, that the flight went as promised.

The freight forwarders supported this service and 42.5 tonnes of South Australian produce left for Hong Kong. It included fresh lobsters, plums, melons, grapes, mining equipment, leather from a saddlery in Adelaide and solar optical lenses. I name that range of goods because the importance is that it was high value. The export of solar lenses, mining equipment and lobsters, in particular, means that the revenue earned exceeds any underwriting that the Government had promised in respect of these weekly services.

Initially we had negotiated that the underwriting per flight would be $50 000. We renegotiated that down to $35 000, at least for the period of February. As I said, the delight yesterday was that there was no subsidy involved at all because of the high value of the freight. I hope the service will continue to be so well received by South Australian freight forwarders and producers. If we not only continue to have weekly flights but also continue to attract such high value product we will not have to subsidise any flights in the future. So, everything will be of great benefit to our export business—agriculture and manufacturing—in this State. I know that there has been some concern about this issue of subsidies. The Government always considered that it would be a sound investment to get this initiative going. The very fact that no subsidy was involved is a cause for us all to celebrate.

GOVERNMENT MANDATE

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about the State Government's mandate.

Leave granted.

Members interjecting:

The Hon. T. CROTHERS: Perhaps I will get a second bite of the bullet, if that is what you are suggesting, and I am quite happy to take you up. Recently the Premier was quoted in the *Advertiser* on the question of the State Liberal Government's mandate in this Parliament. During the course of those quotes he brought into play the role of the Legislative Council in our State's bicameral system of the Parliamentary affairs. Amongst other things he said that because the Liberal Party had the numbers in the other place to form Government the Upper House should not be amending or interfering in any legislation that comes before us from the other place. That is a statement of fact; it is not an opinion.

That certainly was not the case in this place when the Labor Party was in government in this State. I know that for a fact because I was a member in this place at that time and personally witnessed many changes to Bills, some of which were minor and some of which were very major. Most of the amendments and changes were initiated by members of the then Liberal Opposition, who have themselves on occasion called this place 'a house of review'. I guess that if this Chamber is to act as a check and balance or as a house of review of the potential for the excesses of all Governments, irrespective of philosophy, who in their right mind could fault that? Fortunately—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Is that young Mr Redford? Yes, right.

The Hon. Anne Levy: He's a squealing little rat.

The Hon. T. CROTHERS: I thought he was a squealing big rat.

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. The Hon. Anne Levy just referred to me as a squealing little rat and I ask that she withdraw and apologise.

The Hon. T. CROTHERS: She was wrong; I fixed it.

The PRESIDENT: I ask the honourable member whether she uttered those words.

The Hon. ANNE LEVY: I did utter them. I am happy to withdraw them and note that we have established that this House has greater decorum than the other House, where such words were not withdrawn.

The PRESIDENT: I do not require an explanation.

The Hon. T. CROTHERS: Fortunately, this Parliament decided a long time ago that the Upper House in this State should not alter any money Bills and this most certainly has enhanced the reputation of this State's Parliament in comparison to others, such as the Federal Parliament. Not only does the Federal Senate have the right to alter money Bills, which it regularly does, but in fact we saw that on one occasion in

1975, if memory serves me correctly, the Federal Senate refused supply to the Government of the day, which led to that Parliament's being prorogued and a different political Party being returned to power. Indeed, more recently we have seen the Federal budget being held up by a combination of the Federal Liberal Party and other fellow Independents in that branch, that is, the Senate of the Federal Parliament. Having read the comments of the Premier in regard to his mandate in this Parliament, I pose the following questions to him:

1. For the sake of consistency in his comments and mandate, is he prepared to have the matter debated with the State Council of the South Australian Division—note the words 'South Australian'—of the Liberal Party so that those South Australian Liberals who are members of the Federal Senate can be instructed by the State branch in this State not to vote against the Party of the day in the Lower House of the Federal Parliament, which is in government; if not, why not?

2. Does he believe that the Federal Liberal Opposition was right in the past for blocking Supply; if not, why not?

3. Does he believe that the Federal Liberal Opposition is right in its present tactics of holding up budgetary Bills and even, so I am led to believe, in amending them? Again, if not, why not?

4. Finally, but by no means exhaustively, if his answer is in the affirmative to any one or even all of the foregoing three questions, what does he propose to do by way of rectifying these matters? Yet again: if he does not intend to do anything, why not?

The Hon. R.I. LUCAS: I will be pleased to refer the honourable member's questions to the Premier and bring back a reply, but I think the honourable member can rest assured that the Premier, and certainly the Government, accepts the role of the Legislative Council as a House of review. It is a question, however, of its playing a constructive role as a House of review as opposed to being outright obstructionist. That is a judgment on which members may well have different views at any point in time.

The second point is that certainly the State Division of the Liberal Party of Australia does not instruct its Federal or State parliamentary members on attitudes to be adopted in either House of Parliament. The Hon. Mr Crothers comes from a system which is used to taking riding instructions from South Terrace, and he naturally seeks to impose his personal view, his own experience of South Terrace controlling North Terrace, on the Liberal Party. I assure the honourable member that State and Federal parliamentary members are not instructed to take any particular position or attitude—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Exactly. Bob Gregory said one thing one day, and he got his riding instructions from others on South Terrace the next day. He signed one report in one way, then got his instructions 24 hours too late and had to sign another report.

The Hon. Anne Levy: Are you against Standing Orders?

The Hon. R.I. LUCAS: I would have thought that the Hon. Anne Levy was against Standing Orders for interjecting, but perhaps the honourable member has a different set of Standing Orders.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I should have thought that the Hon. Anne Levy was still out of order. I will be pleased to refer the honourable member's questions to the Premier and bring back a considered reply.

MUSIC, CONTEMPORARY

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for the Arts a question about contemporary music.

Leave granted.

The Hon. A.J. REDFORD: It is indisputable that contemporary music is the most accessed and accessible form of art by the general population. I doubt whether anyone under the age of 50 has not enjoyed and participated in contemporary music at some stage during their life. Everyone in this place would agree that there is a huge talent in South Australia in the area of contemporary music. Contemporary music is the most accessed art form, and it is important—

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: If the Hon. Ron Roberts would cease interjecting he might learn something—to the continued economic and cultural life of South Australia.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: Indeed, we would all agree that contemporary music identifies an era and a community. I am also told that contemporary music in South Australia is a $31 million per year industry. In fact, it has a multiplier effect of some 6:1. I also understand that for each band performance between 10 and 15 jobs, albeit of a temporary nature, are created. Whilst these jobs may be of a temporary nature, the more band performances that are conducted the more employment that is created.

Until recently, contemporary music received scant attention from Governments. Indeed, contemporary music was always looked upon as a stand alone industry, in which traditionally Government was not involved, that is, until the Minister imported a contemporary music consultant to report directly to her. As I understand it, the appointment is for a period of two years, and its objective is to promote South Australia as a centre for training, recording, performing and exporting of popular contemporary Australian music.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: He is doing a fantastic job. The Hon. Terry Roberts interjects that John Schumann is doing a good job.

The PRESIDENT: Order! I am sure that it would be better if the honourable member stuck to his question.

The Hon. A.J. REDFORD: In relation to the appointment of a contemporary music consultant, I understand that reports from the recent Melbourne music conference indicated that the interstate perspective is that the position is a ground breaking one and a South Australian first. It is the view of people interstate that this appointment has entrenched cultural existence in contemporary music and that having someone inside the bureaucracy breaks down a number of barriers. I understand that New South Wales and Victoria are considering doing the same thing. In the light of this, I ask whether the Minister will advise what initiatives have led from her appointment of the contemporary music consultant, and what other initiatives are likely to come about in the future.

Members interjecting:

The Hon. DIANA LAIDLAW: You say it is a dorothy dixer. I was not aware until I heard the honourable member provide the information that New South Wales and Victoria were considering the establishment of a contemporary music consultant to the Minister.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: I doubt whether, as the Hon. Anne Levy has interjected, the Hon. Mr Redford would have made that up. It is true that great interest has been shown in the creation of this appointment. The Government decided that it needed to have an affirmative action policy in respect of contemporary music because it had long been ignored in terms of Government attention to music in this State and certainly in terms of funding. I do not think that the contemporary music industry wants lots of handouts, but it does want recognition.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The Hon. Barbara Wiese says that it does not need them. I do not think the young people who are seeking support for both travel and recording purposes, training and the like would appreciate her lack of interest in and sympathy for their initiatives.

In a little under 12 months we have done an enormous amount in South Australia to raise the profile of contemporary music. The consultant (John Schumann) has been appointed. One of the things that he has been able to achieve, which the Folk Federation was unable to do over many years, is find $30 000 for the Folk Federation over the next three years. I was pleased also to see that the *Advertiser* and SAFM have agreed to co-sponsor a South Australian music chart. Members may have seen the dump bins in retail music outlets across South Australia—40 at the moment—which are stocked purely with South Australian music.

It would be our goal to increase those dramatically in number this year. We have received some fantastic correspondence from bands in South Australia applauding the chart and the dump bins. For instance, Barflies, based at Port Adelaide, have indicated that their sales have increased 30 per cent over projections, and they deliberately attribute that to the South Australian music chart. They are now releasing further editions of their recording because of the demand.

That is what we are after with this chart because, if people can see the chart, the bands themselves get encouragement, people can see if they do buy the music that they are having some influence in supporting South Australian music, the radio stations are then encouraged to play the music more often and, in turn, we will have success with the live performance. Live performance and air play will be the focus this year. A number of other things will be announced this year, but they can be a matter of attention a little later.

We have done well to date; we will do better in the future; and I am not at all surprised to learn that New South Wales and Victoria are paying attention to what is happening here in terms of contemporary music.

PATHOLOGY SERVICES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the privatisation of pathology services at the State's public hospitals.

Leave granted

The Hon. SANDRA KANCK: Late last year all members of Parliament were sent a letter from a hospital scientist who works at the Queen Elizabeth Hospital in which he raised concerns about the privatisation of pathology services at public hospitals. In the light of the information provided in that letter my questions to the Minister are:

1. Can the Minister confirm whether or not private laboratories refer the more complex and difficult tests to public laboratories because private laboratories cannot perform them cost effectively? If this is the case, what plans are in train to ensure that public laboratories in South Australia are maintained?

2. Does the Minister agree that the laboratory at the Queen Elizabeth Hospital has increasingly become more efficient and productive over the past seven years?

3. Does the Minister believe that a private pathology service can equal the efficiencies and quality of service provided by the public pathology service as well as making a profit?

4. Can the Minister confirm that the private sector has a history of putting in unrealistic bids in order to win a tender and, once having gained the service, they then refuse to offer the full services tendered for them to maintain their profit margin?

5. Does the Minister believe that it is possible to privatise the pathology service at the Queen Elizabeth Hospital, a service which offers complex pathology testing, teaching and developmental work which is unprofitable?

6. Should the quality and cost-effective pathology service at the Queen Elizabeth Hospital be replaced by a private company, is the Minister concerned that the hospital will have a reduction in pathology services and increases in morbidity and mortality? If not, why not? If so, what steps are being taken to ensure that this does not happen?

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

MATTERS OF INTEREST

The PRESIDENT: In accordance with the sessional Standing Order I can now call on members to make statements on matters of interest. Timing allowed in total is 35 minutes, each member being allowed to speak for no longer than five minutes. Before we start, I should like to say that I hope this may alleviate some of the very long explanations of questions. In fact, there were two today that could very distinctly have been put into this new Sessional Order that we have allocated. First, I call on the Hon. Legh Davis.

The Hon. L.H. DAVIS: I am privileged to give this maiden grieve. With the introduction of Port Adelaide as a second South Australian team into the Australian Football League, almost certainly in 1996, there has been a public debate as to whether both Port Adelaide and the Adelaide Crows should play their home matches at Football Park, or whether one team should be relocated to Adelaide Oval. All other mainland capital cities have Australian Rules Football played on their main cricket grounds. Brisbane (the Gabba) has the Brisbane Bears, Sydney has the Swans, Perth has the West Coast Eagles and Fremantle Dockers for, I understand, at least six matches this season—other matches are played at Subiaco—and the Melbourne Cricket Ground hosts Melbourne, North Melbourne, Richmond and Essendon.

In fact, Adelaide is the only city which does not have AFL football played in close proximity to the central business district. In my view, it makes economic, strategic and geographic sense to have football played at Adelaide Oval, which is regarded as one of the great cricket grounds of the

world but which is very much under utilised in winter. It is now the only cricket ground in Australia without lighting which would allow day-night cricket matches or night football.

The seating at Adelaide Oval is now far lower than that at any other mainland capital city cricket ground. The Melbourne Cricket Ground seats 100 412 people. The Sydney Cricket Ground now seats 41 500 people following a recent upgrade. The Brisbane Cricket Ground is currently being redeveloped and by the end of the year will have seating for 22 238 and a total capacity of 23 718. The Western Australian Cricket Ground has seating for 24 292 and a total capacity of 31 192. However, the South Australian Cricket Ground currently has seating for only 13 500, with a total capacity of 33 000.

The South Australian Cricket Association has a bold proposal to build a new grandstand and increase seating at Adelaide Oval which would boost seating to 28 000 and lift the oval's capacity to 48 000. The SACA believes that this can be achieved without raising membership, without increasing ticket prices or catering, or indeed any other prices which exist in South Australia for AFL matches. The move makes economic sense because the $10 million increase in revenue in the first year, if AFL football was played at Adelaide Oval, would help fund ground improvements and ensure that Adelaide Oval maintained its status as one of the great sporting arenas.

This revenue will also be available to the AFL club based at Adelaide Oval and football at all levels. It makes geographic sense because, although Football Park is undoubtedly a wonderful sporting arena, its location in the western suburbs does make access more difficult for some football fans. Adelaide Oval's central location is a distinct advantage. Also the parking around Adelaide Oval and the public transport that flows past Adelaide Oval makes it an ideal ground for AFL football. Of course, if AFL football was played at Adelaide Oval, it would liven up the central business district, particularly on a Friday night, as well as on weekends. It also makes strategic sense in that rugby league is pushing hard to establish a national competition which will include a team from Adelaide. The existing rugby league competition has already played matches for premiership points at Adelaide Oval and would obviously see the oval as a most desirable venue.

SACA's new Bradman Stand at the southern end of the Adelaide Oval is, in my view, the best building erected in Adelaide in the last decade. I have every confidence that the proposed new grandstand will match the same high standards of the Bradman Stand. Mr Barry Gibbs, the Executive Manager of the South Australian Cricket Association, said that this grandstand could be completed in time for the 1996 football season. The lights proposed for Adelaide Oval will also enhance the ground. To minimise the visual impact, the lights are of a revolutionary design, which will make them retractable when not in use. I understand that they will be ready for the start of the 1995-96 cricket season.

The decision as to whether Football Park will be used for all 22 home matches for the South Australian based AFL clubs or whether these matches are shared between Football Park and Adelaide Oval ultimately rests with the South Australian National Football League. However, I understand that the Australian Football League would be more than happy if one of the Adelaide clubs was based at the Adelaide Oval. Adelaide Oval was the headquarters of Australian football in South Australia until the South Australian National Football League opened Football Park in 1973.

The PRESIDENT: Order! The honourable member's time has expired.

The Hon. R.R. ROBERTS: I rise to bring to the attention of the Council and of South Australians the situation with respect to meat hygiene. In the past few weeks, we had a very unfortunate event in South Australia, and much has been said about who is to blame and why it occurred. As a result of all that, what has occurred is that now in South Australia the meat hygiene regulations, the future of the smallgoods industry and, indeed, the whole meat industry are under some suspicion. During the ructions over who was to blame and where the contaminated product came from, a lot of duck shoving has been going on, and nobody really wants to take responsibility.

There have been several attempts to trace the contaminated meat. Obviously, what is occurring is that the Premier has to some degree tried to get the blame away from South Australia, and I can understand why that would be. The Minister in Victoria is also very keen not to be found to be at blame. This comes around probably because seven months ago the Victorians deregulated their meat market and brought in their quality control programs. With the quality control programs, we have gone away from AQIS inspection. We no longer have an independent inspectorate in Victoria. Indeed, the inspectors become part of the profit making enterprise, and that is something that concerns me.

It has long been my view, that inspectorates, whether they be in meat hygiene or any other area of Government activity, ought to be independent and aloof from the enterprise. With the demise of the AQIS inspection in Victoria, when this incident occurred, some attempts were made by AQIS inspectors because of the implications for the export market of this incident. They entered a boning works, I believe in Preston, and were able to ascertain that none of the meat that was processed there was from an export abattoir. The problem is that under the AQIS inspection it is very clear, with the strict regimes of cross checking that are in place, you can trace every piece of meat back to the source where it was killed. I am told, from a reasonable source, that unfortunately on this occasion they are unable in Victoria to trace that meat back to the slaughterhouse concerned.

How it impinges upon South Australia is the next issue that we need to look at. I am told that it is certain we are looking at introducing the quality assurance program into South Australia as quickly as possible, in response to the unfortunate death of a young South Australian. I am assured that that becomes a problem because the regulations under which we will be working are almost a mirror image of those operating in Victoria. Having had a system in Victoria for seven months, which now obviously reflects some failings, it is of concern to me and to members of the Opposition that we are about to embark upon this same program.

We believe that South Australians ought to be able to go to a retail outlet and buy meat of a quality that will stand the test, whether it comes from Victoria, New South Wales, South Australia or, indeed, any other State. South Australians have the right to have a standard of meat inspection which is equal to the export standard. It has to be pointed out that the American export standard that we have to meet is not the export standard that is in America; it equates only with its domestic standard. Therefore, it is essential that we get the base principles right.

I have called on the Premier of South Australia to institute an inquiry into the smallgoods industry in South Australia to ascertain the circumstances surrounding the recent incident and to clear or otherwise the production of smallgoods. It will be no good to South Australians to clear the processes that are occurring in South Australia if we cannot assure the integrity of the product that comes from interstate. I call members' attention to the question of meat hygiene and call upon the South Australian Government to cooperate with Mr Theophanous in setting appropriate standards for meat hygiene in Australia.

The Hon. M.J. ELLIOTT: I welcome this opportunity to use this debate to raise an issue which is of concern to me. I did not realise that I would have this opportunity until a short while ago, so I will not be speaking from prepared notes—reminder notes that is, of course. I wish to address the issue of the Hindmarsh Island bridge, which matter has been brought into this place today by way of a statement from the Attorney-General, who reported the results, so far at least, of a Federal Court decision. I understand that the Federal Court has yet to say more on the matter. This issue has come before the Chamber on a number of occasions now, and the most thorough examination there has been in relation to the Hindmarsh Island bridge has been done by the Standing Committee on the Environment, Resources and Development.

I suggest that members have a close look at what that standing committee had to say, because that committee had great reservations about the fact that a bridge was to be built at that site. At this stage, I do not think it is particularly constructive to go over all the arguments as to why Hindmarsh Island bridge is a good or a bad thing, other than to say that there are good environmental reasons, good Aboriginal heritage reasons and I think good development reasons generally why that bridge should not be built. I would also argue that it is not necessary.

My concern is that this matter has been extremely protracted and is likely to be so. In his own statement, the Attorney-General recognises that it is possible that there will be further appeals. It has been seven months now since Minister Tickner made his decision to get this far. The court has not finished with it and there may be appeals. So this could easily go on for years to come. It is desperately important that the Government involves itself in a circuit breaking exercise. For a considerable period of time in this place, I have been suggesting that there are alternatives to building the bridge. Whether one thinks the bridge is a good or a bad thing, I strongly believe that there are alternatives.

The only reason a bridge was required in the first place was because a planning decision indicated to the developers that, if it was to go beyond stage 2 (as I recollect it) of the Binalong development, a bridge would need to be built. The developers did not want the bridge and did not ask for it in the first instance. The whole matter has become more complex because they wanted to proceed beyond those stages, and without the bridge being built they cannot do so. Had the Parliament been prepared to intervene and remove the requirement for the bridge to be built so that the development could expand further, that would have removed the primary burden that was placed upon the developer. It is fair to say that the current ferries would not be able to cope with the traffic that would want to get over to the development, so there would still need to be an improvement in access.

The Hon. T.G. Roberts: Other developers wanted to make applications, too.

The Hon. M.J. ELLIOTT: That is another issue. If the bridge is allowed to proceed there is no doubt we will see not only the Binalong development but a significant number of others on the island, which should not proceed for a host of reasons, which, as I said, have been canvassed in this place on a number of occasions. If the Government gave people jobs by building a bridge at Berri, which has been justified on economic grounds and which will pay for itself, it would release two of the more modern ferries we have on our system, two large ferries, which are—

The PRESIDENT: Order! The honourable member's time has expired. I call on the Hon. Caroline Schaefer.

The Hon. CAROLINE SCHAEFER: I express my disappointment at the lengthy delay by Minister Bob Collins on any decision on exceptional circumstances drought funding for the designated areas, that is, the Far West Coast of South Australia and part of central Eyre Peninsula. The State Department for Primary Industries sent a most comprehensive application for this drought funding in early December last year. This was considered and sent on to the committee (euphemistically known as RASAC) which deals with these matters and which is chaired by Mr Neil Innall, who would be known to many members here. That committee then went to the Far West Coast of South Australia and took evidence from the residents and inspected the area.

It is a detailed application and it is most difficult to comply with all the restrictive rules for eligibility—which is why such a small area of the State is eligible. It has required extensive research in deciding which areas comply due to rainfall alone and comparing that with production costs in those areas. In my opinion, the amount of time taken by the Department for Primary Industries and the in-depth nature of the application that has been sent is quite outstanding. Local people had built their hopes on a decision having been reached by this stage, if not earlier.

The RASAC committee handed its recommendations and the results of its visit to the Minister two weeks ago, but yesterday Mr Collins announced that he would not be making a decision for several more weeks. Every step along the way has been completed. No-one else needs to be asked advice. All evidence is before Mr Collins, yet he still requires several weeks before he makes a decision.

Obviously, the people involved in this decision are now, after a series of years, on a very minimal income. They are an early production district. They are looking to prepare ground now, and the optimum time for sowing is middle to late April. They have demands put upon them by their banks. As a rule, their budgeting must be done by the end of February and, of course, they do not know at this stage whether they can buy fuel or super or whether or not they will be able to farm. It is mostly a broadacre farming area and the interest rate subsidy for which they would be eligible, if this exceptional circumstances drought funding is approved, would be the difference between them being able to produce or not produce for this year. I wonder why no decision has been reached by the Federal Minister. He has given no reason for his lengthy delay. I wish to appeal to this Council and hope that it goes further, because it seems to me to be an inordinate amount of time to make a decision, when all the evidence is before the Minister.

The Hon. M.S. FELEPPA: I welcome this opportunity to speak now that a grievance debate has been allowed in this Council as well. It is hoped that, as backbenchers, we will be

able to get rid of the rust in our mouths and have the strings of our tongues loosened a little. Until now our voices have been restricted to asking very simple questions when time permitted and to participating on very rare occasions in general debate. Now we can make a further contribution in informing and influencing the Parliament. Unfortunately, the lack of opportunity to speak in this Chamber has given the media the somewhat wrong impression that we, as backbenchers, sit here idle and then go off to fritter away our time outside the Chamber. Obviously, we cannot all be Ministers or shadow Ministers but there is still a very important role to be played other than looking after a portfolio.

