LEGISLATIVE COUNCIL

Wednesday 22 February 1995

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

LEGISLATIVE REVIEW COMMITTEE: CRIMINAL INJURIES COMPENSATION ACT

The Hon. R.D. LAWSON: I table the report of the committee on the Criminal Injuries Compensation Act and move:

That the report be printed.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE

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

QUESTION TIME

EDUCATION QUALITY ASSURANCE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister of Education and Children's Services a question about education quality assurance.

Leave granted.

The Hon. CAROLYN PICKLES: On 25 December the Minister signed a letter answering my question on notice concerning the establishment of a Quality Assurance Unit in the Department of Education and Children's Services. First, I must acknowledge the Minister's commitment to signing correspondence on Christmas Day. The Minister's letter detailed how the Quality Assurance Unit had been established since the third term of last year and comprised nine staff, five of whom have salaries of $67 000 or more. The total annual salary bill for this unit is almost $500 000.

The Minister explained that, since the third term last year, the unit has been drafting a framework for quality assurance processes for consultation, and that the program of work for 1995 has not been finalised. I have now received information from the Minister's department that the Quality Assurance Unit has in fact started on its new role as the quality watchdog by conducting a review into how many officers in the Education Department have mobile telephones. My questions to the Minister are:

1. Who is being consulted on the quality assurance framework document and will the Minister table a copy?

2. Has the work planned for 1995 now been completed by the Quality Assurance Unit and what are the details?

3. What was the purpose of the mobile telephone review and how many officers in the Minister's department have mobile telephones?

4. Does the department publish a list of mobile telephone numbers and, if not, why not?

The Hon. R.I. LUCAS: I will have to take some of those questions on notice and bring back a reply. The simple answer to the mobile phones question is that there was a view from somewhere that a number of officers were using a mobile phone while they sat at their desk with a telephone next to them and that it was probably not the best way of going about using the mobile telephone if there was ready access to a stand-alone unit within the department. As to who raised that question, whether it was another central agency, the Treasurer's office or Premier and Cabinet, or whether it was generated from within the Department of Education and Children's Services initially, I am not sure, but I can certainly check that for the honourable member and bring back a reply.

I know that there was a question mark as to whether we could reduce central office expenditure somewhat on telephones, in effect, by looking at the way that we use mobile phones. It was as simple as that: an attempt to see whether we could reduce our expenditure on mobile phones so that we could spend more money on schools and services, which is where we want to see our money being spent. We do not want to waste money in the central office if we can avoid it.

In relation to the other aspects of the question, I will consult the Chief Executive Officer of the department and the head of the Quality Assurance Unit and bring back a reply as soon as I can.

ORGANOCHLORINS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development and Local Government Relations, a question on organochlorins.

Leave granted.

The Hon. T.G. ROBERTS: The question that I asked the Minister for Primary Industries recently was slightly different in that it related to the ARMCANZ conference to be held shortly. The question related to the nature of the submission and the basis for the information. I am now in receipt of more information from people in the industry who have supplied to me questions that they would like answered. I cannot answer them and I would like the Minister to answer them for me.

On Tuesday 21 February the *Advertiser*, in an article headed, 'Termite spray ban could lift price of new house,' stated:

> The cost of a new house could rise by up to $4 000 because of a national ban on the use of organochlorin termite sprays, the Housing Industry Association has warned.

The information that I have been given by other people in the industry associated with other products, which are said to replace organochlorines because of the dangerous nature that the chemicals pose to health, have indicated that $4 000 is nowhere near the price that would be added to a new house. Their estimate is that $400 would be nearer the mark and in some cases the added cost would be less than that.

The position appears to be that the State is preparing a case to go to the Commonwealth to try to overturn the decision to which I alluded in the previous question, namely, to change the Federal approach to the ban in South Australia. The information that has been given to me leads me to ask the following questions:

1. Is it a fact that the Government is preparing a submission which states that there are no effective alternatives or conclusive evidence on the effectiveness of alternatives or criteria for measuring the effectiveness of alternatives to organochlorines as termiticides?

2. Is it true that it is preparing a submission which states that alternatives to organochlorines, including physical barriers and alternative chemicals, have not been adequately

tested in alkaline and highly reactive soils; that the alternative termiticide chlorpyrifos is not effective in alkaline soils; that the adequacy of physical barriers in Adelaide's cracking soils is a concern; and that the long-term effectiveness of physical barriers is unknown?

3. Will the Minister table any scientific studies, surveys or investigations providing conclusive evidence of the effectiveness of organochlorin termiticides in protecting buildings from termites in different regions in South Australia?

4. If no such evidence is available for organochlorines, why does the Minister require such evidence for non-organochlorin methods of termite control?

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

TRANSPORT DEPARTMENT

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about the Department of Transport strategic review.

Leave granted.

The Hon. BARBARA WIESE: In her ministerial statement yesterday, the Minister outlined a savage slash and burn/carve up of the Department of Transport. She noted—

Members interjecting:

The PRESIDENT: I think that is an opinion and I ask that the honourable member refrain from expressing opinions in explaining her question.

The Hon. BARBARA WIESE: I would have thought it was fact but I will take your advice, Mr President. The Minister noted that the department had undergone considerable change over the past 20 years and she said:

> The new strategic direction simply represents an increase in the extent and speed of the change process.

That is an understatement of monumental proportions, and I would like to dissociate the Labor Party from any implied suggestion in those remarks that this was a path down which our Government would have moved—we certainly would not have done so to the extent of this Government because the financial gains could not be substantiated and in our opinion did not outweigh the social costs that such a move would bring. The so-called new strategic direction cuts the Department of Transport in half. The new direction will be achieved at the expense of jobs and the livelihood of 1 300 employees with this massive blow to staff having to be accommodated within just two years.

Will the Minister provide detailed information on the number of employees by category of employment, for example, weekly paid, technical, and so forth, who can expect to receive a tap on the shoulder, and in which divisions and units of the department they are currently employed? Will the Minister advise what involvement, if any, work force representatives and relevant trade unions had in arriving at the review's conclusions? Will she release full details of the Government's new human resource management policy and say how it will apply to the 1 300 Department of Transport employees who are to be axed? In particular, will the Minister explain how and when the provisions for rights of return to the public sector apply as referred to in section 11 of the strategic review on page 14?

The Hon. DIANA LAIDLAW: The honourable member, who did very little to reform and restructure, has clearly taken some offence at the effectiveness with which this Government has moved on this issue. That is not opinion: it is fact. It has been reinforced by discussions I have had with many people in the transport field since I have been Minister and over the period in which we have been involved in this work. There is no employee to be 'axed' as the honourable member emotively said.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: No, she used the word 'axed'. That is not what is going on. As she would know, we have continued the policy of the former Government in terms of no retrenchments. What we have said is that people will be able to make choices. The human relations section of the department has been in close discussion with others and myself in terms of the arrangements to apply. They will be there as will the unions to work with the department through all these changes. I had discussions with a number of unions but not all unions in relation to these changes, and we developed some very satisfactory working relationships at that time.

I referred to that yesterday when I spoke about the maintenance work of the department and how we were working with relevant unions to build up on a pilot basis a private maintenance business in South Australia. There is no such business in South Australia at the present time and the department certainly has the monopoly. I know some councils do such work but we are required by the Federal Parliament through legislation to ensure that by 1996—next year—all maintenance work on national highways must be competitively tendered.

We are simply extending the arrangement, which the Federal Government has required of all Governments across Australia in terms of maintenance work on national highways, to apply to our arterial roads system and, generally, that has been well supported because we have a strong private sector in this State that is well able to do that work in the construction industry and to do so competitively. As I said, we are building up with the support of unions, on a pilot basis, a maintenance industry.

As to the department's way of doing work, yesterday I said that this is simply an increase in the extent and speed of the process of change in the department. When looking at the ministerial statement I recall that those words were actually selected by senior management within the department as the most appropriate words I could use to describe the situation. It was their assessment that this was an increase in the extent and speed of change within the department and I concurred with that assessment.

In terms of senior management in the department, the senior management is comprised of exactly the same people who were in the department when the honourable member was Minister. They were not my appointments. I have not moved in and changed the senior management. The senior management has worked with me through this exercise over the past six months acknowledging that there is a change in the role and function of the department.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Not solely, as the honourable member may wish to accuse me, of some philosophical hangup that I may have. It arises from Federal Government legislation and from the fact that we inherited a massive debt that we have to get under control. It arises from the fact that we have made a number of commitments in terms of road transport that have been well applauded throughout the electorate, whether it be the sealing of arterial roads, the third arterial road or the sealing of roads on

Kangaroo Island. These changes will help us meet all those objectives.

I make the point that 40 per cent of the work that the department currently undertakes is now undertaken by the private sector. As the department alerted me, and I agree, we are simply increasing the extent and speed of a change undertaken over a number of years. Going back to the comment about jobs, I stated yesterday that it is important to understand that the Government will continue to need and fund roadworks, maintenance and construction work. We are not cutting funding for that purpose. In fact, we are trying to find extra funds for that purpose and, therefore, there will still be jobs—in fact, more jobs—in the transport sector. What we will be changing in this exercise is the nature of the employer of people doing that work. So, jobs will not be lost to the transport sector. They will be downsized within the department. Certainly, the department will be focusing on the role of manager of the assets, not provider of that work.

That general direction is being undertaken across Australia at the encouragement of the Federal Government, which understands, as we do—even though members opposite fail to understand it—that we have to undertake micro-economic and macro-economic reform in the transport sector. The Department of Transport must play its role and it is keen to do so, and that is why, together, we have come to this arrangement, which the Government has endorsed. I could well understand if there was some degree of anxiety, but according to the feedback to the office today there has been support for that undertaking throughout all areas of the department. I know that some unions have difficulty with it and the Public Service Association, in particular, has got itself pretty up tight about this. Other unions, as I have indicated, have been able to work with the Government in this.

In terms of the Public Service Association, it should be understood that we have not by any means singled it out—and it probably wishes to accuse me of that as it has accused me of other things in recent days. In fact, I understand that I have been accused of perpetrating something equivalent to a 'Garibaldi' on the roads. It has accused me of all sorts of things. I have not sought to single out the Public Service Association, but it fears—and one must understand that this is the basis for so much of its agitation—that when those jobs transfer to the private sector, as they will in many instances, the Public Service Association will not have coverage. I think that is essentially what is behind much of the hysteria, wild remarks and ill-considered statements made by the Secretary, Jan McMahon. In fact, on ABC television last night she said:

> The Public Service Association is very surprised, and if the private sector goes into deregulation then perhaps we are having an equivalent of a 'Garibaldi' on the roads.

It would hardly be surprising to members that I would be seeking advice about that statement. I can assure members that, at the very least, I will be seeking a public apology, because in terms of the maintenance and safety on our roads I am implementing Federal Government/Federal Parliament policy, and that is that there will be—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The honourable member has reason to get excited because she did not do what should have been done in terms of the public sector in micro-economic reform, and also she sought to ignore what I am obligated to do under the Federal Government legislation, and that is to competitively tender—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —maintenance and construction work. So that we do not lose our money for roads from the Federal sector, I am implementing Federal Government legislation and extending that same principle of competitive tendering for maintenance and construction of the State arterial road system. That causes no great difficulty for anyone in the community except for members opposite and the Public Service Association. So, the least I will be seeking is a public apology for such an offensive statement as that made by Ms McMahon yesterday. I think there were other questions that the honourable member asked about categories. I have certainly sought to put the statement in context, which the honourable member did not choose to do. I will seek details on some of the matters concerning categories of employment that the honourable member sought in her question. I do not have such information at hand.

The Hon. Barbara Wiese: What about the human resources policy?

The Hon. DIANA LAIDLAW: I said to the honourable member that I will get the information.

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question about privatisation of several functions of the Department of Transport.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to her ministerial statement, made in this place yesterday, as well as the report entitled 'The Way Ahead' about the privatisation of several functions of her department. In her statement, the Minister outlined the Government's preferred policy option (which is option 2 in the report), which proposes, among other things, to privatise mechanical services, plants and workshops of the Department of Transport, and which is partly funded by the selling off of a number of the department's important assets. The report omits revenue estimates for the proposed asset sales. My questions to the Minister are:

1. What is the total value of asset sales outlined in 'The Way Ahead' document, and how do these affect the actual financial return to taxpayers and the net present value of option 2 over the next 10 years?

2. Why was a detailed breakdown of the revenues and outlays for each option not spelled out in the report? Can the Minister now provide this information to the Council and, if not, why not?

The Hon. DIANA LAIDLAW: The information I can provide to the honourable member and the Council is that the $141 million as advised yesterday is a net figure. It takes into account all TVSPs and other matters we would have to address as part of the downsizing of the department and the creation of other units on a smaller basis. That is the figure over 10 years. I can recall that, in the second or third year, it is $56 million of asset sales in terms of workshops, plants, mechanical equipment, etc. I do not have the detail with me and I will follow through those questions that the honourable member has asked.

BLOOD TESTING KITS

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Transport a question about drink driving.

Leave granted.

The Hon. R.R. ROBERTS: Recently, I asked a question of the Minister in respect of a case that occurred in Port Pirie,

where the police breath tested a member of the public who had an alcohol reading of .195. The basis of the quashing of this conviction was that the defendant had been unlawfully and unwittingly tested, and that the blood test kit that was issued to that defendant was not approved properly by the Minister for Transport. Yesterday, I received an answer from the Minister for Transport in respect of these matters, in which she indicated that from 1 February 1994 some 554 of these test kits had been issued by the police. The Minister further stated:

> Blood test kits are issued as an evidentiary aid to persons charged with prescribed concentration of alcohol offences; they do not constitute part of the prosecution case. Their purpose is to provide the defendant with a means of obtaining evidence for the defence should they so desire.

She further stated:

> If the validity of the blood test kit was not raised as an issue at the trial, any conviction obtained would be based upon the evidence presented by the courts or by both parties. There were, therefore, no convictions from the use of the blood test kits.

I have some further questions for the Minister in respect of this matter. Does the Minister assert that the blood test kit's non-approval was not the basis for the dismissal of the charges in this case and, if so, does the Minister say on what grounds the magistrate dismissed the charges? Secondly, of the 554 kits issued, besides those cases which the Crown Solicitor advised should be withdrawn and which have been withdrawn, how many drink driving charges relating to the period between 1 February 1995 and 22 July 1995 are subject to legal challenge due to the failure by the Minister to approve the blood test kits in good time? Finally, is she satisfied that all the blood test kits presently being distributed by the police in possible cases of drink driving have been properly approved by the Minister and, specifically, how has the Minister given her approval?

The Hon. DIANA LAIDLAW: In relation to the third question, I gave approval for these kits on 22 July 1994, as the honourable member has acknowledged. I received advice from legal sources two days earlier that it was not usual for specific approvals to be sought and that a challenge as to the validity of the test kit would be most unlikely. I had been asked two days earlier to sign this approval. I was asked without knowledge of or regard to the Port Pirie incident, and this was the first time I had ever received any advice on the issue. If I had been asked to approve them earlier I would have done so, but I was alerted to this issue by the department one week after the Police Prosecutions Branch had raised the question of the approvals.

So, in terms of my responsibilities, when I was alerted to the issue for the first time, I gave the approvals that had been requested of me, without regard to or knowledge of the Port Pirie incident. I indicated yesterday that 'although not the basis for the dismissal of the case, potential difficulties associated with the technicalities of future proof of the approval of the blood test kits emerged during the trial and that these matters are being addressed by the Minister for Emergency Services and the Attorney-General.' That is all I can add in that respect. The honourable member has sought a number of other details, and I certainly do not have that information in my head or on hand, but I will provide it to the honourable member.

The Hon. R.R. ROBERTS: As a supplementary question: has the Minister received legal advice on the validity of the form in which she gave the approval for these blood test kits?

The Hon. DIANA LAIDLAW: I have seen no formal legal advice or memos on this matter.

LEGAL AID

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General a question about legal aid.

Leave granted.

The Hon. G. WEATHERILL: For the past 30-odd years (and it has been going on a lot longer than that) I have been hearing that the Australian dream is to own one's home. Unfortunately, a lot of the people who strive for this are on very low incomes. They scratch and scrape to raise the money to buy own their homes, some of which are units or small houses that would be worth from approximately $70 000 to $130 000. These people are restricted in their access to justice. When these people seek legal aid, it does not matter whether they have any bank savings or whether they are on a very low income. If they have the right in those two areas to obtain legal aid, the next thing they are asked is, 'Do you own your own home?' If they own their own home, to go to court to fight a case or to get justice in any way, shape or form, they must sell that home. Selling the family home in this way to get justice in this country is totally unacceptable. Will the Attorney-General consider putting the home aside from the conditions for receiving legal aid and looking only at the person's income and savings which would restrict them from receiving legal aid? Would he also raise this matter at the Attorney-Generals' conference so that these people can receive justice in this country, rather than lose their family home?

The Hon. K.T. GRIFFIN: It was the former Attorney-General who brought into the Parliament a Bill to amend the Legal Services Commission Act which allowed for the Legal Services Commission to take a charge over real property to secure any legal aid which might be granted by the Legal Services Commission to the applicant. That matter had been raised by the Legal Services Commission, as I understand it, with the former Attorney-General, who did bring the legislation into the Parliament.

It seems to me that you cannot make a rule that at no time will there be a charge taken over real estate. There are small family homes and large family homes, and people do embark upon devices to avoid the meeting of their obligations, whether it be legal aid or perhaps some of the corporate defaulters of the 1980s who seem to be able to shift a great deal of their resources away to trusts and members of their family and then seek to come onto legal aid. I think Mr Connell in Western Australia only recently applied for legal aid. I thought that was quite a disgraceful approach, but fortunately he did not get it. So, one cannot really say as a fixed rule that is immutable that the Legal Services Commission should not take a charge over real estate in relation to legal aid.

I should just remind members that the Legal Services Commission Act actually provides for the Legal Services Commission to be independent of Government control. So, by statute, it is independent of control at the State level, as it is independent of the Government at the Federal level. The only way in which there can be any influence is through the provision in the budgets of both the Federal Government and the State Government each year for appropriate grants of funding and through the lodging of annual accounts and proper auditing of those accounts. The Legal Services

Commission sets its own guidelines in relation to the determination as to whether or not legal aid should be granted, whether it is in respect of a particular class of legal action, or whether it is in relation to a particular category of persons and their particular financial circumstances.

I remind the honourable member that the Federal Government, through the Federal Attorney-General, is expected to be making a statement on the access to justice report by Professor Sackville. I think that statement is due to be made either this month or next month, and there is some speculation that $50 million might be available through access to justice, although a subsequent report said that they are going through the rigours of budgetary scrutiny and it might be reduced to $24 million, or some such figure. So, at the Federal level, as I understand it, some consideration is being given to additional funding.

There is a recognised problem in the availability of funds. The primary funding comes, and has always come, from the Federal Government. The basis upon which this State now makes funding available to the Legal Services Commission is 40 per cent from the State and 60 per cent from the Commonwealth. When I was Attorney-General previously, it was 75 per cent by the Commonwealth and 25 per cent by the State, and that has been renegotiated in the intervening period. The fact of the matter is that it is very largely a Commonwealth responsibility. Many of the applicants for legal aid are those who might be on Commonwealth pensions or other allowances, or be returned service people, and traditionally the Commonwealth has accepted a responsibility to fund the needs of those people.

So, all I can do with the honourable member's question is refer it to the Legal Services Commission to inquire if it will provide me with a response from its point of view. So far as the Standing Committee of Attorneys-General is concerned, I doubt if there is any good purpose served in dealing specifically with the issue. We do, on each occasion that we meet, have on the agenda issues of legal aid, and they are primarily issues directed towards the inadequacy of the funding made available by the Commonwealth. I will certainly refer the substance of the question to the Legal Services Commission and bring back a reply.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: CANADAIR CL415

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial reply to the report of the Environment, Resources and Development Committee on the Canadair CL415 inquiry, particularly prepared by the Minister for Emergency Services.

Leave granted.

MOTOR REGISTRATION DIVISION

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister of Transport a question about the Motor Registration Division.

Leave granted.

The Hon. A.J. REDFORD: In today's *Advertiser*, the General Secretary of the Public Service Association is quoted as saying that changes to the Motor Registration Division could lead to industrial action and that the changes would mean increased costs. I remind members that the Public Service Association has lost some 40 per cent of its members over the past 12 months. Further in the article, Mr Atkinson was reported as saying:

> [The changes] raised important questions about privacy, with the division's extensive files containing information on organ donors and whether people had been convicted of driving offences.

In the light of that, my questions are: first, will the proposed changes lead to an increase in motor registration charges and increased costs? Secondly, what protection will there be in relation to the privacy of the records of people of South Australia?

The Hon. DIANA LAIDLAW: I thank the honourable member for the opportunity to address those issues. I was fascinated to read those responses this morning in the *Advertiser*, particularly as they were so off the mark. I should have thought that a person of supposed intelligence, to hold the position of Secretary of the PSA, would have appreciated that motor registration charges are in fact set by the Government and that they will continue to be set by the Government because that is one of our direct responsibilities. That has been the case in the past and will continue to be the case in the future. The level of motor vehicle registration fees and charges is a matter of Government policy and it will remain so in the future. So, in answer to the honourable member's direct question, no, the changes will not cause an increase in motor vehicle registration fees.

I should note also that currently there is a review of motor vehicle registration fees. We are seeking to rationalise many of the categories because the way in which they operate at the moment is particularly confusing. It certainly makes it very difficult administratively to operate efficiently and cost effectively. So, we are going through a review of that at the moment and the Registrar will have a report to me by the end of this month or early March.

The bigger issue of privacy was raised by the member for Spence (Mr. Atkinson). It was also important to me in my considerations and to the department when management was looking at the whole issue in terms of its recommendations about the future operations of the head office of motor vehicle registration. I reinforce, as I stated yesterday, that we are looking at outsourcing the work, operations and administration of motor registration at head office, which is not as productive at this time as the smaller branch and regional offices, and we are not planning to look at the outsourcing of their administration.

Privacy has been at the top of our mind in looking at the whole issue, and I am keen to make the following points. Access to information on the register will continue to be very strictly controlled. For an external agent to be authorised to provide services dependent on access to the register will require the agent to be legally bound by the privacy provisions of the Motor Vehicles Act, just as existing motor registration staff are bound by the same privacy provisions of the same Act. The penalty for breaking these requirements is up to one year's imprisonment or a fine of $4 000, apart from any severing of the contract and withdrawal of the authorisation of the agency concerned. Any employee who at present breaches those privacy provisions would be out of the Public Service.

In addition, authorised agents will be able to access information relating only to the select function that they have been authorised to undertake. All transactions and inquiries within the registration and licensing system are electronically logged and, therefore, automatically subject to audit, so agents will be electronically barred from directly accessing the computerised main data base. Information to users of the

network is provided on a separate computer, which effectively creates a barrier to accessing unauthorised information.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: I thought you would have been interested in this information, because your shadow spokesman raised this as his chief concern.

Members interjecting:

The Hon. DIANA LAIDLAW: You don't want to know the truth. The fact is that we have planned and considered all these matters. You just do not want to know about it because it does not suit your argument to know that this is well considered, well planned and strongly supported, and so it should be.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: It is important for members to be aware, particularly those opposite because their shadow spokesman on transport has indicated some concern about this matter, that information to users of the network is provided on a separate computer which effectively creates a barrier to accessing unauthorised information. Police access to the data base for policing purposes will be unaffected, and there will be further discussions with the police in relation to this matter.

In relation to the sensitivity of information on organ donation—a matter also raised by the shadow Minister—and driving offences, I am able to advise that an authorised external agent will be bound by legal privacy requirements when receiving information from members of the public, such as organ donor information. Further, they would not have access to information on driving offences. Finally, confidentiality of information on the register is provided for under the Motor Vehicles Act and meets the requirements of the Privacy Committee of South Australia and the Government's information privacy principles. Any new arrangements will be subject to similar scrutiny and requirements.

CARRICK HILL

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Carrick Hill.

Leave granted.

The Hon. ANNE LEVY: When the Minister was in Opposition she made a great deal of noise about a review of Carrick Hill not having been made public. When she became Minister, that review was not made public. I asked a question on this matter in August last year and was told by the Minister that she would take up with the board of Carrick Hill whether the review should be made public. The fact that it was not made public initially came as a request from the board of Carrick Hill.

I understand that Carrick Hill is developing a corporate plan and the review may form part of that corporate plan, but there is no indication as to when it will be complete and/or whether it will be released when it is complete. Furthermore, Carrick Hill has now been without a Director for 8 ¾ months since the previous Director left the position. While I in no way cast aspersions on the person who is Acting Director, that is a very long time for an institution to be without a Director. I ask the Minister:

1. Has she taken up with the board the question whether the previous review of Carrick Hill can be released; is she planning to release it; and, if so, when?

2. When will the corporate plan for Carrick Hill be complete; is she planning to release it; and, if so, when?

3. When will a new Director be appointed?

The Hon. DIANA LAIDLAW: I asked the board of Carrick Hill in about June or July last year to prepare a business plan, not so much a corporate plan. I think there is a difference. This plan is to look quite aggressively at future commercial options as well as other arts and related activities. I have been waiting for that report. In fact, today I wrote to Ms Williams, as Chair of Carrick Hill, asking that the report, which I understand is at an interim stage, be forwarded to me by 1 March.

I think that Carrick Hill has to get on with this matter. It has had eight months to do it. In my view, it is impossible for the board to go ahead and appoint a Director until it knows where it is going, what it is doing and what type of person it wants for that purpose. I am conscious that it is without a Director, but I would agree with the sentiment that there is hardly any point in appointing one until future goals, directions and responsibilities have been worked out, and they will be confirmed with this business plan. I am very keen to receive a copy, as supplied in the past under the arrangements with the former Minister, and I shall be seeking the board's views as to whether it wants that plan released. I think it is important as a general rule that these plans are released.

They are public institutions supported by the public purse. I believe their functions and roles should be a matter for public discussion and perusal. I will be expressing that view to the board when I have received what I understand is still just an interim report on 1 March, which is the date I sought. In relation to the earlier review to which the honourable member refers, I will be discussing the release of that paper in the context of the interim plan. I am keen, as I have indicated before, for that review to be released.

PRIVATE RENTAL RESEARCH PROJECT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement about the Private Rental Research Project.

Leave granted.

The Hon. K.T. GRIFFIN: Some 70 000 private rental tenancies are in place in South Australia at any one time. The average duration of a private tenancy is about 16 months and some 50 000 new residential tenancy agreements are formulated and nearly 50 000 end in any year. This form of housing is used by a significant number of people at any given time and by most people during their lives. The Government supports this form of housing and is committed to creating a fair and equitable environment for both landlords and tenants.

In May 1993, Shelter SA sought funds from the Residential Tenancies Fund in order to establish a private renters walk-in and telephone advice service to provide information to and advocacy for tenants. Shelter SA is a non-government housing organisation which is an advocate for low income housing consumers. After discussion with the then Minister for Consumer Affairs and the Commissioner for Consumer Affairs, the Private Rental Research Project was established and funded from the budget of the then Office of Fair Trading to an amount of $25 000. The Private Rental Research Project was funded to conduct research into the issues facing private rental markets, including affordability, maintenance, tenants'

knowledge of their rights and responsibilities, discrimination and access, privacy, and security of tenure.

The Government has provided considerable support to this project apart from funding, and that has included membership of the broadly based reference group responsible for overseeing the project. Other reference group members included the Citizens Advice Bureau, the Real Estate Institute, the Adelaide City Council Trade-A-Place and the Welfare Rights Centre. Whilst this project has been proceeding, I have conducted a complete review of legislation in my Consumer Affairs portfolio. I will introduce to Parliament tomorrow the Residential Tenancies Bill 1995 which will more clearly outline landlord and tenant responsibilities when in a residential tenancy agreement. It will address some of the concerns expressed in this report, including the establishment of a code of conduct for boarding and rooming house residents and proprietors.

The report prepared at the end of this project contains eight key recommendations, the majority of which are supported by the Government and will be acted on. They include maintenance of financial assistance to private renters. The South Australian budget for 1994-95 anticipated an increase of 9 per cent in expenditure on the Private Rental Establishment Support Services Program and a 20 per cent increase in rent relief. Formulation of strategies by the Office of Consumer and Business Affairs to address the issue of discrimination in the private rental market are proposed, and would include participation by the Real Estate Institute and the Equal Opportunity office.

I will instruct the Commissioner for Consumer Affairs to investigate the extent to which maintenance is an issue for private renters and devise strategies to overcome difficulties which arise in that area. Preliminary investigations reveal that, of the 4 235 matters listed for hearing in 1994, fewer than 2 per cent related to maintenance. The Government will conduct an extensive educational program concurrent with the proclamation of the new tenancies legislation when passed by Parliament. A specialist tenancies tribunal or division will still be available to determine matters arising from residential tenancy matters, but it will be enhanced by an increased emphasis on conciliation and mediation to attempt to resolve disputes at an earlier and less costly stage, and reduce the number of matters that would proceed to hearing.

I do not believe that the case presented for the establishment of a private renters' advocacy service is a convincing one as it may result in overlap and duplication of services already very ably provided by the Office of Consumer and Business Affairs. Accordingly, I will not be supporting this recommendation, but have requested that the Commissioner for Consumer Affairs monitor the situation on an ongoing basis and determine that the level of advisory services being provided is at an appropriate level. Finally, I am pleased to release the report as a public document and advise that copies are available on request from the Residential Tenancies Branch of the office of Consumer and Business Affairs; 8th floor, 50 Grenfell Street, Adelaide—telephone (08) 226 8613, or from SHELTER (SA) at 264 Flinders Street, Adelaide—telephone (08) 223 2555. I seek leave to table the report.

