LEGISLATIVE COUNCIL

Thursday 23 February 1995

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

JUDICIAL SALARIES

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a statement on the subject of judicial salaries.

Leave granted.

The Hon. K.T. GRIFFIN: Today the South Australian Remuneration Tribunal handed down its decision in relation to a claim for an increase in judicial salaries. Throughout most of Australia, judicial salaries are determined by remuneration tribunals which are independent of Government. This applies in South Australia. In 1992 the then Government pressed the judiciary to adopt a statutory formula for salaries similar to that for parliamentarians, but the judiciary would not agree. The then Government eventually agreed a formula with the judiciary relating to salaries which essentially meant that judges would be paid the national average, in effect, the same salary as a Federal Court judge.

Last June, the Judicial Remuneration Coordinating Committee, representing the State's 100 members of the judiciary, made a submission to the Remuneration Tribunal seeking a full flow-on of the increase granted to the Federal judiciary by the Commonwealth Remuneration Tribunal in September. It was backdated to August 1994.

The State's judiciary has not been successful in its claim for a full flow-on from the Federal decision. If it had been, judges and magistrates would have received a 10.6 per cent increase. Instead they were granted a salary increase of 6.08 per cent commencing from 1 January 1995. This followed strong opposition by the State Government to the claim of the judges. This means that the salary of a Supreme Court judge will rise from $147 995 to $157 000, and the salary of the Chief Justice will rise from $163 438 to $173 383. In addition, the salaries of several senior officers within the Attorney-General's Department are linked by contract to judicial salary levels.

It is estimated that the increase will cost the Government about $1.1 million in a full year, a figure the Government can ill afford given the budgetary pressures it inherited. The Government is sensitive to the fact that the salary increases come at a time when other professionals are pushing hard for a pay rise. There is the perception that judges are already well catered for financially and therefore should not benefit from any salary increase at present, especially as judges and magistrates received salary increases in 1988, 1990, 1991, 1992, 1993 and now 1995.

However, it must be made perfectly clear that the Remuneration Tribunal is independent of Government, and as such the Government has no power whatsoever to intervene in its decision making process or make any changes once a decision has been made. The Government vehemently opposed the judiciary's claim for salary increases and put forward a strong and detailed submission. The key points of the Government's case included the following:

· The decision of the Commonwealth Remuneration Tribunal in relation to the Federal judiciary was flawed in that it substantially relied upon a decision of the Queensland Salaries and Allowances Tribunal. The latter body had awarded Queensland judges an increase of 3.4 per cent but had merged a long-standing allowance into judicial salaries. The effect was that the Queensland judges appeared to have received a far more substantial increase than the 3.4 per cent actually granted. The allowance had previously been held by the Queensland Tribunal not to be part of judicial remuneration. Mr Horton Williams QC, for the South Australian Government, also submitted that the Queensland decision was affected by peculiar local factors relating to the salary arrangements made in respect of the judges of the new Court of Appeal by the Queensland Government independently of the tribunal. The Queensland tribunal decision had been disallowed by the State Parliament as it was *ultra vires*, that is, outside its power.

· The Remuneration Tribunal should have regard to the particular economic difficulties faced by South Australia. A substantial increase in judicial salaries may flow on to other workers or at least negatively influence the industrial climate, thereby damaging the policy of wage restraint on which recovery of the local economy depends. The tribunal should have regard to the lower cost of living in South Australia. The cost of living difference means that a salary level some 6 per cent lower than applying interstate would enable judges to enjoy the same living standards as their interstate counterparts. The Assistant Under Treasurer (Economics) provided evidence concerning the local economy and the cost of living.

· Section 101 of the Industrial and Employee Relations Act 1994 required the Remuneration Tribunal to have regard to the State wage case decision recently handed down in the Industrial Relations Commission. That decision had awarded an increase of three instalments of $8 per week to those workers who had not benefited from enterprise bargaining since 1991 and who did not benefit over the forthcoming 18 months. Moreover, the commission's wage fixing principles had rejected nexus as a justification for a paid rates adjustment.

· The Australian Industrial Relations Commission had held that local factors (in the present case, the regional economy and cost of living) were relevant to wage fixation.

· Whilst the Government did not resile from the broad principle of national judicial salaries, recognition of local cost of living variations could be reconciled with that concept. Alternatively, the local economic difficulties demanded a short-term departure from the national standard.