A simple perusal of *Hansard* will list the numerous standing committees involved with the operation of this Parliament; and from time to time select committees are established by the Parliament. This work is not performed in the public eye and it is almost ignored by the media, but it is in fact the work that keeps most backbenchers busy. Committees are a continuing process which provides parliamentary scrutiny to the activities of the Executive whilst, at the same time, providing an opportunity for the Parliament to inform itself of the public's views and opinions.

In addition to the committees of the Parliament, every member, as would be expected, has responsibility to his or her constituents, which is a continuous activity within the electorate. Again, this work is not conducted under the glare of the media spotlight and, as a consequence, the public could be forgiven for imagining that our time is being wasted doing nothing constructive, which is sometimes a view encouraged by elements in the media. Mr President, I can tell the media, through you, that they are not correct and they should be told that the impression which they give to the public can be quite easily misunderstood and distorted.

On 20 September last year during a radio interview a well known and respected political reporter, Professor Dean Jaensch, suggested that the members of this Chamber could be more usefully employed by being given a specific electoral district for which they would be responsible and to which residents could come with their troubles and problems. As you know, Sir, we have been performing this duty for many years: it is well known and established knowledge. What Professor Jaensch is proposing is not a new idea.

Whilst I personally applaud the sentiments behind the suggestion, it is for the Government and the Parliament to be persuaded that a return to the old system of zonal representation for members of the Legislative Council would be a better way for the electors of South Australia to be represented. Whilst the division of the State into districts could be seen as being convenient and members may become better known in one corner of the State or the other, I still believe that members in the Legislative Council should be elected by the entire State.

The suggestion by Professor Jaensch may well give the media the opportunity to see more of the contribution of the backbench, but this would occur only if the media thinks the member's efforts for their electorate is newsworthy. However, I believe that the media would continue to ignore the efforts of the backbenchers and continue to present a stereotype of lazy MPs for public consumption.

The PRESIDENT: Order! The honourable member's time has expired.

The Hon. A.J. REDFORD: I rise to congratulate this Government and, in particular, the Attorney-General and the Minister for the Status of Women, for initiatives last year in the area of domestic violence. The achievements of this Government include a greater focus on the problem and the raft of legislation passed last year, including the Domestic Violence Act and the creation of stalking offences, was a small step in dealing with this problem. I acknowledge the role played by the former Attorney-General, Mr Sumner, in introducing, prior to the last election, similar legislation on stalking. It is now pleasing, when I occasionally attend the Adelaide Magistrates Court, to note that the court list now differentiates between common assault and domestic assault. Clearly that has an impact on everybody associated with the court system and one hopes that it will have some effect in changing the community attitude towards this appalling problem.

I remind members of some of the issues that arise from domestic violence and draw members' attention to the ACT Law Reform Commission Report, which indicated that 3 000 out of 100 000 women contacted the Domestic Violence Unit at least once a year in the ACT, that is, 3 per cent of all women in that territory. In fact, 30 per cent of all calls to police in that territory relate to domestic violence disputes and 40 per cent of all homicides occur within family groups. One does not have to be a Rhodes Scholar to appreciate that this is a very serious and significant problem.

A significant proportion of the community still believes that domestic violence is a domestic matter and 20 per cent of people believe that it is acceptable, according to a 1988 survey. I will be interested to see whether that attitude changes in future surveys. I recently had cause to look at what is the Commonwealth and State Government expenditure on domestic violence in this State. An indication of the level of funding available in this area can be summarised as follows: Commonwealth expenditure in areas such as general awareness; the Australian Institute of Judicial Administration; undergraduate law curriculum; international conferences; a 'stop violence against women' community education program; and a survey of attitude changes. This costs the taxpayer some $5.2 million.

In the area of family and community services, which is a State line, we have an expenditure of about $5 million, relating to the creation of the Domestic Violence Unit, various rural domestic violence services, women's shelters (which costs us $4.2 million), Aboriginal emergency women's shelters, and the national women's health program, community health service and domestic violence service (costing a further $4 million). The Department of Housing spends $145 000 on review and data collection with over $1 million spent by the Attorney-General's Department, the Correctional Services Department and the Legal Services Commission on domestic violence. The police spend $870 000. In all, some $13.1 million is spent on domestic violence.

I was drawn to a Queensland study entitled 'Who pays the economic cost of violence against women?'. It has been determined that, for every domestic violence victim, the cost to the community is some $27 211. If one looks at the statistics, it is easy to see that the cost of domestic violence in South Australia is some $32 million, but that is looking only at those cases which are reported. We all know that we are only seeing the tip of the iceberg. Factors would put the cost at a much higher level, including the cost of services to young people, the cost of rehabilitation of men who are involved in it, including imprisonment and the like. So, the cost is not insignificant. In closing, I suggest a model that we might consider in future because I do not believe that we have

gone far enough in dealing with the problem. Victims ought to be legally assisted because the criminal process is essentially intertwined with the domestic process and victims of domestic violence have other factors to consider such as the ongoing relationship with their spouse, how they deal with their children, and matters of property and maintenance. I am not suggesting that that person be involved in the criminal prosecution, but if someone gets that independent assistance it takes the pressure off the victim in relation to decisions as to whether or not prosecutions ought to be pressed and takes away the pressure on the victim.

The PRESIDENT: Order! The honourable member's time has expired.

The Hon. ANNE LEVY: I am pleased to take part in this first grievance debate in this Chamber. When I had the privilege of being President of this Chamber I tried very hard to get a grievance debate procedure brought in. I took up the matter through the Standing Orders Committee and had various discussions with members of the Chamber. The then Leader of the Opposition was vehemently opposed to it. The then Leader of the Government was at best lukewarm, so my attempts got nowhere. I am glad to see that the current Leader of the Opposition and current Leader of the Government have different views.

I wish to make a few remarks about the necessity for Adelaide to consider and plan towards getting a proper concert hall. We lack a concert hall that is worthy of the Adelaide Symphony Orchestra and, indeed, of any other orchestra that might come here. Other States have a concert hall, including Sydney and Melbourne. Perth and Brisbane have excellent concert halls for orchestral performances, but Adelaide lacks one. The Festival Theatre was not designed for concerts and is not suitable for orchestral music. Acoustically it is designed for quite different activities and does not work as a concert hall. After trying it for a period of a year or two, the ABC felt that it had to leave it and revert to the Town Hall. The Town Hall is a beautiful little hall and superb acoustically, but it is too small to be a proper concert hall. It seats about only 1 400 people and, for the ABC to run its orchestral concerts adequately and improve the finances of the Adelaide Symphony Orchestra, it needs a larger audience capacity. It fills the Town Hall three times over for concerts. If it could accommodate the same number of people in two concerts it would make a very great difference to its financial situation.

The Town Hall is certainly marvellous for chamber music and chamber orchestras but it is just not big enough in this day and age as a proper concert hall. I suggest that we should take on as a project the provision of a proper concert hall for Adelaide to celebrate the centenary of federation. It should be opened on 1 January 2001. It would be a worthy celebration of the centenary of federation if we could get a proper concert hall. Various suggestions have been made at various times in relation to where a concert hall could go. I would suggest that serious consideration be given to where magistrates' courts are currently situated, that is, in the old tram barns. The magistrates' courts are temporarily housed there while their permanent home is being renovated. They will certainly be back in their proper home well before the year 2000 and that site, a prime site on Victoria Square, would be ideal for a magnificent building that could rival the Sydney Opera House, if not in size, at least in being a major architectural addition to our city. It would very much complete Victoria Square, which at the far end in that corner does tend to deteriorate and detract from the beauty of the square. I would furthermore suggest that this would be a most suitable site as the parking and public transport arrangements are adequate in the area and the people who currently attend concerts in the Town Hall would, I am sure, readily transfer to a site behind the Catholic cathedral, particularly when its new tower is completed.

The PRESIDENT: Order! The honourable member's time has expired.

RULES OF COURT

Notice of Motion, Private Business, No. 1: Hon. R.D. Lawson to move:

That rules of court under the Juries Act 1927 concerning the election, made on 30 September 1994 and laid on the table of this Council on 1 November 1994, be disallowed.

The Hon. R.D. LAWSON: I will not be proceeding with this notice of motion for disallowance on the grounds that the Legislative Review Committee originally thought that the subject matter of the notice, namely rules of court under the Juries Act, ought be re-examined. These particular rules alter the mechanism whereby an accused person can elect to be tried by judge alone at a circuit sitting of the court. I moved the disallowance of the rules last week to allow further time for interested persons, and in particular the Law Society, to respond or voice objections. In the absence of such objections, the committee resolved not to proceed with the notice and so I will not proceed.

WORKCOVER

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

That the regulations under the WorkCover Corporation Act 1994 concerning schedules (various), made on 9 February 1994 and laid on the table of this Council on 14 February 1994, be disallowed.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: I thank the Attorney-General for his assistance in this matter. It is about the only thing the Government has assisted us on in relation to WorkCover. The Opposition is obviously opposed to this Bill. To get some appreciation of our opposition to this Bill we have to look back in time. In 1986-87 we were in fact looking at a situation in South Australia where workers' compensation was in absolute turmoil. It was run by private insurers and we were faced with premiums of 32 per cent of payroll. That was not uncommon and higher figures were quoted to me. However, the average was about 13 per cent to 14 per cent. There was the problem of rehabilitation as well as the management of claims. Indeed, things were seriously out of hand.

The Minister of the day decided that there needed to be a complete overhaul of workers' compensation and the handling of workers who were injured in the course of their employment. We had a tripartite approach to the problem, whereby workers, in particular, were prepared to give up their common law rights for injuries they received. There were some good reasons for that. Under the private insurance arrangements there was a competitive element in workers' compensation and many cases were held up through procrastination. Those holdups were not as a result of medical conditions in most cases but simply to draw out the claim so that people would want to settle out of court. In fact, there are figures to show that during that period many cases did not

come to court; many sat around for two years before resolution was achieved.

It was decided that there needed to be that tripartite approach. The workers, the Government and the employers would sit down and develop a system of workers' compensation which was fair and equitable and which provided a focus on rehabilitation. One of the very important platforms in that policy was that the inspectorate and the handling of claims would be done by one organisation. Duplication would be eliminated. There were problems with coordination of figures. It is very difficult to develop ongoing safety programs and systems within occupational health and safety without coordinated research. One goes back to the Byrne report in 1980 and finds that it is admitted by the insurance companies that their statistics were almost non-existent and indeterminate.

Given that situation, the unions, on behalf of the workers in South Australia, were prepared to make those concessions so that workers could be treated fairly and equitably. It was to be a no-fault, whole-of-life situation whereby justice would be meted out to injured workers and premiums would be kept to a minimum. In fact, the target was for about a 3 per cent average levy rate. Where do we find ourselves in 1994-95? Until about five or six weeks ago, with an average levy rate of 2.86 per cent, we had the best premiums in Australia and we had arguably the best case management. Some people are prepared to debate that, but a proper review of the facts would reveal that what I have said is true. I, for one, as a member of this Parliament, was proud to go out into the community and say that South Australia led the way with workers' compensation. Given what employers are required to pay and the benefits of the scheme throughout, overall we had a very good scheme, a scheme to be proud of.

The Hon. L.H. Davis: Are you going to tell us about the levy rates?

The Hon. R.R. ROBERTS: Indeed, I will talk about levy rates at a particular time. I shall put Mr Davis's name down on my list for special attention later. One could assume that, having had experience with the private insurance companies and having failed, one would be a little reluctant to go back. However, during the run up to the last election we talked about workers' compensation. I have my workers' safety policy paper No. 42 put out by the Liberal Party of South Australia. It refers to workers compensation but not to the objectives of the policy. However, the Party did state that it wanted to ensure that the WorkCover Corporation develops more efficient, consistent and effective administrative procedures for rehabilitation and compensation and that it is accountable, recognising that it has to deal with persons injured at work and their employers. It suggested also that it ought to be recognised that successful claim management and rehabilitation require a team effort involving employee, employer, medical practitioner and return to work professionals and that barriers to such an approach ought to be removed. In another paragraph on page 3, it is stated (and this is a laudable incentive):

> Under these arrangements, all issues relating to workers' compensation and rehabilitation and implementation of occupational health and safety policy in compliance with the legislation will be administered by one authority cutting out duplication and inefficiency.

That is a clear indication of what the mandate was as far as the Liberal Party was concerned. It went on to mention other things with which I will deal, including no reduction in the benefit for workers injured during the course of their work, which I will discuss with respect to a later Bill.

It is recognised in this document that an efficient way of going about handling any of these matters, including case management of injured workers, was to have them under one umbrella, and that there were economies of scale: you could build up your data bank and your information service, your programs would be gleaned from that, and you could get accurate and efficient systems as a result.

So, one must start to think about why this Liberal Government is prepared to move away from that proposal and introduce these regulations. One would assume that it would say that it is more efficient and cost effective. Much research has been involved, and the Ernst Young report actually stated that there were no perceivable savings to be gained by handing back case management to private insurers. What is really being said is that private insurers, having absolutely stuffed up the system in 1987, ought now to go back and look after injured workers. It is a bit like getting a fox to look after the chickens. Obviously, we will go back to the bad old days, into a system whereby private insurers who, although they are quite versed in handling insurance claims, have absolutely no experience with the other arm of this proposal, that is, the proper rehabilitation of injured workers.

I am advised that the only evidence of proposed savings within this Liberal Government proposal is more of ideology than of fact. Indeed, I am advised that the only evidence to support the Government's argument that outsourcing saves money is based entirely on the concept of the changed relationship between employers and insurers. Absolutely no evidence has been provided to support the assertion of a $5.4 million per annum saving. On the other hand, the WorkCover discussion paper (page 2, September 1994) offers the following advice with respect to the administrative structure:

> Evidence from around the world indicates it is not the administrative arrangements which influence a workers' compensation scheme performance, but rather it is the nature of the benefits [that it provides].

The additional administrative costs of outsourcing of the $7.45 million over the next four financial years are based on a grossly understated fee structure. I understand that $14 million per year has been allocated to pay the insurers to perform WorkCover's outsourced claims functions. That appears under the WorkCover claims management agreement (schedule D of December 1994.)

The Insurance Council of Australia has already indicated to WorkCover that for $14 million insurers will not be able to perform the outsourced functions to the required standard. This is understandable given that the insurers would be paid a total of $29.5 million if the fee structure were set at the same level that applies in New South Wales. This can be confirmed in the WorkCover discussion paper (Administrative Structure, page 23, September 1994). I understand that some insurance companies are already starting to lobby for an increase in fees, and this lobbying is sure to intensify if the Government's current Bill to amend the Workers Rehabilitation and Compensation Act is defeated or drastically changed by this Parliament.

The insurers are relying on the proposed amendments dramatically to reduce the number and complexity of ongoing claims. If the lobbying is successful and a similar fee structure to that of New South Wales is adopted, the additional administrative costs of outsourcing will not be $7.4 million but rather $64 million over the next four financial years. This

is well in excess of the alleged $12.9 million savings from the changed relationship over the same period.

The claims management agreement which forms part of the proposed regulation contains no contractual protection that the current fee structure will be maintained. Clause 7 of the agreement allows for fees to be reviewed annually and appropriate fees to be determined by the Minister in the event of a dispute. If current attempts to have the fees increased are not acceptable, insurance companies will accept the proposed heavily discounted fee structure for the first 12 months and then use clause 7 of the schedule to achieve the fee increase.

I am advised that another concern with the proposed agreement is its apparent rigidity in all areas except that of the fee structure. The Workers Rehabilitation and Compensation Advisory Committee established by this Government to advise on workers' compensation matters recently reported to the Minister for Industrial Affairs on its concern that if the agreement proves inadequate in any area it will be virtually impossible for the corporation or the Government to amend it.

Some comparison between the past and present shows that a primary motivation for the establishment of the WorkCover scheme was the significant cost blow-outs experienced in the 1970s and 1980s. In the five year period prior to the introduction of the scheme, costs increased by 24 per cent per annum. Since the introduction of WorkCover, costs have reduced in real terms by 5 per cent per annum.

For a small market such as South Australia the reintroduction of a system based on the involvement of competing insurers will once again lead to increasing costs with each insurer having only a small proportion of the market and relatively high overheads. Pressure to reduce costs will be translated into pressure on workers' entitlements and invasions of workers' rights and privacy as attempts are made to minimise payments to workers.

As well as being self defeating in terms of the scheme's broader objectives, attempts to keep competition alive in the environment whilst not being able to sustain it will ultimately be futile. We will probably end up with something like we did with third party insurance many years ago where, when it becomes unprofitable, insurance companies will say to the Government, 'Go back and fix it,' having had two or three years of mismanagement and the scheme being absolutely gutted.

When compared with the efficiencies gained from one central workers' compensation body, it would be inherently less efficient to have multiple companies duplicating each other's services. The Queensland scheme is managed by a single Government authority and, with a levy rate of 1.61 per cent, has the lowest levies in this country. This can be verified in the WorkCover discussion papers (Administrative Structure, Attachment 2, September 1994). The South Australian Commission of Audit in its 1994 report states:

> The present advantage of the monopoly in claims administration enjoyed by WorkCover allows economies of scale to be realised. Competition may not produce benefits by comparison. Administrative costs are low in Queensland, where the Government's monopoly in claims management administration exists. The consulting firms of Arthur Andersen and Ernst Young were both commissioned by WorkCover Corporation to examine the operation of the interstate schemes and make recommendations in relation to outsourcing claims management. Both were inconclusive and were unable to provide any empirical evidence of administrative costs savings through outsourcing. The consultants' main achievement was to highlight the difficulties in comparing the widely different interstate workers' compensation schemes.

This is a mistake that is often made by commentators who talk about the difference between schemes. One must really look at the cost of the levy and the output of the scheme. Just to look at the percentages of levy costs is quite misleading.

The introduction of WorkCover has been a significant factor in the reduction of administrative costs. In the past, the involvement of the private sector insurance companies did nothing to control the cost of workers' compensation in this State, nor will it in the future. If there is to be any role for the private sector there will need to be rigorous accountability in auditing mechanisms in place which will require a commitment of resources by WorkCover that will be at least equal to any cost reduction achieved through outsourcing.

In any event, it has not been established anywhere that there will be a cost saving from the introduction of outsourcing. The introduction of insurers will cause the cost of workers' compensation dispute resolution processes to skyrocket with the number of review applications increasing as the insurers' drive to prove their efficiency leads to more and more genuine claims being rejected. With multiple insurers the duplication of claims processing areas will lead to difficulties in monitoring and maintaining the registration of employers—it is still a compulsory scheme. The duplication of claims areas will also hamper the monitoring and control of costs of providers such as medicos and rehabilitation consultants.

In summary, there is no evidence that outsourcing will save money. In all probability, outsourcing will raise the administrative cost of the scheme by $64 million over the next four financial years. The Government's justification for outsourcing the WorkCover claims management function is based on a totally unsubstantiated assertion in respect of a 1 per cent reduction in scheme liabilities and an unsustainable fee structure that has no contractual protection beyond the first year. Economies of scale will be lost and regulation will increase the administrative requirements on the scheme.

The Government has failed to show that any cost reductions will not be accompanied by undesirable consequences that will undermine the scheme. All aspects of policy, not just cost reduction, need to be examined in order to determine the appropriate policy direction. Admitting insurers to the administration of workers' compensation simply for the benefit of those insurers without demonstrable benefits to the major parties—workers and employers—is not good policy.

No-one has seriously looked at the impact of outsourcing WorkCover from the injured worker's perspective. Both consultants' reports commissioned by WorkCover to look at different aspects of outsourcing precluded any discussion with workers or employers as to their experience with privately insured workers' compensation. History again provides us with some insight as to what may happen, as does an overview of what motivates insurance companies and experiences in other areas. Access to the scheme will be much more difficult for workers.

In addition to this significant blow-out in workers' compensation costs experienced in the 1970s and 1980s, difficulties with worker access to compensation was one of the driving forces in the establishment of the Workers Rehabilitation and Compensation Act and the WorkCover Corporation. Before WorkCover was introduced in 1987 many workers had to wait years before anything was paid to them by way of benefits and compensation, and only after protracted court cases costing both the insurance companies and the injured workers a lot of trauma and money. In many

cases treatment was delayed for lengthy periods until entitlements were established.

I have also been told of other concerns by people who are advising my colleague, the Opposition spokesman on industrial relations, in respect of these WorkCover matters. I am advised that occupational health and safety prevention is a concern. My advisers declare that prevention of injury and disease is a crucial element in reducing the human and financial costs of workers' compensation. The agency performance standards on page 12 of the CMA deal directly with occupational health and safety and prevention. The minimum level of compliance is that 50 per cent of employers have appropriate systems in place. This level and subsequent levels are far too low. It is necessary that elements one, two and three be increased respectively to 65 per cent, 80 per cent, or 90 per cent if this regulation were even to be contemplated.

A second area of securing confidentiality of data has also been mentioned. This appears in schedule J of the CMA which states:

> Any outsourcing proposal must ensure absolute security and confidentiality of the data. Proposals must therefore undergo maximum security to ensure data protection.

We would maintain that these arrangements should be scrutinised and agreed by the Auditor-General.

Another area of concern to my colleague is in the area of cancellation, suspension or surrender of agreement. Schedule G of the CMA refers to it in these terms:

> This schedule deals with the consequences of a breach of agreement. The wording in clause 1 implies that the corporation has an option to take action or not to take action. Enforcement of standards is generally acknowledged worldwide as the key factor in a successful workers' compensation scheme.

It should be mandatory that the corporation take action in accordance with schedule G. There also appears to be a problem with the legal cost. The CMA contains no restrictions on the type of claims costs incurred by an agent because all claims costs are met by the corporation and not by the agent. Agents will be free to run large bills for medical-legal reports and solicitors' fees. Workers will find their claims being regularly disputed and be forced into costly legal battles at the review panel and the appeal tribunal.

In respect of staffing arrangements, I am also advised that we have some concerns. The staffing arrangements for WorkCover staff are still being negotiated between the corporation and the unions. Schedule E of the CMA contains only one paragraph, and that is clause 1.1(a) dealing with this matter. It does not, nor does any other section of the proposed agreement, detail staff conditions which an agent will be bound to provide. Further, this clause enables Cabinet variation of any negotiated agreements. Obviously, that would concern the Opposition. I am hopeful that it would be of some concern to Mr Elliott and the Democrats, too. It is therefore important that full staffing arrangements be incorporated into any CMA.

In respect of fee structures (I have mentioned this, but I will repeat the concern), the CMA contains no contractual protection that the current fee structure will be maintained. Clause 7 of the CMA allows for fees to be determined by the Minister in the event of a dispute. If current attempts by insurers to have fees increased are not successful, they will accept the proposed heavily discounted fee structure for the first 12 months and then they will obviously use clause 7 to achieve the fee increases, thus contributing to further costs.

In the area of claims management function the current proposals do not allow the corporation to compete. I need to say more on that in a moment. A true free market system is driven by the profit motive, and there should be no restriction on the number of competitors, provided that the standards are met. The corporation currently has the human and technical expertise and should not be discounted as an agent. Competing with the corporation's high standards will ensure that the agents are seriously in the business of providing quality claims management for injured workers and not simply competing a loss leader bid in order to pick up more lucrative parts of the business in 12 months time, for example, in the area of levy collection.