Leave granted.

BANK FEES AND CHARGES

In reply to **Hon. BARBARA WIESE** (9 February).

The Hon. K.T. GRIFFIN: I have been in contact with the Prices Surveillance Authority. At this stage they have not completed their investigations. When completed, a report will be released which will invite submissions from the public. When I have received a copy of the report, I will then be in a position to make an appropriate response, if this is warranted.

REPORTS

In reply to **Hon. ANNE LEVY** (21 February).

The Hon. K.T. GRIFFIN: A Pre-Paid Funerals Working Party was set up by the Hon. Barbara Wiese MLC, then Minister of Consumer Affairs, in September 1992.

It appears that the working party was set up in response to:

. A Prices Surveillance Authority inquiry into the funeral industry
. A small number of problems concerning the handling of money paid for pre-paid funerals
. Some general problems (eg consumer not advising relatives of pre-paid funeral arrangements and not addressing problems that can arise between the making of the contract and the death of the consumer, such as shifting to a different location).

The working party comprised members of the then Department of Public and Consumer Affairs (DPCA), the Public Actuary, a number of industry representatives and a representative of the South Australian Council on the Ageing (SACOTA).

The working party's first meeting was held on 3 March 1993. It was chaired by Mary Beasley, then Commissioner for Consumer Affairs, with Liz Cufone as Executive Officer. Further meetings were held during 1993, with the last being on 11 October 1993.

It appears that Ms Jennifer Taylor later replaced Liz Cufone as Executive Officer.

The main work of the working party involved an examination of legislative approaches taken to the regulation of pre-paid funerals in other States. It also surveyed in the industry in South Australia to determine current practices with respect to pre-paid funerals, and discovered that most funeral directors offer a pre-paid funeral fund.

The working party considered some options for further action, but produced no report or recommendations.

Following the change of Government, it was resolved in February 1994 to establish a new working group, comprising the same industry and SACOTA representatives, and the Public Actuary (chaired initially by Tony Lawson, Commissioner for Consumer Affairs and then by George Scherer of the Legal Unit of the Office of Consumer and Business Affairs), with the aim to develop a Code of Practice under the Fair Trading Act 1987. It was never intended that the new working group would produce a report as such. Instead, the Code of Practice is aimed at protecting money given by consumers to funeral directors for pre-paid funerals by requiring the funeral directors to invest the money with a type of financial institution approved by such investment.

It is also aimed at ensuring that the parties to a contract for a pre-paid funeral are made aware of problems that can arise with such contracts, and address them (eg through disclosures concerning the investment of the money, the costs of the funeral, the funeral arrangements and of arrangements that are to apply if certain contingencies apply—the funeral director ceases business or is unable to honour the contract, or the consumer cancels the contract. Practical advice is also offered to consumers). It is proposed that the Code will, as far as possible, be in 'Plain English'.

The working group conducted extensive consultations with the industry, churches and other relevant parties.

The Draft Code of Practice was released for public comment in early January 1995. Submissions were requested by 13 February 1995. A total of one written and six verbal submissions have been received and are presently being evaluated; comments so far have generally been supportive and constructive.

Once the evaluation of submissions has been completed, and any necessary changes to the Draft Code have been made, then the code can be prescribed. This will be done in the first half of 1995.

Consideration is also being given to increasing the penalty in the Fair Trading Act 1987, presently set at $1 000, which can be set for breaches of a code or regulation under the Act. This will be considered together with other amendments to the Act which are proposed as a result of the current legislative review process.

GLENELG-WEST BEACH DEVELOPMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development

and Local Government Relations, a question about the Glenelg-West Beach redevelopment.

Leave granted.

The Hon. M.J. ELLIOTT: Today in a joint press release a couple of important announcements were made by the Premier and the Minister. The first such announcement was that a contract for the dredging of the Patawalonga Lake could be let by this month. I note in documents that I received under the Freedom of Information Act that some 240 000 cubic metres of sediment are to be removed, and they will contain in excess of 100 tons of lead, 100 tons of zinc, and quite large quantities of a number of other contaminants, all of which are proposed to be placed on airport land without the benefit of an environmental impact statement. If the Government says that the material is not polluted the question being asked of me is: for what other reason is it being removed? Is it to allow for the insertion of an internal marina? If that is the case, why is significant public money being used to subsidise what is clearly a private benefit?

The Premier announced that a private sector consortium had been chosen for a proposed development at the Glenelg and West Beach foreshore. There has been previous experience at this site which has been an ongoing saga for some nine years in relation to, first, Jubilee Point, which has continued to this stage. Jubilee Point occurred under the special projects unit of former Premiers of this State, and they had a series of disasters, which are well documented, from that special projects unit. Many developers spent a lot of money only to see their money go down the gurgler because fatal flaws were not identified in time. The present Government has, in relation to the Saint Michaels development process, carried out a public consultation before bringing in the developers. It has been so successful that the Government is doing it again in relation to the Mount Lofty summit itself.

Again, the question being asked is: why, in this case, is public consultation not occurring before developers come in again? The cynics are suggesting to me that the decisions have already been made. In fact, the same bureaucrats who were working on Jubilee Point are working on this project as well. Ever since the new Government came in they have been walking around with the maps under their arms. Key components of the possible development have already been identified. Again, the question being asked is: why has the public not been consulted before bringing the developers in this time as the Government is now doing in other cases? My questions to the Minister are:

1. Why has there been no EIS in relation to the dredging?

2. Does the Minister claim there is no contamination? If he claims there is no contamination, why is the material being removed? If it is being removed, will marina developers pay for the cost of that removal so that the public purse is not paying for a substantial private benefit?

3. Why has there been no consultation process as the Government carried out with both Saint Michaels and now the Mount Lofty summit development?

4. Does the Premier not acknowledge that he may make exactly the same mistakes as the previous Premier made in relation to a whole host of projects?

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

MATTERS OF INTEREST

The Hon. BARBARA WIESE: I wish to make a few remarks about the Government's strategic review of the Department of Transport which was released yesterday and which I referred to in Question Time today. In fact, the document released by the Minister yesterday raises more questions than it answers about the future of the department, the functions it performs and the people who perform them. In her rather glib and shallow statement yesterday the Minister spoke of the department's 'reassessing its purpose in life' and she talked about 'the outcome of this soul searching exercise'. This was followed by a rather obvious dissertation on the role of the department, a role and mission that it has in most respects been pursuing for a long time, and particularly since 1993 when the Department of Transport was formally created.

The Minister talked about high sounding principles and objectives to achieve effectiveness and efficiency, but when we cut through the rhetoric of the statement and when we heard more of it today in Question Time, what do we find? What exactly is the Government doing with the department? When we look at the position, the Government is doing nothing more than following the tired old slash and burn formula pursued by conservative Governments in other parts of the world, a formula which has been borrowed from the United Kingdom, New Zealand, Victoria and many other places where the economic rationalists and bean counters have been in ascendancy.

There is nothing new in this document. There are no innovative solutions to the problems we face and in fact what is behind all of the rhetoric—the bottom line—is that the Government is just cutting costs again and the main tool for cutting costs is to cut jobs. The Government has tried to dress it up as something different but at the end of the day it is about cutting the budget. The people who are bearing the burden of these cuts are the department's work force. The work force will be cut. That is a massive blow to people in the department and, whatever the Minister says, in two years half of the work force will be gone—the department will be gutted.

The irony of it all is that these actions are coming from a Minister who, when in Opposition, led a deputation to my office when I was Minister of Transport Development complaining furiously that 12 jobs were to be lost in a road transport depot. At that time she was complaining about 12 jobs, but those jobs were not to be lost as those people were being relocated. Those workers were not being shown the door but were being relocated elsewhere within the organisation. At that time the honourable member was most insistent that the world as we knew it would end. If that was the case then, what is the Minister presiding over now?

Today she tried to suggest that her actions were the result of the Federal Government. The Minister tried to suggest that new conditions applying under Federal road funding provisions were bringing her to this course of action, that it was not really her idea and she was being forced into it. Just yesterday the Minister was telling us and the media that these were the actions of a visionary State Minister. The Minister cannot have it both ways. I suggest that she is being most disingenuous by suggesting that all of these actions are being brought about by Federal Government requirements.

The fact is that Federal Government requirements do not explain why these changes are taking place in the Motor Registration Division; they do not explain why changes are taking place in the Northfield depot; the Minister does not tell us how all these fit into the Government's former decision to hand over computing services to a private company in EDS; and she does not tell us what is happening with the Northfield laboratories which are doing work of national and in some cases international significance. All of the changes cannot be blamed on the Federal Government but can be laid at her own feet.

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

The Hon. BERNICE PFITZNER: I wish to speak about mental health. A recent *Advertiser* article renewed my grave concern with regard to mental health, mainly the lack of services available for the mentally ill. In this article a Professor McKelvey stated:

> Australia should learn from the experiences of the United States where there is a large population of mentally disabled homeless people created by the inadequate provision of mental health care. The American policy of deinstitutionalisation has resulted in a sub-class of mentally disabled people who live under bridges and who live in railway stations.

The report of the National Inquiry Into Human Rights and Mental Illness, generally known as the Burdekin Report 1993, identified the hardships and disadvantages of the mentally ill. Burdekin said:

> Human rights are about balancing the rights of all of us as individuals with the community, yet the mentally ill do not seem to have their rights taken into account at all in many cases, let alone balanced.

The philosophy of deinstitutionalisation for the mentally disabled has been the vogue for the past 15 or more years. It is a popular concept as it involves integrating disabled people into the rest of the general community. It has happened here in South Australia. The closure of Hillcrest was the result of the deinstitutionalisation policy initiated by the previous Government. Hillcrest was acknowledged as a hospital of excellence for the mentally disabled. Top class psychiatrists provided services of excellence.

With the closure of Hillcrest and the indiscriminate discharging of residents out of Hillcrest into the community, South Australia has lost a superb service and we probably now have a situation approaching the United States scenario. This process is also happening around the nation and increasingly the discharge of patients from mental hospitals will increase the number of seriously disturbed people living in the community without support. The failure to provide adequate care and support in the community is a defect which, if allowed to continue, will lead to the failure of deinstitutionalisation as an attempt at improving the lot of the mentally and emotionally disabled and will simply shift the problem from the hospitals into the community.

These disabled people need food, clothing, accommodation, support and provision of care by nurses, social workers and psychologists. In a hospital they receive all this and perhaps they need this support even more so in living in the community. A research project known as the post Burdekin report found that there are still enormous issues that have not yet been addressed. Some of these issues are: the lack of services and support for children and adolescents; the appalling conditions of mentally disabled people living in boarding houses; the lack of dignity and respect accorded to the mentally disabled and the people who care for them; and, again, inadequate support provided to allow mentally disabled people to take their place as an integral part of the community.

We now have the Federal Minister for Health in an article in the *Australian* focusing on the seriously mentally ill. In trying to look for a scapegoat to take the blame for the inadequate care of the mentally ill, she targets the private psychiatrists and accuses them of spending too much time and taxpayers' money on treating what she calls the 'worried well'. The Federal Health Minister has picked up this term, the 'worried well' and used it as though to say that there is nothing wrong with the body: it is all in the mind. Further, health insurance planners—the bureaucrats—often subscribe to the notion that the 'worried well' either need no care or can find it via non-medical sources. In an article the Federal Health Minister said that the figures suggested Medicare's assistance was unbalanced in that it subsidised treatment of people who were not in crisis.

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

The Hon. SANDRA KANCK: I intend to speak about road design and the lighting sequence at a number of intersections or junctions around Adelaide, because some of them are potentially dangerous. They are intersections that I use quite frequently, and I am sure that all members would have other examples. One near to my home at Athelstone is at the corner of Gorge and Stradbroke Roads, where a roundabout has signs that tell drivers that they should form one lane. However, I am finding that an increasingly significant minority of motorists ignore that and drive around the roundabout as though there were two lanes, and that occurs because the road is wide enough to accommodate this. Although shadowed marking on the road indicates that the cars should merge into one lane, it is still used by many as though there were two lanes, and it results in quite a degree of aggro being directed towards people like me who decide to observe what the sign says.

I asked a police officer how he thought I should negotiate this particular roundabout and his view was that, in the event of some sort of bingle occurring and if a court had to establish who was in the right and who was in the wrong, the court would probably look at the design of the road before and after the roundabout rather than at the signs. So, it has left me in a difficult position in trying to work out whether I should be law abiding and observe the signs or forward guess what a court might decide should I be in an accident. I have decided to observe the sign but, in doing so, I have incurred the wrath of those motorists who do not. In this particular instance, I think Campbelltown council ought to make up its mind what it wants in that area and either physically widen the median strip and enlarge the roundabout so that it forces cars to merge into one lane or, if it does not want that, it should mark the road with two lanes.

Another corner that is of some concern to me is the North Terrace-East Terrace corner. If you travel along North Terrace in an easterly direction you will notice that at that junction there are four lanes on that side of the road. Nearest to the kerb is a bus lane, then for the next lane there is a straight-ahead arrow on the road, the next has a double-headed arrow with a straight ahead and a turn right indication, and the one nearest the median strip has a right-hand arrow only. My concern is about the sequence of lights at this junction. If you wish to travel in a reasonably uninterrupted

way towards Hackney, you have to position yourself to get into that single straight ahead lane more than a block before the junction.

If this is not done one can sit for a considerable length of time in the lane with the double headed arrow without moving because when the main light switches from red to green the right arrow stays on red for approximately 30 seconds. This results in some dangerous behaviour from some drivers who, without warning, will suddenly veer into the next lane on their left so that they do not have to wait. A simple change of sequence of those lights so that there is a green arrow at the same time as the green light would allow the bulk of the traffic to move off together without creating that frantic and dangerous driving behaviour that I have frequently encountered at that corner.

Thirdly, for drivers travelling in a northerly direction along Lower Portrush Road and who wish to turn left into Harris Road there is no provision for a left turn with care when the red light is operating. It surprises me that, after all this time, there is not a left turn arrow at this corner. When I was in Sydney at the end of December, I noticed in the Parramatta area the use of signs at intersections such as this that indicate to drivers that they can turn left against a red light provided they can prove it is safe. This would seem to be a very useful and a very inexpensive way to deal with the situation that exists at the Harris Road-Lower Portrush Road corner, where there is not enough room to build a left turn lane with a traffic island. I refer to just those three instances on this occasion. I am sure there will be plenty of others referred to in future. I do not believe in whingeing about something that we cannot have anything done about, and I will ensure that copies of this speech are sent to relevant local councils and the Minister with a request for some action.

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

The Hon. CAROLYN PICKLES: I rise to correct some of the claims of the Government on job growth and unemployment. No greater offence could be committed against South Australia than this Government's hoax on jobs and unemployment. The latest such offence was committed by the Minister for Employment, Training and Further Education when the January job figures were released. In response to a Dorothy Dix question in the House of Assembly on 9 February, the Minister claimed that it was a good news day as unemployment had fallen to just below 10 per cent and 22 500 new jobs—

The Hon. R.I. Lucas interjecting:

The Hon. CAROLYN PICKLES: Just wait—22 500 new jobs had been created over the previous year in the manufacturing, finance, retailing, transport, hospitality and tourism sectors. In reality, the January job figures continued the disastrous record of the past 13 months of the Liberal Government. There has been a national recovery and jobs explosion in Australia. In the 13 months to January, national employment grew by over 298 000 in seasonally adjusted terms, or by 3.7 per cent.

The Hon. R.I. Lucas interjecting:

The Hon. CAROLYN PICKLES: I am using the January figures. This brought unemployment down from 10.6 per cent to 9 per cent, with an increasing participation rate. What happened in South Australia over the same period—this supposed period of prosperity ushered in by the Liberal Government? Only 2 100 jobs were created. The employment growth has been a scandalous one tenth the rate of the national job growth. In the midst of the strongest national growth in a decade, our employed work force has grown one tenth—that is .33 per cent of the national rate. In the months since September the work force has actually contracted by 5 900 and, with the Transport Minister's announcement yesterday, there will probably be a few more thousand on the scrap heap.

With such a pathetic rate of job growth it is no surprise that the participation rate has also been falling. Indeed, the decline in unemployment for which the Minister congratulated himself was entirely due to this fall in the participation rate. If the participation rate had stayed at its July 1994 level, current unemployment would be 11.4 per cent. The Premier has made many boasts about the jobs created since he came to office—from 11 200 to 13 000 to 15 000; he cannot quite make up his mind. In making these utterly false claims, Mr Brown merely underlines how miserably he has failed. The South Australian work force actually needed to grow by 23 300 in the period since December 1993 for this State to have gained its appropriate share (accounting for 8.3 per cent of Australia's population) of the new jobs created nationally.

This deplorable record on jobs compares to a position in 1993 when, despite the claims of the Liberals that only a State Labor Government stood in the way of economic recovery, we had an employment growth of 2 per cent, which was well in touch with national performance. The most cynical claim of all was Minister Such's saying that 22 500 new jobs had been created. For this he used a very strange manipulation of ABS unpublished data. On questioning in the House of Assembly, he could not deny what the published ABS data showed: that, while Australia benefited from 298 000 new jobs since December 1993, South Australia's labour force had grown by a miserable 2 100. This must be one of the few occasions on which a Government has shown such cynicism that it cited gross figures for jobs and tried to pass them off as a net figure. The one good thing shown in the January job figure was the decline in youth unemployment.

The Hon. R.I. Lucas interjecting:

The Hon. CAROLYN PICKLES: We will see how long that lasts. Everyone has a right to a job, moreover a decent job. This is accepted under the Federal Government's Working Nation job compact. It is shameful that this Government should so cynically misuse information about so important an issue.

The Hon. T.G. ROBERTS: Everyone is familiar with the terms 'sustainable agriculture' and 'sustainable economy', but very few people are familiar with the term 'sustainable society'. I would like to outline a good and a bad story about sustainable society in and around the metropolitan area in relation to some major projects. In the northern suburbs we have a good example of cooperation between the three tiers of government (local, State and Federal) in a project that was designed under the previous Government to retain and cleanse floodwaters, and to set up a retention program that allowed for recharging the aquifer.

Local governments in the northern regions—spearheaded by the Salisbury council in cooperation with the State Government—set up a program in the northern suburbs which had a lot of merit and which encompassed the principles of sustainable society, that is, respect and care for community life; an improvement in the quality of human life; conservation of the earth's vitality and diversity; and cooperation in preserving the ecology, that is, not seeing it in segments but

as a whole. The way in which councils have cooperated to obtain Federal moneys for this project is also a success story. Further stages will be developed, and it will be something that people from other States will come to view. As I said, it is a success for the principles of a sustainable society. The bad story in relation to how not to do it properly involves the Torrens River catchment area. Currently, three disputes are continuing as to how we can come to terms with the ecology and the environmental problems associated with, first, the Patawalonga. We had a question about that today and we have previously had questions to the Government asking how we can deal with the issue. That has been segmented off from the problems associated with the Torrens River, which is a separate set of problems incorporated on the same river system.

We then move to the Tea Tree Gully council area, which is trying to come to terms with an application to use an area of council land for a land fill. If one takes the ecological problems associated with the top end of the catchment area and putting a land fill in an area that has the sensitivities of the upper reaches of the Torrens in the catchment area in the foothills, then looks at the Government's policy in relation to levying people further along in those council areas in order to prevent any stormwater from entering into the river system that will finish up in the Torrens River in the metropolitan area (which becomes the Adelaide City Council's responsibility), and then separates that from the multimillion dollar project that will be occurring in the Glenelg area, one can see that there is not an integrated program there but one of separate vested interest.

It has nothing to do with an integrated plan for cleaning up the Torrens and for getting settled projects in which the whole of Adelaide could participate. Certainly the clean-up of the Patawalonga will benefit those people in that particular local council area, but not everyone will benefit from the proposed marina or the type of development that will ultimately signify a change to the Glenelg area. Henley Beach council is very concerned about the possible downstream effects of cutting an outlet into its local government area, and the Federal Airports Corporation and other people associated with the disposal of the contaminated land are starting to show concerns about how that project is developing.

On the one hand, we have local government, State and Federal Governments working together to finance a natural solution—with some engineering input into that natural solution—to an ecological problem, overcoming it with cooperation and getting accolades for it. On the other hand, we have a major project that is not integrated into a total management catchment scheme; it has a fragmented approach, where a small section of society will benefit from the gains to be made from that investment package, and lots of concerns being shown by other people in South Australia. Mr President, I do draw the—

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

The Hon. R.D. LAWSON: A number of surveys have demonstrated the lack of awareness on the part of young people of Australia's system of government. Late last year a survey conducted by the Constitutional Centenary Foundation showed that year 11 students are profoundly ignorant of the Constitution and the Australian Federation. The survey found that young people were far more interested in personal freedoms than in civics. The Executive Director of the foundation was quoted as saying that uppermost in the minds of young people were rights, not freedoms, for example, rights to drive a car, to drink, to buy cigarettes, to go to nightclubs, to play pokies, to get married, and other personal freedoms. However, the survey did show that students want to take part in social debates, for example, about the environment, Aboriginal reconciliation, and the treatment of ethnic minorities—all trendy topics in which it is easy to become an instant expert. A report of the survey said that young people:

> . . . exhibit a level of cynicism about politics and politicians which, combined with a lack of knowledge, makes it very difficult to educate or communicate with them on these matters.

This is not the only recent report on the subject. The Turnbull Republican Advisory Committee concluded that ignorance of the Constitution made informed debate about reform difficult. This view is shared by the Australians for Constitutional Monarchy Group, and it was confirmed by the Centenary of Federation Advisory Committee last year.

These results are depressing because most school syllabuses do include some elements of education and civics, and most citizens and most members of Parliament, irrespective of their political views would, I think, agree that something must be done to address the situation. I do not necessarily subscribe to the view that there has been any decline in the standard of community awareness of our system of government. I suspect that earlier generations were similarly disadvantaged, because lack of awareness on this subject is not confined to young people.

The recent release of the report of the Civics Expert Group, appointed by the Prime Minister, entitled *Civics and Citizenship Education* is to be welcomed. It is a valuable resource for anyone interested in the subject. The authors received submissions from all over the country and across the political spectrum, and they have produced a most comprehensive report. Obviously, in a brief address such as this, I can refer but briefly to specific contents of the report and its recommendations, but several points are worth mentioning: first, traditional civics is usually regarded by children and students as one of the most boring subjects in the curriculum, and that fact presents a challenge.

The report of the Civics Expert Group acknowledges the possibility of this type of education degenerating into political indoctrination. This is a danger to be avoided. For example, the Director of the Commonwealth Parliamentary Education Office is quoted as saying:

> 'Old civics' was often criticised for promoting an unquestioning acceptance of the prevailing order. 'New civics' may, if care is not exercised, become a dirge on the social ills of [so-called] 'ugly Australia'.

In other words, it would encourage cynicism rather than appeal to the idealism of youth. The report does not promise easy solutions. Warren Pryor, Faculty of Education, Deakin University, is quoted as saying:

> . . . there is precious little evidence available anywhere related to successful transmission of civics values. Even more troublesome is the evidence which seems to suggest that to promote and inform the public about governmental, constitutional, citizenship and civics issues does not ensure that students will become supportive of democratic values in the long term.

I do commend this report of the Civics Expert Group and urge members to read it.

The Hon. J.C. IRWIN: From the matter of interest addressed by the Hon. Ron Roberts, shadow Minister for Primary Industries, on 15 February, I draw attention to these points, which are based on the honourable member's

concerns regarding meat hygiene: Victorian deregulation; independent meat inspections; tracing of meats to slaughterhouses; ensuring the integrity of meat from interstate; and ensuring that South Australian consumers can buy meat from any outlet in South Australia which will stand the test.

At the outset, I would like to stress that throughout its 12 years in office the previous Government failed to address these problems when the then shadow Minister, Mr Dale Baker, and the Opposition had raised the need for these new standards within the industry. I further commend this Government on the speed with which it introduced new legislation at the beginning of last year and also its rapid response to the present crisis. In response to these statements by the shadow Minister, I refer to claims made by the Community and Public Sector Union on the causes of the HUS outbreak, as follows:

> Meat inspection services have not been deregulated. In fact, in both Victoria and South Australia, where new legislation has been introduced within the last 12 months, there is more intensive surveillance in the meat industry, not less.

This increased meat surveillance includes:

· In abattoirs, company-employed meat inspectors on site, in most cases the same inspectors previously employed by AQIS.

· Independent regular audit of company inspection programs in SA and Victoria by SGS Australia, an internationally certified and acclaimed audit agency. This independent audit replaces the monthly checks AQIS formally performed on its own inspectors.

· Formal introduction of quality assurance programs in meat slaughtering plants, employing quality assurance managers with formal meat inspection as well as quality management and quality assurance audit certificates as mandatory qualifications.

· Introduction for the first time of company-based quality assurance programs together with independent inspections/audits by SGS into secondary meat processing operations, including smallgoods factories, boning rooms and other premises which have not previously been regulated under meat hygiene legislation.

· Quality assurance programs include a strong component of internal staff training to ensure that all workers on the plant understand and have active roles in quality production. Company quality assurance training is designed to enable key floor staff to recognise abnormalities and put procedures in place for appropriate sampling, testing and correction.

In fact, there is no doubt that, under the new quality assurance based programs, which will ensure compliance with national codes of practice throughout the industry, more people with meat inspection qualifications will be employed in the industry, not fewer. In addition, all company staff have a stake and set responsibilities in the quality assurance program.

· Experience with quality assurance systems throughout the world and in most industries (including those with a heavy public safety responsibility and including food industries) has demonstrated that quality assurance is a far more effective and cost efficient means of ensuring product safety than traditional methods of end product inspection by 'independent' (especially Government) inspectors on site. A close examination of best industry practice throughout the world will reveal that most successful companies producing 'high risk' products are very effectively monitoring their own production standards, subject to external audit, and have done so for a very long time.

In the meat industry in particular, modern public health problems such as microbial and chemical contamination cannot be detected by traditional inspection methods and are much better addressed by total quality management programs. In a trial conducted from 1990 to 1993 in Victorian and Tasmanian abattoirs by the Meat Research Corporation and AQIS, an important outcome, critical to the current argument, was that surface microbiological contamination of product was clearly and significantly lower from plants on quality assurance than those on full time AQIs inspections. In fact, the trial produced clear results on most criteria measured: that quality assurance was more effective at ensuring hygiene standards than in-point inspection. This is not news to industry worldwide: it has known it for years, and the last Government should have known it in the 12 years during which it had responsibility. Meat is the only industry worldwide still to have control by inspectors. The reasons are historical, political and industrial.

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

STATUTES AMENDMENT (FEMALE GENITAL MUTILATION AND CHILD PROTECTION) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935 and the Children's Protection Act 1993. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

The principal object of this Bill is to enact criminal offences and specific preventive powers aimed to eliminate or minimise the incidence of female genital mutilation. Female genital mutilation (FGM), otherwise known as female circumcision, is a practice which mainly occurs in, but is not confined to, a number of countries. It may range from the ritual nicking of the female genitalia to what is known as 'infibulation', which is the wholesale removal of all external female genitalia and the closure of the vaginal opening. In general terms, FGM is believed to be practised by some families from African countries such as Kenya, Somalia, Sudan, Egypt, Nigeria, Uganda, and Tanzania, and Arab countries including Oman and Yemen. This is not a full list. In addition, the extent of the practice among families in Malaysia and India is not known, but some families are believed to take part in this practice. There is no defensible case for the practice in any form. The Family Law Council has addressed the arguments for the practice, and rightly dismissed them. It is also arguably contrary to a number of international agreements to which Australia is a signatory. The most specific of these is the UN Declaration on Violence Against Women. The practice is also contrary to Article 24(3) of the Convention on the Rights of the Child and it is that convention which places an obligation on Australia to address the practice.

On 25 October 1994, I made a ministerial statement to the Legislative Council in which I announced the intention of the Government to legislate to outlaw FGM specifically. In November 1994, all Attorneys-General, except the Attorney-General of Western Australia, agreed that specific legislation should criminalise female genital mutilation. The Attorney-General of Western Australia will await draft legislation before deciding whether to act. All jurisdictions took the view

that a comprehensive and targeted community education program must accompany such legislation.

The general social aim of outlawing FGM is to strengthen the right to protection of women and children. Apart from the obvious issue of the right to bodily integrity, FGM is associated with a range of health problems in women and girls which are likely to interfere with their capacity to reproduce and therefore to form their own families in the future. In the longer term, the explicit prohibition of FGM should lead to the enhancement of the status of women and children in the cultural groups involved and increased equality within the family unit.

There is no doubt that almost all instances of FGM are criminal under existing law. The question whether FGM is criminal or not turns on whether consent is a defence to the actions of the person performing the act. An adult may not in law consent to the infliction of actual bodily harm or worse unless the act can be justified in terms of medical benefit or the public interest. FGM is not in the public interest, nor is it medically justified. It follows that FGM amounting to actual bodily harm is criminal.

Where a child is involved, the rules similarly apply to any adult trying to consent on behalf of the child. The High Court, in what is known as Marion's case, made it clear that the child's parent or guardian's consent must be in the best interests of the child, not merely in the biological sense but also in social and psychological senses. A parent or guardian could not consent to sterilisation of a child unless a court approved. The High Court specifically said that FGM was an instance in which a parent or guardian could not consent.

Nevertheless, specific legislation is recommended because the matter has never been tested at law and a specific offence is appropriate both to make sure and to send a clear and unequivocal message to those involved, or who may be involved.

The first part of the Bill contains two criminal offences to be inserted into the *Criminal Law Consolidation Act*. The first of these specifically targets those who actually perform these operations, clearly states that the consent of the victim or the victim's parents or guardians is no answer to the charge. In accordance with the ministerial statement, this offence does not target parents, but rather seeks to ensure that there is no-one available who will perform the operation, even if the parents desire it. The Bill also makes it clear that normal medical procedures are not affected.

The second offence is aimed at preventing and deterring the export of children off-shore to places where the operation is more freely available. It contains a reverse onus clause in relation to the intention to have the child subjected to the procedure, but that reverse onus clause does not come into operation unless the child has been taken from the State and the operation has actually been done. In such a case, the inference of intention is a quite logical and reasonable one.

The second part of the Bill contains an amendment to the *Children's Protection Act*. Clearly, prevention is better than penalising people after the event. Apart from an education campaign targeting the population at risk, there should be a clear power to intervene if a reasonable suspicion is entertained that a child may be subjected to the practice either here or elsewhere. The result of the enactment of specific criminalising legislation, and communication of its message, may be that children will be taken from Australia to have the practice performed in an overseas country where a more tolerant approach is taken. The proposed criminal offence directed at this behaviour will be very difficult to enforce, and in a number of such cases, it may well be too late for the child.

The powers and functions contained in the *Children's Protection Act* do not currently clearly cover the case in which it is reasonably believed either that a child is at risk of the practice or that a child may be taken out of South Australia for the purpose. Further, the objective of the Act which refers to the preservation and enhancement of the child's sense of racial, ethnic, religious and cultural identity does not make it clear that this may not be the case where there is conflict with international obligations or the democratically based condemnation of the South Australian community. As with the enactment of specific criminal offences, specific preventive legislation is contained in the Bill because the matter has never been tested at law and a specific reference is appropriate both to make sure, and to send a clear and unequivocal message to those involved, or who may be involved.

In view of these factors, the Bill proposes a separate set of provisions dealing specifically with this problem. The object of the provisions is to give the court full power to step in and make an order effectively 'freezing' the situation should it find that there are reasonable grounds to suspect that a child might be at risk of female genital mutilation. The Bill also makes it clear that this is not a cultural or racial or religious practice which is ever in the best interests of the child.

The third part of this Bill also contains some amendments to the *Children's Protection Act.* Section 27(2) of the Act requires a Family Care Meeting to be held before any application can be made under Division 2 of Part 5 of the Act. That includes applications for extensions, changes in access times and arrangements and other minor ancillary orders. It is simply unnecessary to require meetings as a matter of law unless the application relates to a matter which is truly determinative of the child's future. The result is that the Family Care Meeting system will collapse under the weight of a large number of unnecessary meetings. It is therefore proposed to amend section 27(2) so that a Family Care Meeting is only required where the Minister is applying *either* (i) for the first order of custody or guardianship under section 38(1)(b), (c) *or* (ii) for guardianship until 18 under section 38(1)(d).

Consequentially, section 27 is to be amended to give the court power to order that a Family Care Meeting be held—or be not held—if, in the opinion of the court, either order is appropriate in the circumstances of the case.

Section 55 of the Act establishes the Children's Protection Advisory Panel'. Section 55 (2) says that the maximum number of members of the panel is to be five. In December 1994, the Minister for Family and Community Services decided to disband the Child Protection Council and expand the role and functions of the Advisory Panel. It is proposed to amend section 55 to enlarge the panel and to widen its remit. These amendments are necessary to ensure that there is no gap between the closure of the council and the expansion of the panel and to ensure that there is at all times a legitimate coordinating and advisory body in existence.

I commend the Bill to the House and seek leave to have the detailed explanation of the clauses incorporated in *Hansard* without my reading it.

Leave granted.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause is an interpretation provision. It specifies that a reference in this Bill to 'the principal Act' is a reference to the Act referred to in the heading to the Part of this Bill in which the reference occurs.

PART 2
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 4: Insertion of ss. 33-33B

This clause inserts a new division into Part 3 of the principal Act, which deals with offences against the person. The new division concerns the practice of female genital mutilation and contains the following provisions:

33. Definitions

This section defines the terms used in the division. Of particular significance is the definition of 'female genital mutilation' which is defined to mean—

(a) clitoridectomy; or

(b) excision of any other part of the female genital organs; or

(c) a procedure to narrow or close the vaginal opening; or

(d) any other mutilation of the female genital organs,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose (as defined by subsection (2)).

33A. Prohibition of female genital mutilation

This section provides that a person who performs female genital mutilation is guilty of an offence and is liable to imprisonment for a period of seven years.

Subsection (2) makes it clear that the consent of the victim or the victim's parents or guardian does not negate criminal liability.

33B. Removal of child from State for genital mutilation

This section provides that it is an offence to take a child from the State, or arrange for a child to be taken from the State, with the intention of having the child subjected to female genital mutilation. The penalty is, again, seven years imprisonment.

Subsection (2) provides the prosecution with an aid to proof of intention for the offence.

PART 3
AMENDMENT OF CHILDREN'S PROTECTION ACT 1993

Clause 5: Insertion of Division 6

This clause inserts a new division into the principal Act dealing specifically with female genital mutilation as follows:

DIVISION 6—OTHER ORDERS

26A. Definitions

This section provides for definitions in the same terms as those inserted in the *Criminal Law Consolidation Act 1935*.

26B. Protection of children at risk of genital mutilation

This section provides that if the Youth Court of South Australia ('the Court') is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.

An order under this section might for example—

(a) prevent a person from taking the child from the State; or

(b) require that the child's passport be held by the Court; or

(c) provide for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation.

An application for an order under this section may be made by a member of the police force or by the Chief Executive Officer.

The Court may make ex parte orders under this section, however, in that case the Court must allow the person against whom the order is made a reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

Subsection (5) overcomes any confusion or difficulty that might be caused by the provisions of section 4(2)*(e)* of the Act, by providing that in proceedings under this section the Court must assume that it is in the child's best interests to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child.

Clause 6: Amendment of s. 27—Family care meeting must be held in certain circumstances

This clause amends section 27 of the principal Act by substituting a new subsection (2). New subsection (2) lists certain specific circumstances in which the Minister will be required to convene, or make all reasonable endeavours to convene, a family care meeting ie. where an application is to be made for an initial order under section 38(1)*(b)* or *(c)* or any order under section 38(1)*(d)*.

Clause 7: Amendment of s. 38—Court's power to make orders

This clause amends section 38(1) of the principal Act by inserting two new paragraphs into the list of orders that the Court can make. These new paragraphs provide that the Court can order—

— that a family care meeting be convened in respect of a child; or

— that, despite any provision of this Act, the Minister is not obliged to convene or hold a family care meeting in respect of a child.

Clause 8: Amendment of s. 55—Children's Protection Advisory Panel

This clause amends section 55(2) of the principal Act to change the maximum number of members of *Children's Protection Advisory Panel* from five to eight and to ensure that the Panel has a general power to provide recommendations to the Minister in relation to the administration of the Act.

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

DOG AND CAT MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 21 February. Page 1222.)

The Hon. A.J. REDFORD: I support the Bill and the general thrust of the objectives that it seeks to achieve. In the short time that I have been in this place, I have not received more correspondence on any issue than the one covered by this legislation. I do not propose to go through the Bill in any great detail, as that was adequately covered by the Minister when it was introduced, but I should like to go on record in relation to a couple of important issues and I have a number of questions to put to the Minister with a view, hopefully, to improving the understanding and implementation of this legislation.

The first issue relates to the dog provisions, and in particular the civil liability that attaches to dogs. Under section 52 of the existing legislation, the Dog Control Act, liability on dog owners in the event that there is an attack causing injury is strict. In my view and experience that has worked reasonably well on the whole, with some minor exceptions. There are always exceptions with laws which impose a strict liability on owners. The fact is that in very few cases, but there are cases, there is the potential for injustice when we have strict liability. With that in mind, I understand that there will be an amendment to the appropriate provision in this Bill, which I understand will have the support of the Government, to the effect that there will be strict liability in the ordinary course, but that the dog owner can claim contributory negligence, thereby reducing the owner's liability in the event that there is contributory negligence on the part of the person who is attacked.

I gave that a great deal of thought when we discussed it in various meetings prior to coming up with the amendment. I believe that dog owners, who have great responsibility, should be held liable when a dog attacks a human being. Such attacks tend to happen with young children because they lack experience in dealing with dogs and are very trusting towards dogs. Therefore, in my view, at the end of the day the dog

owners ought to be responsible. Indeed, if they have a dog that has in any way, shape or form demonstrated a propensity to attack people, that dog ought to be controlled very strictly or alternatively put down. Nothing in this Bill should obviate that responsibility. When looking at the provisions I had the opportunity to speak to a former State Chairman of the RSPCA, former Judge Kingsley Newman, and his view was that strict liability is absolutely essential because it puts the responsibility on dog owners and thereby ensures that dog owners become and remain responsible.

In relation to children and contributory negligence, there are numerous cases, whether motor vehicle accident cases or other negligence cases, where the onus placed on the child is very low. Therefore, my view and understanding of the law is that the onus on dog owners, so far as children are concerned, will not be obviated by the introduction of the concept of contributory negligence.

Other areas are obviously important. One is where a person deliberately embarks on a course of provocative conduct in order to induce a dog to attack them. I think that in such circumstances the dog owner deserves the protection of the law in terms of civil liability. There are many instances where dogs are used to protect property. If someone puts a high fence around their backyard and has a couple of dogs to protect the property and an intruder breaks in, then in some cases he is the author of his own problems. However, if a dog escapes, because there is a hole in the wall or something of that nature, unless there is negligence on the part of the person who has been attacked, the dog owner would be strictly liable. I think that we have found a reasonable solution to those small areas which could lead to potential injustice being visited upon dog owners on the occasion of some dog attacks.

Another issue that I would raise relates to administration. I have had approaches from various people about the role of the Dog and Cat Management Board. It does not have a significant role, other than to monitor the performance of local government in the administration of this legislation, and that will not be an easy task. It also has a very important responsibility in relation to the education of the public, particularly the responsibility of the owners of dogs and cats. At the end of the day this legislation presents a real challenge to local government. On many occasions we hear people say that local government ought to have more responsibility. We have gone down that route and tossed the ball into the local government court, so to speak, and it is now up to local government to run with the issue and ensure that we adopt good dog and cat management practices in this State.

The Hon. T.G. Roberts: You have given them a hard job but you have given them no money.

The Hon. A.J. REDFORD: The Hon. Terry Roberts interjects that we have given local government a hard job and given it no money. To be fair, it is not an easy job, whether it be done by State Government or local government. The responsibility and management practices for dogs and cats vary from area to area, and I will touch on that later, but the responsibility of dog owners and the management of dog owners in rural South Australia is substantially different from that which applies in metropolitan Adelaide. Also, the control of cats in metropolitan Adelaide presents different issues, problems and challenges from the control of feral cats and cats in rural areas. Giving the responsibility to local government will enable local people to deal with local problems, which has always been a great Liberal tenet. In terms of money, local government has powers in relation to registration fees and the like. I understand the intent of the legislation is revenue neutral. What it costs councils to administer this legislation can be recovered by registration fees and so on.

At the end of the day it is up to councils to develop efficient, administrative means by which the moneys can be collected and then utilised. I must record my thanks to Mr Daryl Callaghan, who is the Senior General Inspector of the City of Glenelg. He is substantially responsible for the control and management of dogs under the current Dog Control Act.

I would like the following questions answered by the Minister prior to dealing with the matter in Committee, as it may have some effect on any amendments that I might choose to move in relation to this legislation. The first question relates to clause 7(b)(i). For the benefit of members opposite, the clause provides:

> 7. For the purposes of this Act, a dog is under the effective control of a person only while—
> (b) The person has effectively secured the dog—
> (i) by placing it in a cage, vehicle or other object or structure.

My question relates to the term 'vehicle' and the status of a dog owner where that dog owner puts a dog in the back of a utility. It might not seem significant to some in this place but I know that when I grew up in the country dogs were always in the back of utilities, and access to and from the back of utilities was pretty easy as far as dogs were concerned.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: The honourable member says that it is part of a dog's right to jump in and out of the back of a utility, and I would have to agree.

The Hon. L.H. Davis: Every dog has his day!

The Hon. A.J. REDFORD: Absolutely. But the serious question is whether it can be said that a dog unchained or untethered in the back of a utility is 'under effective control' or that the person has 'effectively secured' that dog. I invite the Minister to consider that clause and, if appropriate, recommend an amendment in relation to that issue. The next question relates to clause 8 which provides almost a general immunity or exemption to the Crown from any provision under this Bill and it is wider than the current Dog Control Act. First, is there any reason why it is wider than the provision in the existing Dog Control Act? Secondly, I seek confirmation that it does not exempt the Crown from any civil liability for any dog attack that might arise by dogs owned by the Crown.

The Hon. T.G. Roberts: The Star Force.

The Hon. A.J. REDFORD: I am not thinking so much of the Star Force but there are other issues. My next comment relates to clause 11(3). I have received considerable correspondence from a number of people who say that the South Australian Canine Association Incorporated ought to have a representative on the board. The fact that it is required to be consulted with before appointing a member to the board is important and should satisfy its concerns. I go on record as congratulating the South Australian Canine Association for the work it has done and the responsible attitude it has shown over the years in terms of dog management, ownership and education. Bodies like that make the job of Government, and of local councils in this case, very much easier.

The next issue relates to clause 32(5)(b)(viii). I have been approached by people who suggest that the Sandy Creek Dog Sanctuary ought to be specifically exempted from this section, which contains the requirement for registration of dogs, in the way that we have exempted other organisations

such as the RSPCA, the Animal Welfare League, the Guide Dogs, the Lions Hearing Dogs and the like. I explained to the constituent that the best way to manage that is to ask the Minister whether he intends to exempt the Sandy Creek Dog Sanctuary by regulation pursuant to that provision. I understand that the Sandy Creek Dog Sanctuary has a good record, plays an important role and provides an important service to the public. In passing, I note that it is pleasing to see that the Guide Dogs are named. I have a close and abiding interest in the work of the Guide Dogs, and its work is to be commended.

The next question relates to clause 48 which refers to the laying of poison in baits for dogs. The legislation properly recognises that there are occasions where it is necessary for an owner of property to lay baits for dogs. I know from personal experience that once a dog becomes rabid and starts wandering through rural communities it can cause enormous destruction to livestock and our rural constituents' livelihoods. However, it was suggested to me that there ought to be a requirement that where baits are laid then the appropriate local council should be notified. I understand the reason for that is that if the inspector finds dead animals in the vicinity it makes it much easier for the inspector to determine what the cause of death was, and it also enables the appropriate authorities to determine whether baiting has been carried out in an unlawful fashion. Again, I invite the Minister to consider filing an amendment to the effect that local council be notified in relation to the laying of baits.

The next issue relates to clause 50 which provides in part that a council may on its own initiative or on application make a destruction order in relation to the dog, if certain things occur. The question put to me, and I invite the Minister to respond, is whether the council can delegate its authority that it has been given under section 50 of the Act and, if so, under what circumstances? I appreciate that section 41 of the Local Government Act may well apply but if that is the case then I would be grateful if the Minister could confirm it. I understand that councils delegate all sorts of services in terms of enforcement of many aspects of their responsibilities under various pieces of legislation, but what has been suggested to me is that, if section 41 of the Local Government Act does not apply and the council cannot delegate, it will have to call a meeting every time it wants to make a destruction order and that would clog up the orderly administration of the Act.

Another important issue is where councils share resources. Often, in rural areas, and to some extent in the metropolitan areas, councils will share resources. I can understand that there may be situations where a council may want to share its resources in relation to this Bill with another local council. The question that has been asked is whether either or both councils can delegate the responsibility under section 50 to an individual who is doing the work on behalf of both councils.

The next issue that has been raised with me concerns clause 87(a)(ii). It has been explained to me by Mr Callaghan that he has had cause on occasion to prosecute people under the Dog Control Act. He has been put to proof as to whether the animal he has taken, identified or complained about is a dog. I invite the Minister to respond as to whether there have been other areas where there has been difficulty in proving in a court whether or not an animal is a dog or some other species. Referring to clause 87(a)(ii), will the Minister consider an amendment to the effect that, if an allegation in a complaint relates to a dog, then the onus reverts to the owner to prove or disprove that a particular animal was or was not a dog? I am not sure of the exact circumstances where those problems arise, but I have been told that they do arise.

I now turn to one common issue that seems to have threaded its way through the enormous amount of correspondence that I have received from a wide ranging group of bodies, some of which I had never heard of previous to this legislation, which are interested in the topic of cats. I am sure that all members would be familiar, as a consequence of the lobbying that we have received from Cats Assistance to Sterilise, with the activities of desexing cats and putting them back into the community. As I understand their argument, they say that this legislation will not work, that the destruction of cats will not work and they point to the example of rabbits. We have tried to destroy them and, in fact, we have not made a great inroad into the rabbit population, other than through the myxomatosis disease. It has been suggested that if we go down the path of destroying cats it will be ineffective and that the most effective way of controlling cats is by desexing them and putting them back into the community.

The argument goes that, when we desex the cat and put it back into the community, it marks out its territory and stops other undesexed cats coming in to that area. I ask the Minister whether there is any validity in that assertion. Has the Minister considered the argument that desexing will reduce the cat population quicker than destruction? Also, I invite the Minister to comment on the success of the cat sterilisation scheme in rural areas. I understand from correspondence I have received that the voluntary program now in place has humanely reduced the number of cats in Adelaide by 12 per cent in 12 months.

I quote from a letter that I received from the Anti Vivisection Union of 13 February 1995 and I ask, first, can the Minister confirm the accuracy of that assertion and, secondly, will that improvement be bettered as a consequence of this legislation? I have also received correspondence from Animal Liberation (2 February 1995) stating:

> Since it is clearly impossible to kill all cats in an area, maintaining the colony of desexed cats actually reduces the population by preventing breeding. The alternative is to have fertile animals taking over the territory.

Is that assertion correct? Has the Minister considered the assertion and, if so, what is the Minister's response?

In closing, I suggest that the correspondence I have received about the desexing issue addresses some of the issues that confront people in metropolitan areas, but I am not sure that it in any way addresses the enormous damage that cats do in rural areas. I perhaps speak anecdotally but I come from a rural background and have seen as a kid what a cat can do to the bird population. I have seen what a domestic cat that was fed every night can do on a half acre block. My observation as a child was that when the cat died the birds returned and there was a huge improvement in the population of the bird life in the small area around my parents' homestead.

At the end of the day it is very important that people understand that whilst we enjoy the company of cats in our homes when one is confronted with feral cats and when one sees the damage they can do to bird life in country areas then there needs to be strong action taken. Members do not need to be reminded that Australia has lost more species of birds and animals than any other country in the world. It is a very poor record and I hope that legislation of this type will go some way towards remedying Australia's appalling record of retention of native species and birds. I commend the Bill.

The Hon. L.H. DAVIS: I would like to take up where my colleague the Hon. Angus Redford left off and spend some time trying to put down the myth that somehow cats do not do damage in the wild. There is no doubt in my mind that feral cats are a menace and it can be demonstrated in the information that I am about to present to the Council. Last year a group of us went to Roxby Downs, which was that 'mirage in the desert', which even the Labor Party now recognises as a reality.

One of the very impressive things about Western Mining Corporation, as the operators of Roxby Downs, is its concern about the environment, its monitoring of both flora and fauna, which is to be commended. Monitoring both inside and outside the operation area has been designed specifically to examine animal groups and their relationship to their terrain, after taking into account vegetation and seasonal influences. An effort is made to take note of the fauna regularly seen in that area: red kangaroos, small nocturnal mammals such as the native mouse, the fat-tailed dunnart, more than 83 bird species, including wedge-tailed eagles, corellas, galahs, parrots and numerous reptiles in the area. The trilling frog is one amphibian that occurs in that area and, as we would expect, there are many rabbits in the area as well.

The Hon. T.G. Roberts interjecting:

The Hon. L.H. DAVIS: The trilling frog is of particular interest, particularly to members opposite. In the tour of inspection of Roxby Downs we had the opportunity to visit the environmental office and the Roxby Downs rehabilitation site. We talked to the health, training and environmental superintendent, Mr Jim Hondros and also to the environmental officer of the Olympic Dam project, Mr John Read.

There was no question that their examination of the feral cat problem gave the complete answer to anyone who believed that there was not a problem. If we look at the Roxby Downs experience in an unemotional and detached fashion we see what damage the feral cats can do. The factual information about feral cats that I now present to the Council has been collected over five years in a scientific fashion by the environmental laboratory officers at the Olympic Dam project. I seek leave to have inserted in *Hansard* a table of a statistical nature entitled 'Cat Diet Summary'. It is a summary of cat stomach samples collected at Roxby Downs since 1989.

Leave granted.

CAT DIET SUMMARY
Summary of Cat Stomach Samples Collected Near Roxby Downs Since 1989

Species	No. of Animals	No. of Cats
Zebra Finch	7	5
Fairy Wren	1	1
Black-faced Woodswallow	1	1
Singing Honey-eater	1	1
Small Passerine	7	7
Galah	1	1
Grey Teal	1	1
Crested Pigeon	2	2
Crested Bellbird	1	1
Budgerigar	1	1
Ctenophorus Fordi	7	4
Ctenophorus Pictus	26	3
Pogona Vitticeps	7	5
Tympanocryptis Lineata	2	2
Tympanocryptis Intima	1	1
Varanus Gouldi	4	4
Diplodactylus Conspicillatus	1	1
Diplodactylus Damaeus	2	2
Diplodactylus Stenodactylu	3	3
Gehyra Variegata	4	3
Nephrurus Levis	1	1
Nephrurus Levis	1	1
Rhynchoedura Ornata	1	1
Pygopus Nigriceps	1	1
Ctenotus Brooksi	4	4
Ctenotus Leae	1	1
Ctenotus Regius	18	4
Ctenotus Schomburgkii	4	2
Ctenotus Strauchii	1	1
Eremiascincus Richardsoni	5	5
Lerista Labialis	1	1
Menetia Greyi	1	1
Morethia Boulengeri	3	3
Trachydosaurus Rugosus	2	2
Ramphotyphlops	2	2
Neobatrachus centralis	1	1
House Mouse	36	15
Rabbit	39	37
Pseudomys Bolami	1	1
Sminthopsis Crassicowdata	1	1

SUMMARY OF ANIMALS EATEN BY CATS NEAR ROXBY DOWNS:

Birds—23
Reptiles—103
Frogs—1
Native Mammals—2
Introduced Mammals—75

The Hon. L.H. DAVIS: This table sets out the number and type of animals and birds that have been found in the stomachs of cats in the period since 1989. It shows that 23 birds, 103 reptiles, one frog, two native mammals and 75 introduced mammals have been collected from cats' stomachs in the past six years. Western Mining has gone about this in a very systematic fashion. It has told me that many of the cats sampled were unwanted or stray cats which left towns and started hunting wildlife. Many more native animals are captured by domestic cats and eaten or left to die. So, the figures of the retrieved or injured animals which have been caught by domestic cats but which have not died are excluded from this list. Certainly, the Western Mining experience is clear evidence of the damage done by feral cats in that particular area.

The other area in South Australia that I want to touch on is Wilpena in the Flinders Ranges. I have obtained contemporary information about the problem in this area. Dogs are not a problem at Wilpena: cats, on the other hand, are devastating. They are the words used by people in the area—'Cats are devastating.'

An honourable member interjecting:

The Hon. L.H. DAVIS: Well, they are double the size of domestic cats so they are all doing very well in this area. The National Parks and Wildlife Service has embarked on an extensive campaign to get rid of the feral cats. It is making some inroads, but cats are not under control and are still a major concern. The service is seeking to reduce the number of cats in pastoral areas and it is using 10/80, which does not go down the food chain and to which cats seem particularly sensitive. So, the dilemma always in trying to keep feral cats under control is not to damage other fauna in doing so.

The Hon. T.G. Roberts: There is no guarantee with 10 80.

The Hon. L.H. DAVIS: No. Cats are also caught in traps. Sporting shooters go into the area for feral goats, which have been a long-term problem in the Wilpena area, and also there is an attempt to keep cats under control with the local farmers doing their bit. So, there are two examples in South Australia which are beyond dispute.

I want to add a third example and that is from interstate in the Blue Mountains. Eighteen months ago my wife and I stayed at Withycombe, which was the childhood home of

Patrick White, the great Australian novelist. Withycombe now is a historic bed and breakfast retreat in a very beautiful area of the Blue Mountains. Adjacent to Withycombe is the home of a very good friend of its owner, and that person is very keen on bushwalking. On two mornings we went out on a long walk through the beautiful trails in the Blue Mountains.

The host was, in fact, an adviser to the National Parks and Wildlife Service in New South Wales and also was involved closely with the establishment of the Dick Smith magazine *Australian Geographic*. He made the point to this group of walkers that there is no native wildlife left in the Blue Mountains under a weight of 5 kilograms and that feral cats and other predators, such as foxes, have devastated the native fauna in that region. Of course, that is the problem we face in dealing with legislation such as this.

I find it ironic that I have had more literature and more information faxed, phoned in and sent in by letter on this subject of cats than that on any other piece of legislation in the past two or three years. There is not one piece of information I have received from anyone about the dog provisions in this legislation; it is all to do with cats.

I can understand the emotion involved with cats. My wife and I have a dog, and I am grateful that no-one has sought to impose their views on the dog provisions of this legislation. However, the cat lobby is alive and well. There is no doubt about that. It has been very vigorous and, of course, it is an exercise in the lobbying process. I commend those people who have the energy and the enthusiasm to put a point of view because certainly I have learnt a lot about the very complicated subject that is undoubtedly involved in this legislation.

I have referred to feral cats at length; I now want to make the point that some people find hard to accept: domestic cats do wreak havoc on fauna. My mother-in-law, who lives in Brisbane, has a cat called Jessica. Jessica is a pretty smart looking cat—the sort of cat that one could see on the front cover of a magazine or on a television program. She is an absolutely blissful cat, but she has a problem: she kills possums and birds. My wife was very concerned about that and bought her mother a bell to put on Jessica. That did not stop Jessica because the next time we were up in Brisbane she very proudly deposited a dead possum on the front door step, and that was there to greet us in the morning. So, we bought a bigger bell, and the next time we were up there it killed not a possum but a bird. So, Jessica the cat with a bell kills possums and birds; she is very good at that is Jessica the cat.

We have to say that if we leave all the emotion out of it and are dispassionate about the facts, they are facts that have to be addressed. It is easier, I think, to address the fact and deal with the emotion than to come up with a solution, and I think that is reflected in all the speeches to date on this subject. I can deal with this matter fairly unemotionally, because I want to declare an interest, and that is that I do not have a cat.

First, I want to refer to the comments of Colonel M.J. Harries, who was an Executive Director of the RSPCA for 24 years, so one would have a fair respect for the comments of someone who has served in that capacity in an organisation such as the RSPCA. He criticises the Government's inadequate reference to de-sexing. That is one of the points that has come through very clearly in the correspondence we have received on this subject. I must say, that I find the points he makes persuasive. Colonel Harries states:

> . . . I believe [de-sexing] to be one of the more important facets of any control program. Examination should be carried out into form of encouragement to sterilise, either by the reward and/or punishment of the owner.

His view was that the CATS (Cats Assistance to Sterilise) Inc.'s program appears to have gone well. He further states:

> The procedure of de-sexing colonies of stray cats was devised by the Universities Federation for Animal Welfare based on the theory that nature abhors a vacuum and if you move or destroy a colony of stray cats from a certain area that same area will be repopulated by other cats shortly thereafter.

One hesitates to wonder whether that applies to politicians as well. Colonel Harries further states:

> If you reduce numbers and de-sex the remaining cats in the original colony you end up with a stable and manageable number of cats in the area. CATS Inc. in its wider application of the same theory has made an appreciable effect of the overall stray cat problem. There is no one magic solution to the problem.

And that is something with which we would all agree. He continues:

> The approach must be multifaceted. You need a vigorous de-sexing drive, a certain amount of selective destruction, obligatory identification of the animal by the owner, coupled with an intelligent education program and you may be able to achieve some small success, which is all that you can really ask for.

Colonel Harries then goes on to say:

> The 'killer virus', which was suggested by Mr Peter Lewis MP, member for Ridley, is draconian and a vote loser.

Just to comment on the CATS program, I received a letter from Dr Tinkler, a veterinary surgeon. I must declare an interest: he is our vet—for the dog, that is, not for the cat.

The Hon. T.G. Roberts interjecting:

The Hon. L.H. DAVIS: Well, he hasn't done much for me. I go to a doctor myself, Terry; I don't know about you. Dr Tinkler makes the point that he has been in veterinary practice for nearly 34 years. For the past five years he has been Chairman of the Governing Council of the Cat Fancy of South Australia. In 1988 he was the first veterinary surgeon approached to offer a reduced fee for de-sexing cats owned by people who could not genuinely meet the full professional fee. From this initial approach CATS Inc. evolved, and it now involves up to 60 veterinary surgeons in South Australia. Dr Tinkler's letter states:

> There can be no doubt this scheme has been a great success in reducing the number of unwanted kittens and stray cats. Identification of cats is to be encouraged but the proposed legislation will cause a considerable amount of anxiety to cat lovers. Cat collars cannot be guaranteed to remain in place; both my cats have lost their collars recently and microchips and recording are expensive. CATS in the last six years has done much to educate the public as to their responsibilities, of which de-sexing is of paramount importance.