The corporation's continued involvement in claims management will prevent workers or the scheme from being held to ransom in the event of a prolonged disputation over the level of fees and other issues. For those and other reasons, these regulations are rejected by the Opposition.

One must remember that the regulations are predicated on the passing of the WorkCover Corporation Bill. There has been much discussion about the Bill, and I will not go into any detail on the Bill itself. Suffice to say that, indeed, one has to congratulate Dean Brown on holding the record for having turned out workers in their thousands to oppose this legislation.

The previous record was also held by the Hon. Dean Brown when in 1979 he achieved a crowd of about 8 000 people on the steps of Parliament House after trying to gut the public sector. He wanted to introduce privatisation and reduce the working conditions of public servants. Today I am told that the record has been surpassed by the same Hon. Dean Brown in his attempts to reduce benefits to workers in South Australia. I am told that there were at least 16 000 protesters out the front of Parliament House. One could probably assume this legislation was twice as bad as the privatisation legislation in 1979. I point out to members opposite that, following that dispute in 1979, the Tonkin Government was kicked out of power, so hopefully that may sway their thinking.

The Democrats have stated publicly that they support no reduction in benefits to workers in South Australia. I reiterate: these regulations are putting the cart before the horse. The CMA is being predicated upon the Bill's passing. Anybody with any knowledge of the history of workers compensation in this Parliament over the past 10 or 15 years would know quite clearly that, because of the unique nature of the Parliament and the past structure of both the Lower and Upper Houses, there is not a Bill introduced into this Parliament that has not been amended drastically before it reached the financial stages of agreement. What we have here is the ambit claim put forward by the Brown Liberal Government to change the WorkCover situation in South Australia. Insurance companies in South Australia and, indeed, Australia have been asked to submit a $20 000 fee for the right to be involved in the claims management area of workers' compensation. That is not a bad lurk. Even if you do not happen to proceed as a provider, you still have to pay the $20 000 fee.

I am told, and I disappointed to hear it, that the Hon. Mr Elliott is talking about making some amendments to the Government's Bill. We will be calling on him later to fulfil a commitment to the workers of South Australia that no benefits to injured workers be introduced into South Australia. We will be asking him to reject the Bill totally at the second reading stage. However, if indeed he decides to

pursue that and introduce some amendments, this is an ambit claim, and I do not believe that the Government actually believes that such draconian legislation, draconian as admitted in another place by the Minister in charge of this legislation, will actually get through.

I believe they are playing a pea and thimble game with the Democrats. They have put in their maximus position and they want to gradually reduce it back and try to fool the Democrats into accepting about 10 per cent of these draconian changes that they want to introduce. They then want to say, 'Well, you've done us over, you've saved 80 per cent,' but the 20 per cent they get through would be those that most severely affect workers in South Australia. I refer particularly to the James case and the redeterminations.

It is the Opposition's belief that these regulations at this stage ought to be rejected because, as I said, they are putting the cart before the horse. The system should clearly be that the Parliament should pass the legislation and then we should introduce the regulations, so that at least the insurance companies could negotiate on a level playing field with the Government, because they may make a contractual arrangement and then find out that they cannot implement the policy, anyhow.

The Hon. K.T. Griffin: Are you talking about the regulations?

The Hon. R.R. ROBERTS: Yes. It is very clear that there is really no need to outsource the administration of case management as proposed. During the last round of discussions that we had on WorkCover, we changed the structure of WorkCover. We introduced a changed board structure which is dominated these days by employers. Gone are the tripartite arrangements where we had equal representation. The main emphasis has been that the administration ought to be changed. The great criticism about WorkCover is not necessarily the benefits that are provided for injured workers. The greatest condemnation of the system of WorkCover that we have been able to pick up is about the administration cost.

One of the things that the Government claims it will be able to do by the outsourcing of claims management is that it will be able to change the administration and there will be less bureaucracy. I would suggest that the board of WorkCover now has more employer and Government representatives than it has ever had. These are the people who say that management ought to manage. They ought to go around there and, if there are bugs in the administration of WorkCover, they should sort out those things. If we still have a problem, we should start talking about the legislation. Everything that could have been done in the administration of claims management in WorkCover has not been done and ought to be done prior to legislative change.

Besides the foregoing, there is the question of the regulations themselves. I have been advised by people more versed in this area than I that there is some problem with the regulations themselves. It seems quite clear to those doing a purview of these regulations that the regulations themselves appear to have been drafted by someone with skills in the area of drafting legislation but the schedules appear to be done by someone else. There is some suspicion that it might have been done by WorkCover. However, there is some doubt as to whether the regulations are defective in so far as they may be unenforceable due to the use of non-definitive terms. I will cite a couple of examples that have been given to me:

It is doubtful whether regulation 10 of 1995 is legally enforceable. The regulation (a minimum enforceable legal standard) has called up the 'contract contained in the schedule'. However, the schedule is written in discretionary rather than enforceable or parliamentary form. For example, reference is made in appendix 2 to 'the conditions' contain the suspension, cancellation or surrender of agreements. This is found in schedule G. However, nothing contained in schedule G defines at what point and under what circumstances must 'a warning notice' be given; in what circumstances other than 'deficiencies' in the audit program can a cancellation of the contract or an agreement occur?

Furthermore, I am advised that in schedule A point 2.4 'reimbursement of expenses', the following wording is used 'workers should be confident'. Such verbs as 'should' are moral imperatives, and not legally enforceable terminology. These are but a few examples reflecting the problems contained in the regulations.

The PSA and other people with whom we have had discussions believe that, because the schedules are referred to in the regulations, problems do arise. Despite the objections, I believe that one thing should convince members that these regulations at this time ought to be knocked out, despite the fact that we have not handled the legislation and it is putting the cart before the horse—the regulations contain no prospect for contestability for WorkCover employees or WorkCover itself to compete for its own work. If we are really talking about competition, I believe it would be sensible to allow WorkCover with all its expertise, computer banks and so on to be in the main game. That would keep those wanting to get involved in this area of workers' compensation honest and we could maintain our consistency of records. Our occupational health and safety provisions would be much better served by having databanks that contain all the information.

I am advised that, under the Government's proposal, for the first 12 months anybody who was competing in this area would be required to use the Government's computer interface but, after that, they could have the opportunity to implement their own system. Clearly that would bring about the situation to which we alluded earlier, that you would have all sorts of systems, no integration, no ability to compile statistics or develop future policies for workers' compensation and no safety measures.

The Opposition calls upon the Hon. Mr Elliott and the Hon. Sandra Kanck to join with us in rejecting these regulations and, on the rejection of the regulations, we suggest to Government members and the Hon. Michael Elliott that they vote with us in defeating this obnoxious WorkCover Bill, and then we can sit down and look at workers' compensation. The managers of WorkCover have a responsibility to properly manage WorkCover. They have no mandate in any document to reduce workers' benefits in South Australia. They have no right to cause the hardship and the concern that is being caused out there in the community. We invite the Democrats to join with us not only in disallowing these regulations but in defeating the Workers Rehabilitation and Compensation Amendment Bill.

I call on members opposite who have had some association with the legislation over the years, people such as the Hon. Mr Griffin who has a record of opposing retrospectivity, which runs right throughout all these Bills and the associated regulations, and people such as the Hon. Mr Lawson, the Hon. Mr Redford and the Hon. Mr Davis. They know that this legislation is flawed; they know it is draconian. They claim that they have independence within the Liberal Party. I invite them to do the just thing by workers in South Australia and, when we move to throw out this legislation, to display that independence, come over here and support the workers of South Australia and to join us in voting out this legislation.

The Hon. T.G. ROBERTS: I support the disallowance motion and indicate that I will be making a much larger contribution to the debate when the Bill hits the floor. The disallowance has to be supported not only on the basis of many of the arguments put forward by my colleague but also to highlight the confusion that exists in the public and in the mind of those people who have a vested interest in making sure that a workable Bill is negotiated for the future of South Australian industry and commerce; and so that people can look at this State in a way which historically they have been able to, and see an industrial relations scene that has a welding of labour and capital without conflict.

I am afraid that, unfortunately, the numbers outside this House today indicated not only to members in this Chamber and in the other place but to all the people of South Australia that the divisions between capital and labour are now wide apart, and it is this vexed question of WorkCover that has brought about this situation. If the Government believes that it can pursue a commitment on behalf of its constituents to drive down the levies in this State at the expense of benefits to injured workers, I am afraid that the divisions between capital and labour will run deeper and you will not be able to get a cohesive working relationship in most sites in South Australia.

With regard to some of the points that have been raised in relation to levy rates and benefits, the direction and flow of where the Government would like to take WorkCover should not be a surprise to anybody on this side of the Chamber. Obviously there is a philosophical question involved in outsourcing, and that has come at a most inconvenient time. Whenever the Government mixes the privatisation or outsourcing argument with effectiveness, efficiency and restructuring it gets it wrong, and it gets it wrong badly because it cannot separate the philosophical arguments from the effectiveness and efficiency of any corporate or Government structure.

Every Government department that is being restructured to fulfil the objectives of the philosophical position of privatisation, restructuring and outsourcing has got itself into bother. At present there are major problems associated with these philosophical events in nearly every department. The WorkCover Bill has caused not only this Government but the previous Government more heartache than any other Bill that has been brought before this Council. The honourable member went back into history about the development of WorkCover, when private insurers held the monopoly on insurance in this State; the problems that employers had with levy rates and establishing fault (because it was a fault system); the problems that people had on the job in establishing responsibility and fault for accidents in the work place.

If you were not a good shop steward in those days and did not carry a camera and notebook and did not interview at least half a dozen witnesses around an accident on a site you were not doing your job properly, because you knew that in many instances you would have to come into court and produce those notes, photographs and witnesses to establish a case. As the honourable member indicated, many of those cases went for two and three years and a lot eventually did not get a court settlement. Most of the arrangements—and I call them 'arrangements'—were made between lawyers representing the employers and lawyers representing the employees. Most of those out of court settlements were made through negotiation. Nevertheless, it was a messy scheme and there was a lot of conflict. It did not lead to a good climate for industrial relations because it had a 'them and us' argument attached to it because fault had to be recognised.

Not a lot of prevention was associated with that program. There was a lot of what insurance companies called 'risk management', where they would handball companies with poor records between each other, and the risk management assessors would hope that, if they took the responsibility for insurance for a particularly bad industry for a 12 month period, they did not get caught with any deaths or serious injuries. The insurance companies were not able to influence outcomes within those industries in terms of prevention; the only discipline they had was to increase the ante on insurance premiums to try to get the employers to develop programs on that site to minimise accidents.

In the mining, metals, manufacturing and many other industries that are dangerous, including the correctional services areas, people are daily put at risk physically and you cannot eliminate the risk. Therefore, the premiums remained high. The employers called on the Government, the unions and the commercial interests to put together a package of reforms that presented itself in a new Bill that tried to reform WorkCover.

In 1986 a Bill was introduced that had all elements of agreement associated with protecting the interests of those people who went to work and who performed their duties on a daily basis, hoping that they would return without injury or not face death by the end of the day. When all the vested interests are pulled together (and it is a complicated stream of vested interests in relation to WorkCover), if an accident occurs on site you have the employers' and injured workers' interests, the reporting of the accident, medical treatment, assessments, reviews, and rehabilitation programs, thereby involving a whole range of people following through an accident.

The 1986 Bill took a long time to bed down and WorkCover took a long time to establish and put in place. Nobody on this side of the Chamber would argue that there were not problems with WorkCover and that injured workers did not have problems in establishing their claims or getting the appropriate medical treatment, rehabilitation and counselling in relation to the accidents that occurred. There were problems and, from 1986 to 1990, many of those problems were discussed in a reasonable framework where employers' organisations, trade unions and the Government sat around tables and tried to work through the problems to administratively cut the overheads and costs associated with the levy rates to try to get a system that worked and allowed for a competitive levy rate with interstate counterparts and a rehabilitation program that allowed workers to return to work or at least get treatment and rehabilitation through therapy or whatever was the requirement to allow some dignity in the process.

We were able to put together one of the best schemes in Australia and the principles behind it protected workers by prevention and allowed for treatment of injuries for injured workers and for rehabilitation to get them back on the job if that was a requirement of the industry. That is what both sides of the argument wanted. The employers wanted that, as did the unions and members themselves.

In 1990 a call for a select committee to bring about changes to the existing system was made and a joint House select committee called for submissions from all interested bodies to try to put together a package of reforms that would allow for a reduction in the levy rates so that South Australian industry could be more competitive or at least equal to the

eastern States. It was being called for not because the levy rates in relation to benefits were so outlandish that there was a major problem but because systems in other States were cheating in relation to rehabilitation of injured workers by throwing them on to the social security scrap heap and taking them out of the rehabilitation process. Once you do that, partially injured and seriously injured workers have no hope of getting further employment. South Australia's rates were being compared with New South Wales, when New South Wales had an entirely different rehabilitation and payment scheme for long-term injured workers.

It was clear that nobody was looking at putting together a package of reforms at a Federal level to get the States to even out their programs to some sort of middle ground or bring in a program that allowed for the rates to be reasonable, for the prevention programs and treatment and rehabilitation of injured workers to level out in some middle ground. It was clear that the intention was to drive the South Australian scheme down to being equal to the worst in Australia because we were less competitive and geographically less acceptable in the marketplace in terms of complete economic rationalisation. If South Australia's industry was to show a happier face to the marketplace, it had to drive not only its WorkCover rates and levies down but drive down its wages and conditions. Unfortunately, that seems to be the philosophical direction in which we are going.

I would hope that members opposite would heed the call for a broader review or, as was the call in one case, that a royal commission be held into WorkCover. It is that important to get WorkCover right so that it is not dismantled to a point where it is completely out of control and out of kilter and where we have a WorkCover program that offers no cover at all. It will be disastrous if we get to the point of taking the easy way out and hitting the sitting duck—the injured worker.

Many vested interests are at stake in WorkCover and one of the reasons I am supporting the disallowance (not only because it has been moved by the Party on this side of the House) is that the discussions I have been hearing within this building indicate that many people are dissatisfied with the flow of play with the indicated push to hit benefits. Some members opposite, who have not made their opinions known publicly, are showing concern about the direction and flow of play. The Government should take a step back and call in the interested parties (similar to those called into the joint select committee before), look at where we are going nationally and at what Federal legislation is being looked at in relation to a uniform scheme for workers' compensation. Possibly it should even pressurise the Federal Government to look at bringing all States together to put together a package of uniform proposals that equalised out the benefits to injured workers and had the same cover, prevention and rehabilitation programs. That would make more sense than this State trying to drive down the WorkCover levies, the prevention programs and the amount we are spending on rehabilitation with the farming out of insurance to the private sector.

In summary, it is taking all the WorkCover programs and indications of a very humane scheme back to base one and back before the time of Jack Wright in 1972. It would be back to the 1968 model. I hope members opposite and the Democrats would look at putting up their hands and saying, 'Let us analyse it,' because if we go ahead and maintain the confrontationist tactics developed to this point I do not see that any of the benefits we will get from driving down the rates will apply. The confrontationist programs that will develop on worksites will eliminate any benefits you might try to achieve with cheaper rates.

In terms of the programs run prior to the 1972 Bill with make-up pay, I have heard people, even those in the Lower House on the other side, suggest that private insurance schemes to cover the gap between WorkCover and related injury are not acceptable. It is certainly a major step backwards if employees have to take out private insurance to cover the gap between their commitments to their mortgages, car payments and their white goods because the WorkCover scheme just does not allow them to put food on the table and to pay their bills at the same time. That would be a major tragedy and there would be confrontation in terms of make-up claims on sites daily. You would soon have employers putting up their hands saying, 'Let's sit down and look at a scheme which has some sort of universality and morality, which brings about equity and which has social justice components that everyone can agree to.' Unfortunately, I think that we have to go through the confrontationist stage of rejection before we can sit around a table to get what I would think would be a universal scheme based on those suggestions that I have made.

Whether the Government is looking at talking to the Federal Government about a universal scheme, I do not know. I have taken a lot of interest in the debate and the direction and flow of play, but I have not been involved in too many of the discussions because they have been carried out at another level. In Opposition you really do not have much input into how Bills are drafted. However, while we were in Government, certainly on that select committee, a lot of information was put forward that I think should be acted on.

The administrative steps that could be taken to achieve some of the changes required to cut the costs should be on the table for further consideration. However, the last thing that should be touched is the meagre benefits that are applied to injured workers. Again, we have had the spectacle of the press running the 'rort a day' campaign to undermine the confidence of the people in the whole system. I would hope that that would stop and that the propaganda campaigns take a holiday for a while so that people can establish the real facts about how the scheme should be run and how it will be administered and financed.

They are the reasons why I am supporting the disallowance. It is hopefully a motion to give people breathing space, to take notice of the dissatisfaction that manifested itself in the rally outside today and to take note of some of the problems that may emerge when members on the job and unions decide to take it up as an enterprise bargaining point to have individual make-up pay claims put on to employers. Perhaps industrial relations breakdowns over WorkCover can be avoided.

The Hon. L.H. DAVIS secured the adjournment of the debate.

SOCIAL DEVELOPMENT COMMITTEE: EMERGENCY CARE DEPENDANTS

Adjourned debate on motion of Hon. Bernice Pfitzner:

That the report of the Social Development Committee on Emergency Care of Dependants be noted.

(Continued from 8 February. Page 1109.)

The Hon. T.G. ROBERTS: I rise to make some comments on the fifth report of the Social Development Committee, to congratulate it for the task that it set itself and the areas of concern that it addressed in relation to demography and social change in terms of the ageing population in this State, family leave entitlements and the overlap between work and family responsibilities—about which I will comment in a little more detail—and family leave options. The committee certainly made a very good attempt to put together many of the issues that have been debated publicly in this State through many forums. I think the committee could not have done a better job in putting together a whole list of issues that concern many South Australians. I am not sure that I agree with all of the recommendations, but that is the nature of committee work. However, certainly, the recommendations in the first part of the report are wide ranging, very detailed and explain a lot of what the body of the report contains.

The witnesses called and the submissions made allowed the committee to pull the report together in a very organised way. I know how difficult it is for research people to get continuity and flow through reports, but in this case I think it has been achieved. The criticism that I might have, if there is one, relates to the recommendation for use of sick leave, which states:

> The use of sick leave should be modified so that employees may use their sick leave entitlements to provide care for ill family members through enterprise agreements. This would legitimise an already common practice. Absences relating to provision of care to an ill family member must be supported by a medical certificate if the absence is for more than one day.

The committee took quite a bit of evidence on that issue. I must say that in the body of the report it notes all the evidence and the variations of that evidence before it drew up its recommendations.

Although there does not appear to be a wide variance between the recommendations and what I would see as perhaps a better position, I thought that, being a report, it could have been a little bit adventurous and taken the next stage of how to handle that issue. Included in the body of the evidence are references to companies that have a slightly different approach. I understand what the committee is saying; that is, that it should be left to an enterprise to work out how to utilise the provisions of leave within a particular site or workplace. However, I think that, had the committee gone one stage further and made recommendations for standards to be set so that enterprise bargaining could use the standards for models, that may have firmed up the report a little.

The report refers to a number of organisations and enterprises that use and offer unlimited sick leave provisions for people to adjust to the problems associated with a developing family. Working people generally, as they go through life, have different requirements in the nature of structuring their life around work. I guess that in the old days, if you go back to the Marx and Engels period and look at the conditions of the working class in 1880, you find that people had no control over their life inside of their work premise and very little control outside of it.

We have developed to a new stage in conjunction with employers who are enlightened, and there are a few of them. Even I will acknowledge in this day and age that many employers have enlightened views about how you structure work around family life.

I am familiar with ICI and with claims that I presented to enlightened employers in the 1970s and early 1980s. Most employers were sympathetic to the claims that were being made, and ICI certainly adopted the position of making provision for unlimited leave on the basis that that leave must be justified in terms of how the work is structured. You must overcome the problems associated with the process. You cannot leave an employer in a position of being unable to pursue their business interests. Those negotiations occur at an enterprise level, but I believe that should be set down as the recommended ideal for an ambit towards which most enterprise bargaining organisations can move.

It may be that the easiest way to do that is to provide for a certain number of days and have a cut off point but, as the report points out accurately, there are divisions of responsibilities and benefits between management and those workers who are not regarded as having management responsibilities, that is, generally those people who carry out the work on a day-to-day basis following instructions or by rote. There seems to be two standards in most work places. If you have a management position you can adjust your hours of work and lifestyle around the problems that you are experiencing. Many employers allow their senior management to take time off to look after sick children and wives or husbands; it does not appear to be a problem at management level. However, when you get into blue collar areas it is a problem because there seem to be two standards or ways of approaching the solution.

In white collar areas in the Public Service, as the report notes, flexibility of working hours can be negotiated. I think under the Victorian system you can negotiate 46/50 or 48/52 and take hours off in lieu and adjust your salary over a 12 month period on the basis of the time you take off to pursue family related matters.

This is where I disagree with the report. I think we would be better off if we were less prescriptive and did not set down criteria for leave to be taken because, as the report states, in some cases people are able to get leave while others may make an application under the same rules but do not get it. That causes confusion and discord in some cases. Some overall principles need to be established but we should not be so prescriptive about how they operate.

Some companies offer variations on how to structure work around family life. I am not sure whether the committee contacted those companies to see how their programs were working. I know that the ICI program was negotiated at the same time as we were negotiating with the pulp and paper industry, which was keen to transfer to that system on the basis that its blue collar workers went onto a salary and had almost the same responsibilities as management. They did not necessarily see themselves as hourly paid employees or wage slaves: they saw themselves in an enterprise that had to make a profit to survive, so the work had to be structured in a way that allowed everyone to make that enterprise tick over in the most cooperative way. That is the more enlightened approach to industrial relations that exists nowadays, and I would have thought that that sort of recommendation could have been made.

It was argued in opposition that if, for instance, some employees took extended time off because they were ill or if a family had a Down's syndrome child or a child with a lot of illness who needed special care because of a physical disability, they would be discriminated against and the employers would cease their contract. If you worked for BHP in Whyalla and you had to take your child to Adelaide for special treatment, you would have to be away from work for a long time. In regional areas, specialist medical treatment is

not available generally, so that time spent away from the workplace is much longer, so a more flexible arrangement could be looked at to restructure work hours so that you were given time off in lieu and provision was made for flexible payments.

It is a difficult situation. Most employers would say that that would be an accountant's nightmare and that you cannot have those sorts of individual schemes running on individual sites. To some extent, I must agree with that, but management must restructure its ways. Computers make it a lot easier than it was on the old clock and card system of payment. It is possible to keep track of a person's hours of work over a 52 week year and make allowances in the provision of payment.

I hope that many of the components of the report are given a lot more coverage in the press than they have received to date. I am sure there is enough content in the report for a talk back show to run for another six months, but unfortunately because of some of the progressive ideas contained therein I suspect that they are not being picked up as well as they could. With that slight adjustment regarding pay provisions for family, sick and absence pay, I think the report is excellent, and the committee should be commended for it.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

STATUTORY AUTHORITIES REVIEW COMMITTEE: ELECTRICITY TRUST

Adjourned debate on motion of Hon. L.H. Davis:

That the interim report of the Statutory Authorities Review Committee on the review of the Electricity Trust of South Australia be noted.