That letter is from a professional in the area.

A range of interested parties sent in correspondence: the Tail Wavers Cat Club; the International Network for Religion and Animals; the Vegetarian Society of South Australia; and the Cat Protection Society of South Australia. A range of very interesting names were mentioned but I will not go into detail. Some groups did make fairly specious claims. The Tail Wavers Cat Club from South Launceston said:

> . . . it has yet to be scientifically established that cats *per se* are a major 'problem' to anyone or anything. . .

That group had a very fixed position. It took the extreme position that cats should be protected at all costs. The International Network for Religion and Animals also took the same view, saying:

Cats are being used as a scapegoat for mankind's activities and animal husbandry—which is the real cause for the diminishing native habitat and its animals.

The Vegetarian Society of South Australia Inc.—which I presume one could argue does not have any interest in the matter—said that it was concerned that stray cats were to be targeted and feral cats were to be at the mercy of hunters. That, of course, ignores the damage that feral cats do to native fauna.

To return to the CATS program, there was a very persuasive letter from Dr Joan Carr, now resident in Victoria, who had been involved with Cats Assistance to Sterilise in a research program at the West Beach cat colony. Her letter states:

The cats were all de-sexed a few years ago. Before the de-sexing program, the colony numbered over 40 cats and was rising rapidly—now their numbers have halved and are continuing to fall. They are just one example of a well-managed cat colony in Adelaide in which cats are de-sexed, returned to supervised sites, fed and given veterinary care.

That West Beach program seemed to indicate that the CATS program works well. It would also suggest that the sandhills at West Beach are not being used for what they used to be. Dr Carr has now moved to Melbourne. She has taken up a position at the University of Melbourne and notes that there is no similar program to CATS Inc. operating in Melbourne. There is no support for colony carers to have their animals de-sexed. Melbourne has a 'catch and kill' program which does not solve the problem because it means that the back streets and alleys of Melbourne are riddled with half-starving cats. Dr Carr's plea is as follows:

I urge South Australia to keep the lead by getting to the root of the problem: educating owners about the need for de-sexing and supporting affordable cat de-sexing, including those in urban colonies. Already you have a fine record for de-sexing cats. CATS alone has de-sexed over 25 000 cats in a five year period. Increased support for research into immuno-contraception for controlling the fertility of cats in the wild which do not rely on humans for sustenance is also crucial.

These are some of the comments made by a range of people, and this illustrates the complexity of the problem. This Government has made a positive step forward in introducing this legislation. It has focused people's attention on the real problem of controlling cats. It has also highlighted the damage done by feral cats.

I finally quote from an article from the *New Scientist* of 21 May 1994. It can be said that other regions in Australia have made a positive attempt to control their cat population. The article states:

From 1 July, no household in Gladstone will be allowed to keep more than two cats, and from next January the animals will be under a night-time curfew.

No sandhills for the cats in Gladstone! The article continues:

Cat owners in the city will have to keep their pets confined in some form of escape-proof building from eight at night until six in the morning. On the Diamantina River in Western Queensland, Army marksmen have been called in to shoot feral cats.

The council of Sherbrooke, near Melbourne, in 1991 was in fact the first region to act against cats, which were blamed for a sharp decline in the population of lyrebirds in that region, so it passed by-laws that required cats to be confined at night, to be registered and identified by a collar and to have a microchip implanted or a tattoo. They also encouraged their cats to be sterilised, which of course is the same program offered by CATS Inc. in South Australia. The council charged a reduced registration fee for neutered animals. That is something that is also important: to recognise that councils in South Australia are charging a reduced fee for a neutered animal. As a result of the council at Sherbrooke intervening in 1991 to reduce the movement of cats, the number of lyrebirds surviving in Sherbrooke rose from 10 to 80 over the past year. To be fair, there is some argument about whether cats had been solely to blame for the reduction in lyrebirds; some human element could have been involved, but it is an interesting example.

I will now turn to the wild and look at another example quoted in the *New Scientist* magazine about the damage done by feral cats. In the Gibson desert of Western Australia the authorities went out to kill—poison—all the foxes over a period of a year and then released 40 burrowing bettongs, rat kangaroos the size of rabbits and 40 golden bandicoots to try to repopulate the fauna in that area. All those bettongs, rat kangaroos and bandicoots were dead within three months, eaten by cats. Another program near Shark Bay in Western Australia again sought to poison all the foxes in a particular area and then release burrowing bettongs, but one of the foxes survived and ate four of the bettongs before the fox itself was poisoned, but then the remaining bettongs were killed anyway, probably by cats.

In focusing on cats in the wild it would be quite unfair to blame them solely for the problems with native fauna. In relation to that program at Shark Bay, as Geoff Short, from the CSIRO Division of Wildlife and Ecology, stated in the *New Scientist* magazine:

In Australia, endangered species face a deadly triangle of foxes, cats and rabbits. Just targeting the one won't do. We have to target the lot.

It is quite obvious that, for instance, if foxes are controlled the number of rabbits and cats is likely to increase.

The point that comes out of that article and the examples I have given about Roxby Downs, Wilpena, the Blue Mountains and from the *New Scientist* about the programs in Western Australia is that the feral cat is a major problem which cannot be ignored and which has to be addressed, in association with addressing other predators of native fauna, including foxes and rabbits, which do as much damage to the environment as to anything else.

This Bill deals more with domestic cats and domestic dogs, but it does have a general application. The Parliament's role in this emotional debate is to try to deal with the legislation before us in the most dispassionate fashion possible. It will be a Committee debate, and I have made my contribution at the second reading stage knowing that the legislation will be debated and resolved during the Committee stage.

The Hon. J.F. STEFANI secured the adjournment of the debate.

STATE GOVERNMENT INSURANCE COMMISSION (PREPARATION FOR RESTRUCTURING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 February. Page 1233.)

The Hon. L.H. DAVIS: I would like to speak briefly on this legislation, which seeks to provide for measures to accelerate the sale of SGIC and also to protect the directors and staff of SGIC who may be involved in the selling-off process.

The saga of SGIC in recent years has been a sad one. Established in the early 1970s by the then Labor Government, SGIC was a most successful Government institution until about 1986. It had a conservative investment policy, concentrating mainly on fixed interest and Government securities with some shares in leading companies and virtually a nonexistent property portfolio. But, like so many other institutions, particularly in the private sector, SGIC was swept away in the burst of enthusiasm that accompanied the excesses of the late 1980s. It moved into an extraordinary period where it assembled a gaggle of mediocre properties in Adelaide which, by the end of 1991, were an embarrassment in investment terms: 30 per cent of them were unlet at one stage and, to crown off the embarrassment in the property area, SGIC had entered into a put option in 1988 for which it got $10 million in cash, but the risk it took on in exchange for that $10 million cash was the potential to own 333 Collins Street, Melbourne, if the developer was not able to meet the financial commitments involved with that building.

With the increasing interest rates and the collapse in the property market, that inevitably happened and SGIC reluctantly was legally obliged to pick up the ownership of that building in mid 1991, at a cost of $465 million. It was the most expensive property in Melbourne at that time. It was immediately revalued downwards to $395 million and is currently valued at little more than $225 million. It still remains, only 60 per cent let. It is an unpalatable but necessary fact of life that the losses and write-offs on that building over the past 3½ years since SGIC assumed ownership of 333 Collins Street would come in somewhere near the cost of that building to SGIC, that is, the original cost of $465 million.

What was even more disgraceful was that SGIC breached the Insurance and Superannuation Commission guidelines which provided that insurance companies should invest no more than 5 per cent of their total assets in any one particular investment, obviously following the adage that you should not have all your eggs in one basket. The forced investment at 333 Collins Street meant that SGIC had over 30 per cent of its investable funds in one asset, which was losing money.

In addition, it had, as I said, a series of most unsatisfactory, inappropriate property investments in South Australia and a string of other mediocre investments which defied description. What compounded the problem for 333 Collins Street was the fact that it had not laid off the risk when it took out that put option, so that left SGIC fully exposed to the put option.

To save SGIC from a technical bankruptcy if not a real one, 333 Collins Street was removed from its portfolio and the asset management group established to look after the so-called bad bank took over responsibility for 333 Collins Street. So, with State Government Insurance Commission in 1995, we have, like the State Bank, a Government commercial operation which has been cleaned up of its nasties. So SGIC, like the State Bank, has been sanitised for sale. Today, the State Bank of South Australia is the cleanest of the banks of any size in Australia because quite obviously the bad debts have been quarantined with the asset management task force. So it is with SGIC.

A big effort has been made to retrieve the situation which resulted from a series of horrific decisions made in the late 1980s and some extraordinary blunders made by senior management of SGIC over that period of time, not to mention the complicity and support of the then Labor Government in the process. The State Government Insurance Commission Act required the Treasurer of South Australia at the time, then Premier Bannon, to give his approval for some of the major transactions which SGIC entered into. However, over the past 15 months, SGIC has been tidied up and I was pleased to note that it did report a profit in its last reporting period. As a result, the Government is looking to sell off areas of SGIC. The role of the task asset management task force is to ensure that this is done in an orderly fashion.

The Government has established a project committee which consists of the Under Treasurer, the Chairman of SGIC and the Chairman of the asset management task force to progress the sale process of SGIC. So, this legislation merely seeks to give effect to this process and to corral the management and senior staff of SGIC involved in the sale process from any legal liability that may flow from that. For example, in the due diligence process, Directors and staff of SGIC may give advice or information in writing or verbally; they will be protected from any legal liability arising from that process; and also the Bill will allow for the work required to prepare SGIC for sale. The Bill makes amendments to the State Government Insurance Commission Act, and I support the second reading.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contributions to the debate. I acknowledge the continuing interest of my colleague the Hon. Legh Davis in the performance and operations of SGIC. It is an issue that has been near and dear to his heart for some years now. I therefore acknowledge his contribution over the years in identifying, I think, some ongoing problems that have been clearly in the operations of SGIC for a good period of time. I thank members for their contributions and for their indication of support for the legislation.

Bill read a second time and taken through its remaining stages.

LOTTERY AND GAMING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 1205.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the Hon. Mr Crothers for his contribution to the debate and for his general support for the legislation before the Council. The honourable member raised one matter in particular, and I have sought advice from the Deputy Premier and Treasurer on that matter and I will put on the public record the Treasurer's response to that question. It states:

During the second reading debate on the above Bill, the Hon. Mr Crothers suggested that suspension of licence might be an appropriate penalty for persons who repeatedly and knowingly sell lottery products, including scratch tickets, to juveniles under 16. The position is: Lotteries Commission products are sold under the State Lotteries Act. These products, such as scratch tickets and Keno, are not sold under licence but through commission agents which operate under an agency agreement between the commission and the agent involved. It is now an offence under the State Lotteries Act to sell Lotteries Commission products to persons under 16. The Act contains no authority for the Minister to suspend an agency agreement for any reason. Lottery products governed by the Lottery and Gaming Act, such as those prescribed over—

and they include instant tickets, raffle tickets and eyes down bingo tickets—

are sold under licence issued to non-profit organisations through the lottery and gaming section of Treasury and Finance.

The Minister has the power under the Lottery and Gaming Act to suspend certain licences issued under that Act. However, it is not an offence under the Lottery and Gaming Act for non-profit organisations to sell lottery products to minors. Therefore, licences issued under this Act are not subject to suspension for the sale of lottery products to minors. The point is that it is not an offence to sell a raffle ticket to a 14 or 15 year old, but it is an offence for a commissioned agent to sell—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: Yes. There are two separate products here. A commissioned agent selling Keno or scratch tickets has a problem because of the new legislation, but if Trevor Crothers, on behalf of the Broadview Football Club—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: —all right, the UTLC hundredth day celebrations or the Broadview Football Club—has a licence to sell raffle tickets he would not commit an offence if he sold a raffle ticket to a 15 year old. Those are the two differences. The advice is that there might be some confusion between these two issues. If the suggestion is that a suspension of an agency agreement under the State Lotteries Act would be appropriate where commissioned agents continue to sell commission products to minors, despite the fact that it is now an offence to do so, that would be a matter for consideration by the commission under the terms of its agreements with agents. On the other hand, if the suggestion is that licences issued under the Lottery and Gaming Act should be considered for suspension where non-profit organisations sell lottery products to minors, we would have to amend the Lottery and Gaming Act to make it an offence to sell lottery products to minors. We would have to make it an offence for anyone to sell—

The Hon. T. Crothers: Or the commission would have to write it into the agreement as a clause.

The Hon. R.I. LUCAS: That is in relation to scratchies and Keno. The commission has to do that in part of the agreement for those sorts of products. If it is in relation to selling raffle tickets, we would have to make it an offence to sell raffle tickets to a minor. The Treasurer indicates that this is the second option. He has considered this possibility previously but rejected it, because lottery products available under the Lottery and Gaming Act are different in nature from those marketed by the Lotteries Commission and are not of obvious appeal to minors. He has obviously judged that there has not been a problem in relation to raffle tickets and eyes down bingo and such things. That is the considered advice for the consideration of the honourable member.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Occupying a common gaming house.'

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

Page 2, lines 23 to 30—Leave out section 75 and insert new section as follows:

75.(1) A person who is the occupier of a common gaming house is guilty of an offence.

Penalty: Division 4 fine or division 6 imprisonment.

(2) In proceedings for an offence under this section it will be presumed, in the absence of proof to the contrary, that the defendant knew that the house, office, room or place was being used as a common gaming house.

This amendment has done the rounds of the lawyers' faction of the Government and we now have a considered view. I will explain the amendment. Section 75 of the Lottery and Gaming Act contains an offence of 'being the occupier of a common gaming house.' This is an offence of ancient lineage deriving from the English Gaming Act of 1845. It was enacted to replace a series of statutes going back 300 years which banned specific games such as pharaoh, hazard passage and the pernicious game known as roly-poly. I am not going to ask what that was. The earliest statute dates from the time of Henry VIII. It banned all sorts of games in order to compel people to practise archery.

The law is that a defendant cannot be found guilty of being an occupier of a common gaming house unless the defendant knows that it is a common gaming house. This poses a problem for the police. If the occupants are astute enough to hide their activity before the police can get into the house or room, it is very difficult to prove beyond reasonable doubt that any particular one of them knew what was going on out the back.

The Government accepted police submissions that something needed to be done about this problem. However, consultation revealed a strong strain of opinion that the solution contained in what is currently subsections (2) and (3) was too harsh in two respects. First, it reversed the onus on to the defendant on the balance of probabilities—the civil onus. Secondly, it required the defendant to prove not only that he or she did not know, but also that he or she could not reasonably be expected to have known. That is a very hard thing to do for an innocent person. It asks for proof of almost every negative factor, and this is an offence punishable by imprisonment.

Consultation between the police, Treasury and the office of the Attorney-General has produced a compromise, which is contained in the amendment. The defendant will have to show lack of knowledge only. The onus is still on the defendant, but it is a lower onus—an onus to provide sufficient evidence to raise a reasonable doubt on the issue. That is more consonant with the traditional presumption of innocence which should attend offences punishable by imprisonment.

Parliamentary Counsel has also taken the opportunity to redraft subsection (1). The basic offence should refer to being 'an occupier' rather than a person who 'occupies',. because the statute contains a definition of 'occupier' and not of 'occupies.' My good friend the Hon. Mr Crothers and I have discussed this amendment at great length. I look forward to what I hope is his earnest support for this amendment.

The Hon. T. CROTHERS: After the reference to Henry VIII, I feel almost like Sir John Falstaff—I certainly look like him—having to get up to reply. The Minister showed us the amendment early in the piece and I had a look at it. I believe that what he is saying is 100 per cent correct. If I owned a house and leased it to someone who proceeded without my knowledge to use it as gaming premises, it would not be fair. As the Act was worded, as the owner I would have been up for the offence. However, it now means that there is a defence for the owner of the premises in respect of a matter such as I have described. The Opposition has no reservations. I support the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (7 and 8), schedule and title passed.

Bill read a third time and passed.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

Returned from the House of Assembly with the following amendments:

No. 1 Clause 4, page 2, after line 5—Insert new paragraph as follows:

(f) by striking out the definition of 'the Tribunal'.

No. 2 Clause 6, page 3, line 2—Leave out 'Tribunal' and insert 'District Court'.

No. 3 Clause 6, page 3, line 6—Leave out 'Tribunal may' and insert 'District Court must'.

No. 4 Clause 6, page 3, line 9—Leave out 'Tribunal, the Tribunal' and insert 'District Court, the Court'.

No. 5 Clause 6, page 3, line 16—Leave out 'Tribunal' and insert 'Court'.

No. 6 Clause 6, page 3, line 19—Leave out 'Tribunal' and insert 'District Court'.

No. 7 Clause 6, page 3, line 30—Leave out 'Tribunal' and insert 'District Court'.

No. 8 Clause 6, page 4, line 8—Leave out 'Tribunal' and insert 'District Court'.

No. 9 Clause 6, page 4, line l9—Leave out 'Tribunal' and insert 'District Court'.

No. 10 Clause 6, page 4, line 25—Leave out 'Tribunal' and insert 'District Court'.

No. 11 Clause 6, page 5, line 3—Leave out 'Tribunal' and insert 'District Court'.

No. 12 New clause, page 5, after line 9—Insert new clause as follows:

Amendment of s. 40—Form of credit contract

6A Section 40 of the principal Act is amended by striking out from subsection (4) 'Tribunal or'.

No. 13 New clause, page 5, after line 9—Insert new clause as follows:

Amendment of s. 41—Form of contract that is a sale by instalment

6B Section 41 of the principal Act is amended by striking out from subsection (3) 'Tribunal or'.

No. 14 New clause, page 5, after line 11—Insert new clause as follows:

Amendment of s. 46—Harsh and unconscionable terms

7A Section 46 of the principal Act is amended—

(a) by striking out from subsection (1) 'Tribunal' and substituting 'District Court';

(b) by striking out subsection (2) and substituting the following subsection:

(2) In—

(a) proceedings before the District Court under subsection (1);

or

(b) proceedings before a court for the enforcement of a credit contract, guarantee or instrument to which this section applies, or for the recovery of damages or other compensation for the breach of such a contract, guarantee or instrument,

the court may grant relief under this section.;

(c) by striking out from subsection (3) 'Tribunal or the';

(d) by striking out from subsection (5) 'Tribunal' and substituting 'District Court';

(e) by striking out from subsection (6) 'Tribunal or a' and 'Tribunal or';

(f) by striking out from subsection (7) 'Tribunal or'.

No. 15 New clause, page 5, after line 17—Insert new clause as follows:

Amendment of s. 60A—Relief against civil consequences of noncompliance with this Act

8A Section 60A of the principal Act is amended—

(a) by striking out from subsection (1) 'Tribunal' and substituting 'District Court';

(b) by striking out from subsection (3) 'Tribunal' and substituting 'District Court';

(c) by striking out from subsection (4) 'Tribunal' and substituting 'District Court';

(d) by striking out from subsection (5) 'Tribunal' and substituting 'District Court';

(e) by striking out from subsection (9) 'Tribunal' and substituting 'District Court'.

No. 16 Schedule, page 6, line 7—Leave out 'Commercial Tribunal' and insert 'District Court'.

Consideration in Committee.

The Hon. K.T. GRIFFIN: I move:

That the House of Assembly's amendments be agreed to.

Yesterday I made some observations about this Bill, but more particularly the Second-hand Vehicle Dealers Bill and outlined a few matters that ought to be addressed. It is obvious that there will be some matters that could be agreed without further discussion. There will obviously be matters which cannot be agreed without further discussion, and this Bill is to some extent dependent on what may be finally resolved by a deadlock conference in relation to the Second-hand Vehicle Dealers Bill. I appreciated the contributions on the Second-hand Vehicle Dealers Bill from members yesterday intimating their present positions and, as a consequence of that, I think that we ought to short-circuit the process and work towards a deadlock conference in relation to both this Bill and the Second-hand Vehicle Dealers Bill.

The Hon. ANNE LEVY: I oppose the motion. I feel that this Council should insist on its amendments as a bloc rather than consider each one individually. I admit that some of the amendments to the amendments as set out by the Attorney are certainly acceptable to the Opposition, but certainly not the totality of them. I agree with the Attorney that probably the most expeditious way of dealing with this Bill and the Second-hand Vehicle Dealers Bill is to get them into a conference where the issues can be thrashed out. To a large extent, the solutions found to one will flow on and provide solutions for many of the other Bills which are being considered and will be considered in the near future by this Council. I oppose the Minister's motion, and I feel that the Council should insist on its amendments *in toto* even though when we come to a conference I am sure agreement will rapidly be reached on some of the issues, if not on all of them.

The Hon. SANDRA KANCK: I indicate that the Democrats are not happy to agree to the amendments as they have come back from the House of Assembly.

Motion negatived.

The following reason for disagreement was adopted:

Because the amendments are inconsistent with the purpose of the Act.

SECOND-HAND VEHICLE DEALERS BILL

Consideration in Committee of the House of Assembly's amendments.

(Continued from 21 February. Page 1226.)

The Hon. K.T. GRIFFIN: I move:

That the House of Assembly's amendments be agreed to.

I have already outlined the basis for this motion. I expect that this Bill will end up in a deadlock conference where those issues presently in dispute will, hopefully, ultimately be resolved.

The Hon. ANNE LEVY: I oppose the motion for exactly the same reasons as with the previous Bill. Looking through the 42 amendments from the House of Assembly, while I might actually agree with about 18 of them I do not agree with the others at this time. Rather than going through the laborious procedure of working out which ones we agree with and which ones we do not, the matter will be resolved speedily by getting into a conference. So in order to achieve that I oppose the Attorney's motion.

The Hon. SANDRA KANCK: The Democrats are not happy to accept the House of Assembly's amendments.

Motion negatived.

The following reason for disagreement to the House of Assembly's amendments was adopted:

Because the amendments are inconsistent with the purpose of the Act.

WORKERS REHABILITATION AND COMPENSATION (BENEFITS AND REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 February. Page 1189.)

The Hon. M.S. FELEPPA: This Bill should be vigorously resisted as it goes against the humane principle of compensation for injured workers and, furthermore, ignores common justice in the application of reviews. As has been said already by the United Trades and Labor Council, the Bill is inhumane, unjust, inequitable and poorly drafted. It is an attack on the rights of workers and will adversely affect the dignity and living standards of workers, consequently reflecting on the harmony they enjoy within their families. Workers have a right to expect to be treated as dignified human beings, with the ability to continue enjoying a standard of living to which they had committed themselves before they were injured.

The blame for injuries in the workplace, unless it can be proved conclusively to be otherwise, most of the time falls squarely on the employer. The employer has an absolute responsibility to provide a safe and secure workplace. As a former toolmaker for many years, I have had experience of what can go wrong in work premises during working hours. Unless preventative measures are taken to ensure that people work in a safe environment, injuries can occur very easily. Frequently employers, because of a simple lack of understanding and ignorance of the possibility that an accident can happen, do not take any precautionary measures.

This Bill shifts the consequence of the blame onto the worker by reducing the provision of fair and equitable consideration following an injury. The blame for the injury does not seem to be addressed in the Bill. If it is addressed indirectly, it seems to favour the employer's cost of cover by reducing the actual terms of benefits now enjoyed by an injured worker. At present, under WorkCover, a worker who is injured receives 100 per cent of his or her average wage for 12 months, reducing after 12 months to 80 per cent of that wage. Clause 8 of the Bill attacks that standard of compensation by cutting the payments to 85 per cent after only six months. Those suffering stress are even more harshly treated. Then, after 12 months, there is a drastic drop in wage compensation, which is likely to be at the rate of social security benefits, that is, around the poverty line, and that is not good enough.

Being paid by WorkCover at the level of the Social Security pension puts the worker at a real disadvantage compared with recipients of Social Service and Veterans' Affairs pensions because the worker will not be entitled to electricity, gas, telephone, council rate and other concessions enjoyed by such pensioners. These concessions help raise the pension somewhat above the poverty line.

Under WorkCover the health benefit concession will not be available to the worker or his family. WorkCover would still be responsible for the injury, and these benefits, particularly the health benefit card, provide a real advantage to pensioners. To get those benefits the injured worker would have to be removed from WorkCover and place himself or herself in the social security area. The benefit of such concessions is an incentive to leave the WorkCover scheme. In doing so, WorkCover payments to the recipient would cease to the financial advantage of WorkCover and the financial responsibility would then fall on to the Commonwealth Department for Social Security.

To shift the responsibility for injured workers from the State to the Commonwealth in my view seems to be the very strategy of the State Government. This legislation is quite simply designed to force injured workers onto Social Security benefits. What has not been taken into account is that, when the Commonwealth realises that this ploy exists, it could well plug the hole, leaving injured workers in no man's land, with no concession and only the security level of income from WorkCover.

In the light of what I have said, the terms of WorkCover's compensation proposed in the Bill are quite inhumane for injured workers and their families. Of course, there is another way in which the legislation aims to hinder injured workers from receiving their just dues if the rights of the claimant are to be removed or reduced. I refer to section 81A(1) of the Act, whereby the claimant will have no right to appear in person or by a representative in proceedings before a review officer. It would be interesting to know how the Minister concluded that injured workers should not be entitled to fair representation. This is absurd.

No provision is made in the long amending clause 20 for a written submission initiated by the applicant, and no opportunity is given for the worker to present information to show that the decision already made by the review officer was wrong. Under the same clause any information to be laid before the review officer is to be obtained only by the review officer. Treating a case in that way is like conducting a Star Chamber court, which enforced laws in an unjust way when other courts were unable to enforce them. The Star Chamber was used by King Charles I to enforce policies when the policies were in conflict with the common law.

The Star Chamber court was abolished in 1641 because the injustices of the court were seen to be intolerable. Now we have the shadow of the Star Chamber court falling across the WorkCover Appeals Tribunal, and such Star Chamber practices in our day should not be tolerated. The semblance of the Star Chamber court should be sufficient alone to condemn this Bill. But, at the end of all the wrangle over entitlement to claims and payments, WorkCover could stop the payments without prior notice under amended section 37(3)(a) of the original Act. That is a sheer arbitrariness I should say. If the decision was wrong, then there would be great injustice and hardship.

There are two matters of conflict of interest that can be detected in the practices arising out of the legislation. Assessment of non-economic loss and assessment of a physical impairment will be given over to a panel of doctors who will be appointed on the authority of WorkCover, and the decision of the panel will be final. The panel of doctors will hold their positions at the pleasure and satisfaction of the appointed body, WorkCover, for which they will be making assessments. Since the assessments they make must please WorkCover—which appoints them—there could well be a conflict of interest. If WorkCover is not pleased with the assessments, the doctors could well be out of work or at least stressed by the knowledge that they are on the knife-edge of a conflict of interest. That there can be no appeal from the decision of the doctors is another instance of injustice in the Bill.

The other conflict of interest is where private insurers will have to assess the reasonableness of the employer's actions and also on reporting on the employer's negligence in the work place on unsafe work practice. The private insurers are driven by the need to have the employer continue to do business with them and it is in the interest of private insurers that the insuring employer is not offended by private insurers' assessments. There could be a conflict of interest between pleasing the employer who might take away the business from the private insurer and to be honest in giving a fair assessment which may favour the work force. The work force is no threat to the insurer, so the balance of likelihood would lean to favouring the employer's interest.

The whole Bill, I believe, is flawed with so many holes that it would be impossible for me, or anyone, to cover them all in the time allotted for each speaker in this debate. I have drawn attention to you, Sir, to the Council and to honourable members to some of the points that affect the human side of the Bill and I have highlighted the inhuman and unjust treatment of an injured worker who may be affected by this intolerable Bill. Therefore, I oppose and I condemn the legislation.

[Sitting suspended from 5.53 to 7.45 p.m.]

The Hon. T. CROTHERS: As would well be known by my colleagues on both sides of this Chamber, I normally do not speak for any duration. However, so incensed am I by the contents of this amending Bill that tonight I will speak for an hour—and, hopefully, it will be only an hour. I indicate from the outset that I oppose the Bill, and I will deal in the main with the statements made by people in another place who had the carriage of this Bill and who proffered the excuse that they introduced it to make our Australian exports cost competitive. I have said that I want to be objectively honest, and will I try my very best to ensure that I am. In its 15 months in office, the Liberal Government, in an electoral sense, has seldom put a foot wrong.

The Hon. Caroline Schaefer: Hear, hear!

The Hon. T. CROTHERS: I agree. Honesty always will bear out. I thank the Hon. Mrs Schaefer for her interjection. I hope I hear the same from the Hon. Mrs Schaefer in a moment, when I describe other elements of truth. As I said, the State Brown-led Liberal Government, in my humble view, has not gone too far wrong electorally up to now. However, I put on record that this is the biggest mistake the Government has made electorally, and the public will not forget what the Government has tried to do to people who suffer work related injuries through, in the main, no fault of their own. Some nine months ago this Council almost re-wrote the WorkCover Act. Why so soon after that are we re-writing it again?

One needs to look at the Government's timing in respect of the matter. We are at least two years away from the next election, and probably closer to three. Does the Government think that the electorate will forget? I do not believe they will; I do not believe that all the people who would suffer if this Bill were to be passed in this Chamber would forget. Those hundreds of innocents who would be caught by this draconian measure would not forget, nor would their dependents and the family kin to whom they would have to turn amidst the traumas that would be imposed upon them should this Bill be carried. The electorate will not forget, and I can assure the Government that they will not be allowed to forget what it has done to them on this occasion. If this Bill is passed, the Government will have ensured that the State Opposition wins back at least 10 seats, if not the Treasury benches.

Mr President, your backbench, in both this place and another place, but particularly in another place, should not be lulled into believing what it is being told by the Government. It is difficult to believe the latest actuarial figures emanating from WorkCover, which show a shift of $150 million from the figures given 12 months earlier. It is difficult to believe those sorts of actuarial figures, given that actuaries are supposed to be skilled in making forward projections and can give accountability in respect of their figures.

Anyone with half an eye would know that high unemployment—which we have experienced, and it is not getting much better in this State—reduces the amount of moneys contributed to the cost of running WorkCover. Whilst it is true that it might also lift the A accident levels in the workplace somewhat on the scales of balance, the figures lost by way of contributions made, if you had a totally employed work force, would far exceed anything that would amount to cost in respect of additional people in the work force.

The Government talks about the South Australian union movement, and it says that the Australian Labor Party is enthralled to it. That is absolute nonsense to anyone who has a skerrick of knowledge about South Australian industrial relations. It does not stand any test I know of. Many South Australians are under Federal awards and therefore are not subject to the State Act, others in the South Australian work force are award free and many others are not members of any union at all. That gives the lie to what is being pedalled by the Government.

If the Government persists with this legislation, many existing State awards will shift to the Federal industrial arena to enable the unions, in the only way possible, to protect their members. Currently those unions who have members under State awards make allowances for transport costs, certainly to the eastern States, in respect of all goods and services that emanate out of this State. I guess the corollary of that is that those reduced wage costs that do exist—and I will elaborate on that in a moment—would also be of benefit to people who are exporting some of the goods that this State manufactures and, indeed, some of the agricultural and horticultural products that are also major exports of this State.

The State Industrial Commission, in my view and in my experience, makes allowances for South Australia's distance from its traditional markets, and I personally know that to be a fact. I suggest that the Minister looks at the State wineries award to check the veracity of what I am saying. If the Government, through its stupid and unnecessarily draconian WorkCover legislation, forces unions into the Federal award system, South Australia's traditional industries will have no allowances made whatsoever for its poor geographical positioning.

Let me assure you, Mr President, and other members on the Government benches, and particularly the backbenchers in another place, and even some of the State Ministers who appear not to have a handle on the portfolio for which they are responsible, that interstate branch officials are every bit as conscientious as the officials of South Australian unions, and it will be very difficult to persuade the interstate unions that South Australian workers should continue to enjoy a situation that places South Australian industries at a cost competitive advantage over their interstate competition.

What of the other untruths of this Government in respect of the WorkCover amendments? Let us look at them. The Minister says that measures are necessary to make us cost

competitive with our competitors in the field of export. Again—

An honourable member interjecting:

The Hon. T. CROTHERS: If you listen further, I hope, in the most objectively honest way that I can present it, that you will find good reason for taking issue with your Minister for saying that. Again, in terms of our competitors in the field of exports, the facts belie these statements in that respect. First, there are two sets of recent wages figures: one from the Australian Bureau of Statistics and the other from the Australian National University's National Centre for Economic Modelling (NATSEM). The bureau's figures show that South Australians earn on average 2.3 per cent below the national average wage, whilst NATSEM's figures show that South Australians earn 5.1 per cent below the national average wage. I prefer the NATSEM set of calculations as they include permanent, part-time and casual employees, whilst the Australian Bureau of Statistics figures include only full time employees. As we all know, work related injuries do not just confine themselves to full time employees; they can happen to anyone.

What has the Government itself got to say about our cost competitiveness? The Minister for Small Business in another place, the Hon. Mr Olsen, is always telling the world, indeed anyone else out there listening, about how successful both he and his Government have been and are being in attracting new industries to this State. I have no axe to grind in relation to that. However, an awful lot of this investment is coming from some of our largest trading partners and some of our largest export competitors. It is investment aimed at export markets, not just Australian domestic markets. Whilst it is coming from another place, the Minister for Tourism and other portfolio responsibilities is always telling us and the rest of the world what an attractive cost-competitive destination South Australia is for overseas tourists. I do not cavil with that. Again, when he wears his other hat as Minister for Industrial Relations he introduces a Bill into another place and gives as one of his major reasons for so doing that he is trying to make South Australian industry cost competitive. Clearly he and his Government cannot have it both ways.

Indeed, when one looks at South Australia's record over the past six years with export wines, is it any wonder that South Australian workers, irrespective of Party political loyalties or philosophies, are more than just a little cynical about Minister Ingerson's remarks about South Australia's cost competitiveness in the field of exports? Likewise, in the field of domestic exports, need I remind this Council and my colleagues in it of the submarine contract, which this State won in the face of overwhelming competition from just about every other Australian State? Yet again, with our new frigates, we won the contract for building their superstructure; indeed, I am parochial enough to suggest that, had it not been for the Federal Government's desire to appear evenhanded and to assist work depressed areas in other States, such as Wollongong and Newcastle, we would have won the full contract and not just part of it. I say that with some vigour having served my time in a shipyard. I also take this opportunity, if I may, of reminding this Council that when the Australian Labor Party was voted off the Treasury benches in this State our exports over imports where in the black, not in the red, as one would seem to think from the statements made by Mr Ingerson in another place.

Clearly, the issue of cost competitiveness, so eagerly espoused by Minister Ingerson in another place in his efforts to justify these amendments, does not stand up. There are other industries in this State that one can use as a litmus test or measuring stick with respect to those comments made by the Minister, such as the manufacture of optical lenses, dried fruit (enhanced value there) motor cars, alloy wheels and value added farm and horticultural produce, and that gives the lie to this inept handling by the present Minister of the issue of cost competitiveness. Restraints of time deny me the time that I believe is necessary to canvass the situation fully at this time. Suffice for me to say that, because of the arrogant stupidity surrounding these amendments which this Council now has before it, we are rapidly on the way to losing one of our strengths in the area of competitiveness. That strength was, and hopefully still is, our relative freedom from industrial strife and unrest here in South Australia.

Those colleagues of mine in this and another place of this Parliament who witnessed the rally on the steps of this State Parliament will well understand what I am saying. Just imagine an estimated 8 500 workers outside this place in the searing heat of almost 38 degrees Celsius, or 100 degrees on the old scale. The mind boggles at that temperature. Then, on top of that, even in South Australia, the nurses of this State, whose strike free industrial record is second to none, are on strike. And what is their disputation all about, Mr President? It is all about their wanting the same wage increase as their colleagues have been granted in other Australian States—an increase refused them by this present Government and this Minister. It led to the nurses (justly, in my view) going on strike for one of the very few times in the history of South Australia. With respect to this and other just disputes by workers, I believe as a former union official, and I believed then, that striking or withdrawal of labour is the very last card in the pack. Nobody wins out of that—not the worker, not the employer and not the Government.

In a mass meeting of the Nurses Federation the members saw fit to determine that they would stop work to protest against this Minister and the way in which he has treated their wage claim. I am also mindful that that wage claim had parity with the Eastern States on this occasion; but, if you look at their awards, of course, you will see that there are some variances from State to State. This and other just disputes were brought about by the inept handling of this Minister in the field of industrial relations. I think he is a better Minister for Tourism in my view (and I am not saying how good that makes him) than he has certainly shown himself to be in his knowledge of industrial relations, over which he now presides as Minister. But this and other just disputes by nurses and others will erode South Australia's cost competitive edge—and all because of the arrogance of some members of the present Government and their inability to understand and properly deal with industrial relations.

At least one of my colleagues said in his second reading contribution that it was his view that, in the light of the massive number of amendments to the WorkCover Act that are currently before us—and I remind the Council that this is the second lot of amendments that has been trotted out to us in the past nine months by this excuse for a Minister and what he represents in the Government, who purportedly acts for all South Australians (in the face of the amendments to this Bill that is a very sick joke indeed)—this is an ambit claim by the Government so that it can wheel and deal with the Democrats on these matters.

That member is present in the Council, and he put that to me. I told him that no responsible Government would do that because of the potential disaster which an act of this nature could cause to this State's ability to attract new industries

and, therefore, new employment for South Australia. It looks as though he was right and I was wrong, because the wheeling and dealing between the Government and the Democrats, if one is to believe press reports—and they may not be accurate—appears to have already started. I, for one, hope that, as nine months ago, the Democrats do not get sucked in and that they stand by their principles, thus ensuring that they, like their founder, Don Chipp, will act to keep the bastards honest.

However, I remind them again of what is contained in the Liberal Party's document issued in December 1993 during the lead-up to the last State election and presented by the then Opposition (now the Government) as its document regarding compensation. It is worth looking at the cover-all paragraph, the opening stanza of that document. I will quote verbatim the words that head that document. I have the document with me in case members opposite do not believe what I say. It states:

> A Liberal Government will restructure the administration of workers' compensation, health and safety to guarantee to employees a safety, compensation and rehabilitation system which ensures equity and fairness, promotes a shared responsibility for safety and rehabilitation and achieves international standards in administrative efficiency and cost.

It appears to me that this is an election promise which has been more honoured in the breach than in its carrying out. Once more I say to the Democrats, who have such a vital role to play in this matter: please, for the sake of all South Australians, who may or may not be union members, who are employed under a State award in this State, who may well work in a sheltered workshop, who may well be award free, who may well now be on compensation, do not be sucked in by this anti-worker legislation: just keep the bastards honest.

I would like to make one further point in respect of cost competitiveness, and that relates to the current recently adopted system of enterprise bargaining, of which one of the main outcomes appears to be productivity gains. Some members opposite on the Government side will say, 'What a nonsense', but it is not, because if you look at those productivity gains—and I understand that it is possible to quantify the outcome of such negotiations—you will see that there appear to be productivity gains by employers of 4 per cent.

Because of these amendments, I pose the following question to members of this Chamber: in the light of the present complete abandonment presently proposed by this Government through these amendments to weekly income maintenance for injured workers, what industrial organisation in its right mind would proceed in this State with enterprise bargaining without the safety net of an equitable compensation scheme? The answer appears to be very simple to me but, because I pose it as a question, I will leave it to all other members in this Chamber and in another place to think about.

There are a couple of other matters I want to put on the record in respect of cost competitiveness before I move off that subject and switch my attention to other areas. I watched a program on Channel Two within the past week about Australia's cost competitiveness in comparison with some of our trading partners, and I was somewhat surprised because even I did not realise how competitive we had become. However, when one thinks of the United States raising protective barriers against our State steel exports and our beef trade and subsidising its grain exports against ours, whilst at the same time our other major trading partner, Japan, continues to act in respect of our having total export access to its rice and beef markets, I suppose one should not have been surprised by the contents of the ABC program, which indicated just how cost competitive Australian industry has become.

For those members who did not see it, I advise them to get a copy of the program, as it will open their eyes, particularly so far as this current debate is concerned. Before I complete my remarks concerning cost competitiveness, I turn to an article that appeared on page 13 of the *Advertiser* of Monday 20 February this year. It states, amongst other things:

> A table of wages paid in other countries, including those close to Australia, illustrates the pressure on a relatively high-wage country. Production workers here average $US12.25 an hour.

In Germany—and I remind members that Germany, before it amalgamated with the old Russian dominated provinces of East Germany, lived off its exports and had a surplus balance of payments—the average wage earned by production workers is $25.56, more than double the wages earned here. In Japan, a nation that lives off its export markets and has recently just surpassed the US as our biggest trading partner, the average production worker earned $19.20 per hour, or in excess of $7 per hour more than their Australian counterpart. But there are, on the other side of the coin, those in Bangladesh, where the average cost of production per worker per hour is 25¢.

I pose the question to this Chamber: if cost competitiveness is the rationale that underpins Minister Ingerson's reason for putting forward these draconian measures, why is it that Bangladesh, with a population of 100 million and its low wages of 25¢ per hour, is not amongst the top 50 export nations on this earth?

If cost competitiveness is as major a piece of componentry as the Minister would lead us all to believe, why then is not Bangladesh to the forefront of measures such as that? And that is allowing for the fact that many of the western people with capital to spend, so as to maximise the profitability—do not worry about cost competitiveness—have moved their industries to low cost wage nations. Why are West Germany and Japan the two largest export nations in the world in respect of the balance of payments position since they were restarted after the Second World War and the two countries carrying the largest surplus of balance of payment moneys in respect of export earning in the past decade, with one country (West Germany) more than double our costs and the other (Japan) $7 an hour above our costs—and you would need to add on a lot of other costs if you wanted to justify bringing down those differentials, and I know that you cannot?

The Hon. A.J. Redford: Because they haven't got Keating as Prime Minister.

The Hon. T. CROTHERS: You say that about Mr Keating. Let's see what you have to say in the latter six months of this year. You may, Mr Redford, as a relatively new member here, find that you are dancing to a different piper's tune at that time, and I believe you will. Certainly, all the portents are there, in the work that the Keating national Government has done, and the Labor Government I guess—although I am a bit hesitant to claim Bob Hawke at the moment, although I used to be a supporter of his.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Never mind, the wheel keeps turning, even if one of the spokes is bad or missing. Why is it that, over the past 13 years of a Federal Labor Government, Australia's exports, particularly in the manufacturing, agricultural and horticultural area, in respect of enhanced value, have almost quadrupled? If I could think of the word for five times: it is 'quintuplication', but I cannot think of the

adverb! Let us say it may be even five or six times more. My Latin fails me. Sextuplication means six times, too. I depend on the QC and the barristers present to correct me if my Latin is wrong.

Turning, if I may, to just some of the changes the amendments will make to the present Act if they are carried by this Parliament, I would like to list some of them. I shall not explain what they mean in my second reading contribution, as some of my colleagues have already done that and, no doubt, will continue to do so (and the Democrats as well, I would hope) throughout the second reading. They are as follows: and I want people to listen to this, because this is draconian by any yardstick, by any litmus test that you want to utilise relative to gaining a quantum measurement of what this measure, introduced by some elements of a draconian Government, means in respect of workers. I will come to that much later. First, there will be a cut in the benefits, a reduction in the way average weekly earnings are deducted. I would like to explain to people what that means.

There might be a permanent night shift worker who is injured at work and because of the penalties that he or she receives their average wage might be $100 or $150 higher than the average wage paid to a day worker. There might be someone with a wife and two children—the Australian average—paying off a mortgage on the strength of what they believe is a job for life and would have been had they not been injured. As a consequence, this Government seeks to penalise at least 19 out of 20 workers (or maybe even higher) who are on workers' compensation. I understand there are figures that show that to be 19¾ workers out of 20. On this occasion, and probably for the first time in my life in respect of objective honesty, I will be conservative relative to objective honesty. Let us say that this Government is trying to catch that percentage of workers who are not *bona fide* relative to compo. Let us face it, if all the laws that we ever passed in this place did not require legal action further up the track, and if there were not smart lawyers and barristers around the place, then there would not be a position arising where sometimes the way in which—

The Hon. K.T. Griffin interjecting:

The Hon. T. CROTHERS: You are a barrister and you would have taken cases. As I understand the proprietaries of the legal profession, if anyone comes to you with a case then you are obliged to take it unless you are acting for another party involved in that dispute. Before you are a barrister you have to be something else, but even when you are a barrister you are something else. I will not go into that because I might get thrown out of the Council. The position is that you are obliged to take it. There are four legal people on the Government benches of this Council and there is a wealth of experience residing in them in respect of what I say.

I now deal with the cut in benefits. The Bill will provide for a reduction in benefits through a change in the way a person's percentage of disability is calculated. Even the almighty—and this might sound funny coming from me—had to rest on the seventh day. He found difficulty keeping the pace, so what chance does an ordinary GP or practitioner have in respect of calculating a disability to within 1 per cent—little or no chance at all. Yet, on the whimsy of a medical panel appointed by WorkCover as a tribunal of appeal that is the case. It is rather like putting a fox in the chicken coop to act as night watchman.

There will be a drop in benefit levels to social security level after 12 months for people with less than 40 per cent disability—the point I have just referred to. This includes someone who has lost their leg below the knee. Imagine a fork lift driver or a truck driver by profession who loses their right leg below the knee: do they have a greater than 40 per cent disability? Maybe they will and maybe they will not, but we do not know because the Bill is unclear as to whether you should differentiate given the occupation that the injured worker is following in respect of their quantum percentage of disability. This is discrimination against workers with genuine stress related injury.

Employers are no longer responsible for rehabilitating injured workers or keeping their jobs available for 12 months. That means that the onus for sustaining those people in today's society will be placed on the South Australian and Australian taxpayer even more in respect of the Bill. I believe the Bill is intended to line the pockets of employers which the Government thinks it is beholden to, and I will come to more of that shortly.

Employers will no longer be responsible for rehabilitating workers or keeping their jobs available after 12 months. In other words, if one's injury is of such consequence that one cannot return to work for 13 months or 12 months and one week, it is just too bad; that worker is out of the door. Benefit payments to injured workers can be stopped without any prior warning. I understand there is no appellate tribunal for that. It is almost a court of Star Chamber in its draconian nature. The right to appeal against some claim decisions will be lost, and I have already referred to this aspect. Workers will also lose the right to appear or be represented in reviews of their claims. Those are just some of the measures which, if this Bill is passed, will be inflicted upon *bona fide* claimants who, by far and away, constitute most of those who have work injury related claims. I also want to talk about the Government's plans to hand WorkCover over to private insurers, but I will not do so at any length. Suffice to say, as has been pointed out by the Hon. Terry Roberts, I was a shop steward with front line hands-on experience, which I doubt the Minister has, and I well recall this involved a relatively good employer, the South Australian Brewing Company. Even there (because of the insurance company, not so much because of the company itself which at the finish had to switch insurers), there were problems under the old private insurance work-related injuries compensation scheme. As I said, that has been tried before and been found wanting.

The Hon. A.J. Redford: But there were common law rights.

The Hon. T. CROTHERS: I will come to that directly; I am not going to leave that stone unturned, Comrade Redford. What guarantees will the Government give—

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: Do you think I have been too kind in using that appellation?

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: When I was in the army everybody was my comrade, as they should be. The Old Comrades Association of Great Britain is renowned for the way that it acts on behalf of victims of bureaucracies and Conservative Governments in the United Kingdom. But enough of that idle chitchat. What guarantees will the Government give to South Australian workers in the event of a private insurer going broke, as was recently very nearly the case with Lloyds of London? Everybody knows Lloyds of London. In fact, there used to be a colloquial saying in the UK, 'Your money is as safe as the Bank of England,' or 'as safe as Lloyds'.

Oh, how times have changed. Lloyds was on the point of bankruptcy, and would have been bankrupt, but for the efforts of the newly appointed Chairman who has thus far pulled it sufficiently out of the mire, though not totally, to keep operating. What guarantees will this Government give to workers whose compensation is being paid by an insurance company which may have to go bankrupt, or, worse than that, may involve itself in a contrived bankruptcy? Plenty of cases like that have emanated from the 1980s. The Attorney-General referred to one or two of them today. There is Laurie Connell, trying to claim legal aid, which is absolutely scandalous. There is the case of Alan Bond—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: I don't care whether they were supporters of ours or not; I was not a supporter of theirs. The fellow who is in charge of the winding up proceedings taken against Alan Bond would not comment this morning when he was interviewed on ABC radio; he said, 'Well I don't think I'd better comment on that.' Yet it looks as though those people who were sucked in by Bond will this Friday accept a 1¢ in the dollar payment. That is scandalous. **The Hon. A.J. Redford:** What's this got to do with the Federal Government?

The Hon. T. CROTHERS: I will come to that. It is time the Federal Government (and that is my own people; they are not without sully in this) did something with respect to reinforcing the bankruptcy Acts, which after all are Federal Acts, as you would know, complemented at times by State provisions.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Who?

The Hon. A.J. Redford: Comrade Brian Burke—he got out the other day.

The Hon. T. CROTHERS: Unfortunately, to my ethnic chagrin, both Burke and O'Connor have names of Irish origin. I will not say anything more than that, but I hope that answers your interlocutory interjection.

The Hon. R.D. Lawson: When are you going to talk about the bankruptcy of South Australia?

The Hon. T. CROTHERS: I do not think we are bankrupt. You are still in Government, aren't you? They are still paying us, aren't they? However, with the latest actuarial figures showing a $105 million swing around with respect to the provisions of the WorkCover Act, I am not so sure how long we will stay out of bankruptcy.

The Hon. A.J. Redford: It comes to one vote, one value.

The Hon. T. CROTHERS: You do not believe in that. You have called for voluntary voting, so you certainly do not believe in that. I do not mind your interjecting with me, going against your own Party, but you certainly do not believe in one vote, one value, because the Attorney on two occasions here—one by subterfuge and the other by straight-out Bills—has endeavoured to introduce voluntary voting. I do not want to hear from Mr Redford or any member on the other side even the vaguest notion of one vote, one value, because I find that appalling in light of the honourable member's support for voluntary voting.

Before I go on with the other matters, I would like to place some comments on the *Hansard* record. This is one of the many letters that I and others on both sides of the House have received from injured workers. It is a letter from a very articulate worker. I do not know why he wrote to everyone. I will not name this person, for reasons which will become obvious. He was a member of my old union. So, he writes to me about something I understand. When I was an organiser with my old union, an orthopaedic specialist, whom I will not name—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Absolutely! Before I came here, yes, you have got it right; you are getting clever. Before I came here, when I was an organiser, I used to do the city round for our union. There was a specialist, a Mr Blah Blah, a supporter of the Party now in Government, I am led to believe. This member had injured his back by placing a full keg under the counter of a hotel. The technology with respect to refrigeration was not as good in those days, so the lead into the keg had to be kept as short as possible from the keg to the pump so that the refrigeration system would not be lost.

Now, of course, it does not matter where they put it because the technology is so good, but in those days it did matter. This bloke was injured by shifting a keg and the licensee, of Irish extraction and as decent a fellow as ever pulled on a pair of black patent leather pumps, was part owner of the hotel. He gave evidence about what he saw in favour of this bloke, but in the meantime this specialist kept writing to the press *ad nauseam* every week about bludgers who were on compo.

On one occasion this fellow went to see the specialist and was told straight out that he was a bludger. This worker was a middle aged German or Austrian with a wife but no family or children. He came home depressed from that specialist. His wife said she would make the tea; because it was about four o'clock, but the worker said, 'I am going out to the garage.' He went out there and hanged himself but, before he did, he told his wife what the specialist had told him.

My barrister at that time was young and well known, and we took the case for the widow, who was bereft of any capacity to take it for herself. This was in the days of private insurance companies. So the union fought the case because he was a member, and we won it. My barrister said, 'Do you mind if I give this letter to fourth year medical students at Flinders and Adelaide Universities so that they can see that they have a social obligation to their patients?' I did not mind at all, but here is the rub: the letters flowing from the pen of this Dickensian-like specialist pen ceased. Indeed, the last time I saw a letter from this fellow was three months ago, and it is the only letter I have seen in the past 15 years.

That story indicates what I am saying about compensation. It matters not whether a worker is a supporter of the Liberal Party, the Labor Party or a trade union: everyone can get injured, and the Government is seeking to put additional coinage and profit into the pockets of those big businesses to which they believe they owe something because of their win at the recent election. As a member of the Labor Party, I believe that we earned our stripes at that election, and I make no bones about that.

I wish now to refer to a letter I received (although I do not know whether I was the only member to get one) from an articulate former Liberal voter. I want to put it in *Hansard* but I will disregard any parts of the letter that could identify the writer. Because the letter is addressed to the Minister, he obviously has a copy, and perhaps he has now learnt to read. However, it appears that that may not have been the case until now in relation to this Bill. The letter states:

Dear Minister,

I am writing with regard to the Liberal Government's proposed Bill to amend the WorkCover legislation. Words cannot describe how I feel towards these discriminating changes. If I may give you a brief of my situation, I am 44 years old and until 30 January 1995 was employed by. . . . . As of that date I received a letter of retrenchment. Four years ago I injured my lower back while

assisting a paraplegic patient into the hotel's cocktail lounge. I suffered a disc prolapse, underwent a laminectomy, and six months later, due to deterioration, underwent a spinal fusion (discs, lumbar 4, 5 and S1).

Six weeks later I resumed work on a part-time basis with restrictions, gradually building up to full time. I was in continual pain and at times was forced to work double shifts or was rostered on duty by myself. At times the pain was so severe I could not bend to take my trousers/shoes/socks off. I was ordered to rest my back for further surgery to remove pins, but could not proceed with the operation due to the trauma experienced for the first operation and the life (or lack of) it has left me.

I am unable to walk, sit or stand for more than 15 minutes. I can only sleep for a maximum of two hours at a time as my back stiffens and I cannot walk at all. For four years my life and that of my family has completely changed. No sport, no theatre, no movies, no dancing, no eating out at restaurants. I cannot even take my dog for a walk without severe pain.

I did not go to work expecting to be injured and I would give anything to get back to work and have a normal existence. I was awaiting clearance from my surgeon to recommence work on a part-time basis again in March, but the hotel have put paid to that. At my age, given my disability, taking into account the unemployment rate, what do you think my chances are of finding suitable employment? There has been no—

and he has 'no' in bold print—

offer of rehabilitation by my ex-employer or—

again in bold print—

WorkCover over the last four years. I was a permanent night worker and have for the last four years lost all penalties and overtime. I am on reduced 80 per cent wages. At present I am losing $110 per week. I have two teenage children and a huge mortgage. It was taken out on the assumption I would have my pre-injury salary.

Should this Bill be passed, I will be forced to sell my house and declare myself bankrupt. There is no way I could maintain repayments and live on pension levels. God knows what will happen then. I suppose my family joins the growing number of homeless and are forced to live in the streets. We are talking about human beings, Mr Crothers, not WorkCover statistics. What Mr Ingerson is proposing is worse than what Adolf Hitler did at Auschwitz. Not only have I lost self-esteem, friends, job and suffered monetary loss, I am now to suffer even further and be forced out of my home.

How I rue the day I voted for the Liberal Government. What happened to all the election promises? Brokenness will be my life if these changes are passed. To have no right of appeal against WorkCover's appointed doctors' specialist reports is an infringement of one's personal life and extremely ludicrous. Perhaps the Government should consider the following before giving us injured workers the death penalty.

He lists some seven points which I will not read here; I have talked about them all. He goes on:

We talk about social injustice and a failing economy. Injured workers are human, too. We have feelings and rights and need to be given a fair go in the community. Don't blame all of us for ripping the system; it is the system ripping us.

He goes on:

I enclose a copy of schedule one, 'Principles from the Disability Services Act 1993' and draw your attention to point 3: 'Persons with disabilities have the same right as other members of the Australian community to the assistance and support that will enable them to exercise their rights, discharge their responsibilities and attain a reasonable quality of life.'

The proposed changes, for the vast majority of injured workers, irrespective of the percentage of disability, will be in contravention of this principle, as for many it will mean a dramatic decrease on top of the decrease already suffered in the quality of life. On behalf of all injured workers I urge you to rethink this Bill in consultation with those whom it will affect the most.

I know the feelings of members on my side of the Chamber already, but if that letter does not move members opposite—and I know there are some decent members in the Government, although I have had to buy a crystal ball since this Bill was introduced—they must have hearts of stone. I refer to an experience I had in respect of workers' compensation when I was an organiser for the Liquor Trade Union. A shop steward called me to a small marine store, which handles returned bottles. I will not tell the Council who the employer was, but about eight people were employed in the business. The premises were partly located in what had been an old house in the Port Adelaide area.

I was totally appalled by what I found there. The ground was totally saturated with water and live electrical wires were everywhere, including on the ground, over machinery the workers had to use, and so on. I was called in by the shop steward because, just prior to him ringing me, one of our members, who was almost electrocuted, was carted off to the Queen Elizabeth Hospital. For two weeks the shop steward had been trying to get the employer to fix up things but to no avail. We soon fixed it up when we were down there, but whilst I was there I decided to carry out a total site inspection. If I was appalled by the live wires, I had two even greater shocks awaiting me.

My first visit was to the lunch room, which I can best describe to the Chamber as looking like something from the Bastille before the 1789 French revolution. I said to the shop steward at the time that, if one used the amenities in question, the least one could expect to get in return was a severe dose of bubonic plague. The shop steward assured me that, because no wet weather gear was issued, the so-called lunch room was used as it was the only place in which the eight employees could shelter from rain. We then proceeded to inspect the toilet facilities, which consisted of one country type dunny. When I undid the latch and opened up the door I almost gagged. However, because of the importance of health and safety, I plucked up my courage and moved in for a closer inspection.

The toilet bowl appeared not to have been cleaned for the hundred years it had been in place there. In fact, I would describe it as the finest Victorian antique it has ever been my misfortune to see. It may well have been a George Crapper original and, for those who do not know who George was, he was the plumber who invented the water closet, although I should think that George Crapper's achievements are well known throughout the English speaking world albeit in a somewhat diminished form when we use the colloquial version of his name.

The employer said, 'Can't you give me some time to fix this?' I pointed out to him that he had just had a fellow carted off to hospital who was almost at death's door and, God knows, if the medical people at the Queen Elizabeth had seen those toilet facilities they may not have even been prepared to give him mouth to mouth resuscitation. Who knows?

I suggested to the employer that, if the toilet bowl was cleaned up and forwarded to Christies, it would most likely fetch a price that would more than pay for the very urgent maintenance then required. That is one of many experiences I could relate to the Council. I suggest that it might well be a notion for the Liberals, if they remain in Government, to ensure that whoever is their Minister for Industrial Affairs works for at least six months as a shop steward or a union representative in the workplace.