(Continued from 8 February. Page 1111.)

The Hon. L.H. DAVIS: I thank members for their contribution to this interim report of the Statutory Authorities Review Committee on the review of the Electricity Trust of South Australia. This was the maiden report of the committee, and it dealt, in particular, with board appointments of the Electricity Trust and made recommendations on that matter.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE: COURTS ADMINISTRATION

Adjourned debate on motion of Hon. R.D. Lawson:

That the report of the Legislative Review Committee on the Courts Administration (Direction by the Governor) Bill be noted.

(Continued from 30 November. Page 1009.)

The Hon. R.D. LAWSON: I moved this motion on 30 November, the same day on which the report of the Legislative Review Committee on the Courts Administration (Directions by the Governor) Bill was tabled in the Council. On that occasion, I outlined the contents of the report. I will not on this occasion repeat what I said then, but members will recall that the report concerned a Bill which was prompted by the withdrawal of resident magistrates from Port Augusta, Whyalla and Mount Gambier in this State.

The committee unanimously concluded that, although it strongly supported the principle of judicial independence, it did not consider that the executive Government ought be precluded from giving directions of an administrative nature to the Courts Administration Authority. However, the committee concluded that some provisions of the Bill had the potential to compromise judicial independence and that, for that reason, the Bill could not be supported.

The committee regretted the withdrawal of resident magistrates, but, contrary to the views of the magistracy and others prominent in our judicial system, the committee considered that there are no reasons, in principle, why resident magistrates ought not be again stationed in provincial South Australia should the need arise.

I thank honourable members for their interest in this matter, the members of the committee for their contribution to it and, in particular, the Hon. Mario Feleppa for his thoughtful and helpful contribution. Also I thank members of this Council who participated in the deliberations of the committee—the Hon. Ron Roberts for some of the time during the committee's deliberation and the Hon. Barbara Wiese.

I should again pay tribute to the work of the Secretary of the Legislative Review Committee, David Pegram, and to its research officer, Linda Graham, for their dedication and skill in the completion of the report. I commend the Bill.

Motion carried.

CONTROLLED SUBSTANCES (LICENSED PRODUCTION OF LOW GRADE CANNABIS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 807.)

The Hon. R.R. ROBERTS: I support the Bill. The Opposition has considered this subject at some length and, indeed, I have consulted with the South Australian Farmers Federation. Most people agree that the diversity of farming products in South Australia is something that we all ought to be looking at.

The production of the non-hallucinogenic form of hemp is practised elsewhere in the world, and I will not go over the contribution that has been put by the Hon. Mr Elliott as he covered it in some length. Trials are taking place in Tasmania and the proposal is supported by the Yorke Peninsula development group which has made submissions in respect of this matter and is seeking licensing.

The Hon. Mr Elliott is not seeking to have an open slather production of cannabis plants in South Australia along with the problems that may involve. The obvious question and one of the serious concerns that has been put forward by a number of people when discussing this is: what if people, acting illegally, were to grow the hallucinogenic form of hemp in amongst the crop. I can only say that that will occur anyhow. People have been disguising the hallucinogenic form of hemp as tomato plants, natural bush and various other products for years now. So, the potential will always exist for people to grow illegal hemp not only in South Australia but everywhere else.

This crop does provide an alternative, and the Farmers Federation is concerned with a couple of issues, one being the markets. The way in which this Bill is being constructed allows for research trials to take place, and those research trials should be conducted under strict licensing provisions. The crops having grown under that regime, the potential then needs to be explored further for the facilities to treat the product in South Australia.

One needs to know that there will be people capable and able to manufacture the advance forms of fibre that can be

produced from this hemp. Indeed, it needs to be a staged process and completely monitored and there should be appropriate licences through every step of the process.

Given that that is to take place, I do not foresee that there will be an unusually high danger of unlawful misconduct and, therefore, the Opposition will be supporting this Bill at the second reading. It is hoped that with this legislation we will be able to provide the opportunity for agriculture in South Australia to participate in another income earning venture which is sorely needed in South Australia. The Opposition supports the Bill.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

ENTERPRISE AGREEMENTS

Adjourned debate on motion of Hon. R.R. Roberts:

That the regulations under the Industrial and Employee Relations Act 1994 concerning enterprise agreements, made on 4 August 1994 and laid on the table of this Council on 9 August 1994, be disallowed.

(Continued from 12 October. Page 377.)

The Hon. K.T. GRIFFIN (Attorney-General): The Government does not support this motion for disallowance of certain regulations made under the Industrial and Employee Relations Act. The regulations are highly important to the operation of the State's new industrial relations system which came into effect with the proclamation of the Industrial and Employee Relations Act on 8 August 1994. The motion for disallowance will immediately create significant confusion and anomalies for employers and employees.

There is another set of regulations, the subject of the next motion for disallowance. Both of them were promulgated only after extensive consultation, including consideration by a tripartite subcommittee of the Industrial Relations Advisory Council. Approximately 95 per cent of the regulations were agreed by all parties. It is in this context that the Government views this proposal to disallow the regulations as an extreme reaction to the few areas of disagreement which remain after that process.

There are two issues of concern with this disallowance motion. First, the effect of the motion will be to extend unilaterally the application of existing legislative and award provisions to cover domestic work performed in or about a private residence. That will represent a major policy shift in South Australian industrial law without any detailed consideration or argument having been given by either the Government, the Industrial Relations Commission or industry as to the appropriateness of such a radical change in regulation.

It does need to be reinforced that this regulation exempting domestic work in a private residence is not new policy in the industrial portfolio. Aside from minor drafting changes, its effect is identical to provisions that have been in operation for the life of the repealed Industrial Relations Act SA 1972, that is, for nearly a generation.

The motion by the Hon. Ron Roberts contradicts the previous Labor Government's policy. For 19 of the last 22 years, the Labor Party had control of the industrial relations policy in this State and decided to maintain exemption for part time or casual domestic work in a private residence. But now it is in Opposition, without having even having presented a convincing case for change, the Labor Party seeks to abandon the *status quo* and turn this policy on its head.

The consequences of applying the full force of the industrial relations system and State employment laws to part time or casual private domestic work would be far reaching and highly intrusive within the community. The full impact of that would mean, amongst other things, that families would be forced to pay award wages, plus penalty rates, shift allowances, loadings and overtime as set out in industrial awards, designed for professionally employed workers in the same category, as well as superannuation, annual leave, sick leave and bereavement leave.

Those provisions, which we would regard as rather unnecessary, such as having to provide paid time off to attend trade union training and to display relevant awards on a notice board in the family home, would also apply. Potentially offensive provisions such as the permission for trade union officials to enter family homes and inspect documents, and the right for the Department for Industrial Affairs inspectors to also enter private homes to inspect written time and wage books would also be legally enforceable. All these obligations may be appropriate to employers who, by definition, are operating businesses designed to generate commercial profit. On the other hand, the home owner is not operating a commercial enterprise when engaging a part time or casual cleaner, cook, gardener or baby-sitter. It is not reasonable to compare the employment relationship in a commercial enterprise with the work relationship in a casual domestic environment.

The case for change as advocated by the Hon. Mr Ron Roberts, in speaking to his motion, did not explore these consequences or, for example, the effect of unfair dismissal provisions and/or compulsory arbitration as they would apply to these circumstances. Rather, the position advocated by him appears to reflect an ideological commitment by the United Trades and Labor Council to group all workers under a common set of industrial laws. His proposal also ignores the historic distinctions determined by the courts between employees and contractors. If casual or part-time domestic workers were included in the statutory definition of 'employee' as he proposes, a major legal argument would arise as to whether the worker was an employee at common law, engaged under a contract of service, or an independent contractor engaged under a contract for services. As honourable members will know, this distinction has been drawn by the courts over many years and is not overcome by an artificial statutory limit on the number of hours worked or any other artificial device.

There are also complications which arise in the tax system. The potential application of payroll and fringe benefits taxes, for example, compound the problems for the Opposition's motion. In addition, the highly sophisticated South Australian occupational health safety and welfare legislation and workers rehabilitation and compensation legislation would have its application in circumstances which were never contemplated and for which it was never designed.

The Government's second concern with this disallowance motion is the serious disruptive effect should the motion be passed of having this associated regulations struck down, rendering many aspects of the new industrial relations system such as enterprise agreements inaccessible to South Australian employers and employees. Not only would disallowance deny access to important provisions of the new Act and create confusion in the minds of much of the business community and employees, it would also seriously

disrupt the normal functioning of the industrial relations system.

The disallowance of those regulations associated with enterprise bargaining would remove important safeguards for employees, such as notice requirements to be given by employers upon entering into negotiations, notice requirements to be given by associations seeking to represent employees in enterprise agreements and protection to ensure that authorisations by employees for the approval of agreements are given fully and properly. The disallowance of these regulations associated with the unfair dismissal provisions would remove all exclusions from these provisions, and create anomalies and discrimination between employees which could not be explained by sensible or rational public policy.

The categories of employees exempted from the unfair dismissal jurisdiction by these regulations are the same categories exempted under the Federal Industrial Relations Act. The disallowance of these regulations would also result in the application of normal industrial awards to disabled workers employed in sheltered workshops who currently receive an exemption from the award system under the regulations. This would significantly disrupt the employment programs of these charitable or benevolent organisations. It is also worth drawing attention to the schedule of recognised organisations contained in the regulations, which if disallowed would result in legal challenges to the corporate status of registered associations under the South Australian Industrial and Employee Relations Act 1994.

The argument advanced by the Hon. Ron Roberts for disallowance of this regulation is no different from the unsuccessful argument mounted by his Party during the parliamentary debate on our Bill last year. The Government has made it clear that it is prepared to debate fully and properly the issues which are raised in these regulations through the normal parliamentary process. However, it is the Government's view that, if a full debate is to occur in relation to the position of workers in domestic residences, then this should be done by way of substantive amendment to the Act and not through a disallowance motion of this type. For those reasons, the Government certainly does not support the motion for disallowance.

The Hon. SANDRA KANCK secured the adjournment of the debate.

AGENTS, REGISTERED

Adjourned debate on motion of Hon. R.R. Roberts:

That the regulations under the Industrial and Employee Relations Act 1994 concerning registered agents, made on 4 August 1994 and laid on the table of this Council on 9 August 1994, be disallowed.

(Continued from 12 October. Page 377.)

The Hon. K.T. GRIFFIN: The Government opposes the motion moved by the Hon. Ron Roberts for the disallowance of regulations under the Industrial Employee Relations Act concerning registered agents. Again, these regulations, as for the earlier regulations covered by the motion upon which I have just spoken, are highly important to the operation of the State's industrial relations system. As I said then, the regulations and the system came into effect on 8 August 1994. If the motion for disallowance is actually carried, then it will create significant confusion and anomalies for both employers and employees. As with the general regulations, the subject of the earlier motion, there was extensive consultation on those regulations before they were promulgated. The tripartite subcommittee of the Industrial Relations Council did give consideration to them. As with the earlier regulations, I am told 95 per cent were agreed.

The Hon. R.R. Roberts: 'Agreed' is not the right word.

The ACTING PRESIDENT (Hon. T. Crothers): Order!

The Hon. K.T. GRIFFIN: I am told that about 95 per cent were agreed by all parties. The Hon. Ron Roberts, in seeking to disallow this regulation, indicates that his basis for doing so is the restriction it places on registered agents communicating directly or indirectly with a client of a legal practitioner, a registered organisation or other registered agent regarding the matter without the approval of the agent. He claims that this restriction is counterproductive and unnecessarily costly for employers where industrial officers of trade unions, who are recognised advocates, are unable to communicate with the employers of dismissed workers. He also suggests that in the same clause the words 'in the same transaction' be replaced with 'involved in the same litigation' for the purpose of clarification.

This motion for disallowance is difficult to understand as these regulations have the effect of implementing the same style of registration provisions contained in the previous Act which were introduced by the former Labor Government with the support of unions, employer bodies and the Industrial Relations Commission. It is worthy of note that the previous Industrial Relations Act 1972 was amended to include these provisions in 1992. However, those amendments were suspended from proclamation and operation for 12 months to allow for extensive consultation and the drafting of the associated regulations.

At that time the provision to which the Hon. Ron Roberts refers formed part of the industrial proceeding rules of the South Australian Industrial Court and Commission. The Government is not aware of any concerns being raised over this provision either during the consultation in 1992-93, during its subsequent operation of the provisions in 1993-94 or in the consultative period with trade unions, employers and the commission leading up to the promulgation last August of these regulations, which are the subject of this motion. As a consequence, the Government sees no reason to vary the regulations.

With regard to the Hon. Ron Roberts' second concern, I am advised that the Minister for Industrial Affairs has received advice that the current wording of the regulations is preferable, although this point is not critical. The Government is of the view that it is entirely inappropriate to seek to disallow these important regulations without proper consultation. Again, the Government signals its willingness to discuss this matter further in another context, but will not support disallowance.

The Hon. J.C. IRWIN secured the adjournment of the debate.

RETAIL SHOP LEASES BILL

Adjourned debate on second reading.

(Continued from 14 February. Page 1147.)

The Hon. R.D. LAWSON: I support the second reading of this Bill, which I regard as a move in the right direction. The process of consultation undertaken by the Attorney, who has the carriage of the Bill, is commendable. As the Attorney

mentioned in the second reading explanation, the process by which this Bill was developed involved extensive consultation with industry groups. I regard it as important, when legislation of this kind is considered, that it be considered in consultation with those affected.

Not in any way derogating from that point, I should say that it is not only the so-called stakeholders in legislation of this kind whose interests ought be considered: it is vital that the public interest be considered as well. It is easy to deal with associations which claim to represent various interest groups, but there are people in the community who do not belong to various industry associations, who are not joiners, maybe whose interest in the business of the association is insufficiently great to warrant membership. When one is considering legislation of this kind, one ought give consideration not only to those retail shopkeepers who are members of industry associations, and those landlords who are members of landlords' organisations, but also to those who are not and one ought also to give consideration to the wider public interest in legislation of this kind.

I make that statement not in any sense in criticism of the process, because I believe the Attorney has considered the public interest in bringing forward this Bill. I am sure the public interest has been considered and adequately addressed.

I was initially concerned in this legislation by what I perceive to be a change in the focus of the legislation. This is a retail shop leases Bill. It replaces part IV of the Landlord and Tenant Act, which dealt with commercial tenancies. On the face of it, retail shop leases are but one sector of commercial tenancies. The existing legislation ostensibly applies over the whole field of commercial tenancies. I would be concerned if this legislation narrowed the focus of these provisions from a wide section of commercial tenancies to a narrower section of only retail tenancies. For example, retail tenancies do not on their face include offices (of which there are many and many of which are small), small garages, workshops, surgeries, manufacturer's agents' showrooms and many other types of premises that could not be characterised as retail shops. However, a closer examination of the existing Act makes clear that there has been no substantial change of focus. Section 55 of the existing Act provides that the commercial tenancies provisions apply to commercial tenancy agreements which relate to shop premises. Notwithstanding the broad name of the existing provisions, namely, commercial tenancies, they really have fairly limited application.

It is true that disputes regarding office tenancies and the like have not generated much in the way of complaints, nor have tenancies relating to other small operations. It is undoubtedly true that retail shop leases have been the subject of many complaints, however, and there is a widespread perception, with which I agree, that retail shop leases do require some form of statutory control. From my point of view I favour only the minimum regulation in areas such as landlord and tenant in commercial activities. I favour only sufficient regulation to ensure that there is a fair balance between landlord and tenants in relation to the negotiation of tenancy agreements. I do not favour legislation which controls areas which require no control and in which there is a fairly even balance between two parties to a contract. Certainly in relation to retail shop leases there is an imbalance that requires legislative address.

The Hon. Mr Elliott in his second reading speech yesterday objected to the exemption for retail shop leases in which the rent exceeds $200 000 per annum. This is the level of the present cut off and the level of the cut off proposed in the Bill. I favour maintaining the *status quo* in this area of the maximum rent which ought be covered. It is true that a surprising number of small tenancies, especially in the central city area, attract rents that exceed $200 000. Many members would be surprised to know the high rents paid in the central shopping area, especially Rundle Mall. However, these tenancies by and large these days are occupied by national chains and successful operators who have been able to establish successful businesses. Those operators are not at any disadvantage when it comes to negotiating terms with landlords. If anything, they are at some advantage. When it comes to renewal it is the landlord who has the great fear that if he is at all unreasonable he will lose a tenant paying substantial rent and lose a tenant who, certainly in the case of national chains, looks after premises well and establishes extremely good goodwill for premises. When it comes to renewal, and in negotiating other terms of such leases, there is little inequality of bargaining power that would require the intervention of the Parliament.

The Hon. Mr Elliott suggested that the cut off should not be $200 000 or any other monetary amount, but that it should relate to the size of the tenancy. He suggested that tenancies of 1 000 square metres and less should be covered by the Bill. I doubt that this is any improvement at all as it is a rather arbitrary selection. Out of the central city area there are many large premises which are of greater than 1 000 square metres but which are occupied by tenants who require the protection of this Act. A large area tenanted does not necessarily bespeak a tenant who is either wealthy or has any capacity to bargain effectively against a substantial landlord. It is also the case that difficulties arise in calculating the square area of many premises for all sorts of reasons, some of which are obvious and some of which are not obvious, whether one includes the column space, the common areas and the like. It is my view that the suggested imposition of a ceiling based on the area of a tenancy is inappropriate and, if amendments are moved in that direction, I could not support them.

The Hon. Mr Elliott also mentioned clause 13(3)(c) of the Bill. This clause provides that the term for which a retail shop lease is entered into shall be for at least five years. There are certain circumstances in which that minimum term can be departed from, one being where the lease contains provisions excluding the operation of clause 13(1) and (2) and a lawyer, not acting for the lessor, certifies in writing that the lawyer has, at the request of the prospective lessee, explained the effect of the provisions and how this section would apply to the lease if it did not include such provisions exempting it.

Listening to the Hon. Mr Elliott's comments, it seemed to me implicit that there was an underlying assumption that landlords would, given the opportunity, impose terms shorter than five years upon tenants who desired terms of five years or more. But that is not always a correct assumption. In many cases tenants do not require a lease for five years; they would prefer a lease for less than five years. Of course, it is true that a tenancy for five years confers substantial benefit upon a tenant, but it also imposes a potentially substantial detriment—the obligation to maintain and keep paying rent for five years can be a considerable burden and one that tenants, in certain circumstances, would wish to avoid. Take the case of a tenant who takes over a business part way through the term of a lease and the lease comes up for renewal. The tenant may be uncertain about the future economic prospects of his business, may be uncertain about whether the particular location is the best location. The tenant may want to have a

trial period of, say, two years, or undertake a commitment to remain for only two years. There might be many other personal reasons why a tenant would not wish to be committed for the full five years. The tenant may wish to retire; there may be uncertainties in his or her personal life that make it undesirable to be committed for five years. So, for some, five years is a burden, a millstone around their neck, and a shorter term is not necessarily a detriment.

The Hon. Mr Elliott suggests that if a notice in writing is given by a lawyer under that exemption provision it should be recorded in writing and registered or deposited in some repository and the written document ought to specify the reason why the tenant did not wish to have a five year term. It seems to me that this is altogether too bureaucratic. The reasons why a tenant may not wish to have the full five years are really peculiar to the tenant. He or she may not wish to state those reasons to a landlord. It is certainly not unknown in commercial negotiations that one's private business is not divulged to the other negotiating party. It seems to me an unnecessary imposition to require the establishment of some repository within which these written documents would be deposited.

However, I will be raising in Committee one other aspect of clause 13 of the Bill. At the present time, section 66a of the existing Act provides that at the end of a term a tenant will have an option to have the term extended for five years. So, the option is on the tenant. He does not have to take it but there is an option. Under the new provision (clause 13)—and it seems to me that there is a difference between the new and the old in this respect—the term of the lease is extended to five years if the lease specifies a term that is less than five years. So, it is not a question of an option being granted to the lessee under the new provision: it is an automatic extension irrespective of the wishes of the tenant. That seems to me to be a possible area of detriment and disadvantage to a tenant.

[Sitting suspended from 6.1 to 7.45 p.m.]

The Hon. R.D. LAWSON: Before the dinner adjournment, I mentioned a number of the points made by the Hon. Mr Elliott in his second reading contribution. I pointed out that I did not agree with the general thrust of a number of his remarks. The only other matter of substance that I wish to mention in support of the second reading of this Bill is the question of distraint for rent. Distraint for rent is the procedure whereby a landlord is entitled to seize the goods of a tenant who has not paid the rent.

South Australia remains the only State where this remedy, which is an ancient common law remedy, is still permitted in commercial tenancies. In South Australia, distraint is not permitted in residential tenancies and has not been permitted for many years; nor is it permitted anywhere else in Australia. However, South Australia remains the only State where it is possible for a landlord to distrain for rent in commercial premises.

I am not one who believes that all landlords are virtuous and sensitive beings, nor do I believe that all tenants answer that description. My experience has shown that there are equal numbers of unscrupulous landlords and tenants, but I must say that I consider that the self-help remedy of distraint for rent whereby a landlord can without notice and without the intervention of any court, third party or arbitrator seize the goods of his tenants ought not be permitted.

Regrettably, distraint for rent is a tool that is often used by unscrupulous landlords to force a conclusion to an issue which, in any other field, would have to be determined initially by a court, in order to obtain the necessary court orders and protection. However, I quite understand that the question of distraint for rent is a broader question than one that arises merely in relation to retail shop leases. I understand the reasons why the provisions of the Landlord and Tenant Act relating to this subject have not been removed or included in these provisions in relation to retail shop leases. Speaking for myself, I would like to undertake in the future an examination of the necessity for the retention of this remedy in South Australia.

Leaving aside that question, in my opinion the Retail Shop Leases Bill contains a number of very beneficial provisions. It is an update of an Act that requires some updating. It is an Act that in broad terms has the support of the bulk of those persons and companies that are engaged in this activity. I support the second reading.

The Hon. A.J. REDFORD: I rise to support this Bill as it stands before this place. At the outset, I would like to congratulate the Attorney-General for the manner in which he embarked upon a consultative process with the various interest groups in this area. That process makes it easier for everyone in this place, regardless of political persuasion, to focus their mind on important issues and come to the correct conclusion.

I must say that I disagree with the Hon. Michael Elliott's comment that people involved in this process were sworn to secrecy. The various parties involved in the negotiations with whom I had dealings were in contact with me, and I am surprised that the Hon. Michael Elliott would make such an assertion in this place.

I want to deal just with those issues which are contentious and which have been raised by the Hon. Michael Elliott. First, regarding clause 4, he said that public companies ought to be given the protection of this legislation. I suggest that the Hon. Michael Elliott should reconsider, in the light of the practical and commercial realities associated with the negotiation of leases with public companies in this State. He justified his comment by saying that public companies can be pretty small outfits. I do not know of any public companies that are small outfits, but I suggest that there are quite a large number of public companies, which have small areas, such as Katies and other chain stores such as McDonald's, which have quite substantial operations, that really do not need the protection of this legislation.

The reality is that most negotiations are conducted in a head office in Melbourne or Sydney. This substantially impedes the orderly commercial conduct of quite substantial business enterprises in this State. For example, it is quite common, as I understand it, for a national chain of retailers to deal with a substantive landlord. Generally, their solicitors and advisers are situated in their head office, whether it be in Melbourne, Sydney or Brisbane or Perth, and it is important from a commercial point of view for them to be able to negotiate and have their documentation prepared from a single point. There are many examples such as Westfield (with which I will deal in more detail later), Katies, McDonald's and Hungry Jack's.

If one goes through any Westfield store one will see that a substantial number of operations are subsidiaries of public companies. If Mr Elliott's amendment regarding the area as opposed to setting the rent is successful—that is, 1 000 square metres as opposed to $200 000—what he will really do is impose a further bureaucratic obstacle to these substantial

companies being able to open up small outlets in South Australia. I have cited the examples of Hungry Jack's, McDonald's and various other chain/franchise operations here in South Australia.

The second point with which the Hon. Michael Elliott dealt concerned the question of franchises. Although I am not sure what he intends—I have not had the opportunity to look at his specific amendments—I would say that what he suggests in general terms is almost impossible to achieve and that what he is fearful of is, in any event, already covered in the legislation.

As I understand it, generally speaking, franchises come within the ambit of other legislation and, in particular, Commonwealth legislation, which would prevail. The fact is that, if one looks closely at the Bill, a lease in this whole exercise is also extended by definition to include subleases; lessors by definition are extended to include sublessors; and lessees by definition are included within the definition.

So, at the end of the day the protections that are granted by this legislation apply in a franchise situation, in which, generally speaking, in terms of the negotiation and the whole process, one generally has at least two documents. There is a franchise agreement which sets out the way in which the business operator is to run the business and, secondly, there is a lease agreement. The only reason it is a second agreement is that in a lot of cases there is generally a head lease which protects the franchisor's position.

The franchisor, if it is a public company, will negotiate it itself. If it is not a public company—and there are not too many that would not be, I would not think—then it gets the protection under this legislation. Also, I suggest that subleases are quite common, and certainly there has been no great outcry about problems with franchisors going broke, running off or not fulfilling their obligations in the past. I would suggest that there is no need for that.

I turn to the honourable member's suggestions about clause 13. If I remember correctly, the honourable member said in relation to the five year term that the exemptions, as proposed, possibly give loopholes. I disagree with that. At the end of the day, what we are dealing with is two parties who are negotiating with each other.

In any commercial transaction you are always going to get a suggestion, on any occasion, that there is an unequal bargaining power. It does not matter what commercial relationship you enter into, whether you go down to the shop and buy a packet of cigarettes or whatever you do: if you are hanging out for a fag you pay the price that the shopkeeper asks. You do not sit there as a legislator and say, 'Look, the Hon. Angus Redford is hanging out for a cigarette and it is immoral for the corner deli or the local hotel to charge him $6 when I know he can go to the supermarket and buy it for $5' because there is an inequality of bargaining power.

The fact is the inequality of bargaining power is there; it is a constant; and the real protection is that the person who might be subjected to the inequality of the bargaining power receives full advice and can then make a free decision as a consequence of that advice.

The Hon. T.G. Roberts: Three o'clock at a disco.

The Hon. A.J. REDFORD: Again, we do not give legal advice at 3 o'clock in a disco. I know the Hon. Terry Roberts might buy a packet of cigarettes at 3 o'clock in a disco, but I am staying up late at night working on these speeches. The fact is that it does not matter what one does, because in any world one cannot change the inequality of bargaining power. All you can do is give the consumer—if you call the tenant a consumer—the best advice available, and the Bill proposes that he does get that advice from a lawyer.

Certainly, if someone came to my office to get that advice I would suggest that the person also get accounting advice as well. I will come to some issues that arise in relation to that.

The Hon. Barbara Wiese: Is that an advertisement?

The Hon. A.J. REDFORD: I say to the honourable member that I would have to refer it to someone else; I am not an expert in this area. The other issue that the honourable member says—and the Hon. Terry Cameron interjects; I notice he has not given his maiden speech yet—

The Hon. Diana Laidlaw: I was just wondering if he could talk.

The Hon. A.J. REDFORD: He is probably a politician's equivalent of a 50 year old virgin. I now refer to the other issue. The Hon. Mike Elliott says, 'The landlord has to put down a reason and say what is a legitimate reason.' I can assure the honourable member (and I am surprised he does not understand this, being as he is the meat in the sandwich in a lot of discussions over legislation) that there are always two legitimate answers to any particular problem.

I am sure that when a Government takes a stance on a particular issue which adversely affects an interest group that group goes to the Hon. Mike Elliott and says, 'We have got a legitimate complaint here,' and if we made the opposite decision the opposite group would see him.

At the end of the day, how one can come to a conclusion as to what is a legitimate decision in a commercial transaction escapes me. I suggest that to require a landlord to fill out a form that has no legal effect and gets filed in a tribunal is quite farcical. The landlord could write anything down and, at the end of the day, if he knows that there is no adverse consequence to it—if the Hon. Mike Elliott is suggesting that at some stage down the track we can look at these reasons and say, 'Hang on, we need to revisit this section because the information that is given to us is wrong'—I would suggest that the information that is put in there, purely from a practical point of view, will hardly be reliable because no adverse consequences are visited upon the landlord if he puts in an illegitimate reason.

The Hon. M.J. Elliott: Are you going to amend it?

The Hon. A.J. REDFORD: No, I am supporting the status quo in the Bill.

The Hon. M.J. Elliott: What are the adverse consequences of it?

The Hon. A.J. REDFORD: I am talking about the adverse consequences of your amendment. You are saying—

The Hon. M.J. Elliott: You were complaining that I didn't have any.

Members interjecting:

The PRESIDENT: I ask the honourable member to address his remarks to the Chair.

The Hon. A.J. REDFORD: I turn to clause 43 and, in particular, I will address the comments made by the Hon. Mike Elliott. I must say that personally I have a divided view on this. If the Hon. Mike Elliott's suggestions do get through this place I can envisage a burgeoning and very lucrative area for the legal profession because, as I understand it, the landlord can say, 'I am not going to renew,' and the landlord has to show any one of the following four: first, he can get a better rent; secondly, he can get an improved mix; thirdly, he can redevelop or has plans to redevelop the shop; or, finally, non-compliance with lease. Every one of those has hairs on it and I can see some extraordinary opportunities for lawyers.

Taking them one at a time, the first is the suggestion that the landlord has to show that he can get a better rent. How you define 'rent' would need to be carefully looked at because rent or benefits to the landlord can come in many different ways. It may be that the tenant is going to pay different outgoings and there needs to be an assessment there, particularly in some areas.

The second is a different mix—a lawyer's picnic. I can see myself going down to the Commercial Tribunal with another lawyer. We will have a few valuers on each side all giving various opinions about which mix is going to be better and, at the end of the day, having heard all this very expensive advice from all these valuers and other experts as to what is the best mix in a shopping centre, some judge, usually legally trained, is then going to pronounce to the world what is or is not a better mix.

At the end of the day, that is a very expensive, albeit lucrative to the legal profession, way of coming to some conclusion as to what might or might not be a better mix of tenants in a shopping centre. Again, I would suggest that that is a fantastic source of work for the legal profession.

Finally, I will deal with the question of non-compliance of a lease. I would have to suggest that, in the normal day-to-day dealings between landlord and tenant, it is quite common for there to be non-compliance with terms of a lease. Generally, non-compliance can range from something serious and important like being behind in the rent, all the way down to not fixing damage to minor items in the premises. At the end of the day, non-compliance with the lease ought to be a ground dealt with in the normal course of the law. Generally speaking, if a tenant breaches the lease and subsequently redeems or fixes up that breach, for argument's sake, if he gets behind in his rent and then pays it up, the courts, during the term of that lease, will protect the tenant. Or if he damages the premises and later fixes the premises, then the tenant will be protected by the courts. So, at the end of the day, I really cannot see how that advances anything at all. I certainly await with some interest—and I am not sure whether they are on file as I did not have the opportunity to check—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: I do not mean to cast any aspersions on that. But I will be most interested to see how the honourable member deals with that drafting problem. It will be extremely difficult to draft a clause to the effect that, if there has been a non-compliance with a lease, then the landlord has the right not to renew. What happens if the tenant has made good that non-compliance? What happens if the tenant has habitually committed some non-compliance by perhaps always being a month late with the rent? What happens in that circumstance? What happens if he has generally been a bad tenant but at the time of renewal he gets everything fixed up, and the landlord is confident in the fact that the tenant, once that is all fixed up, will go back into his old habits? At the end of the day, I do not think it is possible to legislate.

If this amendment gets up, it will put us in an adverse position from the landlord's point of view and so far as many other States are concerned. It is important that this be said: the bulk of landlords in South Australia are small investors, either because they have invested in property trusts and the like, which own and manage these shopping centres or indeed they have purchased shops themselves. At the end of the day, to say that we are going to push a balance against a landlord affects as many small people as it would in going the other way in affecting small retailers. Secondly, there would be a move to drive investors from this State. There would be a question of whether overall rentals would be increased to cover losses sustained by landlords as a result of losing some of their rights to deal with their property in accordance with this legislation and in accordance with a lease that they might otherwise have. At the end of the day, it is a commercial deal, and landlords ultimately will seek to recover the overall costs associated with having these proposed amendments of the Hon. Michael Elliott.

The Hon. M.J. Elliott: If the landlord can simply withdraw the offer of the lease at any stage, then the whole Bill is totally worthless.

The Hon. A.J. REDFORD: I am only talking about renewal. If a tenant goes in and he has a five year lease he knows where he sits.

The Hon. M.J. Elliott: Yes, for the first five years.

The Hon. A.J. REDFORD: Yes, he knows exactly where he sits for five years. In no other commercial transaction that I know of does a Parliament seek to bind two people in a contractual relationship for a period that could go on indefinitely. It makes it impossible for a landlord in a commercial sense to plan in the longer term. Quite frankly, five years is quite an extensive period. The Hon. Michael Elliott made the assertion that a substantial number of leases have been entered into in order to avoid the effect of this legislation. Nothing has been put of any statistical nature before this place. We have had that put to us only in an anecdotal way.

I will meet anecdotal evidence with other anecdotal evidence. I might say that it is quite clear that, over the past few years with one major exception, that is, Westfield—and I will get onto Westfield in a minute—it has been a tenants' market in South Australia. As a consequence of the Keating/Hawke Labor Government in Canberra, and as a consequence of the State Bank disaster, we have been in a quite severe recession, and economic activity has not been at the level that we would have hoped. The net effect of that has been that it has become a tenants' market, with the one exception, and I will come to Westfield in a minute.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The honourable member interjects that SGIC has been appalling. I would have to suggest that it has been a tenants' market. The general rate of rental increase has declined substantially outside of Westfield. The number of vacancies in shops has increased substantially.

The Hon. K.T. Griffin: They couldn't get tenants without offering them sweetheart deals.

The Hon. A.J. REDFORD: As the Attorney-General said, they could not get tenants without offering sweetheart deals in the Remm Centre. He is then suggesting that, in this depressed market, landlords have suddenly gone out and rammed these agreements down tenants' throats. At the end of the day, the Hon. Michael Elliott underestimates the commercial capacity—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The Hon. Michael Elliott interjects that after 24 hours I have become an expert. Quite frankly, the number of times he has come into this Council on every single issue and proclaimed himself as an expert is beyond me. It is the pot calling the kettle black. As to the suggestion that a substantial number of leases have been entered into in order to avoid this legislation, that anecdotal evidence has been used to undermine a very fundamental

principle, that is, retrospectivity. If he is going to say that we ought to have retrospectivity, then he should come in this place with some hard facts and evidence of a statistical nature rather than the anecdotal stuff that we had to put up with last night. Retrospectivity is something that is exceedingly important to this Government, and I must say to me as an individual.

An honourable member interjecting:

The Hon. A.J. REDFORD: Well, we're not talking about WorkCover, and we'll deal with that over the next few weeks. I would suggest that, if he is going to demand that there be retrospectivity and overturn what he claims to be these many hundreds of agreements that have been entered into of late, then he ought to come in with a bit more evidence than some of the anecdotal stuff that he as come in with.

The Hon. M.J. Elliott: Where's your evidence?

The Hon. A.J. REDFORD: I would suggest to the Hon. Mike Elliott: if you want retrospectivity, you come in here and you justify it. You justify it. You don't make a bald statement and say, 'Well, I've heard this,' and then we will undermine this principle.

Members interjecting:

The PRESIDENT: Order! The Hon. Angus Redford.

The Hon. A.J. REDFORD: I have been challenged to get my facts right. I am not putting any facts if terms of the retrospectivity; I am suggesting that, if there are facts to undermine that very important principle, then the honourable member bring them into this place and convince us of the need for retrospectivity. Certainly, a bald assertion on his part, in my respectful view, is not sufficient. We have hardly seen a crane in the City square of Adelaide for three years; we have hardly seen a new shopping centre in the metropolitan area of Adelaide in the last couple of years. We are not seeing a general increase in the construction of shopping centres. It is a tenants' market. If some of these amendments are passed we will see a capital strike, and it will not be a capital strike of some big brother over the border; it will be a capital strike on the part of small investors who will say, 'I will not invest in my own State. I will invest elsewhere because I get a better return'. At the end of the day, that will undermine the economic recovery of this State.

The Hon. Michael Elliott suggests that there is a dominance in the marketplace by Westfield. In terms of major shopping centres, it is trite to say that Westfield does have a dominant market position. It has invested an enormous amount of money in the development of its major shopping centres. If there is a capital strike as a result of this legislation all that will happen, if the honourable member's amendments are passed, is that you will increase Westfield's dominance. If no further shopping centres are built in the State then the dominance of Westfield will prevail.

I am not a great advocate of Westfield. In fact, on the radio the other day I heard of the activities of Westfield, where it had decided that it would charge charities full tote odds for selling raffle tickets. That is disappointing. From a political point of view, from its point of view in some respects and certainly from the landlord's point of view, the Westfield timing could not have been worse. The honourable member suggested that someone from BOMA said to him, 'If you legislate in this way we will get around it.' If BOMA said that to him and if that was some form of lobbying, I do not believe that anybody has anything to fear from BOMA.

It has been my experience when practising law that until recently there has been a substantial reliance by small business on goodwill. In most cases goodwill is the most unreliable asset one can find. It is important that tenants entering into any business and lease understand the fragility of goodwill. If someone enters into a lease for a period of five years, a good accountant will say to them, 'As you go through that period your goodwill will slowly diminish and you must take that into account.' In fact, when an accountant prepares a balance sheet, if there is an assuredness of a long-term business, he will generally discount goodwill by at least 20 per cent a year; and if there is an assuredness only of a five year business, he will discount the rate of goodwill at the appropriate rate.

I agree with the Prime Minister that there has been an over reliance in this country on capital growth, whether it be investment in real estate or an illusory increase in goodwill. The fact is that goodwill has always been overstated. I agree with the Prime Minister that from an economic point of view it is an illusory capital growth, it is an illusory type of wealth. What we must do as a community is understand and recognise that. I suggest that goodwill is something which, over the past few years, has become much less significant than it perhaps was 10 years ago.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The Hon. Michael Elliott interjects, 'The next issue.' Of what? He can wave his political threats at me as much as he likes. I will go before any seminar of small business people and say that they cannot rely on goodwill, that it is an illusory asset. To seek to try to protect goodwill by placing these quite substantial incursions in the way of people to deal with property as they see fit will mean, at the end of the day, that you run the risk of protecting that illusory asset, that risky asset, at the price of driving small investors and landlords out of this State and at the risk in the longer term of increasing rentals to cover the loses. I commend the Bill to the Council.

The Hon. K.T. GRIFFIN: I thank members for their contributions on the Bill.

The Hon. R.R. Roberts: At last we might get some commonsense in the debate.

The Hon. K.T. GRIFFIN: I have heard a lot of commonsense. I do not agree with some of the issues that were raised by the Hon. Carolyn Pickles and the Hon. Michael Elliott, but I hope to be able to persuade them eventually so that they come to my point of view.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: We will see what your amendments are first, before I make any judgment about that. I thank members for their contributions on this Bill. It is an important piece of legislation. When the Bill was introduced I recognised that there would be some differing points of view on some of the issues which were raised in the legislation. I note the Opposition's support for the approach that the Government has taken in reviewing Part 4 of the Landlord and Tenant Act 1936 and in putting in place a regulatory framework which is fair to both landlords and tenants.

I note also the Opposition's acknowledgment that there has been considerable consultation with industry in the preparation of this Bill. Both landlords and retail tenants have made an enormous input as a unified group. I have already recorded my appreciation to all of them for their tireless efforts and dedication to the job at hand, but I would like to do that again. They really have made a significant effort in trying to reach agreement on some very difficult and potentially controversial issues.

It is worth noting that of the entire Bill—and it comprises some 75 clauses—there were only eight matters where agreement could not be reached by the industry. Some of those are very important issues; some are relatively minor. But, in an area which only a few years ago was highly controversial and contentious, where tenants and landlords were virtually at each other's throats, we have now moved to a much more mature approach. I have been very pleased with the way in which all sectors of the industry have responded to the invitation to participate in the development of this legislation.

It had been my experience in the past, in Opposition, when we had dealt with issues such as retail tenancies, that there were different interest groups and that they would all make their separate submissions, whether to the Opposition or Government, and would then, in a sense, almost play off one against the other. I recognise that it is sensitive not only in terms of the political atmosphere surrounding this issue but also from the longer term perspective of both tenants and landlords.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I make no observation about any other piece of legislation. I took the view that the only sensible way to approach this was to sit down myself with the various interest groups all together so that all would know what the others were putting and would know that I as Minister took a personal interest in getting issues resolved. That is not to say that I was at every meeting. The industry groups went away and did a lot of discussion themselves. They wrestled with many difficult issues and, even on the areas where they had disagreement, they were able to crystallise the issues for further consideration. On those eight issues that were not able to be resolved, there has been further consultation. We have narrowed down further some of the areas of disagreement.

I expected that landlords and tenants would make their own representations to either Parties or to individual members of the Parliament, putting their viewpoint on those issues, but at least we would come into the Parliament with a Bill where the majority of issues had been resolved between industry groups and Government. That would narrow the contentious issues within the Parliament. I do, however, take some issue with suggestions that there will need to be substantial amendment. If one is referring to it in the context of some of the eight areas in which agreement was not able to be reached, I would not disagree that there are substantial issues, but in terms of the volume of amendments I would hope that they would be largely confined to those issues.

Whilst talking about amendments, I have indicated informally to members but do so now on the record that, when the Bill was finalised and introduced, the industry groups had further discussions and came back and said that we had not adequately addressed some of the issues they had agreed upon and as a result further amendments have been drafted and I would hope to have them on the file within the next day or so in preparation for Committee consideration of the Bill, hopefully next week. There will still be some issues that will be contentious in Committee.

I want to make one further observation about the consultation process. I take exception to the Hon. Mr Elliott's assertion that there was a cloak of secrecy around the process. There was not. It was managed in the way in which I indicated. I indicated to the groups that I expected that they would want to make representations to members of Parliament about some of the issues on which there was disagreement, but I encouraged them to discuss the issues and endeavour to reach agreement before they got out to the lobbying area, which is the appropriate way to do it. It did not create animosity; no-one was playing a different game behind other peoples' backs. Everybody knew what was happening. So, there was no cloak of secrecy.

The Hon. Carolyn Pickles: Sensible approach.

The Hon. K.T. GRIFFIN: I accept that. I may not follow it in every case, but I am reasonably realistic about some of these issues.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No-one could complain about the consultation on native title.

The Hon. Carolyn Pickles: We expect you to maintain this high standard.

The Hon. K.T. GRIFFIN: I thank the Hon. Caroline Pickles for her generous compliments. I will deal now with a number of issues raised by honourable members, first by the Hons Caroline Pickles and Michael Elliott and then those raised today by the Hons Robert Lawson and Angus Redford. Dealing first with the retrospectivity application of the new Act to existing leases issue, I note the Opposition's comments to the effect that members are hopeful that many of the provisions can come into effect immediately and note also the Australian Democrats' comments on this issue.

In introducing the Bill on 30 November, I said that existing legislation would continue to apply to leases entered into before the date of proclamation, subject however to modifications prescribed by regulation. It was not possible at that stage to say what would or would not be applied from the new legislation to existing leases because it was still to be the subject of consultation with industry. Landlords obviously take the view that they do not believe that any of this legislation ought to be applied to existing tenancies. On the other hand, the retail tenants' organisations take the view that a substantial part of it should be applied to existing leases, but both groups—landlords and tenants—agree, with one or two minor reservations, that commercial arrangements currently in place between lessors and lessees, freely entered into between the parties, should be untouched by the provisions of the new Act. If there is an intention to apply a much more substantial part of this new legislation to existing leases, which will alter commercial arrangements, it would be very much out of kilter with the agreements reached between industry organisations.

We are continuing consultation with industry groups presently to determine exactly what provisions should be applied and, in effect, have retrospective application to existing agreements. One example of such a modification will be a provision that will bring existing tenancies under the new regime for settling disputes contained in the new Bill. It may be that matters such as the form of notice about outgoings (which has to be given under the new legislation) will apply equally to the existing tenancies. We are still trying to work out those issues with the industry. Whilst I would generally be reluctant to do a lot by way of regulation, I do not believe there is much option but to address the issue by regulation, which is subject to scrutiny by the Parliament in any event.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I will endeavour to give a clearer indication when we get to that part of the Bill. I hope to give some clearer indication of those provisions that we would seek to have applied, and we are having further consultations about that. I recognise, having sat on the other side for so long, that it is important for Government to try to

give some indication of areas that will be the subject of regulation, whether in this context or any other, and I will endeavour to do so at the time we get to a consideration of that in Committee.

The Hon. M.J. Elliott: You weren't keen on regulations—

The Hon. K.T. GRIFFIN: I just said that I am not ordinarily keen on doing these sort of things by way of regulation. Sometimes in the process of developing legislation where there are continuing consultations there may not be any option but to do that. I do not resile from my general concern about doing many of these things by way of regulation, but I recognise that sometimes it is impractical to rush it all together and do it in the principal statute. I will endeavour to provide further information to members when we get to Committee consideration of the Bill.

I turn to the issue of the application of the Act. Currently part IV of the Landlord and Tenant Act does not apply where the rent payable exceeds $200 000 per annum. Both the Opposition and the Australian Democrats are advocating the adoption of a provision whereby shops that have a lettable area of 1 000 square metres or more would be excluded from the legislation—in other words, a floor coverage exemption as opposed to a rent payable exemption. The Government has concerns about the potential lack of certainty in relying on a floor coverage provision as opposed to a rental provision. For example, will the marginal areas of retail shops be taken into account in the calculations of floor space? That is not clear.

The other issue of concern to the Government is that no rationale has been supplied as to why 1 000 square metres is the appropriate measurement for floor space in this State. One could ask 'Why not 500 square metres or 1 500 square metres?' The 1 000 square metres figure—

The Hon. M.J. Elliott: Why $200 000?