I am sure that most members in this place, if not all, will agree with me when I say that the letter I read was written by an articulate person who, through no fault of his own, now finds himself in an awful position. Of course, it just does not stop with him. As I said earlier, it affects his immediate family and, in particular, his ability to keep a roof over his head and, indeed, to assist his teenage children in furthering their education. I find it heartbreaking in the extreme but,

unfortunately, he is not on his own—there are hundreds like him. I remember a favourite saying of my father's which he taught me as a child: 'Son, always vote for the Labor Party because the best Liberal Government you will ever find, in so far as the wage earner is concerned, is not half as good as the worst Labor Government you will find.' Sage advice indeed when one considers what we have before us.

The Hon. R.D. Lawson interjecting:

The Hon. T. CROTHERS: When you are half as good, you will be a third as good as those who have had experience in the workplace and have not had their education in some ivory tower, or some well-ventilated and air-conditioned legal office. Let me conclude my second reading speech—and it is a fairly lengthy conclusion, I must say—by posing the following question to the Council: what on earth made the Brown Liberal Government introduce such a draconian measure into this Parliament? Let me tell the Council what I think: it has nothing to do whatsoever with cost competitiveness or any other flimsy rationale which the Government and its inexperienced Industrial Affairs Minister would put up. The Government used those reasons to try to justify these amendments—

The Hon. R.D. Lawson interjecting:

The Hon. T. CROTHERS: Let posterity be the judge of what I said and, believe me, posterity will have ample time to read my speech in *Hansard*.

The Hon. R.I. Lucas: And you have an ample posterity!

The Hon. T. CROTHERS: Yes, an ample posterity and sometimes a loquacious one when I feel that the rights of those not able to defend themselves are being trampled on, just as they are at the moment by the miserable Government that you serve as Leader in this place.

The Hon. R.I. Lucas: Do I serve it well?

The Hon. T. CROTHERS: I think you are very smart, but my mother used to say to me, 'Son, you're only smart with the skin off and the iodine is poured on.' So I will make a judgment at a later time when I see how well you stand up.

The Hon. R.I. Lucas interjecting:

The Hon. T. CROTHERS: Unfortunately, my mother has passed on. The introduction of this legislation has nothing to do with any of the rationale that was put up. It was introduced for political reasons. I put it to the Council that this is a political measure pure and simple, motivated in no small measure by the ideological attitudes of the conservative dries of this Government who appear at this time to have the numbers to rule the roost in the Liberal Party room. I say this to the Government: irrespective of what happens with this Bill, the Opposition shall never allow your actions in this matter to be either forgotten or forgiven.

Of course, the ideological matters to which I have just referred are the conservative dry wing of the Liberal Party's absolute detestation of the trade union movement. But, as I have said, all workers in this State, whether award free, under a South Australian award or under an agreement or whatever, are subject to these draconian measures. However, this is what I believe has happened and the Government ought to be ashamed of itself.

I oppose this Bill and all that it stands for and what effect this Bill, if carried, will have on all South Australian workers. Indeed, in the history of world Governments, this action by the South Australian Brown-led Liberal Government is in a class of its own. I hope and trust that the Bill will be consigned to the trash can of South Australian industrial history. I, for one, when measures of this nature are before us, will resolutely and steadfastly oppose the Bill. I call on the Democrats to support me in the interests of equity, fair play and justice for all South Australians, irrespective of whether or not they are members of unions, who are members of the work force and who, like anyone, irrespective of their political affiliations, can be injured. I call on the Democrats to stand fast, to stand shoulder to shoulder with me and my Australian Labor Party colleagues in this Council on behalf of all South Australian workers in this State whoever they may be.

I oppose this Bill. I am sorry I had to take up the time of the Council. I normally do not speak this long but I felt so strongly as a human being about this measure that I had to get my feelings on record, in so far as it was possible for me to do so. It is not just members of the Labor Party or members of the trade union movement who will be affected. Members should remember that the letter written to me that I have read into *Hansard* was from a Liberal supporter. Copies of the letter are available should anyone want them from their local member. I hope and trust that the Democrats will stand firm. In the words of their founder, Don Chipp, when he left the Liberal Party: 'Let's together keep the bastards honest.'

The Hon. A.J. REDFORD secured the adjournment of the debate.

RETAIL SHOP LEASES BILL

In Committee

Clause 1—'Short title.'

The Hon. CAROLYN PICKLES: The Opposition may wish to recommit a couple of its amendments, so I suggest to the Attorney that I believe that an appropriate way to deal with this Bill would be to go right through to the end of the Bill and report progress at the end of the Committee stage, because I believe that one amendment in particular, in relation to the Commercial Tribunal, hangs on another couple of Bills which are now a matter for conference. I believe that the appropriate way to deal with this would be to get to the end of the Committee stage and ask the Attorney to report progress.

The Hon. K.T. GRIFFIN: I am happy to accommodate almost all reasonable requests. I think we should leave that until we get to the end. I have an open mind as to whether it would be the appropriate course to recommit, but I am not saying 'No', because I think one needs to be realistic that there are some amendments here which will tie in with others. If the Bill is in a form that is not acceptable to the Government it may ultimately go to a deadlock conference anyway, which will give the opportunity to sort out any issues which might be in conflict either with matters being considered in other Bills, particularly the status of the Commercial Tribunal or with other matters which my be related to it. I have an open mind about it. I suggest we work through the Bill clause by clause, deal with the amendments and revisit the request of the Leader of the Opposition when we get to the last clause in the Bill. I am amenable to reasonable propositions because, after all, my interest is to try to get the Bill in a reasonable form, suitably supported by the Council and by the House of Assembly.

The Hon. M.J. ELLIOTT: First, I respond to the observations of the Hon. Carolyn Pickles. I believe that some subjects may require recommittal; I discussed the matter with the Hon. Carolyn Pickles a short while ago. While we are in the early stages of the legislation I would like to put one other matter on the record.

During the second reading debate, a number of Government members chose to make a contribution, as is the right of all members of this place. They were critical of a number of matters that I raised and on which I said I would move amendments in Committee. I am aware that the Hon. Mr Griffin has received—and I am not sure whether his colleagues have also received—a copy of a letter from the Retail Traders' Association, which states:

> I have noted with considerable interest speeches by you and your Legislative Council colleagues in relation to the Retail Leases Bill. It would seem that we have not been able to convince you of the enormous problems that will still exist in the retail industry through the Government's failure to respond to our repeated request for extended coverage of the Bill and for improved protection for retail tenants at the expiration of their lease, thus making the many sound provisions of the Bill much less effective. We are most disappointed in this and it would seem that, for the second time in six months, the retail industry, the largest private sector employer in the State, is to become a political football. Despite this, you may be assured of our resolve to continue to fight for the outcome we seek.

The association went on to raise a particular issue, which will be addressed in Committee. I must reiterate what that letter says. The Government, in tackling the question of retail tenants generally, has involved itself in a most important issue, an area in which too many retail tenants for too long have been treated appallingly. There is a large number of excellent provisions in this legislation and not a large number of amendments to the Bill. However, I must say that, if some of these amendments do not get up, the Bill will not be worth the paper it is printed on. It will be a Bill of platitudes if some of the amendments are not carried, and it would be a fraud on retailers to present it as anything else. I make those comments, and I will pursue the amendments with great vigour in Committee.

The Hon. K.T. GRIFFIN: I hope that is not a reflection of the sort of debate that we will have in this place on this Bill. It is not a fraud, and I take exception to the suggestion that it will be a fraud if it is passed in the form proposed by the Government. The fact of the matter is that a lot of people have done a lot of hard work on this Bill. It does not meet completely the wishes of the Retail Traders' Association and the Tenants' Association or the wishes of landlords, building managers and investors. We are trying to chart a course which we believe will result in a reasonable piece of legislation.

As I said when I raised these issues earlier in the debate, we have tried to recognise that there is a public interest involved, an interest of tenants and an interest of investors. The interest of the whole State is at play, and the delicate thing to do is to try to find a balance, and that is difficult. If we start this debate by calling it a fraud and saying that the Bill is not worth the paper it is written on, I wonder where we will get to with this? I hope it will not deteriorate into a slanging match, because we have come genuinely to the point of presenting a Bill which is the result of a lot of work and negotiation but in respect of which the Government has had to take decisions on some important policy issues where there has not been agreement within the industry.

I did not intend to refer to any of the correspondence that has been floating around. The honourable member referred to one letter which suggests that the retail industry is becoming a political football. I deny that that is the case. The Government has endeavoured genuinely to try to work through a particularly difficult and controversial issue. We might not have been successful in meeting everyone's wishes, but to say that we have made this a political football is nowhere near the truth. The fact of the matter is that we have approached it in a genuine spirit in an attempt to find something that is reasonable. I suspect that the Opposition has tried to do the same. The Hon. Mr Elliott has presented a private member's Bill which now has amendments to it, and I think we should stick to rational and reasonable debate about the issue rather than starting to categorise things as fraud or saying that they are not worth the paper they are written on before we even get into the Bill.

The Hon. CAROLYN PICKLES: In the spirit of rational and reasonable debate, the Opposition is supporting 95 per cent of the Government's amendments and 95 per cent of the Democrat's amendments, so I consider that to be extremely even-handed and I suggest that we now get on with it.

Clause passed.

Clause 2 passed.

Clause 3—'Interpretation.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 23—Insert:

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

It is appropriate that the definition of 'demolition' should reside in clause 3.

The Hon. K.T. GRIFFIN: I will not raise any objection to it at this stage. We can see what the Bill looks like at the end. The fact that it appears in one section is because 'demolition' is referred to only in one section. Normally, definitions are included in a definition clause where the definitions have relevance to a number of provisions in the Bill. I think it is best left where it is, but I will not make a big fuss about this one.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

Page 1, lines 25 to 27—Leave out definition of 'enclosed shopping complex' and insert—

'enclosed shopping complex' means a group of 3 or more retail shops under common ownership or management with a common area through which public access is obtained to all or some of the shops and which is locked to prevent public access through that area when those shops are closed for business;.

This is in the form of a drafting amendment to tidy up the definition of 'enclosed shopping complex'. It has arisen as a consequence of consultation with industry since the introduction of the Bill. When I say 'industry', I mean landlords and tenants and those who represent them. All these amendments from the Government relate to issues which were originally considered by the various representatives of the whole industry. It was suggested that we had not adequately addressed those agreed matters in the drafting process but that they should be properly addressed. That is now what we seek to do.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We believe that this is an improved definition. By adding the words 'through which public access is obtained to all or some of the shops', it ensures that arcades and malls will be covered by the definition.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 28—Insert:

'(indexed)'—*see subsection (3).*

This amendment is necessary in relation to an amendment I will be moving later to clause 4. The Government, in the Bill as it stands, is determining that this Act will apply only where the rent payable is below $200 000 per annum. During the second reading stage I noted that all other States, I think, are using the size of a shop as a determinant.

The Hon. K.T. Griffin: Not all other States.

The Hon. M.J. ELLIOTT: Most?

The Hon. K.T. Griffin: Three.

The Hon. M.J. ELLIOTT: How many are not?

The Hon. K.T. Griffin: Queensland, the ACT and New South Wales.

The Hon. M.J. ELLIOTT: But I think the more important argument is that, using a set figure—and the Government had not even indexed it—creates a number of problems. First, that even a figure of $200 000 is affecting some quite small shops. Single shop operations in a large number of shopping centres and through some of the major shopping precincts within the Adelaide square mile are paying over $200 000 per annum now, which means that they simply will not be given coverage by the Government's legislation as it stands. I am proposing that it be 1 000 square metres and, more importantly, in relation to the amendment I am moving now, that it exceeds 1 000 square metres and that the rent payable under the lease exceeds $250 000 indexed per annum, noting that there are some quite large shops, which perhaps sell bulky items that are not valuable. However, having inserted a monetary figure, legislation quickly loses its relevance as inflation takes effect. So, it is necessary that that figure be indexed, and that is what the amendment that I am moving at the moment is about.

The Hon. K.T. GRIFFIN: I indicated in my reply that the Government intended to review periodically the figure of $200 000, or whatever it might be, because we recognise that we would need to take into consideration not just the question of inflation but the property market, rents being charged and factors such as that, which were relevant to determining whether the $200 000 cutoff was an appropriate level, or whether some other figure might be appropriate. I acknowledge that there is no provision in the Bill for that to occur and, whilst I do not have an amendment on file, I had intended that we would at least give some further consideration to whether it might be appropriate to put in a minimum figure of, say, $200 000, and provide for it to be increased by regulation which, of course, is the way in which a number of other monetary amounts in other legislation, such as the Associations Incorporation Act (which defines the level at which an association becomes a prescribed association), might be varied.

It seems to me that that is a neater way of doing it than by way of indexing. But for the purpose of keeping it alive, if that is what the Committee would wish to do, I am prepared to give some further consideration to an alternative that would allow periodic variation, not below the $200 000, but in consultation with the industry and also taking into account a number of variables that are relevant to determining what should be the cutoff figure. I know that the honourable member is also raising this issue of the coverage, whether it should be 1 000 square metres or whether it should be a monetary level. It is probably appropriate that we deal with it now, although there will be an opportunity to pursue it again under clause 4.

We did give consideration to whether we should move towards a net lettable area (which is 1 000 square metres in New South Wales, the ACT and Queensland, from memory) or whether we should have a monetary amount of rent. The Government took the view that the monetary amount of rent was the better figure because 1000 square metres would most likely embrace most, if not all, of the tenancies in the big retail shopping centres except for the big supermarket and department store tenancies. Also, the 1000 square metres might have no relevance to any particular rent because there are some shops which pay a higher rent per square meterage than others depending on the nature of the business. We took the view that the rental was an appropriate basis upon which to make the change.

I suppose one could ask, notwithstanding the precedent in New South Wales, Queensland and the ACT, what is significant about the 1000 square metre threshold? I am told that the average size of, say, a specialty shop is about 100 square metres. There will be some differing points of view about that, but that is the information which I have been presented with. So, 1000 square metres makes a very significant shop indeed. I have made no study of the amount of rent payable in this context, but the Government took a decision to maintain the *status quo* and to at least rely upon what was in fact well accepted throughout the State since the mid 1980s when the Landlord and Tenant Act commercial tenancy provisions were inserted rather than moving to a totally new coverage of this legislation.

The Hon. CAROLYN PICKLES: The Opposition will support the Democrat amendment in relation to coverage. Since the Democrats are proposing coverage in clause 4 which involves reference to both the size of the shop and the amount of rent payable under the lease, it is appropriate to have some indexing provision in respect of the initially stipulated rent limit. We support this amendment and will be supporting the inclusion of subclause (3).

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

Page 2, after line 9—Insert:

'mediation' of a dispute includes preliminary assistance in dispute resolution such as the giving of advice to ensure that—

(a) the parties to the dispute are fully aware of their rights and obligations; and

(b) there is full and open communication between the parties about the dispute;

This amendment seeks to insert the definition of 'mediation' into the Bill. It may not be strictly necessary but we thought it was important in the context of this legislation, which will be used by lay persons as well as professional persons and legal practitioners in particular, that we have some focus on mediation. I hope that it will not be particularly controversial.

The Hon. CAROLYN PICKLES: The Opposition supports the Government's intention to have the Commissioner for Consumer Affairs involved in mediation presumably at the early stages of dispute between landlords and commercial tenants. The definition of 'mediation' put forward by the Government is appropriate and we support the amendment.

The Hon. M.J. ELLIOTT: The Democrats support the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: I move:

Page 2, line 12—After 'payable by the lessor' insert 'but does not include outgoings which are directly proportional to the level of a lessee's consumption or use and for which the lessee is required to reimburse the lessor under the lease'.

I suggest that this is a minor amendment to the definition of 'outgoings'. It arose out of consultation with industry after

the Bill was introduced. Industry expressed a desire that a proviso similar to the one that appears in the definition of 'operating expenses' in the Landlord and Tenant Act 1936 be incorporated into the definition of 'outgoings'. The Government agreed with the request of industry in this regard.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 2, line 17—Leave out the definition of 'Registrar' and substitute:

'Registrar' means the Commercial Registrar;

This is probably an appropriate point at which to debate landlord and tenant disputes arising under this legislation. The Labor Party takes the view that the Commercial Tribunal should not be abolished or have its jurisdiction diminished unless there is clearly good reason for doing so. As the Government will have noted from our contribution on the Magistrates Court (Tenancies Division) Amendment Bill, we reject the Government's vision of commercial and residential tenancy disputes being lumped together in a division of the Magistrates Court. That being the case, and as we are committed to the Residential Tenancies Tribunal standing as it is, we suggest it would be appropriate for the Government to look again at the jurisdiction of the Commercial Tribunal.

We have informally and in this place put to the Government a workable option which will involve the work of the Commercial Tribunal essentially being transferred to a division of the Magistrates Court. I hope that the Attorney-General has not ruled out consideration of this option. Unless this option is taken up by the Government or unless the Government comes up with an even better option which remedies the perceived shortcomings of the Commercial Tribunal while retaining the access to justice that we are seeking to maintain in respect of certain types of disputes, we will keep pushing for the *status quo*. In other words, unless the Government can come up with something better, we will stay with the Commercial Tribunal. We have put the winning card in the Government's hand by suggesting an option with which our constituents will be satisfied. It is up to the Government.

It may be that this issue can be resolved only by a conference, but we understand it relates to a couple of other Bills presently before the House which have gone to a conference. We hope that the Australian Democrats will support us so that we can leave the option open. The amendment simply ensures that the term 'Registrar' will be taken to be the Commercial Registrar of the Commercial Tribunal. We urge the Democrats to support our view in respect of the tribunal. The options are a matter for the conference between the two Houses on another Bill, and it is not appropriate for me to comment on it.

The Hon. K.T. GRIFFIN: The Hon. Anne Levy yesterday outlined a proposition which she had raised informally with me in January: that if we established a division of the Magistrates Court which had greater flexibility than the court itself in dealing with matters which came before it in an adversarial context, the Opposition would be prepared to support it. That arose in relation to the Second-hand Vehicle Dealers Bill where we had endeavoured to refer warranty disputes and requests for the repair of vehicles where there was a breach of the warranty provisions to the Magistrates Court. I took the view that what we were proposing was adequate in that it provided flexibility and informality and did not lock the parties into a requirement for representation by lawyers and it would also provide a reasonable mechanism by which flexibility could be given to the court to manage its affairs more efficiently than they are managed at present. I also took the view that establishing a separate division might create some unnecessary administrative structures within the Magistrates Court which might impede the flexibility that I would like to see given to the Chief Magistrate in the management of the business of the court.

I have indicated that we will give further consideration to the proposition that the Opposition has made to us. We do not believe that the Commercial Tribunal should continue in existence. It is not particularly efficient in its operation away from the mainstream of the court and we would like to see it as part of the mainstream of the court to enable proper management of the resources of the court, particularly in respect of these sorts of matters which might otherwise have ended up before the Commercial Tribunal.

There has been a great change in the approach of the courts over the past 10 or 12 years since the Commercial Tribunal was established. There is now a great deal more flexibility in the approach to different mechanisms for resolution of disputes than has previously been available. As I said, we will oppose the amendment. We will continue to press certainly for the magistrates jurisdiction. We believe that the Tenancies Tribunal, which we are seeking to establish to deal with not only residential tenancies but commercial tenancies and other tenancy type disputes, is the best structure. If this amendment is carried, we are certainly prepared to give some further consideration to the wider proposition put by the Opposition informally and again yesterday by the Hon. Anne Levy.

The Hon. M.J. ELLIOTT: I indicate support for the amendment at this stage. When I spoke earlier, I indicated that there were a couple of matters on which we may need to recommit, and this is one of those. For the same reasons as expressed by the Hon. Carolyn Pickles, there are a number of other pieces of legislation before us which have some bearing, in my mind at least, on the outcome of this. Dealing with the Bill relating to the Magistrates Court and the tenancies division, for a start the Democrats do not have any sympathy for housing questions being referred to a tenancies division which would be shared with commercial tenancies. Other legislation referred to by the Hon. Carolyn Pickles will have some interaction with this. At the end of the day, we may be looking at either a commercial tenancies division or a commercial division—possibly the Magistrates Court; I am not ruling either of those out as other possibilities. The issue simply needs to remain open at this stage, and we should not spend a lot of time on it now, because it is a matter that we will address at a later stage.

The Hon. A.J. REDFORD: I rise to support the position put by the Government. In doing so, I would like to refer members to the contribution made yesterday by the Hon. Anne Levy regarding a similar principle involving the Magistrates Court (Tenancies Division) Amendment Bill. In her contribution, as I understand it, she generally set out the position of the Opposition concerning specialist tribunals versus the mainstream court system. She said that it was vital. One of the advantages of the Residential Tenancies Tribunal—and indeed I would assume the same would apply with the Commercial Tribunal—is that assessors or lay people sit with the Chair of the tribunal. The honourable member said that these lay assessors have experience in the industry and,

as a consequence of that experience, there will be a number of advantages.

I must say that I have frequently appeared before the Commercial Tribunal and the Residential Tenancies Tribunal and many other tribunals that have lay assessors, and I have yet to see, as an outside observer of the process, what possible open contribution those assessors make. If they are making a contribution, it is made behind closed doors. It is a contribution that is made between the assessor and the Chair—usually someone legally qualified—behind closed doors, where the parties cannot see what is happening. My understanding of justice is that justice done behind closed doors is not justice.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: The Hon. Rob Lawson refers to the jury, but the jury is deciding facts and is not making decisions on law. The law is set out clearly and the process of a jury trial is open, above board and there for everyone to see. That certainly does not happen in this case. I point out to the Hon. Robert Lawson that in this case a summing up of the law is not given to the experts, the assessors, who then go away and make findings of fact. Even if that argument is brought in, it does not flow.

I suggest that there is absolutely no basis on which the honourable member can claim that assessors add anything. In fact, it has been my experience that aggrieved parties walk away feeling more aggrieved because the process of justice in their eyes has been less open.

The second point the Hon. Anne Levy makes is that the main advantage of assessors is that parties do not need to obtain a number of expert reports to bolster their cause because there are experts on the tribunal. If the Hon. Anne Levy had taken the trouble to speak to any lawyer of any merit or calibre, she would have discovered that any party in any significant dispute who went before a tribunal without expert evidence to assist their cause ran a real risk because no-one knows on what basis the assessors are making a decision. The Hon. Anne Levy went on to state:

> Each party might feel it necessary to have one, two or even three expert reports. Usually the experts who prepare these reports will be called along to the court so that they can be cross-examined by the other party or parties. This obviously involves considerable expense to both parties appearing.

First, whether or not there are lay assessors on the tribunal, parties will chose to call expert witnesses as they see fit. I cannot possibly understand the rationale for saying that because there is a lay assessor on the board someone will not call an expert witness. I challenge the Hon. Anne Levy to identify what lawyers would give that advice to their clients simply because a lay assessor is on the tribunal.

The next step highlights the Hon. Anne Levy's ignorance because she goes on to say:

> There can be some cross-examination of experts, whereas with assessors there cannot be cross-examination.

The Hon. Anne Levy is saying that we can have experts sitting on the tribunal whose opinions cannot be tested or challenged and that decisions are made behind closed doors, and on any examination that is a flawed process: it is done behind closed doors and it is not tested. If the Hon. Anne Levy thinks that cross-examination is a bad thing, I suggest that she spend a bit of time in the courts to understand the true value and importance of cross-examination of experts, because then everyone knows that a particular viewpoint has been tested, just as viewpoints get tested in this place.

The Hon. Anne Levy then goes on to say that she believes it is a sufficient to have assessors sitting on the tribunal. Again, I do not understand how she can assert that point. It is more expensive to have three people sitting on a tribunal than it is to have one person. Even a member of the last Labor Government Cabinet ought to be able to understand that simple financial fact. It does not matter what we have done in Government over the past 12 months: there seems to be absolutely no indication that the Labor Party has come to grips with normal, simple economic arithmetic.

The honourable member then claimed that the specialist nature of the tribunal promotes consistency in terms of decisions made by the tribunal members. That may well be the case, but with the suggestion that has been put forward by the Government I cannot see how that would promote any inconsistency. Such a suggestion in my view is a denigration of the standing of courts and judicial officers in this State. For people to say that they make inconsistent decisions and that lay people do not do so is a ridiculous argument.

The Hon. Anne Levy then talked about the procedure, and I suggest that she examine the role of the courts and some of the great strides the courts have made in the past few years in dealing with matters expeditiously and cheaply, and certainly the courts, and in particular the Family Court followed by other courts, have been leaders in conciliation and mediation. She then comes to a conclusion—and I highlight this—that it is better to have casual people on $40 an hour, rather than magistrates on $100 000 a year. Again, if she does her arithmetic she will find out that they approximate with each other and that there is no cost saving whatsoever. Certainly, in my view, I cannot see how that can possibly be supported.

The final and very important point is that over the past 12 months we have had from members opposite lecture after lecture and pontificated speeches about the independence of the judiciary. It is a very important principle. The fact is that if we put this in the court system we do guarantee independence of the decision maker and the decision-making process.

There is no way in the world that anybody could suggest that we appoint assessors until the age of 65 years and that they are independent. Time and again I have appeared before these lay boards and, on all too regular occasions, I find that one of the assessors has to disqualify himself because he knows one of the parties or knows of one of the parties and then there is an adjournment. There is normally a process where you have to find someone to replace the assessor. With all my experience in relation to the Taxi Cab Appeals, the South Australian Metropolitan Fire Service Appeals and the Tow Truck Tribunal, I would have to say that on every single occasion I have appeared before these bodies there has been some knowledge of the assessor of the individual party involved and there has had to be some scrambling around to find a replacement appointment. It is all well and good to stick your head in the sand and start opposing these things, but I invite the Opposition to speak to the people who practise and deal in these areas and make an informed judgment, rather than having something that it believes is a feel good decision.

The Hon. CAROLYN PICKLES: I understand that the Hon. Anne Levy has indeed gone out and consulted quite widely on this issue. As we indicated in the beginning when we were debating this Bill, this is a matter that I believe has been dealt with in other legislation. It is a matter that is before a conference, and I imagine that this Bill also will be the

subject of a conference if we cannot decide on this. I urge the Democrats to support the amendment.

The Hon. R.D. LAWSON: I direct a question to the Attorney on the present operation of the Commercial Tribunal in relation to commercial tenancy matters. The schedule to the Commercial Tribunal Act provides that regulations can be made to enable the Commercial Tribunal. when sitting in relation to commercial tenancy matters, to be constituted by the Chairman or a Deputy Chairman alone. Can the Attorney say whether or not it is the practice of the Commercial Tribunal sitting in commercial tenancy matters to sit as Chairman alone or with other members?

The Hon. K.T. GRIFFIN: I do not have the figures in relation to commercial tenancies, but I can say that between July 1993 and June 1994 40 matters in respect of commercial tenancies were heard in the Commercial Tribunal. I will get that information. I have it in relation to second-hand vehicles, where six matters were heard by the judge sitting alone, and there were a total of 66 matters in relation to second-hand motor vehicles. I do not have the information readily available, but I will obtain it and ensure that it is available for members one way or the other.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 2, lines 28 to 32—Leave out the definition of 'retail shop lease' or 'lease' and insert:

'retail shop lease' or 'lease' means an agreement under which a person grants or agrees to grant to another for value a right to occupy a retail shop for carrying on a business—

(a) whether or not the right is a right of exclusive occupation; and

(b) whether the agreement is express or implied; and

(c) whether the agreement is oral or in writing, or partly oral and partly in writing,

and includes a franchise agreement that provides for the occupancy of a retail shop;

There has been some difference of opinion as to whether or not franchise agreements are covered adequately by this Bill so, to that extent, this is just a clarifying amendment to make it quite plain that a franchise agreement that provides for occupancy of a retail shop is treated as a retail shop lease or a lease for the purposes of the Bill.

The Hon. K.T. GRIFFIN: I oppose the amendment. The Bill is not about franchise agreements: it is about retail leases. I repeat what I have already said in reply; to the extent that franchisees should be protected and to the extent that their franchise is related to a retail lease, they are protected by this legislation.

The Hon. M.J. Elliott: That is all I want.

The Hon. K.T. GRIFFIN: You are going further than that: you are talking about a franchise agreement that provides for the occupancy of a retail shop, so really you are protecting the franchise agreement rather than just that part of the transaction which relates to the occupancy as lessee or sub-lessee of a retail shop. I understand that franchise agreements come in a number of different forms and are not always tied to a retail lease agreement. Many franchise agreements are the subject of separate agreements from those of the retail shop lease agreements, and that is due to the preference of the parties to prepare retail lease agreements in registrable form.

In those instances, the provisions of this Bill will apply only to the retail shop lease, which grants the franchisee a right of occupancy to the premises. There are some cases where the lease agreement may be incorporated into the franchise agreement and, in those circumstances, I would suggest that the Retail Shop Leases Bill will apply only to that portion of the agreement that relates to the retail shop lease and not to the lease as a whole. One has to recognise that the whole idea of a franchise agreement is that it gives the franchisee the licence to use the name and system of operation of a business.

The Hon. A.J. Redford: And the marketing.

The Hon. K.T. GRIFFIN: And the marketing weight that goes with the name. McDonald's, for example, is McDonald's System of Australia Pty Ltd, and that is a system of franchising, marketing and distribution of products where all the operators are franchisees.

In some cases the premises are owned by McDonald's System of Australia. Of course, many of them are not but, where the property is owned by the franchisor, a separate lease may well be involved. If the franchise is tied to the use of premises then, in respect of the premises, there has to be compliance with the local law, and in this case that is the Retail Shop Leases Bill. The amendment is opposed. It certainly goes much further than the Government believes it ought to go in dealing with the issue of franchise agreements detracting from the focus upon retail leases.