The Hon. K.T. GRIFFIN: That is a fair question: why $200 000? That was the basis upon which this legislation has been triggered for quite some time. The Government and I took the view that there was such uncertainty about the 1 000 square metres that it was preferable to maintain the *status quo* in respect of the coverage of the legislation because that was something which was recognised and which had been the basis upon which retail or commercial tenancy legislation had been operative throughout this State for a number of years. So, that was the rationale for it. I think there are some issues that need to be addressed in relation to the 1 000 square metre figure. It has been drawn straight from the New South Wales legislation. I acknowledge that we have used the New South Wales legislation as a template for much of the Bill that is now before us.

However, it seemed to me that there was dispute between both parties. One could justify maintaining the *status quo* in relation to South Australia as the basis upon which the legislation should be applied. However, the use of the rental provision does provide a greater level of certainty. The amount is clearly definable. On the information available to Government the sum of $200 000 covers currently the majority of retail tenants and small businesses in this State. Therefore, there would be no reason to depart from that formula. However, I should point out—and I think I did during the second reading debate—that it is the Government's intention that this figure be the subject of periodical review in consultation with industry and that it will be adjusted if it is demonstrated no longer to cover the majority of retail tenants in this State.

One has to recognise that there has been a downturn in the property market, in the retail sector, in this State which has meant that rents have not escalated. In fact, as the Hon. Angus Redford said, significant incentives have been paid to retail and commercial tenants generally to get them into vacant accommodation.

Members interjecting:

The Hon. K.T. GRIFFIN: I am saying 'generally'. Again, I do not deny that there are some places where rents have been based upon a CPI or a fixed escalator rate. We are trying, as members will recognise—and I think that everyone has recognised that it is a good thing—to get rid of ratchet clauses so that you do not have this constant escalation without some reference either to market value or to some fixed—

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Turnover is still permitted. It is a fact of life that wherever you go across the world turnover plays a significant part in calculating rent. The turnover, in shopping centres particularly, comes in some part from the fact that the investor has built a huge centre, has brought together a mix of tenants and has provided a facility that, in itself, has a critical mass and attracts people into it. Certainly, part of it might well be the contribution of all tenants, not just one tenant, but also it is partly attributable to the fact that there is an investment that is providing a facility. There are arguments both ways. I am saying that from the Government's perspective we have taken the view that the present basis—and you can argue about the $200 000 I suppose—is the basis that gives the greatest level of certainty to the formula to identify the coverage of this legislation.

The next issue is public company exemption under the Act. The Hon. Michael Elliott has indicated that he will be moving an amendment to bring public companies within the scope of the Act. Again, the Government considered this issue of whether the exemption in relation to public companies—which presently exists in the Landlord and Tenant Act and has been there since it was enacted in the mid 1980s—should be removed as part of its review of this legislation. We were not satisfied on the evidence that was available that there was a need to remove this exemption. We have taken the view that, generally speaking, public companies, because of the capital requirement, the number of shareholders, the fact that some of them may well be listed on the stock exchange and others will have significant resources—that those resources at their disposal enable them more equally to negotiate with landlords than do individuals and smaller businesses.

I turn to franchise agreements. The Hon. Michael Elliott has queried whether or not the Bill will give adequate protection to franchisees. It is my advice and I submit to the Council that the Bill does protect franchisees adequately, particularly where they are sublessees as sublessees are included within the definition of 'lessee' under the Act. It should be understood that franchise agreements come in a number of different forms and are not always tied into a rental/lease agreement. For example, I understand that many franchise agreements are the subject of separate agreements from those of retail shop lease agreements due to the preference on the part of the parties to prepare retail lease agreements in registrable form. In such instances the provisions of the Retail Shop Leases Bill would apply only to the retail shop lease, which grants the franchisee a right of occupancy to the premises. The terms and conditions of the

separate franchise agreement would not be impacted upon in this instance by the provisions of the Bill.

In other cases the lease agreement might be incorporated into the franchise agreement. In that case it is arguable that the Retail Shop Leases Bill would apply only to that portion of the agreement that relates to the retail shop lease and not to the lease as a whole. The whole idea behind franchises is that they give the franchisee the right to use the name and the system of a business. If the franchise is tied to the use of the premises then, in respect of the premises, there must be compliance with the local law and in this State that is the Retail Shop Leases Bill, if and when it passes.

The Hon. M.J. Elliott: What if the franchisor goes broke?

The Hon. K.T. GRIFFIN: My understanding is that the sublessee is still protected by the provisions of the retail tenancy agreement.

The Hon. M.J. Elliott: Can they take over the lease?

The Hon. K.T. GRIFFIN: Let me take that on notice. I cannot do it on the run without having a good look at the Bill again. I suppose what the Hon. Mr Elliott is suggesting is that the franchisor might hold the head lease and default on the rent. My understanding is that that is adequately protected. However, for the Committee stage I will get a considered response to that to ensure that I am not misleading the Council.

I turn now to the minimum five year term. The Hon. Michael Elliott has made much of the provision in the Bill of a minimum five year term and the exemptions available to reduce the length of this term. With the greatest respect to the honourable member, this argument is without foundation. The provision of a minimum term of a lease has provided both landlords and tenants with certainty and clarity in relation to the term of the retail lease.

However, as with many things in life, there was a need to provide for flexibility in relation to this provision which the Government has built in. The flexibility of the provision aids both tenants and landlords, that is, it cuts both ways. This can be shown in the case of a tenant who does not want to be locked into a five year lease and desires to reduce the term of a lease by means of obtaining the certificate of a legal practitioner.

The Hon. Robert Lawson has made reference to that and to the fact that a tenant may want a shorter term lease rather than a longer term lease. We are, after all, dealing with a commercial venture, and parties must accept the risks associated with the success or otherwise of a business venture. The provision of legal advice also obviates the need for written reasons to be prepared and submitted to a tribunal.

As I say, we are dealing with a commercial arrangement and negotiations between parties. If a party does not like a term of the agreement, if it is critical to the issue, the judgment can be made that, 'Yes, we will accept the risk' or 'No, we won't enter into the lease.' The submission of written reasons as to the reduction of the term of a lease I suggest serves no useful purpose in this context.

In respect of the review of rent, I note that the Hon. Mr Elliott has mooted that the tribunal should intervene in cases where, in his words, a person can demonstrate to the tribunal that their rent is out of kilter with any reasonable market expectation. This requirement will not be necessary under the provisions of the new Bill. Parties will negotiate at the time of entering into a retail shop lease what type or formula of rent offered under the Bill will apply to their lease. The Bill prevents ratchet clauses, so this will overcome one of the concerns of the Hon. Mr Elliott.

The Hon. M.J. Elliott: It was existing leases that I was worried about.

The Hon. K.T. GRIFFIN: Not new leases?

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That is partly the reason, where experience indicates there are some problems; therefore, we want to change it for the future.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: If one starts to get into applying limitations to the rental provisions of existing leases, one then gets into a position where one interferes with a commercial arrangement between the parties and the essence of the agreement between the industry groups representing both landlords and tenants is that that is the sort of issue which is a commercial arrangement, and it will not be the subject of intervention by the new legislation.

The Hon. M.J. Elliott: In general terms, I agree.

The Hon. K.T. GRIFFIN: Right. If a party selects current market rent as the formula applicable to their lease and if the parties cannot agree on the amount of rent, provision has been made in the Bill for the amount of the rent to be determined by a valuation carried out by a valuer. Information as to the rent and nature of rental increases will therefore be known at the outset of the lease. Any breaches of a lease agreement will be dealt with by the Commissioner or the tribunal. There is no need, therefore, under the terms of the new Bill for tribunal intervention in the manner described by the Leader of the Opposition.

With reference to lease renewal, I note the Opposition's support for the provision contained in the Bill requiring a lessor to give not less than six months' and not more than 12 months' notice to the lessee of the lessor's intention not to renew or extend a lease. The Opposition has, however, foreshadowed its desire to include in the Bill an obligation on the part of a lessor to provide written reasons to tenants for their decision not to renew or extend a lease.

The Government does not agree that there is a need to provide what amounts to written reasons for decisions, particularly given the lengthy period of notification that is required to be given under the Act. The Government gave serious consideration to this issue. Superficially, one can feel some sympathy for the view of tenants that there ought to be written reasons for their not getting an extension.

On the other hand, the mere provision of a requirement to provide a reason will, as the Hon. Angus Redford suggests, leave open the opportunity for landlords to give a one liner reason which may not necessarily be the true reason for the decision not to extend or renew.

I also note the comments that have been made by the Hon. Mr Elliott regarding lease renewal provisions. There are two main matters that I wish to take up with respect to that. The first relates to his general comment that six months before a five year lease expires, lease negotiations should be started. This comment does not reflect accurately the provision of the Bill dealing with renewal which provides for negotiation to commence not less than six months and not more than 12 months before the expiry of the lease. This more accurately reflects the period of negotiation that can occur. In relation to the period prescribed in the Bill, this is more than an adequate period for a party to become of and prepare for the outcome of the lease renewal negotiations.

Secondly, in relation to the honourable member's four propositions for a landlord not to renew, the Government is of the view that these suggestions would put an undue fetter upon landlords' rights in relation to what they can or cannot

do in relation to their property. Landlords are in business just as retail tenants are in business and obviously they want maximum return on their property. I suggest that the majority will not play games with their tenants for mere sport or for arbitrary reasons because, it is like any business—I keep preaching this through the Consumer Affairs portfolio—and it is in the interests of business to ensure that their clients or customers are happy, because happy customers mean the establishment of goodwill and return custom. I suggest the same applies in relation to the majority of landlords. Decisions as to the renewal of a lease are most frequently based on economic considerations, and it is for those reasons that we take issue with the propositions put by the honourable member.

In respect of relocation, I note the Opposition's support for the Government's inclusion in the Bill of an all embracing provision that protects the rights of tenants who are asked by lessors to relocate their business within a shopping centre. I note, however, that the Hon. Mr Elliott has raised a concern in relation to the number of shops that are defined in the Bill to be a retail shopping centre. He does not accept, however, that any number of shops should apply to this definition.

With respect to the honourable member, the definition is designed to identify what falls within the category of a retail shopping centre. Clearly, one shop, for example, could not sensibly be regarded as a retail shopping centre. There was a need to clarify the number of shops for the purposes of—

The Hon. M.J. Elliott: You could not be asked to relocate, either.

The Hon. K.T. GRIFFIN: It depends. If you have one shop obviously you will not be asked to relocate.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That may be the case, too. There was a need to clarify the number of shops for the purposes of the Bill, and five shops was regarded as the appropriate number to describe a retail shopping centre. As to the issue of relocation as it relates to the number of shops in a shopping centre, I understand that the majority of problems experienced by tenants in the context of relocation occur in larger shopping centres where there are multiple shops.

I now turn to associations that represent lessees. I am pleased to hear that the Opposition supports the provision in the Bill which provides for a lessee to be accompanied by a member or an officer of an association that represents or protects the interests of lessees. The Government supports the right of retail tenants to have an adviser present during negotiations to eliminate any question of undue domination by landlords during the negotiation process. I am not sure, however, why the Opposition has mentioned a perceived difficulty on its part in relation to the term 'professional adviser' as this term does not appear in clause 57 of the Bill. I hope that we can explore that issue further in Committee.

In relation to demolition, both the Opposition and the Australian Democrats have called for a statutory right to resume occupancy of particular premises following demolition of the premises—in other words, the granting of what amounts to a first option to lease a shop in a rebuilt shopping centre. Again, as a Government, we gave consideration to this argument, but as a matter of policy we determined that a requirement to give tenants a first option to lease a shop in a rebuilt shopping centre would place an undue burden on the lessor's right to redevelop or refurbish his or her property and would also place a fetter on the landlord's right to determine an appropriate tenancy mix for the rebuilt shopping centre.

It should also be noted that the demolition provisions contained in the Bill apply only to retail shop leases that make specific provision for termination. In this respect, the lessee has the opportunity to negotiate the terms and conditions of this aspect of the lease agreement at the time the lease is entered into.

In relation to shop trading, I was pleased to have the support of the Opposition in respect of the trading hour provisions contained in the Bill. These provisions will provide protection and certainty for lessees in shopping complexes in the area of trading hours but also recognise the difference between the special needs of outward facing shops in a shopping complex. In relation to that, the industry groups feel that the provision we have made does not accurately reflect their position and there is an amendment which will be tabled in respect of that issue, which, by now, would have been agreed between all the representatives of landlords and tenants.

The prohibition of ratchet clauses has already been commented upon by the Opposition and the Australian Democrats. It is something new, and one, on principle, might have some objection to any interference with these sorts of clauses, but we took the view that, its having been agreed in New South Wales and being one of the major areas of concern in the retail tenancy area, it was appropriate to include this in the Bill. Landholders have taken the view that this may perhaps lead to some inequity for tenants where there is a fixed escalator rate rather than a market rate for rents, but I am sure that that will shake itself out in the medium term.

I have already commented on the interjection by the Hon. Mr Elliott about the application of that provision to existing tenancy agreements and I do repeat the Government's concern. It would be a concern of the industry groups that this would be a commercial provision which would be interfered with if the provisions of this Bill were to be applied in that way to existing leases.

In relation to the forum equivalent to the Commercial Tribunal, I was disappointed to hear of the Opposition's insistence of the maintenance of the existing forums for the hearing of disputes arising from residential tenancy matters and commercial tenancy matters, namely, the Residential Tenancies Tribunal and the Commercial Tribunal, and their opposition to the creation of a specialist tribunal or division that would hear all residential and commercial tenancy matters. Undoubtedly, that will be further explored in the context of the debate on the Magistrates Court Tenancies Division Amendment Bill.

I also take issue with the description used by the Opposition in relation to commercial and residential tenancy matters as being like chalk and cheese from one another. After all, there is a common nexus between them in the fact that they relate to tenancies, and also the relationship of landlord and tenant exists in both categories of tenancies. One only has to look at the mixed bag of proceedings that are currently heard by the Commercial Tribunal to appreciate the fallacy of the Opposition argument in this regard.

I appreciate, however, the Opposition's approach to me informally to look at options for reform in this area and that is, undoubtedly, something that we will be considering in relation to the Second-hand Vehicles Bill and in other contexts. But, I hope that honourable members will keep something of an open mind on this issue because I have a very strong view that, although in the early 1980s it might have been appropriate because of the rigidity within the

mainstream court system to move towards specialist tribunals, the experience of specialist tribunals has not been all that wonderful and, with the quite significant relaxation of processes, procedures and evidentiary requirements within the mainstream court system, there is much greater efficiency and a form of justice that is as good as, if not better than, what is being offered at the present by moving these sorts of matters through to the magistrates—who will have, incidentally, a State-wide coverage—efficiently and effectively.

I now deal briefly with some of the issues raised by the Hon. Robert Lawson. He did make the observation about consultation: that we ought to be giving consideration to those who are not members of trade associations as well as those who are members of trade associations, as well as consider the public interest. I would respond to that by saying that that has been done. By dealing with the various trade organisations, there is a diverse range of business interests represented whose interests are shared, I would suggest, by those who are not members: the Newsagents Association, the Small Business Association, the Retail Tenants Association, the Retail Traders Association, BOMA, Westfield and a number of other organisations, and they do have a very diverse range of interests represented.

In terms of the public interest, this is always the constant dilemma. One might focus only on retail tenancies, for example, and get a deal which is acceptable to both landlords and tenants, but in the longer term it has the effect of, for example, passing on costs to the consumer. We must remember in all this that there is a consumer interest in retail tenancies. They want service; they want quality; they want value for money; and they want the best deal that they can possibly get. I now refer to the landlords, although 'feather-bedding' is probably not an appropriate description of the arrangements which are being entered into because they are genuine arrangements—I use it only in a broad context.

If we were to provide for validation of arrangements which had an undue impact upon prices, for example, it would be adverse to the interests of the public at large and consumers in particular. What we have tried to do in the consideration of this Bill (and I pick up the point made by the Hon. Angus Redford) is recognise that there would be no regional shopping centres such as Westfield or Tea Tree Plaza without capital and investment, and without investors being prepared to put their money where their mouths might be and to take some risks. They need a reasonable return; particularly in this State they need to be given a reasonable return if we are to attract that capital in to provide facilities which will enhance the lifestyle of South Australians in competition with New South Wales, Victoria, Queensland and so on.

We do need to recognise that there is a sense in which we have to provide both security for investors and landlords, as well as a reasonable return on capital. On the other hand, those investments would not be viable without tenants; tenants would not have an opportunity without the shopping centre; and shopping centres would not be viable without tenants who had some entrepreneurial flair, were prepared to give it a go and provide a service. There are thousands of such small businesses.

This Bill is designed to try to achieve a balance between those competing factors and meet the overall public interest considerations which must not be ignored in entering into these sorts of arrangements. What we have achieved in this Bill does represent a fair balance between the rights and needs of landlords and investors on the one hand, the rights and needs of tenants on the other, and the public interest in general.

The Hon. Robert Lawson did make some reference to a perceived change in emphasis from commercial tenancies to retail tenancies and I note that he is now comfortable with the coverage of this legislation, which is almost identical to that in the present Landlord and Tenant Act in so far as it relates to commercial tenancies.

In respect of section 66A of the existing lease and clause 13, which was the minimum terms of tenancies, the Hon. Mr Lawson made some observations about an option to extend beyond five years in section 66A. Before we get into Committee, I ask that he might reconsider that. My understanding of section 66 is that, if there is a tenancy of a term less than five years, if a landlord gives a notice to the tenant requiring an indication as to whether the tenant wishes to extend beyond the shorter period to a maximum of five years, then the tenant has to make a decision. There can be an extension of up to a minimum of five years. It was always intended by the previous Government and by the Parliament that that should provide a minimum five year tenancy. As far as I can see, in section 66A there is not any provision for a right of renewal, or an extension beyond that term of five years.

He does make some reference to distraint for rent, which is a matter under the general provisions of the Landlord and Tenant Act. All I can say in relation to that is that it is an ancient remedy. It is one which is still practised. I am certainly prepared to give some consideration to it and to the issues relating to that, but I am not persuaded that any changes should be made to the Bill to deal with that issue now. It is something which needs some careful consideration and discussion, with both landlords and tenants and with others who have an interest in that area.

The Hon. Angus Redford has dealt with many of the matters to which I have already referred. I have responded and added to the issue which he raised about the need for capital in this State. I just repeat what I have just said, that is, I think that this Bill will present a reasonable balance between the interests of landlords and tenants and satisfy the broader public interest. Whilst there are areas of disagreement, I am pleased to repeat my earlier comments that those areas of disagreement are, within the broad framework of this Act, of fairly limited application. I again thank members for their consideration of this Bill.

Bill read a second time.

WORKERS REHABILITATION AND COMPENSATION (BENEFITS AND REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 February. Page 1130.)

The Hon. R.R. ROBERTS: Quite clearly, the Opposition is opposed to this legislation. This Bill, presented in Parliament in 1995, puts to rest once and for all the document that was presented by the Liberal Party as its workers' safety policy. It makes it very clear that that document is not worth the paper it is written on. This is an absolute betrayal of the workers in South Australia. During the election campaign, the Australian Labor Party warned workers that a vote for the Liberals was a vote for a slashing of the benefits available to workers in South Australia. We were roundly condemned by members of the Liberal Party, and the Hon. Mr Ingerson in

particular accused us of running a scare campaign and repeatedly guaranteed the workers of South Australia that there would be no diminution of the benefits under WorkCover if the Liberals were elected.

In the policy document No. 42, Workers Safety Policy, (page 6) it went into print, and said:

> The objective of the Liberal policy is to accelerate this process so that South Australia achieves competitive levies much closer to the time promised by Labor without reducing the benefits for those injured workers.

Quite clearly, they were trying to dupe the workers of South Australia into voting for them on the basis that their levies were safe under the Liberal Party. They tried to give an impression that they were a compassionate and a caring partner in the agreement that was made in 1987, between the government of the day, which was a Labor Government, I am proud to say, the employers of South Australia, and the trade unions in particular, to set up a system of workers compensation in South Australia which was fair and equitable, was whole of life, and without fault, which provided proper reviews and proper justice for the three parties.

Quite clearly, what has occurred since then is that two parties have ganged up and ratted on the third party, that is, the employers and the Government. It is a complete betrayal. One remembers on the night of the election, Dean Brown, on television, thanking the workers of South Australia for putting their trust in him. Quite frankly, the betrayal that has been cast upon the workers of South Australia rates right up there with the actions of Judas Iscariot. This is an absolute betrayal of trust of workers in South Australia and it ought to be condemned.

The other problem that we have, is that Dean Brown has something else to answer for. He has put into place a Minister to handle this legislation who obviously has very little idea about what this Bill and workers compensation is all about. All he seems to do is to mouth off the ideologies of the employers. In 1994, there were substantial changes to the WorkCover legislation in South Australia. We changed the structure. Instead of having an even-handed board and an advisory committee, it was heavily loaded through legislation in favour of employers and Government representatives.

Since that time, these people have roundly condemned the system of WorkCover in South Australia and indeed principally they have condemned the administration of WorkCover. They now have the greatest opportunity to display to everybody in South Australia their managerial skills and they could get in there and fix up the administration of WorkCover, where I am told, and it is agreed by most parties, there are plenty of opportunities to save money. These people who claim to be the managers have taken the coward's way out. Instead of tackling the problems of the administration, putting into systems and taking out some of the bureaucratic mechanisms which they claim impede the efficient claims management, as an example, they have taken the easy way out. They say, 'Well, hang on, we set up a scheme, because the insurance companies in the past could not handle it, and we have this agreement.' They take the easy way out; instead of going in and managing, as they have a responsibility to do, they said, 'Well, let's give it off to the private insurers.' You, Mr President, would be amazed that that could possibly occur, and you would have to ask what the reason would be. Perhaps I can give you 67 500 reasons.

There has been a great commitment to the Liberal Party by the insurance industry in South Australia. In fact, prior to the election, there was quite a list of people within the insurance industry who felt that they ought to make a contribution towards the Liberal Government. For instance, on 19 November 1993 the Commercial Union Assurance Company provided $5 000. CIC on 13 December 1993 threw in $10 000. CE Heath International on 16 November 1993 gave $20 000. It must have felt that there would be some gold at the end of the rainbow. Manufacturers Mutual Insurance on 29 October 1993 threw in $10 000. Mercantile Mutual Holdings on 19 November threw in $10 000. QBE Insurance made two donations; they were that anxious. On 10 August they threw in $1 000 and obviously the Liberal Party bagmen said, 'We will give you that $1 000 back; you obviously need it more than we.' So they did the right thing and threw in another $4 000. Sun Alliance decided to help out in the campaign—Sun Alliance and Royal Insurance on 13 December threw in $7 500.

Obviously, the Liberal Party has delivered a system, the best system that money can buy. That is the sort of thing that has occurred as a background to why these betrayals are being foisted upon the injured workers in South Australia. Instead of doing the decent thing and addressing the management these people took the coward's way out and attacked the victim. This is certainly bad. I have been in this place for six years and I have seen some rotten legislation in the past 12 months but this would have to be the kingpin of them all.

Mr President, I would expect and you would expect the United Trades and Labor Council would be an obvious opponent of this legislation, because they have consistently defended the rights of injured workers in South Australia, long before WorkCover, and continue to exercise that function. This legislation is so bad that it has brought out groups in the community unprecedented in my experience and it has brought on to the streets of Adelaide today the greatest number of protesters we have ever seen in this State. The only protest that has come close to this was the protest in 1979 induced by the Premier of South Australia, although he was only a backbencher then. How did he turn these people out? It is funny how history repeats itself.

In 1979 he attacked the workers of South Australia, wanted to get rid of the public services and wanted to deregulate everything on that occasion. He got knocked off at the election and has come back some 13 or 14 years later and has introduced the same thing. He rode in on a great tide of expectation and did in fact fool some workers in South Australia with the untruths that were part of the policy that was being espoused, reinforced by the now Minister for Industrial Relations, giving false assurances to the workers in South Australia that they would be looking after them. That has been put aside.

In this legislation we have seen opposition from the Community Health Association, the Action Group for Injured Workers—one would expect that, when their group is being absolutely rorted, they would protest—and the Welfare Rights Centre has decided to join the coalition, and there is the Greek Welfare Centre, Flinders University Students' Union and the Australian Plaintiff Lawyers Association. These are not people that one would expect around Trades Hall; these are not diehard socialists we are talking about. These are people who do not get involved.

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: I am proud to be union, proud to defend the workers in South Australia against the sort of people like you. The Federation of Spanish Speaking Communities has thrown its weight behind the campaign, as has the Ethnic Community Council. The United Ethnic

Communities has joined the fight against this. The Australian Society of Rehabilitation Counsellors has joined it, as has the United Trades and Labor Council, the obvious front runner. The Women's Electoral Lobby has joined in this as has the South Australian Institute of Teachers.

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: Exactly. They have been rorted by this Government more than most in their working conditions. They do not want to suffer the stress that you people have put them under and then not get any compensation for it. The Public Service Association has also joined. This legislation has been designed for one purpose. Realistically, this is too horrific to be real. As I said, Dean Brown has put the Hon. Mr Ingerson into the portfolio. He obviously has no idea. Mr President, we may have been better off with someone who knew something about industrial relations.

An honourable member interjecting:

The Hon. R.R. ROBERTS: Well, Joe Rossi would have handled this with a lot more clarity perhaps than Mr Ingerson. It has been put to me by a worker to whom I spoke a few days ago in respect of the choice of Mr Ingerson as the Minister for Industrial Relations: 'This is the worst personnel placement since Edward Scissorhands was given a job as a condom tester!' He was not impressed and most workers out there are not impressed with this Minister—despite all the backup that—

Members interjecting:

The Hon. R.R. ROBERTS: It is necessary, even at this late hour, to outline some of the concerns. We have had much correspondence on this Bill outlining the faults in it. Every member of the Opposition has a stack of papers pointing out the faults in the Bill. Unashamedly I am going to use as a basis for my comments the response that was put together by the Trades and Labor Council. I use this deliberately because they are the only people as part of this triumvirate that have not ratted on the deal. Therefore they are maintaining their commitment to the workers of South Australia and the WorkCover situation. During the election campaign the Minister for Industrial Affairs, Graham Ingerson, asserted that there would not be cuts to injured workers' entitlements, yet serious cuts and changes to WorkCover have already being implemented prior to this lot of legislation. But now the Bill introduced on 1 December 1994 and rushed through in February 1995 is an attempt to radically transform the existing scheme of workers' rehabilitation and compensation. In large part it will destroy the basic framework of workers' rehabilitation and compensation. The massive cuts will have a disastrous outcome for workers and their families and, indeed, the whole community. The cuts are unjust and they are also inequitable. The system is to become more complicated. People least able to defend themselves, those of non-English speaking background, workers, women and youth are particularly at risk. I understand that the Carolyn Pickles will be expanding in that area.

The main effect will be to greatly lessen the incentives on employers to provide safe workplaces and working conditions. The cost of workplace accidents and injuries are transferred to the injured workers, their families and the general taxpayer. Employer levies may well drop but the cost of the workplace injuries will be unlikely to fall and the incidence of workplace accidents and injuries may well increase. The main beneficiaries of this legislation will be the negligent employers in South Australia. Commitments to weekly income maintenance and systematic rehabilitation for injured workers will be dispensed with. The rights of injured workers to have decisions of the WorkCover Corporation and the exempt employers reviewed will be removed in some areas—and this is a particularly disgraceful part of the Bill—and those reviews will be significantly diminished in other areas. At the same time we are convinced that privatising WorkCover claims management will cost more. I did outline my objections to that and the information provided to me in an earlier contribution, so I will skip over that.

There is a growing outrage not only from the unions and injured workers; other interested stakeholders from outside and community groups have also expressed their disgust at this legislation. We find it hard to believe the extent of the cuts and the dishonest public relations justifications promoted by the Minister. The following is not an exhaustive analysis, clause by clause, but there are some clear areas of concern that we need to put on the record. I am certain that in years to come people will really want to know just what this Government was about and what drastic measures it was prepared to tale to attack workers' benefits.

One of the key areas of concern is the employers' responsibilities to re-employ and rehabilitate injured employees are to be drastically reduced. After 12 months employers will no longer be obliged to rehabilitate injured workers or employees or to keep their pre-injury employment open for them, which is an onerous situation. The Premier has said that there will be 4 000 jobs created with the changes to this legislation. We know how that will occur because the 4 000 people presently on WorkCover will be thrown out of their jobs, put on social security and those jobs will be available to somebody else. It will do very little for those injured workers.

Even the first 12 months after injury the employer no longer is under any onus to show that suitable employment exists for injured workers. That is covered in clause 17. Prior to 1987, under the old system, there was no focus on rehabilitation. With WorkCover there have been continuing attempts by employers, rehabilitation providers and unions to rehabilitate injured workers. This is now to be completely undermined. After one year not only will wages be drastically reduced but the system introduced to encourage employers to dump injured workers, rather than an attempt to rehabilitate them by offering suitable employment, even though it may be reasonably practicable to provide suitable employment. What hope has a worker with serious disability in the labour market? The opposite should occur, namely, constant improvement to the rehabilitation strategies and the enforcing of employers' existing obligations.

We have no confidence that private claims managers will improve rehabilitation in South Australia. The commitment to weekly income maintenance for injured workers is completely abandoned. The calculation of weekly earnings is shifted away from average weekly earnings, which has been the basis of the scheme since its inception, closer to ordinary time basic earnings. For example, all hours worked beyond 30 hours a week, bonuses and allowances and all non-monetary benefits are now to be excluded. No consideration will be given where an employee would have been in line for a promotion. The total amount will also be restricted—to ensure that we do not get too much out of it for workers—to 1.5 times the State average weekly earnings. The existing legislation now provides for twice. After 26 weeks, weekly income payments drop to 85 per cent of pre-injury notional weekly earnings. Workers with stress disabilities are further cut back. I shall mention that further along.

For most injured workers, income will be cut to a level to be specified by regulation after 12 months. It will be six months in the case of stress. This is likely to be equivalent to the Commonwealth social security pension, but without the accompanying concessions that you would expect under a social security pension. There will thus be little point in injured workers remaining on the WorkCover scheme from this point. The new suitable employment provisions will cut the weekly benefits even further. It has been accepted that, when as a result of work related injury or disease, a worker is incapacitated and loses the ability to earn a living, his or her fundamental human right is that of receiving fair monetary compensation, that is, the average amount that a worker could reasonably expect to have earned for a week's work if the worker had not been disabled.

This is now to be undermined. Hardship will occur with workers unable to meet their financial liabilities. It should be remembered that in South Australia in 1987 the abolition of the common law claims for loss of earning capacity was accepted only with the guarantee that the existing level of income maintenance benefits would be paid. It cannot be said that the majority of workers will be better off. We contest the Minister's advice when he says that by further cutting current entitlements for long-term injured workers, they will somehow be encouraged to go back to work. This is the big stick approach and it is not warranted. The existing reductions after one year are difficult enough already. Anything less than 12 months is unrealistic to reorganise, for example, mortgage repayments.

Limitations for workers to be compensated for stress have been introduced in 1994, but there is no justice for further discrimination. Stress victims should receive the some benefits as workers disabled by physical conditions. The proposals are hardly an appropriate approach to assisting the psychiatrically or psychologically disturbed person to return to the work force or into the community. It is more likely to turn people into outcasts like on United States streets with high costs to the whole community. Workers with mental disabilities are again second class citizens.

This is not the first time this Government has shown no compassion for the psychiatrically disturbed persons who have gained those injuries in the work force. We have, as you would remember, a Bill that has passed this House that has been sitting on the table in the lower House and has not been processed for some time. This Bill was accepted right throughout the legal profession and again by support groups in the community, but this Government has been playing politics with that Bill and leaving it lying on the table in the other place while psychiatrically and psychologically injured workers are out there doing awful things to themselves. They also have the added concern in that they know that this Bill is before the House and it is causing great distress. It is not beyond the realm of possibility for a tragedy in that area.

There is a great concern at destroying income maintenance after 12 months. This is reduced to a pittance for all but the most severely injured. Incapacity should be understood as an inability of the worker to sell his or her labour in the real world. To construct artificial and unfair tests, presuming partially incapacitated workers can actually obtain jobs in competition with uninjured workers, is unacceptable to the Opposition. Employers and WorkCover will be encouraged to dump thousands of workers off income maintenance with a system that asserts untruth, that is, that the jobs exist which they are capable of performing when it is known obviously that they cannot find any employment.

The reality is that what is being contemplated in this legislation is a situation where there is no employment, and the best example is of a person working in a country town who is assessed to be able to be a carpark attendant. I can tell you that there are not a lot of carpark attendants in those country towns. This Bill seeks to assume that that work was available and discounts that worker's benefits by that amount because he is not out there doing a job. This is simply an outrage.

Suitable alternative employment for injured workers is defined unrealistically and can be applied unjustly and capriciously. Under the amendments the WorkCover Corporation or an exempt employer will be able to reduce a partially incapacitated worker's weekly payments if a suitable job exists in theory. The intention appears to be to reverse the decision of the Supreme Court in the James case.

Clearly, one of the main incentives of this Government is to get rid of the James case. It has been to the Supreme Court, the case was ruled in favour of the workers, but employers have now sought relief from the Liberal Party to overturn it in law so that they can say that they were right all the time. The James case involved the determination that for suitable employment to exist an actual job had to be available. It is the experience of many injured workers looking for suitable employment that employers will not employ them if they have or have had a claim for compensation. That is the reality. The effect of the new suitable employment provisions could be drastically to reduce weekly income, even in the first year of employment.

We are strongly opposed to massive slashing of income maintenance levels for those designated partially incapacitated. Under the proposals there are now to be penalties for getting injured. The concept of what constitutes a compensable workplace injury is substantially narrowed and opened up to a great deal of legal contest. The worker will have to prove that the injury was caused solely or at least significantly by their employment instead of simply proving that the injury was work related. This is one of the platforms of the legislation and the agreement or the accord between workers, Government and employees in 1987. It is a slashing of the basis of the scheme.

This provision takes workers' compensation in South Australia back 30 years. It will knock out many cases where workers have been exposed to hazardous chemicals, where manifestations of an injury have been delayed or with pre-existing conditions, for example, a degenerative back condition. They will receive nothing—no money, no rehabilitation. Mr Ingerson cannot maintain this line that workers will not be affected by his legislation. As is occurring with recent stress-related injuries, workers will be subjected to invasive questioning by lawyers about their private and social life outside of work. There will be great complexity introduced in nearly every case. There will be blatant discrimination and this will apply in the treatment of some injured workers in sections of the community. For example, injured workers who are 40 per cent or less permanently incapacitated will be thrown on the social security scrap heap after 12 months and denied access to lump sum commutations for physical impairment in line with proposed clause 13. All but the most severely injured workers will fall below the 41 per cent threshold. Injured workers with less than 10 per cent capacity will have no access to lump sum commutations for non-economic loss except where the loss of capacity is for a finger, a toe or a sense of taste or smell.

Women, who suffer a disproportionate percentage of musculoskeletal injuries, will also be disadvantaged. Non-English speaking workers will be disadvantaged by being denied rights to representation and will be expected to know the regulations and how they apply. Injured workers with stress claims are singled out as the second class injured and will be dealt with a much inferior way. The notion of impairment, that is loss of function, is different from incapacity.

The introduction of totally arbitrary levels of impairment (which, I might add, was admitted by the Minister) is not justified. In the real world percentages of impairment do not necessarily relate to the overall ability of the injured worker or the injured worker's ability to cope with the pre-injury work. There are many examples of injustice. A more than 40 per cent level is absurd, as is the 10 per cent hurdle. It is arbitrary for a worker with 9 per cent to get nothing but those with 11 per cent would get $10 582.

There is a real problem with the new system with no two doctors agreeing. We are fundamentally opposed to introducing trial by doctors, which is part of the legislation, with the proposed panel of doctors being inevitably biased, with their narrow social views against workers. We believe that the current non-economic loss provisions of the third schedule are far more preferable to injured workers. The issue is not, however, one of changing the impairment levels but of the wrong principles being applied.

The fact that there is no right of review or appeal means that members of the medical profession rather than the independent review officers are the final arbiters of injured workers' rights to compensation for permanent impairment. This is totally unacceptable and is a totally hypocritical principle on the part of the Liberal Party of Australia. The Liberal Party, when talking about the medical profession, has always claimed that every citizen should have the right to a doctor of their own choice. What is being proposed here is a star chamber situation where doctors appointed by the board, which is dominated by the Minister's representative and workers' representatives, will sit in judgment of workers. The fundamental right of the old scheme was that the treating doctor's view was always meant to be the principal view to be taken into consideration when determining claims and that has been undermined.

No-one has explained the situation where one expert says that the injured worker is incapacitated at say, 20 per cent, the other expert says it is 30 per cent and we then bring in the tie breaker appointed by the Minister. No-one has actually said that he may have a different point of view and say that this particular injured worker does not have the 20 per cent or 30 per cent and, in fact, he has 35 per cent incapacity. What do we do in those circumstances? There seems to be no indication of what happens in that situation. Clearly, this is an unacceptable situation, where we have the medical profession determining the case without right to an interview at least with the injured worker. He is not able to represent himself and the most abominable part about it is that that particular change is non-reviewable. You cannot actually contest the fairness of the decision.

The legislation also will be retrospective unfairly prejudicing existing injured workers who have made financial, legal and personal decisions based on the existing law. Clause 24 provides that six months after the passing of the Bill income maintenance will be adjusted on those pre-existing determinations. This will be particularly unjust for injured workers who have decided not to proceed with common law claims prior to 1992 or those who have converted common law settlements to weekly income payments. It is a classic case of the Government's feeling that it is fine to hit the workers retrospectively, which is an abhorrent principle at any time. This is an amazing situation of retrospectivity. As late as today we had the Hon. Angus Redford waxing lyrical about his commitment to the use of retrospectivity. Indeed, the Attorney-General, who has the unfortunate task of having to handle this Bill, must be in a terrible position in terms of the principles that he has espoused in this Chamber about his and the Liberal Party's belief that retrospectivity should never be used to deny members in the community rights under the law. In fact, on 4 December 1992 he was moved actually to put out a media release in respect of this matter when he said:

> The law should not be used to take away retrospectively a right which any citizen has.

I am looking forward to his contribution in respect of retrospectivity.

Another appalling part of this legislation is that the review arrangement will be totally changed so that there is only an inadequate clerical-type review before review officers rather than a judicial process with appeal to the WorkCover appeals tribunal. It is intended here that in future, instead of the injured worker having what one would think is an undeniable right to put his case before a review, he must put it in writing, and he is not even allowed to appear at the hearing. At worst, a review will consist of a check that the proper procedures have been followed. There is no real opportunity for an independent review of the assessment or the merits and no right, of course, for the injured person to be represented. A claimant will have no right to appear in person before that review officer or to be represented by an adviser or advocate at these reviews. No provision is made for written submissions by the applicant, either. Only the review officer may obtain information. In other words, the documents are presented and there is no explanation. This gives no opportunity to the worker to indicate or to initiate presentation of information that may clearly show that the decision that has been made is wrong.

Proposed section 83B enables the corporation to invite submissions from all interested parties except the applicant, which is an outrage. Assessments of physical impairment and non-economic loss have been given over to the panel of WorkCover appointed doctors whose decisions will be final. We question whether doctors should be judges on non-medical issues.

I have had some experience with medical tribunals. In the 1960s and early 1970s there was a provision in the Workers Compensation Act in South Australia dealing with an exemption at Port Pirie—only for Port Pirie, the site of the world's largest lead smelter—affecting any person who wanted to claim compensation for lead poisoning, for instance, unlike other workers in the State of South Australia who could go along to their doctor and receive a certificate saying that they were suffering from lead poisoning and would be entitled to workers' compensation. You had a spray painter at Holdens who suffered some symptoms, went along to his doctor and a specialist, it was diagnosed that he had lead poisoning and he went on workers' compensation.

You had to go before a panel of three GPs. Despite your specialist evidence, you were, in fact, ruled out of order by this tribunal. Port Pirie was probably the only place in South Australia where you could not get lead poisoning. So, panels hold no appeal on medical grounds for me. As I said, proposed section 83 enables the corporation to invite

submissions from all parties except the worker in the review situation.

I want to say something about reviews and review officers, and I will come to that in a moment. Workers will no longer be able to seek the aid of a review officer in dealing with undue delay in determining compensation for non-economic loss. This is raised in the Bill in proposed new section 85. In addition, unless a worker claims compensation there is no entitlement under proposed section 43. In other words, the new system requires workers to be aware that they have made an entitlement and to claim it, but it puts no time limit on the decision maker to determine it, and, again, there is no right of review in this situation.

Costs of proceedings before the Workers Compensation Appeal Tribunal can be awarded against the loser. This will discourage workers from exercising appeal rights and heavily favour employers and WorkCover with their vastly greater financial resources. Again, this is one of the basic platforms of the original WorkCover scheme (no fault at no cost) where workers could expect to get a review of their circumstances, receive justice and not be threatened off as was the situation prior to the introduction of WorkCover where they were intimidated into accepting lesser amounts of compensation than they might otherwise be entitled to simply because they could not afford legal action.

This is simply an outrageous denial of workers' rights to receive customary natural justice. The determination of rights in issues affecting lives requires a fair and open judicial process. Together with trial by doctors this is a fundamental attack on the rule of law. Many workers will not have the money to go before the Workers Compensation Appeal Tribunal, and the employers and WorkCover will crush them with greater financial strength. This change is abhorrent to the basic issues of justice.

In respect of redeterminations, the Bill gives WorkCover almost unqualified power to revisit and alter prior decisions affecting people's rights and livelihood. It provides that a redetermination of any decision can be made where the original determination 'was made as a result of error' (clause 16). 'Error' is not defined, nor is it qualified. Further, clause 24(2)(c), which provides the power to redetermine, operates retrospectively and prospectively. Again, it introduces the principle of retrospectivity, taking away the rights of workers.

During the discussion stage of this Bill I received numerous inquiries from injured workers. In fact, I received quite a number of calls when we were talking about people with psychological disabilities or injuries suffered through their work. I was asked on a number of occasions whether it was correct that there would be retrospectivity and whether people on long-term injury benefits would have their case redetermined. Unfortunately, I advised them that that was completely unlikely because of the Government's insistence that retrospectivity should not take away the rights that citizens had enjoyed. However, I was wrong in that situation, and I can only apologise to those people to whom I gave some comfort based on past statements by members of the Liberal Party opposite.

There are many other issues of concern. This is vital legislation; the Government has gone way over the top with it; and it should be rejected. Those who are interested in the workers' compensation and rehabilitation system should be given the opportunity to come up with real reforms, not an easy fix by slashing entitlements.

There has been criticism of the review process in South Australia. Claims have been made that some of the people involved are not qualified in the law. In fact, it has been proposed, mainly by lawyers, that there ought to be a more formal type of review. In fact, the review process has been cut drastically.

In any consideration of the benefits of an amended review process as proposed in this Bill, it must be judged against the current review process. I have been given some figures in respect of the review process and its efficiency. According to a *Financial Review* in 1993-94, the review panel was allocated 5 189 review applications under section 95 and 2 252 special jurisdiction applications under section 102, a total of 7 441 files or applications. Review officers conducted 15 500 hearings, an average of 72 hearings on each available day for hearing. Review officers made determinations within four weeks of the last hearing in 96 per cent of cases. Review officers made 907 written determinations and 2 551 unwritten determinations. By any measure, the throughput of cases conducted by the panel is impressive. Efficiency is maintained while giving parties access to fully impartial review processes.

However, one cannot look just at the numbers. The efficient throughput of matters is meaningless if the outcomes (that is, the decisions) are shown to have a high error rate. The number of appeals following the review officers' decisions to the Workers Compensation Appeal Tribunal and the subsequent number of decisions overturned by the WCAT are an objective measure of the quality of these decisions. Only 26 decisions by review officers were overturned by the Workers Compensation Appeal Tribunal. This indicates the accuracy of review officers' decisions as determined by the tribunal between 1992 and 1994. This indicates that decisions by review officers were overwhelmingly accepted by the parties as measured by the low appeal rate and that review officers' decisions are generally upheld by the WCAT.

The error rate of review officers as measured by the misunderstanding of the facts of a particular case or their interpretation of the law is very low—somewhere between 1 per cent and 5 per cent. Clearly, review officers are making quality decisions that stand up objectively as measured by the appeal processes.

Not only do applications have quick access to the review process but also they are generally assured of receiving quality outcomes. The other thing, of course, is that you are still entitled to go and plead your own case. Clearly, they are some of the concerns that the Opposition has. I said in my opening remarks that I believed that this legislation was over the top. I have said earlier that this legislation is in the area of ambit; it is too horrendous to be true; it is a con trick; and it is one of the old negotiating ploys that has been used by employers.

What the Hon. Mr Elliott and the Democrats and the Opposition are being asked to do is accept this horrendous legislation and then go into the negotiating processes with the Liberal Party and try to diminish it. I believe that there is only one way to handle this particular legislation, and I am directed by my shadow Minister in another place that we are to oppose this. Quite clearly, everybody knows that the shadow Minister has vehemently opposed this legislation and believes that it ought to be thrown out at the second reading.

I can assure members in this Chamber that the members on this side of the Council are just as adamant: this legislation is a disgrace, it is uncaring, and it is unsympathetic. It has been determined and stated by the Minister that it is draconian. In fact, that admission by the Minister ought of itself to condemn the legislation. We appeal to members opposite.

Members with an appreciation of the law on the other side and members with an appreciation of the law in the other place know that this legislation is bad: they know it is flawed. They mumble in the corridors but unfortunately, when the opportunity did present itself to those members in the Lower House to stick up for injured workers, to reinforce the promises that were made to the community in South Australia, not one of them exercised the opportunities they had under the constitution of the Liberal Party to vote for justice and to throw the legislation out. Not one of the 37 members of the Lower House was prepared to defend that which they were honour bound to protect and vote with the Opposition.

However, we will have an opportunity in this House for those members to exercise their independence. They claim they are statesmen. When this legislation comes to the second reading, I ask them not to mess around with it at this stage of the proceedings. I call on members of the Chamber (and particularly I rely on the Hon. Mr Elliott and the Hon. Sandra Kanck to support us) to throw out this legislation.

In conclusion, watching the ABC tonight I was pleased to see the Hon. Mr Elliott on television give an undertaking that it was his intention to throw this legislation out. I invite all members of the Chamber to follow the lead by the Australian Labor Party and the Democrats and throw this legislation out. Show this legislation the same mercy as the Liberal Party has shown injured workers in South Australia and throw it out.