The Hon. CAROLYN PICKLES: We would have liked more time to look at this amendment, and so we oppose the Democrat amendment at this time. I point out that we received some of these amendments only last night—

The Hon. M.J. Elliott interjecting:

The Hon. CAROLYN PICKLES: Let me explain. Perhaps we can recommit following further consultation. We are concerned with the interests of franchisees and will support new clauses 69D and 69E proposed by the Democrats. Those clauses clearly improve the Bill and will benefit franchisees who operate from within shopping complexes. However, from a legal point of view, we have grave reservations about including franchise agreements in the definition of 'retail shop lease', particularly given that we expect proposed new clause 69E to be the subject of a successful amendment.

We will have a situation where the franchisor and the franchisee will effectively be required to enter into two separate agreements where the franchisor seeks to enter into a lease with a shopping centre landlord on behalf of the franchisee. In that situation, the provisions of the Bill will necessarily apply to the lease agreement or the lease aspect of the overall agreement between the franchisor and the franchisee. We therefore see no necessity for the Democrat amendment to the definition of 'retail shop lease'. We are concerned that the inclusion of certain franchise agreements in the definition of 'retail shop lease' could impose certain obligations on the part of the franchisor towards a franchisee which do not necessarily fall within the intention of the rest of the Bill. Therefore, we oppose the amendment.

The Hon. M.J. ELLIOTT: It needs to be recognised that franchise operations are probably the most rapidly growing section of retailing at the moment. You only have to go to your shopping centre to see how rapidly franchising is expanding.

The Hon. T.G. Roberts: Privatisation of the private sector.

The Hon. M.J. ELLIOTT: Something like that. If this legislation fails, in any regard, to extend protection to franchisees in relation to their tenancy, we are leaving a very significant part—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: Putting what a bit high?

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: I did not say that. I said that, if any part of this Bill is denied to those people, it will be a significant set back for them. Certainly, if this fails to address it, I intend to make it plain that franchisees should be given every protection that this Bill offers to all other tenants. There is a real danger that a franchise agreement may, by the way in which it is written, create many grey areas as to what components of it relate to tenancy and what parts do not. To my knowledge, a large number of franchise arrangements in shopping centres have the franchisor as the tenant, and the person who becomes the franchisee simply pays an amount for the franchise to the franchisor and does not really know what components are rent and what components are anything else.

The way the arrangement is structured, it is possible that they will not really be afforded the protections, whether or not the Government intends that to be the case, unless we are very explicit in the way we treat it in this legislation. I was certainly attempting to do that. Whether I have succeeded I am prepared to be persuaded. However, I find it of some concern that the immediate reaction from the Government, at least, is, 'No, the Bill is fine. We do not need this at all.' I am not convinced by that argument. I could be convinced that I have not got it right in terms of getting the wording right. I am disappointed that the Government is not at least saying that it is prepared to look at this further. I think this is an important issue and that it deserves more attention. Otherwise, as I said, a significant number of retailers will not be afforded the protection that we believe they should be afforded by this legislation.

The Hon. A.J. REDFORD: I would like to ask the Attorney a number of questions and I am happy for him to take them on notice, because they will become relevant only at the time of any recommittal. As I understand it, franchises are covered by other legislation, both State and Federal. As the Hon. Robert Lawson reminded me, there is the petroleum franchise legislation and Federal legislation covering the issue of franchises. In that context, I would appreciate the Attorney's advice as to what other legislation covers franchises. If this amendment is successful along with the raft of amendments that the Hon. Michael Elliott has proposed, what effect would that have on other Acts? Will there need to be other consequential amendments made to those Acts? As I understand it, the Commonwealth has legislated in some respect in this area. What Commonwealth legislation is relevant in this area? If these amendments get up, are they consistent or inconsistent with Commonwealth legislation? Obviously, if they are inconsistent, would that attract the attention of courts, particularly the High Court, in striking the legislation down under the Australian Constitution?

The Hon. R.D. LAWSON: I have some sympathy with the Hon. Michael Elliott in seeking to provide for protection of the holders of franchises. However, I would be very much opposed to seeking to confer that protection by engrafting a provision onto the definition section of this Retail Shop Leases Bill. The issue of franchises is highly complex. So far as I am aware there has been no inquiry in South Australia into the particular operations of franchise agreements. In the process of preparing this legislation, the stakeholders in that industry have not been consulted. There has been no cogent argument advanced as to what protection this particular amendment would confer on franchisees. So, although the amendment might be motivated by a desire to improve the lot of franchisees, it seems to me that it does not. Franchisees, as tenants, are entitled to all of the protections of this Bill. It is not correct to say, as the Hon. Mr Michael Elliott does, that franchisees do not benefit from the provisions of this Bill.

The Hon. K.T. GRIFFIN: As far as the Hon. Angus Redford's questions are concerned, I am not familiar with all the detail. I will have the matter researched and bring back a reply. I think there is some provision in the Trade Practices Act that deals not so much directly with franchise agreements but at least with the concept. Off the top of my head, I do not know of any State legislation that deals specifically with franchises, but I will have that examined.

I think it is fair to say that in the course of the consideration of this legislation the issue of franchises was drawn to the Government's attention. We took the view that we should not be seeking to deal specifically with franchises in the context of retail leases legislation because they were two different concepts, although franchising does frequently confer a right to occupy.

I draw members' attention to the definition of 'retail shop lease'. It is important that it be recognised that 'retail shop lease' or 'lease' means an agreement under which a person grants or agrees to grant to another person for value a right to occupy a retail shop for carrying on a business, whether or not the right is a right of exclusive occupation, whether the agreement is express or implied and whether the agreement is oral or in writing, or partly oral and partly in writing. It seems to me that that more than adequately addresses the issue of the right to occupy which has been granted as part of a franchise transaction or otherwise. With respect, I think that we are dealing adequately with the issue. If the honourable member comes up with some other evidence which indicates that it is not adequately dealt with, I am certainly prepared to have another look at it but, in the drafting and consultation phase, it did not seem to the Government that it was either necessary or appropriate to go beyond what is presently in the Bill.

Amendment negatived.

The Hon. CAROLYN PICKLES: I move:

Page 3, line 11—Leave out the definition of 'tribunal' and substitute:

'tribunal' means the Commercial Tribunal.

This amendment is consequential on the previously successful amendment moved by the Opposition.

The Hon. K.T. GRIFFIN: I agree that it is consequential.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, after line 13 Insert—

(3) If a monetary sum is followed by the word '(indexed)', the amount is to be adjusted on 1 January of each year by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index (All groups index for Adelaide) as at 30 June in the year in which the stated amount was fixed by Parliament.

This is consequential on an earlier amendment.

The Hon. K.T. GRIFFIN: I agree that it is consequential.

The Hon. CAROLYN PICKLES: I support the amendment.

Amendment carried; clause as amended passed.

Clause 4—'Application of the Act.'

The Hon. M.J. ELLIOTT: I move:

Page 3, line 18—Leave out paragraph (a) and insert—

(a) the lettable area of the shop exceeds 1 000 square metres and the rent payable under the lease exceeds $250 000 (indexed) per annum; or.

Again, this is consequential.

The Hon. K.T. GRIFFIN: It is in a sense consequential, but it is also substantive. I made my point earlier that the Government does not support this. I am prepared to give some consideration to the annual rental figure and some provision for increase by way of regulation, consistently with the expressed view of the Government that we are prepared to review the figure from time to time, but we certainly do not support the extension of the scope of this legislation to cover the lettable area of a shop of up to 1 000 square metres.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. The questions of which tenancies will or will not be covered has been the subject of protracted and passionate debate between those representing the interests of landlords and those representing the interests of tenants. The Opposition has received submissions from both sides. For commercial tenants it will make a very big difference to their business, particularly when they are negotiating leasing arrangements, whether they fall within or without the protection granted by this legislation. We do not accept the argument that has been put to us that, if you cannot prove legislative protection is necessary, you should not do it. We see many of the provisions of the Retail Shop Leases Bill as promoting justice in the marketplace and restricting the opportunity for sharp practice in this corner of the commercial arena. If it promotes justice and minimises the opportunity for sharp practice, it seems to us that coverage should be fairly wide.

On the other hand, we can see that major commercial tenants known as anchor tenants in shopping centres, such as Coles, Woolworths, and so on, have access to the best legal advice that money can buy. Therefore, we do not quarrel with some limitations on coverage. As I indicated previously, the Labor Party considered that the test adopted in New South Wales of a limit of 1 000 square metres of lettable area was a reasonable test. The Democrats' amendment combines this with a rent limit which restricts the excluding provision further to the exclusion. We therefore support this amendment.

The Hon. M.J. ELLIOTT: While I said this amendment is consequential, the Minister is correct in saying that it is the substantive clause in relation to the suite of amendments. So I will reiterate the relevant points. First, regarding the question of the amount of rent, as I said, a figure of $200 000 will be exceeded not just by anchor tenants in big shopping centres. Other shops in large centres will exceed $200 000. For instance, single shops in Rundle Mall will exceed that figure. We are talking not about big companies such as Coles or Woolworths but perhaps about a family business. While a rental figure of $200 000 is pretty difficult to comprehend—it is more than all my worldly goods with an extra zero or two added—some people do pay rental of that figure. People with those sorts of premises get threats. I understand that, recently, one person in Rundle Mall who did not want to open on a Sunday was threatened by the landlord, 'If you don't open on Sunday, we won't renew your lease.'

That sort of person would not be afforded the protection that this legislation offers to most other retailers. I do not think that is acceptable, and that is why I have gone for 1 000 square metres. The only people who will not be covered are anchor tenants, although it should be noted that some sellers of bulky but not high value goods might have quite large premises but not necessarily a high turnover. Therefore, they would not pay a high rental, and the 1 000 square metre rule would preclude them from protection even though they are not a big business by any definition. As such we should seek to afford them protection as well, and that is why I have combined the 1 000 square metre rule and rent payable under the lease exceeding $250 000 indexed as the test.

The Hon. K.T. GRIFFIN: I do not intend to take up a lot of time by calling for a division on some of these issues. The fact that I have expressed a view should be sufficient for the record.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, line 26—Leave out subparagraph (i).

This is another matter but it relates to who will be afforded protection. Under the Government's Bill as it currently stands, public companies or subsidiaries of public companies will not be afforded protection. Again, some people might assume that a public company is a big business and therefore will not need the protection of this Act. I am assured that many public companies are not big businesses and that they will need the protection of this legislation. No good reason has been put forward as to why they should not be afforded that protection.

The Hon. K.T. GRIFFIN: The Government strenuously opposes this amendment. The provision is presently in the Landlord and Tenant Act in so far as it relates to commercial tenancies. The Government can see no justification at all for seeking to give protection to public companies. Most public companies have a very large capital base.

The Hon. M.J. Elliott: Many do not.

The Hon. K.T. GRIFFIN: Most of them do. If you are talking about a public company, you have to distinguish that from the old exempt proprietary company, which was the small family company or the company formed by friends and associates who carried on a smaller business. You certainly have some big companies which are exempt proprietary companies, but my recollection—and I should have checked this for the purpose of the debate—is that you must have a minimum of 20 shareholders to be a public company.

The Hon. M.J. Elliott: Twenty five, I think.

The Hon. K.T. GRIFFIN: When you have a public company, it opens up a whole range of opportunities for investment—raising funds from the public by prospectus, which you cannot do if you are an exempt proprietary company. It opens up the opportunity for listing on the stock exchange if you can qualify with the Australian Securities Commission requirements. The fact of the matter is that you certainly have a wide range of corporate activities which are presently excluded from the protections of this Bill but which, if they are not excluded, will get the benefit when they have significant bargaining power. Many of them are big business.

It seems to me and to the Government that it is quite inappropriate to provide that protection to public companies. They do not have it now; they have not had it since the inception of the legislation. No valid reason has been demonstrated by the Hon. Mr Elliott as to why they should now benefit when previously both Labor and Liberal Parties in particular—and even the Australian Democrats back in the mid 1980s when this first came in and when the legislation was subsequently reviewed a couple of years ago—were seen to be of one mind—that excluding public companies or subsidiaries of public companies did not prejudice them but let them battle in the real world where they could match it toe to toe with the investors, managers and landlords.

The Hon. M.J. ELLIOTT: While it might be true that some public companies may be listed on the stock exchange

and some of them may be extremely cashed up and may be theoretically very powerful, all of them are not. The Minister asks why we should re-visit this question. We are re-visiting the whole legislation, for goodness sake, and it is reasonable in the circumstances to re-visit the issues that we covered last time. We would not be bringing in new legislation unless we thought the old legislation was not working. By the very act, we are admitting there is need for change, and it is worthwhile—

The Hon. K.T. Griffin: How is this exclusion not working?

The Hon. M.J. ELLIOTT: I can tell you that the people who represent traders are telling me that there are public companies which, while in some cases they have chains of stores, do not have the muscle it is claimed they have. I can give an example: there is a case right now of a tenancy agreement being thrashed out with such a company. I think this company is a public company which has a number of stores. The landlord happens to know what the turnover is and, because it has not been too bad, has asked for a 20 per cent increase in rent. They are disputing this. The landlord is now saying, 'The lease on one of your shops is about due for renewal. If you do not pay an extra 20 per cent rent, you will lose the lease on this shop.' That is what the landlord is doing to them, and the landlord has them over a barrel. In fact, I will be addressing two other issues in relation to amendments later.

This is happening to very big companies. You only have to read the *Financial Review* to find that, in recent months, even the very big companies such as Woolworths and Coles have been complaining bitterly about the way they are being treated by some of the big landlords. You would be a fool to believe that it is only the little trader, the mum and dad shop, that cannot take on the landlords. The big ones are having trouble with landlords. It is very dangerous to assume that all public companies are big. Whilst many may be, many are not. I can tell you that there are case histories of these companies being treated extremely badly, just as badly as some of the very small traders in these issues. Frankly, some of these chains rely upon being in the high profile centres, and the threat of non-renewal of lease in itself is enough to bring the most powerful retail companies to heel very rapidly. They do need that protection, and I am astonished that the Minister is resistant to offering it to them.

The Hon. K.T. GRIFFIN: It is not at all surprising. We are trying to get some balance into this, and the Hon. Mr Elliott seems to believe that we should hold the hands of Woolworths, Coles and all the other big companies that happen to be in a bargaining position. If their tenancy has expired, then they are in a position where they have to bargain. Under this Bill we are entering the marketplace to intervene in respect of the smaller tenants, in particular, who everyone recognises are in a weaker bargaining position. You cannot tell me that, just because Woolworths is complaining in the *Financial Review*, we ought to be particularly sympathetic to that.

In respect of the big operators, it is a matter of getting the right public message across. It is a matter of wheeling and dealing, bumping backwards and forwards and negotiating. That is a fact of commercial life. If the big operators cannot stand the heat, they should not be in the marketplace. But with the small operators we have agreed that there is a need to provide protection, and that is what we are doing. If you put in the protection for public companies you put in the protection for bodies like Woolworths, Coles Myer and everyone else who might be of that sort of status and, in any event, the other public companies, which may not be listed but which may, nevertheless, have substantial market power and muscle. There has to be some sense of balance in the marketplace and in dealing with this when you are talking about those larger operators rather than the small tenants upon which this Bill is focused.

The Hon. M.J. ELLIOTT: The point I was making about Coles and Woolworths was not that we should be affording them protection. The point I was making is that even the two most powerful retail chains in Australia are saying that they are being treated badly by landlords. I was not saying that they should be extended protection. In fact, most of the shops they own would not meet the 1 000 square metre test. Certainly, Coles Myer does own some small chains like Katies that perhaps would. But the point I was making was that even retail chains with the power of Coles Myer and Woolworths are not getting a good deal, so what hope do the smaller public companies—

The Hon. K.T. Griffin: You don't know they are not getting a good deal. They say they are not getting a good deal.

The Hon. M.J. ELLIOTT: What I am saying is that they are having difficulties, and some public companies that own a single outlet or a relatively small number of outlets have no more hope than the very small, ordinary retailer, which happens not to be a public company.

The Hon. R.D. LAWSON: Companies in our system are divided into public companies and proprietary companies. To establish and maintain a public company is a very expensive operation. Ordinarily, one would not have a public company unless one wanted to go to the public for money or subscriptions. Proprietary companies cannot do that: public companies can. Most public companies are listed on the Stock Exchange or established for the purpose of being listed on the Stock Exchange. There are heavy audit requirements on public companies that do not apply to proprietary companies.

There are not, in my experience, small public companies. Obviously, some are smaller than others but, ordinarily, they are not entitled to and do not seek the protection of the law in relation to these matters. The Hon. Mr Elliott refers to the fact that some public companies, apparently, are facing renewal of retail tenancies. In my experience, it is as much a fear of the landlord in those situations that the tenant, some national company, will vacate the premises, and it is not a case where there is inequality of bargaining power at all. Where you have a retail tenancy in which the particular tenancy is the only business of the particular family, company or shopkeeper, obviously, such a tenant is at the mercy of a landlord.

Public companies with chains of stores are not similarly at the mercy of a landlord. If the landlord seeks to extort high rent from them such tenants will say, 'We are going elsewhere; we have more eggs in our basket than one. We can move down the street and you will be without a tenant.' Public companies and substantial retail chains are valued and prized tenants of any landlord. They establish good will while they conduct their business there. If they move down the street, clearly, they do not do that lightly. But ordinarily there are swings and roundabouts in negotiations between such tenants and landlords. They have not previously had the protection of this Act. As I understand, they do not have the protection of similar legislation in other places. Frankly, the Hon. Mr Elliott has not made a cogent case by any particular example for their exclusion here.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We have been persuaded by the many submissions that we have received. We cannot see the sense in distinguishing between partnerships, private companies or public companies when it comes to the question of a simple case of justice and protection offered by the legislation. We have listened to the arguments on both sides. As I indicated earlier, we have received many submissions on this issue and we support the amendment.

The Hon. M.J. ELLIOTT: I think the Hon. Mr Lawson might get a letter in the mail after *Hansard* has been read to explain a few things. There are three States which have similar legislation to ours and all three cover public companies. That was one issue that the honourable member raised. He said that if you do not like the landlord you move down the street. If a retailer was operating at Marion or at Tea Tree Plaza and they wanted to move down the street, it would not be a bright move. The fact is that there are some inquiries around the place at this stage to look at the position that some landlords hold in relation to the retail market, because some landlords have a pretty good stranglehold on the preferred locations.

Moving down the street sounds like a simple option. It might be all right in Mount Gambier, but even then there is only about a 150 metre strip that you would want to move up and down, and if you moved out of that you would lose out pretty badly, too. But for many retailers moving down the street is not really an option at all. Certainly, the landlord needs key tenants but if the landlord displaces one he will find another sucker pretty quickly because they are the preferred sites. The point I am making is that simply shifting down the street, which is one of the points the Hon. Mr Lawson made, is not a realistic option. The fact is that the other three places where similar legislation has taken place has afforded the protection, contrary to his assertion.

Amendment carried; clause as amended passed.

Clauses 5 and 6 passed.

New clauses 6A to 6E.

The Hon. K.T. GRIFFIN: I move:

Page 4, after line 13—Insert new headings and clauses as follows:

PART 1A
ADMINISTRATION

Administration of this Act

6A. The Commissioner is responsible for the administration of this Act.

Ministerial control of administration

6B. The Commissioner is, in the administration of this Act, subject to control and direction by the Minister.

Commissioner's functions

6C. The Commissioner has the following functions:

(a) investigating and researching matters affecting the interests of parties to retail shop leases; and

(b) publishing reports and information on subjects of interest to the parties to retail shop leases; and

(c) giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to retail shop leases; and

(d) investigating suspected infringements of this Act and taking appropriate action to enforce this Act; and

(e) making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act; and

(f) administering the fund.

Immunity from liability

6D. No liability attaches to the Commissioner or any other person acting in the administration of this Act for an honest act or omission in the exercise or purported exercise of functions under this Act.

Annual report

6E.(1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the preceding 30 June.

(2) The report must include a report on the administration of the Fund.

(3) The Minister must, as soon as practicable after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

These provisions are, again, in the nature of some drafting amendments. The Bill was formally silent on the specific role of the Commissioner for Consumer Affairs in relation to the provisions of the Bill with the exception of the fund. It is not strictly necessary to incorporate these provisions into the Bill, but it was thought appropriate that they be inserted so that there will be parity between the provisions of this Bill and those of the Residential Tenancies Bill which will be introduced into this place tomorrow.

The Hon. CAROLYN PICKLES: The Opposition supports the new clauses.

New clauses inserted.

Clause 7 passed.

Clause 8—'Lessee to be given disclosure statement.'

The Hon. K.T. GRIFFIN: I move:

Page 5, after line 34—Insert:

(6) However, an order cannot be made under subsection (5) on the ground that a disclosure statement is incomplete or contains information that is materially false or misleading if—

(a) the lessor has acted honestly and reasonably and ought reasonably to be excused; and

(b) the lessee has not been substantially prejudiced.

In essence, this is a drafting amendment. It has arisen after consultation with industry and represents the agreed industry position on this issue. It is a fair provision and provides an opportunity for landlords under the three different grounds set out in the amendment to argue against an order being made by the tribunal. As I said, it is agreed by the industry at large.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 9 passed.

Clause 10—'Lease preparation costs.'

The Hon. K.T. GRIFFIN: I move:

Page 6, lines 7 and 8—Leave out paragraph (a) and insert:

(a) fees charged by a mortgagee for producing a certificate of title for the land over which a retail shop lease is to be registered or for consenting to the lease;

It was drawn to the Government's attention by industry that the current definition of 'preparatory costs' provides for the payment of one half of mortgage production fees but makes no reference to mortgagee consent fees. Industry approached the Government to amend the clause to include this provision, and the Government agrees that it will provide clarity and certainty in relation to the payment of this fee.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 11—'Premium prohibited.'

The Hon. M.J. ELLIOTT: I move:

Page 7, lines 9 and 10—Leave out 'in connection with the granting of the lease'.

With this amendment, I am attempting to make a clear distinction between moneys which may be paid in relation to the granting of a franchise and the payment of key money,

which is something that the legislation elsewhere specifically forbids.

The Hon. K.T. GRIFFIN: I would have thought it was, in a sense, consequential on the earlier amendment in relation to the franchises which had been lost. But if the honourable member does not think it is so, I would not support it. It is clear in the Bill exactly what is intended. What we are seeking to do in the Bill is clarify what a lessor can or cannot do.

Whilst a premium in relation to a lease is prohibited, one must recognise that there are figures which are frequently paid for seeking and accepting the grant of a franchise. That might be in connection with the granting of a lease but it will not be a premium as such for the granting of the lease itself but rather will relate to the franchise. It is clear what is intended from the Bill as it is and, therefore, I will not support the amendment.

The Hon. CAROLYN PICKLES: The Opposition opposes the amendment, which we believe is consequential.

The Hon. M.J. Elliott: It's not; it was not meant to be.

The Hon. CAROLYN PICKLES: We oppose the amendment.

Amendment negatived; clause passed.

Clause 12 passed.

Clause 13—'Minimum five year term.'

The Hon. M.J. ELLIOTT: I move:

Page 8, lines 4 to 6—Leave out all words in paragraph (c) after 'lessor' in line 4 and insert:

(i) certifies in writing that the lawyer has, at the request of the prospective lessee, explained the effect of the provision and how this section would apply to the lease if it did not include that provision; and

(ii) ascertains from the lessee, and includes in the certificate the reasons stated by the lessee for not wanting the benefit of this section; and

(iii) files the certificate with the tribunal.

I raised this issue in the second reading debate. The amendment seeks to expand on the provision that the Government has already provided in that a lawyer who is not acting for the lessor will certify in writing that the lawyer has at the request of the prospective lessee explained the effect of the provision and how the provision will apply to the lease. The addition of paragraphs (ii) and (iii) completes the purpose of my amendment. It is intended for the tribunal to pick up any patterns that may be occurring in the industry, and it is not intended in any way to stop either the lessor or the lessee from seeking to have terms of less than five years. There can be good reasons why either party may want such a short term.

The amendment is not to prevent that from happening but is simply to recognise that if it does happen not only will we have the lawyer certifying that the lessee understands the effect of the provision but also the certificate produced will be lodged with the tribunal and the lessee will state why they are not wanting the benefit of the protection of the provision.

The Hon. K.T. GRIFFIN: The Government does not support this, because we think it is quite unnecessary. We have provided specifically in the Bill that, if the lease contains a provision excluding the operation of subsections (1) and (2), and the lawyer who is not acting for the lessor certifies in writing that the lawyer has, at the request of the prospective lessee, explained the effect of the provision and how this section would apply to the lease if the lease did not include that provision, the shorter tenancy can be entered into validly. We are looking at providing a protection for the lessee and I suppose to some extent a protection for the lessor. If independent legal advice has been given to the prospective lessee, then that prospective lessee as well as the lessor are both protected. We see no reason at all to have reasons stated.

One of the difficulties that might well arise from this is that the lawyers, who seek to protect themselves to ensure that they are not liable for any negligent act or omission, will seek to draft the reason much more precisely than might otherwise be the case. It happens with guarantees at the present time: lawyers have to give a comprehensive certificate and have to make their own declaration. Members will find that around the legal profession at the moment, in the light of some cases relating to this, a much greater level of caution is involved in counselling and advice in respect of a guarantee than there was previously, so the expense increases.

We are seeking here to provide the protection and to leave it at that. With respect to the honourable member I cannot see what the advantage is in filing the certificate in the tribunal. Of course, the amendments do not say what is to happen with the certificate: is it accessible by the public at large; is it merely kept as a matter of record; and what does the tribunal have to do with it? The honourable member said that it might be to establish whether or not there is a pattern. I am not sure what sort of pattern you can devise from certificates which are filed except that, first of all, there are a certain number of certificates which are given relating to a particular range of tenancies between particular parties—I am not sure what you can read into that, either.

The whole essence of this, as I say, is to provide independent advice, and that is the key to the protection which we believe is important to include in this Bill and not the peripheral issues to which the honourable member's amendment refers.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 14 to 19 passed.

Clause 20—'Turnover rent.'

The Hon. M.J. ELLIOTT: I move:

Page 13, after line 32—Insert new subclause as follows:

(4A) A lessor must not require a lessee to provide to the lessor information about the lessee's turnover unless the retail shop lease provides for the determination of rent by reference to turnover.

Maximum penalty: $1 000.

I have moved this amendment in a slightly different form from that which is currently before members as circulated. I have struck out from the amendment on file the words 'or a component of rent' which followed the words 'determination of rent'. The reason for this amendment is that where a landlord is collecting rent that is linked to turnover there is a good reason why the landlord needs to know what the turnover is.

However, if the rent is not linked to turnover, I do not believe that the landlord has any justification for knowing precisely how well a particular business is going. I am advised that unfortunately landlords use that information to work out exactly how much blood they can squeeze out of the stone if a business does well. They find that out by obtaining the turnover information, and their first reaction is to bump up the rent at the next opportunity and squeeze out as much money as they can. It is one thing for market negotiations between the landlord and the tenant in terms of what a rent should be, but for the landlord to know precisely what the turnover is gives rise to an opportunity for abuse of that information. By all means let the landlord say, 'I want a

particular rent' and let them play one prospective tenant off against another, but there is no good justification for the landlord having that knowledge.

The Hon. K.T. Griffin: Why did you delete the words 'or a component of rent'?

The Hon. M.J. ELLIOTT: I do not understand all the intricacies of the way in which rents are structured. I do not think it adds anything, but I have been advised by people in the retail industry that the amendment works better without those words.

The Hon. K.T. Griffin: The clause in which you are putting it deals with a component of rent in the first line.

The Hon. M.J. ELLIOTT: Yes, but this clause clearly says that, if the determination of rent is carried out by reference to turnover, they would have a right to access that information.

The Hon. K.T. GRIFFIN: Apart from the merits of the amendment, I would have thought that it needed to be consistent with the first line of this clause, which provides that, if a retail shop lease provides for the determination of rent or a component of rent by reference to turnover, certain things follow. One presumes that those paragraphs which follow relate to those situations in which turnover might be just one part of the basis for calculation of what the rent should be. The amendment suggests that if you leave out those words it narrows the extent to which information on turnover can be available. The amendment provides:

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

There are some circumstances in which you might have a base rent and you might have several other factors built into the determination process so that the determination of rent will not be only by reference to turnover. If you delete the words 'or a component of rent' it suggests that it is limited to those circumstances in which turnover is solely the determinant of rent. That is the first issue, which is a drafting issue.

So far as the merits of it are concerned, I am not going to oppose it now but I do not want that to be taken as acceding to the provision. There may well be circumstances in which turnover is relevant to the proper conduct of a shopping centre or a landlord's business, and in those circumstances it may be appropriate to not override the terms of the lease, which might specifically provide for this information in those circumstances.

The other matter which needs to be recognised is that, so far as rent is concerned, we are outlawing ratchet clauses. So, there must be a clear choice by the landlord as to the method by which rent is increased. I suppose the only circumstance in which what the honourable member is suggesting might be the motive for having information about turnover is at the end of the lease, after the lease has been renewed. In other words, if you have five years plus five years right of renewal, it is at the end of that 10 year period that it may be relevant in determining what the basis should be for rent in the future. I am not sure whether or not that is the case but, in those circumstances, I will not oppose it outright but indicate that I do have some reservations and want to give it further consideration.

The Hon. R.D. LAWSON: The Attorney highlights a potential difficulty with this provision because 'lessor' and 'lessee' are both defined to include former lessee and former lessor. Therefore, one must read this provision in light of that definition and, at the expiration of the term of a lease, when a new lease is perhaps being negotiated between a former lessor and a former lessee, in the ordinary course it may well be relevant in that discussion for the lessor to ask, 'What were you doing previously?' Most tenants will be quick to say, 'I am afraid I can't pay a higher rent because I wasn't doing terribly well. My turnover was falling.' Quite often, in the course of negotiations, a landlord might call a tenant's bluff and say, 'Let's have a look at your figures.' It seems to me in that situation it is perfectly reasonable.

The Hon. CAROLYN PICKLES: The Opposition was inclined to support the Democrat amendment because we believed it provided a level playing field. We will support the amendment to the amendment, but we would like to consider the matter further as to whether or not that further amendment is required, in light of some of the Attorney's remarks. At this stage, we will support the Democrat amendment.

The Hon. M.J. ELLIOTT: Without going into a debate about the words I deleted, I point out that I think the words are redundant within the subclause. However, I do not think we should focus on that—we should focus on the larger issue. I was not talking hypothetically. The example I gave earlier about the chain of stores which was threatened that one of its leases would not be renewed was in this position where it was required to provide the landlord with turnover figures. The landlord felt, on the basis of the turnover figures, that he could tighten the screws, and so, with lease renewals, he demanded an extra 20 per cent. The lessee baulked at that and there was then the threat of the lease not being renewed.

The fact is that landlords are in a very powerful position whereby they can get a company and tighten the screws down to the absolute limit so that they squeeze out almost every last cent of profitability whilst allowing the company to continue to operate. Basically, retailers go into a business not just to make a living but because they are driven by the profit motive. A landlord watching over the top and knowing precisely what the turnover figures are and that he or she can turn the screws a bit tighter in respect of rent because the lessee can afford it really puts them in a no-win position.

Sometimes, after they have made a sizeable investment in the company, they cannot afford to leave, but there is barely any point in staying because they are hardly making any profit. The sophisticated landlord can play that game right to the very limit: working out precisely how much they can squeeze out of them whilst maintaining them there. There is no justification for a landlord being able to require the information as distinct from a tenant feeling that they want to put it in front of the landlord because they want to argue that in fact things have not been going too well and the landlord is asking too much. That can be at their discretion, but at present the situation is the other way around.

The Hon. K.T. GRIFFIN: I suspect that one of the consequences of this if it stays in the Bill finally will be that landlords will ensure that rent is determined by reference to turnover, whether in whole or in part. In a sense, it is self defeating. As I said, I will give it more consideration. I am not inclined to support it but I am happy to give it further consideration.

Amendment carried; clause as amended passed.

Clauses 21 to 25 passed.

The CHAIRMAN: I point out to the Committee that clause 26, being a money clause, is in erased type. Standing Order 298 provides that no question shall be put in the Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clause 27—'Estimates and explanations of outgoings to be provided by lessor.'

The Hon. K.T. GRIFFIN: I move:

Page 15, line 10—Leave out 'three months' and insert 'one month'.

This is designed to alter the periods of time in which the estimate of outgoings must be given to the lessee. The industry considered the period of three months and submitted as a group of one mind that this period could and should be reduced to one month. The industry also made representations in relation to altering the time frames referred to in the next amendment to be moved and also in clause 29. The Government has taken the view that the request is reasonable and is prepared to support it.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 28—'Lessor to provide auditor's report on outgoings.'

The Hon. K.T. GRIFFIN: I move:

Page 15, lines 18 to 21—Leave out paragraph (a) and insert—

(a) the lessor must, within three months after the end of each accounting period, give the lessee a written report containing a statement of all expenditure by the lessor in the accounting period towards which the lessee is required to contribute in a form that facilitates comparison with the relevant estimate;

This relates to the period within which certain information ought to be presented by the lessor to the lessee. It is consistent with what I have just referred to in relation to clause 27.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 29—'Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred.'

The Hon. K.T. GRIFFIN: I move:

Page 16, line 4—Leave out 'six months' and insert 'three months'.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 30—'Non-specific outgoings contribution limited by ratio of lettable area.'

The Hon. K.T. GRIFFIN: I move:

Page 16—

Line 22—Leave out 'the total amount of that outgoing' and insert 'the relevant amount of that outgoing'.

Lines 25 and 26—Leave out subclause (2) and insert:

(2) This section—

'excluded premises' means premises in a retail shopping centre (such as office towers and entertainment annexes) that are leased or available for lease but are not retail shops;

'referable'—an outgoing is referable to premises if the premises enjoy or share the benefit resulting from the outgoing;

'relevant amount' of an outgoing means—

(a) if the outgoing is wholly referable to retail shops the total amount of that outgoing;

(b) if the outgoing is partly referable to retail shops and partly referable to excluded premises a proportion of the outgoing equal to the proportion that the total lettable area of the retail shops in the retail shopping centre bears to the total lettable area of retail shops and excluded premises.

In effect these amendments exclude the total area of office towers and entertainment annexures from the calculations of the non-specific outgoings contribution. The amendment flows from the consultation process with industry after the release of the Bill. There was a concern by both landlords' and tenants' representatives that we reflect these provisions, which have not been adequately addressed in the Bill as introduced.

The Hon. CAROLYN PICKLES: The Opposition supports the amendments.

Amendments carried; clause as amended passed.

Clauses 31 and 32 passed.

New clause 32A—'Harsh and unreasonable terms for rent.'

The Hon. M.J. ELLIOTT: I move:

32A (1) The Tribunal may, on application by a lessee vary the provisions of a retail shop lease about rent if satisfied that provisions are harsh and unreasonable.

(2) In deciding whether a provision of a retail shop lease is harsh and unreasonable, the Tribunal must have regard to—

(a) the periodic rent that could reasonably be expected for the shop on the rental market (the 'market rent'); and

(b) the extent of divergence between market rent and the rent payable, or likely to be payable, under the lease; and

(c) any other relevant factors.

I raised this matter during the second reading debate.

In general the legislation is not going to be retrospective, and in fact I am not asking it to be, for a good reason. One of the reasons why we are debating this Bill now is that it has been realised that some practices in the area of tenancy agreements have been quite unconscionable, in particular, ratchet clauses. In some cases their application has created rents which are well out of kilter with any normal market expectation; ratchet clauses have the capacity to do that. With this amendment I am not seeking in general to have the tribunal intervening in relation to rent: rather that, where it is clear that the rent has reached a level which is harsh and unreasonable in the view of the tribunal, the tribunal should take several factors into account, particularly the periodic rent which could reasonably be expected for the shop on the rental market—the market rent—and the extent of divergence between market rent and the rent likely to be payable under the lease and any other relevant factors. I would expect that just because there is a divergence is not sufficient: it is the extent of the divergence and the extent must be such that the tribunal feels that the rentals are harsh and unreasonable. It will apply in very few cases, but I believe that for those few cases the clause is justified.

The Hon. K.T. GRIFFIN: The Government does not support this amendment. Certainly, it is not relevant in relation to new leases. Of course, the amendment does not distinguish between existing or new leases. In relation to new leases, the clause will just not be necessary. 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 the lease. The Bill does prevent ratchet clauses, and that will overcome one of the Hon. Mr Elliott's concerns in relation to new clauses. If a party selects current market rent as the formula applicable to the lease and the parties cannot agree to the amount of rent, provision has been made in the Bill for the amount of rent to be determined by a valuation carried out by a valuer. Information as to the rent and nature of rental increase will be known at the outset of the lease. Any breaches of the lease agreement will be dealt with by the commissioner or the tribunal. Under the terms of the new Bill there is no need for tribunal intervention in the manner described by the Hon. Mr Elliott.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: This is for new ones; we are talking about that at the moment. This amendment deals with all leases. I do not even accept that there should be an amendment in relation to existing leases. In the discussions between the various parties in the industry it was agreed that, notwithstanding that landlords believed that none of it should be applied retrospectively, if it was going to be applied retrospectively, certain provisions should not be touched, and they included the commercial arrangement between the parties. I would suggest that it is not consistent with that agreement within the industry but, more particularly, a commercial arrangement is already entered into in relation to existing leases and there ought not to be this power of intervention in relation to rents and certainly there should not be the power of intervention in relation to new leases, and this is certainly what the clause allows.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We believe it allows the tribunal to vary harsh or unreasonable provisions of retail shop leases. It is similar to the provision in the New South Wales legislation by means of which unfair contracts can be varied. We do not believe that it will lead to undue uncertainty in commercial tenancy dealings. Proposed new subclause (2) gives all relevant parties a fairly good idea of what commercial behaviour is or is not acceptable in this context.

New clause inserted.

Clauses 33 and 34 passed.

Clause 35—'Demolition.'

The Hon. M.J. ELLIOTT: I move:

Page 19, after line 25—Insert:

(3A) If a retail shop lease is terminated because of the proposed demolition of the building of which the retail shop forms part, and a new retail shop is to be located in the same (or substantially the same) place, the lessor must, at the request of the lessee made before the termination takes effect, enter into an agreement giving the lessee a right of first refusal for a lease of the new shop premises on reasonable terms and conditions.

The word 'demolition' is fairly broadly defined in this legislation compared with the old legislation. There may be some arguments about the precise definition. 'Demolition' does not necessarily mean knocking down a building and starting again. It simply requires vacant possession of a shop. It is possible that relatively minor work could require vacant possession of a shop particularly if, for instance, it was a clothing shop and you were going to produce a lot of dust, and it was going to occur only for a couple of days.

Under the current definition of 'demolition' in this legislation, this could be sufficient excuse for creating vacant possession. There is the capacity for capricious abuse of the word 'demolition'. Of course, in many cases demolition may be far more substantial. I seek to provide that, where a person has had their lease terminated because of the proposed demolition of a building of which the retail shop forms a part and where a new retail shop is to be located in the same or substantially the same place, the lessor must, at the request of the lessee made before the termination takes effect, enter into an agreement to give the lessee the right of first refusal for the lease of the new premises on reasonable terms and conditions. That is consistent with other arguments that I will put forward later.

It is not only the landlord who makes an investment: the retail tenant makes an investment as well. While tenants do not have an absolute right to possession, they have the right to be treated reasonably. Where a good tenant is paying the appropriate market rent and where no-one else in the market is prepared to pay far more, that retail tenant must be given a reasonable chance of renewal, or in this case reoccupation, after demolition.

The Hon. K.T. GRIFFIN: This is a joke. The definition of 'demolition' is quite strict. The Bill provides:

. . . 'demolition' of the building of which a retail shop forms part includes a substantial repair, renovation or reconstruction of the building that cannot—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Painting is not included in this definition.

The Hon. M.J. Elliott: It says 'substantial repair, renovation or reconstruction of the building'.

The Hon. K.T. GRIFFIN: They must be read together. It does not mean just moving people out to paint. That is a nonsense. It says 'substantial repair, renovation or reconstruction'—the rules of statutory interpretation require that they be looked at as a class not separately—'. . . that cannot be carried out practicably without vacant possession of the shop.' The fact is that it is only very rarely that you move everything out to paint. You can move things around and paint without having to move everything out. It is reviewable by the court. If there is a tenant or an agency representing a tenant that believes this is a sham, action can be taken in the courts, which is the proper place for reviewing that decision, to have either an injunction or other order made which overcomes the sham demolition. It has to be substantial.

This amendment puts a very substantial brake on the right of a landlord who might be seeking to demolish either a shop or the whole of a shopping centre, or a substantial part of it, to rebuild. It may be that it will occur over the space of a year or so rather than just in the space of a week or so, and I cannot imagine there will be many instances where substantial repair, renovation or reconstruction will take place in such a short period of time. Over the space of a year or so, if there is substantial redevelopment, this clause gives the former lessee the first right of refusal—a legally binding right to a lease of the new shop premises, on reasonable terms and conditions, whatever that means.

It means that, instead of the landlord's being in a position to make decisions, which a landlord is entitled to make in relation to investment, tenancy mix or what might be achievable in the marketplace in terms of rent, that landlord is constrained by the provisions of this clause. I think they are totally unreasonable. As I said at the outset, this Bill is designed to deal fairly with both landlords and tenants, and I suggest that this is substantially restricting the opportunity of landlords to take proper decisions and to give former tenants an unnecessarily weighted right to have a first right of refusal to the lease. I oppose the amendment.

The Hon. M.J. ELLIOTT: Regarding the sort of renovation that might require vacant possession for a relatively short period of time, a building that will have asbestos removed would require vacant possession for a relatively short period.

Members interjecting:

The Hon. M.J. ELLIOTT: Frankly, I think floors can be renovated at a time and things like this in various buildings and, in relative terms, it will be quite a short vacancy, but the premises will have to be emptied whilst that is being done. However, the building will be substantially the same building with the asbestos removed. I do not think that, in those

circumstances, we are offering an unreasonable protection to a tenant.

The Hon. K.T. GRIFFIN: I will make one other observation in respect of that. Let us take asbestos. It may well have been that there has been a lower rent because either the premises were dilapidated or there was asbestos and, as a result of the removal of asbestos, it has not just been a matter of taking it out of the ceiling or wherever it was but some substantial upgrading. 'Reasonable terms and conditions' would suggest that the landlord is no longer at liberty to say, 'For these premises, because I have upgraded them substantially by removing the asbestos and upgrading the air-conditioning, I want this amount of rent and I am entitled to stand in the marketplace—and I want to stand in the marketplace—for two or three months until I get a tenant who is prepared to take it up'. Instead, he is bound by this right of first refusal on what some independent body, presumably the tribunal, will regard as reasonable terms and conditions, whether in relation to rent, the term of the tenancy and so on. I suggest that that is an unrealistic expectation and an unnecessary and unreasonable burden by which, in reasonable circumstances, landlords should not be required to be bound.

The Hon. R.D. LAWSON: The absurdity of this provision can be illustrated by the following example. Take a strip shopping centre along, say, a major thoroughfare, of old buildings comprising a fish and chip shop, a delicatessen and a hardware store. The landlord enters into a lease with all those tenants for five years but says 'I may wish to redevelop this property during the five years and, if so, I am obliged to comply with the provisions of the existing Bill.' Let us assume that the landlord wants to sell to a developer who wants to build a complex containing boutique shops or antique shops or to completely change the character of the shopping centre, or to facilitate a different type of operation entirely but in a number of stores in the redeveloped premises. If the Hon. Mr Elliott's clause is enacted, that redevelopment would be entirely frustrated, because the landlord would have to offer to the fish and chip shop operator, the delicatessen and the hardware store shops in his proposed boutique complex. This is, in fact, a common form of redevelopment, as any visitor to The Parade at Norwood or Unley Road would be well aware.

The Hon. CAROLYN PICKLES: The Opposition has received many submissions on this aspect and we have been given many examples of abuse of demolition clauses in commercial tenancy agreements up to this point. We believe that this amendment will remedy that situation and we therefore support it.

The Hon. M.J. ELLIOTT: We might be in a slightly different position and this amendment may not have been necessary if the definition of 'demolition' were a better definition. I do not believe that it has sufficient strength to guarantee that the sort of example the Hon. Mr Lawson was giving—

The Hon. R.D. Lawson: But that definition of 'demolition' is your definition.

The Hon. M.J. ELLIOTT: All I have done is move the old definition. It is not a newly created one: I have shifted the Government's amendment from one position in the Bill to another, but it is the same wording. A renovation or even a reconstruction could be a major job, it could be a relatively minor job, and there is nothing about the definition that really indicates how substantial the renovation or reconstruction is or exactly what reconstruction or renovation entails. I suggest that it is possible that, in the scale of things, relatively minor renovations or reconstructions could be sufficient to require vacant possession without the landlord's spending significant sums of money in the process; that, in fact, it is capable of being used as a device to shift people out. I would have thought that, if anybody would understand that, a lawyer could read those words and see that they are open to pretty broad interpretation.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: We need to have some arguments about whether or not the amendment I propose achieves the goal that I have set out to achieve. What I have set out to ensure is that we do not have capricious use of 'demolition' or the excuse of 'demolition' as a way of removing a tenant. Frankly, I think that is possible under the Bill as it stands. There may be more than one way of addressing that problem. If it is not by way of the amendment I am moving it might be by taking a closer look at the definition of 'demolition' itself or by some other amendment to the clause which I am now seeking to amend. To do nothing would be a failing on our part because I think it is open to capricious use.

The Hon. K.T. GRIFFIN: I do not agree with that. Subclause (3) provides for compensation if a retail shop lease is terminated on that ground and demolition of the building is not carried out within a reasonably practicable time after the termination date notified by the lessor unless the compensation is payable and unless the lessor establishes that, at the time notice of termination was given by the lessor, there was a genuine proposal to demolish the premises within that time. The fact is that there are safeguards built into it. You cannot be precise because you might have what the Hon. Robert Lawson has referred to, namely, a three shop complex or you might have a Westfield or part of a Westfield. What is reasonable in relation to the three shop premises in the block would be quite unreasonable in relation to a much more significant development or redevelopment, and, of course, the preparation work is different.

It may be that with the three shops a wall is to be taken out and a new dividing wall is to be put in to make it into four shops. All that is done fairly quickly, but when there is major rebuilding work it might be a matter of 12 to 18 months before the work is completed. I also draw attention to the fact that in the New South Wales Act the description of 'demolition' is in exactly the same terms as what the Government has included in the Bill. The right to recover compensation in the New South Wales Act is in exactly the same terms as that in subclause (3) of clause 35. I suggest that it cannot be defined by reference to arbitrary times, dates, periods, or whatever. There has to be a reference to 'reasonable' and 'substantial repair, renovation, or reconstruction'.

It is a rule of statutory interpretation that you look at the category of activities or events which are referred to and do not construe them in isolation. It is 'substantial repair, renovation or reconstruction of the building'. It is something more than just painting. In my view, you have to leave this, in a sense, dependent upon reasonableness in all the circumstances and not by reference to some arbitrary rule. That is why I take the strong view that this clause is just impossible and will deter investment quite unreasonably and without any justification.

The Hon. M.J. ELLIOTT: I acknowledge the problems raised by the Hon. Mr Lawson in relation to a building which is essentially knocked down, which is demolished in any ordinary understanding of the word 'demolition' and where a new building is put up. I would acknowledge it also where

there has been substantial reconstruction of a building. I am not convinced by the Attorney-General's argument that, with the way the current definition of 'demolition' stands, we are necessarily talking about substantial renovation or substantial, significant reconstruction of a building. I think that—

The Hon. K.T. Griffin: It doesn't mean that. You have to look at what 'demolition' means. It includes a 'substantial repair, renovation or reconstruction of the building'.

The Hon. M.J. ELLIOTT: 'Demolition' has an ordinary meaning in the English language, which is clearly to knock it down and in this context eventually build something in its place. The Attorney is reading that word down quite a bit to 'substantial repair, renovation or reconstruction'. Frankly, I think it will apply to more than the examples given by the Hon. Mr Lawson. I keep hearing ringing in my ears the words the landlords used at the meeting that we had where they were represented by BOMA and we had various retail groups represented and they threatened that they would get around the Act one way or the other.

The Hon. A.J. Redford: It's a pay back, is it?

The Hon. M.J. ELLIOTT: No, it is not a pay back. I took their words very seriously and realised that if clauses are open to interpretation and they can get their lawyers to get an interpretation favourable to them, they will go for it, because that will be their way of getting around it.

The Hon. K.T. Griffin: It cuts both ways.

The Hon. M.J. ELLIOTT: Yes, it does cut both ways. What is important to me is that we should try as hard as possible to ensure that this legislation works precisely as we intend, which means that as far as it is within our power to predict what might happen, we try to narrow things down to ensure that happens. I believe that this is open to broad interpretation. That concerns me and that is why I moved this amendment. I acknowledge there may be other ways of achieving that goal, but the Government is not convinced and I find that unfortunate.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 19, lines 26 to 28—Leave out subclause (4).

This is consequential on an earlier amendment in relation to where the definition of 'demolition' is found in the legislation.

Amendment carried; clause as amended passed.

New clause 35A—'Relocation.'

The Hon. M.J. ELLIOTT: I move:

Page 19, after line 13—Insert new clause as follows:

35A. If a retail shop lease contains provision that enables the lessee's business to be relocated, the lease is taken to include provision to the following effect:

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

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

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

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

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

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

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

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

The wording of the clause is identical to the wording of clause 54 as the Government currently has it in the Bill.

The Hon. K.T. Griffin: Not absolutely. If the Hon. Mr Elliott will look at the last line of paragraph (b), he will see the words, 'to be made available to the lessee within the retail shopping centre'. That is not in his amendment.

The Hon. M.J. ELLIOTT: That is right. As I argued on second reading, I want to talk not just about retail shopping centres. The Government was trying to say that they must consist of more than five shops. I argued that there is no need for any particular number to apply. So, there is that minor change. This clause more appropriately sits among the other clauses which deal with alterations and refurbishment, demolition, and the like. It sits better within that part of the Bill than within part 7, which relates to retail shopping centres. I argued that it should apply to shops more generally. Whether a landlord owns two, three or five shops is immaterial. If the landlord is seeking to relocate that shop, the sorts of protection the Government wishes to put in there should apply.

The Hon. K.T. GRIFFIN: I do not agree with the amendment. This clause is best left where it is, and it is best left in relation to retail shopping centres. What we are trying to do is focus on where we understand the major problem is, that is, in retail shopping centres. That is where, as I understand it, most of the relocation occurs. If you have the three shops in the shopping strip and there is a right to relocate, frankly, I do not think it will occur, because you only have a small area of movement. Secondly, even if that was the case, it does not seem to me to be appropriate to address the issue in terms of that rather small development. But, as I said, the problem that has been drawn to the attention of the Government is relocation within shopping centres, where you have a range of shops, and it is a desire by the landlord or the manager to shift people around within the shopping complex to get perhaps a different mix in a different part of the shopping centre or for some other reason. I do not see any reason at all why we ought to change the position of the provisions in the Bill or extend it beyond shopping centres.

The Hon. M.J. ELLIOTT: Whilst the greatest problems may exist within retail shopping centres as the Government seeks to define them, the effects of relocation can be as significant for a trader who may be operating in a cluster which might have two or three shops. Whether or not you are on a corner, or in a position closest or further away from the road, and those sorts of things—various effects of relocation can impact on you just as much as though you were being shifted around in a large shopping centre. We are not denying the right of the landlord to have relocation, but we are offering certain protections to the lessee. Why are we creating

two categories of lessee and offering that sort of protection to one lot and not to another?

The Hon. CAROLYN PICKLES: This is one of these amendments that have just appeared, and we actually have not had a great deal of time to consider it in any detail. Our immediate response is to support this initially and to have a further look at it, as we will probably be recommitting various clauses of this Bill.

The Hon. K.T. GRIFFIN: I appreciate that the Hon. Carolyn Pickles will have another look at it. There is another aspect of this that needs to be kept in mind; that is, if it applies to shopping centres, it applies because of the potential to shift someone from a prime position to a back corner. That is really the major area of concern: you take a tenant out of play from the mainstream of the shoppers and put them in a back corner so that you can adversely and dramatically affect their capacity to attract custom. That is where we ought to be focusing on the problem and not in the small shopping areas.

The Hon. R.D. LAWSON: Bearing in mind that this proposal is still being considered by the Opposition, I invite the Hon. Mr Elliott and those briefing him to give one example of a retail shop lease that contains a relocation provision and which does not relate to a shopping centre. I defy him to find such a lease in South Australia.

New clause inserted.

Clauses 36 to 38 passed.

Clause 39—'Grounds on which consent to assignment can be withheld.'

The Hon. K.T. GRIFFIN: I move:

Page 21, line 8—Leave out paragraph (b) and insert:

(ab) if the proposed assignee is unlikely to be able to meet the financial obligations of the lessee under the lease; or

(b) if the proposed assignee's retailing skills are inferior to those of the assignor; or

This amendment has arisen as a result of consultation with industry, which requested the reinstatement of the words currently in the Landlord and Tenant Act into the Bill and the Government agrees with the amendment.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 40 to 42 passed.

Clause 43—'Notice to lessee of lessor's intentions at end of lease.'

The Hon. M.J. ELLIOTT: I move:

Page 22, after line 29—insert:

(1A) The lessor must offer the lessee a renewal or extension of the lease at a reasonable rent and on reasonable terms and conditions unless—

(a) another person has genuinely offered the lessor a higher rent for the premises, the lessee has been given an opportunity to match the higher rent, and has declined to do so; or

(b) the lessor proposes to lease the premises for a different kind of business in order to enhance the opportunities for increased turnover for other businesses conducted in other premises leased by the lessor in the vicinity; or

(c) the lessor requires the premises for demolition; or

(d) the lessee has not complied, to a satisfactory extent, with the terms of the lease,

and the reasons for not offering a renewal or extension of the lease are set out in the notice given under subsection (1)(b).

This amendment is critical to whether or not the legislation will have any practical effect. There are countless examples of the power that is wielded by the landlord through the very threat that a lease will not be renewed. We seek to give tenants protection, in that they should not have to pay key money. We seek to give them a whole lot of protections that are theoretically enforceable. The landlord can say, 'I am not going to renew your lease if you take this further,' and almost never will the rights that we have theoretically given to the tenant be enforced because to lose a business will be a far greater cost to the tenant than the key money or whatever else has effectively been extorted out of them by the landlord. This is not a hypothetical situation: it is happening on a regular basis. Without the amendment tenants in practice and in the real world may as well not have the benefit of the many so-called protections that the Bill offers, although they are good and worthwhile protections in their own right.

What this clause does not do is guarantee the right of lease renewal. What it does is give a tenant, in most cases, a reasonable prospect that their lease will be renewed. In most cases if there is a dress shop there a dress shop will remain there. The tenant mix does not get radically changed that often and, if it does, it is just the odd tenant change here and there. In fact, this amendment recognises that the landlord may have someone come along who will say, 'I am prepared to pay a higher rent.' That is a commercial matter and the landlord should have every right to accept an offer of a higher rent.

The landlord may wish to put in a different kind of business. There may be currently a hairdresser operating, but the landlord may feel that by putting in an ice-cream shop it will attract more people into that part of the centre or to the centre more generally, and therefore lift the value of the overall property for the landlord. Under my amendment, the landlord will have the perfect right to do that on the basis of change of tenant mix.

The lessor may require the premises for demolition—another perfectly reasonable reason for not wanting to renew a lease—or it may be that the lessee has been a poor tenant and has not complied with the terms of the lease. I do not mean just at the end of the lease, as the Hon. Angus Redford seemed to imply in his response during the second reading. It certainly does not say that; it merely says 'with the terms of the lease'. If one has not on an ongoing basis been paying one's rent, then one has not complied. If one pays one's rent at the end, even if one has been in arrears, I do not think that the lease has been complied with.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: It means that it would not be a trivial breach of the lease. Nothing that I am proposing here will deny the landlord the capacity to maximise their return from rental. It does not create a perpetual lease. What it does create is a reasonable prospect of lease renewal.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: If somebody else comes along and says, 'I am prepared to pay a higher rent for this property,' then you are gone. If the landlord wants to demolish or to change the mix, or if the lessee has not been a good tenant—all legitimate reasons—there is not a perpetual lease. A landlord could vexatiously refuse to renew a lease, not necessarily to maximise profit by getting a better tenant or a change of tenant—all the good reasons why the landlord would want to do it. The landlord could want to do it because the power of renewing the lease enables him or her to do things which otherwise were not legal. The landlord could say, even though there are supposed to be limitations as to how many hours a shop is open, 'I want you to open longer. I know the Act says you do not have to be required to open for more than 65 hours, but if you do not open more than 65 hours I will not renew your lease.' That is supposed to be illegal, but the landlord would be able to do it.

If the landlord wants to charge key money—which is happening in the business right now, and that is why we are trying to ban it—and the person says, 'You cannot do that,' the landlord could say, 'Well, look, if you complain about it I will not renew your lease.' All these so-called protections that we put in here can be killed by the refusal to renew a lease. If anyone cannot admit that, they are being dishonest with themselves because it is happening now.

The Hon. K.T. GRIFFIN: We are not going to finish this part of the debate tonight. I will respond to the honourable member tomorrow.

Progress reported; Committee to sit again.

SUPPLY 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.

In South Australia, the Budget has been traditionally tabled towards the end of August each year. After allowing for deliberations by Estimates Committees and debate by Parliament the Appropriation Act is usually not passed until about November.

This year the Government has decided to table the 1995-96 Budget on 1 June 1995. The tabling in Parliament of the Budget at an earlier date offers a number of advantages, foremost among them is the greater certainty which it offers the Government and its agencies at the beginning of each financial year and which should in turn assist planning.

Other jurisdictions have already begun to introduce their budgets into Parliaments prior to the end of the financial year. For example, the Commonwealth Budget for 1994-95 was introduced into Parliament during May 1994.

A Supply Bill will still be necessary for the early months of the 1995-96 year until the Budget has passed through the parliamentary stages and received assent.

In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

The amount being sought under this Bill is $600 million. This is considerably less than the $1.8 billion provided by the Supply Act in 1994. The difference is due primarily to the shorter Supply period which means that the normal operating expenses of Government which need to be financed until the passing of the Budget are lower than in the past.

The shorter Supply period also means that interest payments due at the end of the first quarter of the 1995-96 year and which were formerly included as part of the Supply Bill will now be included in the Budget which will be introduced in June.

The Bill provides for the appropriation of $600 million to enable the Government to continue to provide public services for the early part of 1995-96.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides relevant definitions.

Clause 3 provides for the appropriation of up to $600 million.

The Hon. G. WEATHERILL secured the adjournment of the debate.

ADJOURNMENT

At 12.3 a.m. the Council adjourned until Thursday 23 February at 2.15 p.m.