The Hon. CAROLYN PICKLES (Leader of the Opposition): There can be no doubt that this Bill will have a devastating impact on the levels of workers' benefit—and the Minister seems proud of this fact. In Parliament on 7 February he described the Bill as 'draconian action' and said:

> I have said that it is harsh, and I have said that it is very deliberately harsh. I have never gone away from that.

In the *Advertiser* of 14 February the Minister was quoted as saying that the WorkCover issue must be looked at 'without emotion'. I believe what he really meant was that he preferred the issue to be looked at without compassion.

The Bill effectively means the end of income maintenance for injured South Australian workers. The Government does not seem to realise that workers put their physical and emotional health on the line when they go to work.

In my contribution to this debate, I want to focus particularly on the harm this legislation will do to the women of our community. Obviously, women are today employed in an infinite variety of occupations throughout the work force and each carries her own inherent risk.

The Worksafe Australian National Institute report entitled 'Occupational Health and Safety: The experience of women workers, Australia, 1991 to 1992' states:

> Four industry divisions accounted for some 78 per cent of cases affecting women. These were community services, manufacturing, wholesale and retail trade, and recreation, personal and other services. However, only 72 per cent of the total female work force is employed in these industries. Of these industries, higher than average incidence and frequency rates were experienced in community services, manufacturing, and recreation, personal and other services. Community services accounted for over 40 per cent of cases affecting women, while accounting for only 30 per cent of the total female work force. The wholesale and retail trade division, the manufacturing division, and the recreation, personal and other services division accounted for 14 per cent, 14 per cent and 10 per cent of cases respectively.
>
> The most affected occupation groups for women workers were registered and enrolled nurses (12 per cent), cleaners (11 per cent), trades assistants and factory hands (11 per cent), clerks and related workers (9 per cent), ward helpers (7 per cent) and cooks and kitchenhands (7 per cent).

Generally speaking, women are more likely to be the workers at the bottom of the hierarchy in many work places, whether factories, hospitals or offices. They are therefore subject to the greatest pressures, but they have the lease control over the manner and volume of the work they must do.

Given that women are more commonly found at the front line of the work force, it is it is not surprising that statistics show women to be more likely to suffer work stress injuries. The Government Bill singles out stress claimants especially for harsh treatment: six months after the injury workers with stress injuries will have their income reduced to a pension level. The exact rate of the so-called pension level has not yet been specified by the Government.

If the Government, as it proposes to do by regulation, sets the pension rate in accordance with the Social Security pension rate, injured workers will still be worse off because they necessarily will not be entitled to Health Care Cards and other benefits normally provided to Social Security recipients. The Government realises this full well. It is a blatant exercise in passing on the responsibility for the care of injured workers to the Commonwealth Government.

The Government proposes that income for all injured workers will drop to the pension level after 12 months unless the worker has sustained a disability assessed as at least 40 per cent of total body impairment. This represents an extremely high level of injury. For example, a worker left virtually unable to speak or unable to write would still be under 40 per cent as proposed in the new guidelines for assessment proposed by the Government.

I repeat that this Bill sets out effectively to abolish income maintenance for injured workers. This will hit women particularly hard because a higher proportion of long-term injured workers are women, generally because of the nature of their injuries and fewer employment options, and this is particularly true for women of non-English speaking background. Typical examples will be the many cases of women who injure their backs in the course of factory work, thus being permanently incapacitated for the work for which they are suited by virtue of their education and background, and clerical workers with injured backs who will never again be able to sit and type for hours on end.

The Government's proposed new guidelines dramatically reduce the significance of pain and suffering in assessment of a worker's injury. This is a particularly important aspect of work injury for many women. In my view, true compensation must take into account the disruption to the worker's family life. Back injuries, for example, will often make it very difficult for women to perform household activities without pain. We are well aware from the statistics that, unfortunately, women still are the predominant performers of household activities. Injuries may also affect a woman's capacity to lead a sexually active life. One has to be blunt about it. This is part of the true cost of workplace injuries. The emotional distress on top of physical disabilities often produces extreme friction within families—in many cases leading to relationship breakdown.

Of course, women will always be severely affected by WorkCover changes if their partner is an injured worker. The sense of injustice, sheer frustration, and financial pressures created for injured male workers will directly impact on the women in their lives. In a very large number of cases, the Government's abolition of true income maintenance will mean workers and their families will have to sell their home

and move to cheaper accommodation. This is no exaggeration. The appalling consequent disruption, frustration and stress seem to be beyond the contemplation of the Liberal Government. Many harsh divisions of the Bill apply to men and women equally. For example, workers will have their disabilities assessed by WorkCover appointed doctors, with no adequate review of the doctors' decisions. Strict time limits will be set on the worker's right of appeal, although WorkCover will be given the power to go right back to 1987 and redetermine any claim or decision it has made since that time.

The Government also plans to change the cost rules in the Workers' Compensation Appeal Tribunal to pressure workers into accepting unsatisfactory decisions because they will not be able to financially risk bringing the matter before a judge. The list goes on and on. My colleague the Hon. Mr Roberts has detailed this in a lengthy speech before I have spoken today. It is grossly misleading to speak of this Bill as cost saving. It is really about cost transfer. The aim of the Bill is to callously and conscientiously transfer money from the pockets of injured workers and families to the pockets of employers at the expense of the emotional health and wellbeing of thousands of South Australian families.

Toady I attended the rally on the steps of Parliament House, and it was an enormous rally, despite the fact that it was a very hot day. Many injured workers were present, and it was very courageous of many of them to brave the elements today to take part in the rally. There is no doubt that this is a draconian Bill. One cannot even imagine why the Government should introduce such a callous piece of legislation, and I and my colleagues on this side of the Chamber oppose the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

GOVERNMENT FINANCING AUTHORITY (AUTHORITY AND ADVISORY BOARD) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 February. Page 1143.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports this Bill. This Bill centralises the responsibility for the supervision of the South Australian Financing Authority, giving the Under Treasurer a more significant role. Appropriate procedures have been put in place to ensure that the Treasury of the day is made aware of the advice given to the authority by the advisory board, and I note that any departure from the recommendations of the advisory board must be relayed to the Parliament via the annual report of the authority. On the face of it, the structure and procedures put in place by the Government appear adequate. Time will tell. Presumably, the Treasurer and shadow Treasurer will be keeping an eye on SAFA and these new structures and procedures.

I am pleased that the amendment moved by the Opposition in another place to provide for gender balance on the board was successful. In response to this amendment, the Hon. Mr Baker stated that he was quite relaxed about this issue. I wonder whether the Government is so relaxed about the issue that it will put this clause in every Bill that sets up a board, as the previous Government had done. I wonder whether the Minister might answer that query in his response to this legislation. I note that we will be dealing with other legislation that does have a similar amendment. I put on the record now that the Opposition will go on putting in this amendment until the Government gets the message. In any case, the Opposition supports the second reading of the Bill, and I indicate that we have no further amendments.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

GAMING SUPERVISORY AUTHORITY BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to establish a Gaming Supervisory Authority to provide improved control with respect to the licensing, supply and monitoring of gaming machines. Currently, each element of the gaming machines structure is subject to the statutory, administrative and disciplinary powers of the Liquor Licensing Commissioner through the licensing process and to the statutory conditions applied to licences in accordance with schedules 1 and 2 of the Gaming Machines Act. However, from a practical perspective, a significant level of independence is available to the various licence holders and despite the wide powers of the Liquor Licensing Commissioner, effective control is to some extent reliant upon the cooperation of licensees.

This level of independence contrasts with interstate jurisdictions where centralised control is a key feature of the efforts to maintain the integrity of the gaming machine industry. As a consequence, the provisions of this Bill are designed to provide the Gaming Authority with an overarching supervisory responsibility for all aspects of the gaming machines industry and an overriding authority on any matters which are not the direct responsibility of the Liquor Licensing Commissioner.

These changes will be achieved by expanding the role of the Casino Supervisory Authority which already supervises gaming operations, including gaming machines, conducted at the Adelaide Casino. This expansion is a logical progression of that Authority's current role and can be achieved with a minimum of effort. Thus, the new Authority would have similar powers in relation to gaming machine operations outside of the Casino to those currently available to the Casino Supervisory Authority with respect to the Casino. The Liquor Licensing Commissioner will become responsible to the Gaming Supervisory Authority for the scrutiny of the Casino and all gaming machine operations, and the Authority will have the overall responsibility for those matters, with the power to give directions to all licensees and to hold inquiries into any aspect of the Casino or the gaming machine industry. The Liquor Licensing Commissioner will still retain independence with respect to the exercise of statutory discretions under the *Gaming Machines Act* or the *Casino Act*.

Under the *Gaming Machines Act*, appeals against directions or decisions of the Liquor Licensing Commissioner are heard by the Casino Supervisory Authority. Decisions taken by the Commissioner under the *Liquor Licensing Act* are subject to appeal to the Liquor Licensing Court. There is a close link between liquor and gaming machine licensing and it would be sensible to place the responsibility for adjudicating on appeals with the Court. This will ensure consistency with respect to the hearing of appeals. It will also allow the Gaming Supervisory Authority to concentrate on its supervisory responsibilities. The Bill does provide for directions issued by the Liquor Licensing Commissioner, as distinct from decisions or orders, to be reviewed by the Authority, so that directions issued by the Commissioner which licensees consider unreasonable can be reviewed without the need for an appeal to the Court.

It is relevant to point out that the proposed arrangements for the supervision of the gaming and casino industries will not affect the essential independence of the Commissioner of Police or the Auditor General in these areas.

It is proposed that the new Authority will consist of five members (the Casino Supervisory Authority has only three members) in view of its expanded role.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the Act to be by proclamation.

Clause 3: Interpretation

This clause provides the necessary definitions.

Clause 4: Establishment of Authority

This clause establishes the Gaming Supervisory Authority.

Clause 5: Constitution of Authority

The Authority will consist of five members appointed by the Governor on the nomination of the Minister. One must be a legal practitioner of at least 10 years' standing or a retired judge of a superior court in this State or any other State or Territory or of the Commonwealth. A person is not eligible for appointment if he or she has a direct or indirect financial or personal interest in the undertaking under the casino licence or a licence under the *Gaming Machines Act*. The legal practitioner (or retired judge) will be the presiding member. Deputies may be appointed. The deputy of the presiding member must also be a legal practitioner or retired judge.

Clause 6: Conditions of membership

This clause sets out the term of office for members (a term not exceeding three years) and also sets out the grounds on which a member can be removed from office.

Clause 7: Allowances and expenses

This clause provides for members' allowances and expenses.

Clause 8: Validity of acts of Authority and immunity of members

This clause provides the usual immunity for the Authority and its members, and also provides for the validity of acts or proceedings despite vacancies in membership or defects in the appointment of members.

Clause 9: Conflict of interests

This clause prevents a member from taking part in decisions where there is a conflict of interest. Such conflicts must be declared and recorded.

Clause 10: Secretary

This clause provides for the position of Secretary to the Authority.

Clause 11: Functions and powers of Authority

This clause sets out the functions and general powers of the Authority. The Authority's functions in relation to the *Casino Act* are to determine the conditions of the casino licence, to ensure that a proper system of supervision over the casino is maintained and to advise the Minister on matters relating to the casino or the *Casino Act*. Its functions in relation to the *Gaming Machines Act* are to ensure that a proper system of supervision exists over the operations of all licensees under the Act and to advise the Minister on matters relating to those operations or the Act. The Authority can require the Liquor Licensing Commissioner to furnish the Authority with reports relating to the operations of the casino or any licensee under the *Gaming Machines Act* or relating to the Commissioner's scrutiny of those operations. The Authority may give the Commissioner directions (but not in relation to the exercise by the Commissioner of a statutory discretion).

Clause 12: Proceedings of Authority

This clause provides that a quorum of the Authority consists of two members plus the presiding member or deputy presiding member. The presiding member (or deputy) will determine questions of law or procedure.

Clause 13: Inquiries by Authority

This clause empowers the Authority to conduct inquiries. The Minister may initiate an inquiry into any matter relating to the *Casino Act* or the *Gaming Machines Act* or any licence under either of those Acts. Reports of inquiries must be laid before both Houses of Parliament unless the Authority recommends that they should remain confidential.

Clause 14: Powers and procedures of Authority on an inquiry or appeal

This clause sets out the powers and procedures of the Authority when conducting an inquiry or hearing an appeal. This provision is identical to the current provisions in the *Casino Act* and *Gaming Machines Act*.

Clause 15: Representation before Authority

This clause allows persons appearing before the Authority to do so by way of a legal practitioner or by an employee of a representative industry association.

The Hon. T. CROTHERS secured the adjournment of the debate.

STATUTES AMENDMENT (GAMING SUPERVISION) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill gives effect to changes arising from the proposal to establish a Gaming Supervisory Authority. Apart from minor amendments to remove reference to the Superintendent of Licensed Premises from the *Casino Act*, the Bill seeks to amend the *Casino Act* and the *Gaming Machines Act* to reflect the establishment of the Gaming Supervisory Authority and its powers and responsibilities. The *Liquor Licensing Act* is amended to allow the Licensing Court to consider appeals arising from the decisions or orders of the Liquor Licensing Commissioner under the *Gaming Machines Act*.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement by proclamation.

Clause 3: Interpretation

This clause defines "principal Act" for each of the Parts.

PART 2

AMENDMENT OF THE CASINO ACT 1983

Clause 4: Amendment of s. 4—Interpretation

This clause inserts the necessary new definitions in the *Casino Act*.

Clause 5: Repeal of Part II

This clause repeals the Part of the *Casino Act* that established the Casino Supervisory Authority.

Clause 6: Amendment of s. 12—Inquiry to be held by the Authority

This clause effects a consequential amendment.

Clause 7: Variation of conditions of the licence

This clause provides that a proposal for variation of the casino licence conditions may be initiated by the Minister, the Liquor Licensing Commissioner, the licensee (i.e. the Lotteries Commission) or the Authority itself.

Clause 8: Amendment of s. 19—Exclusion of certain persons from casino

Clause 9: Amendment of s. 21—Responsibility of Commissioner

Clause 10: Amendment of s. 22—Power of inspection

These clauses effect consequential amendments.

PART 3

AMENDMENT OF GAMING MACHINES ACT 1992

Clause 11: Amendment of s. 3—Interpretation

This clause inserts the necessary new definitions in the *Gaming Machines Act*.

Clause 12: Substitution of s. 5—Commissioner responsible to Authority for scrutiny of undertakings under certain licences

This clause changes the Liquor Licensing Commissioner's responsibility under the *Gaming Machines Act* from the present general administrative responsibility to the Minister to a more specific responsibility to the new Gaming Supervisory Authority for the constant scrutiny of the operations under all licences under the Act.

Clause 13: Repeal of ss. 11, 12 and 13—Authority may give directions to licensees

This clause repeals those sections that dealt with the Casino Supervisory Authority's inquisitorial powers (these are now covered in the *Gaming Supervisory Authority Bill*) and replaces them with a provision that empowers the new Authority to give written directions to any licensee under the Act. Failure to carry out such a direction bears a penalty of a division 2 fine or division 4 imprisonment (in the case of the holder of the monitor's licence) and division 3 fine or division 5 imprisonment in the case of any other licensee. The Authority's direction will prevail over a direction of the Commissioner.

Clause 14: Amendment of s. 69—Right of appeal

This clause provides a right of appeal to the Liquor Licensing Court from decisions or orders of the Commissioner or to the Authority in the case of a direction given by the Commissioner.

Clause 15: Amendment of s. 70—Operation of decisions pending appeal

This clause makes consequential amendments to the provision dealing with the operation of decisions, orders and directions pending appeal under the previous section.

PART 4

AMENDMENT OF THE LIQUOR LICENSING ACT 1985

Clause 16: Insertion of s. 12A—Jurisdiction of Court

This clause inserts a new section in the *Liquor Licensing Act* to make it clear that the Liquor Licensing Court has the jurisdiction conferred on it by that Act and any other Act (i.e. the *Gaming Machines Act*).

Clause 17: Amendment of heading

This clause is a consequential amendment to a heading.

Clause 18: Amendment of s. 19—Proceedings before the Court

This clause makes it clear that section 19 of the principal Act applies to all proceedings before the Court, whether under the *Liquor Licensing Act* or any other Act.

Clause 19: Amendment of s. 23—Appeal from orders and decisions of the Court

This clause provides that there is also no right of appeal to the Supreme Court from a decision or order of the Licensing Court on an appeal against a decision or order made by the Commissioner under the *Gaming Machines Act*.

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

STATE GOVERNMENT INSURANCE COMMISSION (PREPARATION FOR RESTRUCTURING) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill contains amendments to the *State Government Insurance Commission Act 1992* to enable preparations for sale of SGIC to proceed and protect the Directors and staff of SGIC and other persons involved in the process.

The Government established the Asset Management Task Force in April 1994 to oversee all the sales of Government entities and ensure a whole-of-Government approach. The role of the Task Force, inter alia, is to ensure that the Government, as the owner of these assets, retains ultimate control and responsibility for the sale process.

The Government has adopted a uniform three-stage methodology for the sale process which involves:—

- preparation of a scoping study to identify all the issues relevant to the sale;
- the packaging of the assets for sale including preparation of legislation as required; and
- implementation of the agreed sale process.

The Government has established an SGIC Sale Project Committee consisting of the Chairman of SGIC, the Chairman of the Asset Management Task Force and the Under-Treasurer. Work is proceeding on the first stage of the sale process by the Asset Management Task Force and the management of SGIC under the direction of the Project Committee.

The implementation of sale procedures can cause difficulties where the Board of the relevant body has statutory or independent responsibilities that are not consistent with the sale process.

The Government wishes to overcome these difficulties in respect of the proposed sale of the State Government Insurance Commission and is introducing this legislation to facilitate and expedite the work which needs to be undertaken to get SGIC ready for sale.

Similar legislation was introduced to the House in August 1993 to facilitate the work necessary to prepare the State Bank for sale. The present SGIC legislation does not contemplate a corporatisation process or preparation for sale.

In drafting this Bill, the Government had in mind the following factors:

1. The Board members of SGIC have reasonably onerous duties, a breach of which is subject to criminal sanction. Those duties do not include any restructure or sale process. It is arguable that the immunity from civil liability enjoyed by the Directors would not extend to their assistance or involvement in that process.
2. By reason of the nature of the business carried on by SGIC, the very different prudential and legal requirements on private sector insurance organisations and the potential impact of the Government guarantee on any decisions respecting the sale, the sale process of the SGIC is likely to be quite complex.
3. There may be common law duties of confidentiality owed by SGIC and its staff to the client and others with which SGIC has insurance and business relations.

For these reasons the Government has determined that it is necessary that this legislation be enacted to protect the Directors and staff of SGIC whilst assisting in the vendor due diligence process. Other persons who must also be involved in the sale process include public servants and financial and legal consultants engaged by the Crown. The sale process, by definition, must be carried out on behalf of the Government as the owner of SGIC.

The Bill will facilitate the work required in order to prepare SGIC for sale. The sale of SGIC will not take place until all work has been completed, until the Government has evaluated the result of this work and until further enabling legislation is introduced to Parliament to authorise and effect the sale of the State Government Insurance Commission.

As I have already noted, these amendments are necessary, but they deal purely with matters of machinery. They do not provide either for corporatisation or sale of SGIC. These matters will be subject to subsequent consideration by Parliament.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

Clause 2 provides for the measure to be brought into operation by proclamation.

Clause 3: Insertion of Part 6

This clause inserts a new Part 6 into the principal Act providing for action required in preparation for restructuring and disposal of the State Government Insurance Commission and its subsidiaries.

Proposed section 31 defines the terms used in the Part. 'Authorised project' is defined in terms of proposed section 33(1). 'SGIC Group' is defined as being the State Government Insurance Commission and the subsidiaries of the Commission. 'SGIC Group undertaking' is defined as the undertaking of the Commission and of its subsidiaries, or any part of that undertaking. 'Subsidiary', of the Commission, is defined as a body that is a subsidiary of the Commission according to Division 6 of Part 1.2 of the *Corporations Law* as modified in its application by subclause (2), or any other body or entity of which the Commission is the parent entity according to Division 4A of Part 3.6 of the *Corporations Law*.

The proposed new section also provides that in applying Division 6 of Part 1.2 of the *Corporations Law* to determine whether a body is a subsidiary of the Commission, the reference in section 46*(a)*(iii) of that Law to one-half of the issued share capital of a body is to be taken to be a reference to one-quarter of the issued share capital of the body, and that shares held, or powers exercisable by, the Commission or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the Commission is an instrumentality of the Crown and holds its property on behalf of the Crown.

In applying Division 4A of Part 3.6 of the *Corporations Law* to determine whether the Commission is the parent entity of some other body or entity, the Commission is to be taken to be a company to which that Division applies.

Proposed section 32 provides that this Part applies both within and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

The proposed section 33 provides for the following action (collectively referred to as the 'authorised project') to be undertaken for the preparation for restructuring and sale of the SGIC Group undertaking:

(a) determination of the most appropriate means of disposing of the SGIC Group undertaking and, in particular, whether the SGIC Group undertaking should be restructured by vesting the undertaking in a separate body

corporate or separate bodies corporate in preparation for disposal;

(b) examination of the SGIC Group undertaking with a view to its restructuring and disposal;

(c) any other action that the Treasurer authorises, after consultation with the Board, in preparation for restructuring and disposal of the SGIC Group undertaking.

This is to be carried out by persons employed by the Crown and assigned to work on the project, officers of the Commission assigned to work on the project, other persons whose services are engaged by the Crown or the Commission for the purpose of carrying out the project, and any other person approved by the Treasurer whose participation or assistance is, in the opinion of the Treasurer, reasonably required for the purposes of the project.

The proposed section provides that the directors and other officers of the Commission and its subsidiaries must, despite any other law, allow persons engaged on the authorised project, and, with the Treasurer's authorisation, prospective purchasers and their agents, access to information in the possession or control of the Commission or the subsidiary that is reasonably required for carrying out the authorised project, and provide any other co-operation, assistance and facilities that may be reasonably necessary for the carrying out of the authorised project.

The clause contains a provision for certificates to identify persons who are to have access to information under the clause.

Proposed section 34 provides that disclosure or use of information as reasonably required for the authorised project and things done or allowed under the new Part will not—

(a) constitute a breach of, or default under, an Act or other law; or

(b) constitute a breach of, or default under, a contract, agreement or understanding; or

(c) constitute a breach of any duty of confidence (whether arising by contract, at equity, by custom, or in any other way); or

(d) constitute a civil or criminal wrong; or

(e) fulfil any condition that allows a person to terminate any agreement or obligation; or

(f) release any surety or other obligee wholly or in part from any obligation.

Proposed section 35 provides that in any legal proceedings, a certificate of the Treasurer certifying that action described in the certificate forms part of the authorised project, or that a person named in the certificate was at a particular time engaged on the authorised project, is to be accepted as proof of the matter so certified. An apparently genuine document purporting to be such a certificate is to be accepted as such in the absence of proof to the contrary.

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

ADJOURNMENT

At 10.15 p.m. the Council adjourned until Thursday 16 February at 2.15 p.m.