· The tribunal was not a rubber stamp and must exercise an independent discretion in determining whether to follow the Federal decision.

· Mr Williams QC tendered a graph prepared by the Assistant Under Treasurer's staff showing the extremely favourable position of the judiciary in relation to movements in the consumer price index since 1988. It revealed that judicial salaries have risen by 49 per cent, which is much greater than the Adelaide CPI increase of 27 per cent.

The South Australian Government strongly opposes any general increase in judicial remuneration at present for the reasons outlined in this statement. The fundamental basis for the Government's vehement opposition to a pay increase for judges and magistrates at this time is the negative impact on its policy of wage restraint. Maintenance of wage restraint is regarded as essential for the State's economic recovery, which is very delicately poised. A wages outbreak has the potential to damage the Government's wage restraint policy and is a blow to the public interest. Notwithstanding this, the tribunal has said:

The tribunal is satisfied that the judiciary is a unique group and any increase applied to that group cannot be used as a basis for flow-on to any other occupational group. The tribunal is aware of the significance of the concept of the independence of the judiciary and the need to safeguard the public interest through the provision of appropriate levels of remuneration. The independence of the judiciary also makes the concept of enterprise bargaining inapplicable to that group.

In the meantime, the Government has commenced discussions with the judiciary about various matters including judicial pensions. A committee comprising Government officers, representatives of the judiciary and possibly an independent expert is being established to review judicial pensions. The intention is to introduce greater flexibility without any increase in costs. In addition, the Remuneration Tribunal has adopted a joint submission in relation to motor vehicles which was arrived at after negotiations between the judiciary and the Government. It means that members of the judiciary may elect to receive a cash allowance *in lieu* of a vehicle.

The allowance represents the net cost to the Government of providing a vehicle in accordance with earlier decisions of the tribunal. The allowance has been set at a level which will involve no additional cost to the Government. Judges can receive a vehicle or the allowance but not both. The opportunity was taken to clarify the terms on which judges receive cars.

It should not be forgotten that in June last year four District Court judges accepted separation offers to reduce the level of judges. Much improved management systems have been introduced to reduce waiting times and provide better service. There will be a continuing focus on continual improvement.

QUESTION TIME

SOUTH AUSTRALIAN INSTITUTE OF TEACHERS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about assistance to the South Australian Institute of Teachers.

Leave granted.

The Hon. CAROLYN PICKLES: Last Friday I understand that the South Australian Institute of Teachers arranged to send an eight-page document to each of its 700 work sites informing the membership of proposals being negotiated with the Minister's department on the placement of teachers. A senior officer from the department, however, wanted the Minister to have an opportunity to read the document before it reached teachers and generously offered to pay for the mail out if SAIT would agree to delay distribution until Wednesday of this week. Naturally, the institute was overwhelmed and accepted the offer, which will cost the Minister's department $900. Was the Minister able to read the document before it was distributed, and does he agree that it was worth $900 to delay distribution?

The Hon. R.I. LUCAS: I shall need to check some of the detail of that claim. Perhaps I can put some further information to the Leader of the Opposition, of which she obviously has not been informed. When we entered into discussions with the institute at the end of last year and the start of this year to develop the new teacher staffing formula, the deadline that was established was 31 March. That was because we have to finalise the new staffing policy by that date so that we can commence the staffing process for 1996.

The Hon. Carolyn Pickles: It cost the department $900.

The Hon. R.I. LUCAS: Well, if we can save $20 million or something, it will be money well spent. In the discussions that I had with the President of SAIT I was informed that the discussions were to be confidential and without prejudice and that in no way would those confidential discussions be breached. I was also informed that there might be a need for some distribution to institute members by 11 March so that the institute could consult and seek the views of its membership before finalising any agreement with the Government. The only date mentioned in the discussions that I had with the leadership of SAIT about prior public revelation of the information and the confidential discussions was 11 March.

Last Thursday or Friday, suddenly we were advised that the institute was not going to adhere to that agreement. We were advised to forget about 11 or 31 March and that on 17 February, or whatever the date was, the institute intended to fax to all its members the results, from its viewpoint, of the negotiations in confidential session with the department. At that stage I had not been a party to any of the discussions and was not in a position to make a decision one way or another as to whether the position at which the institute and the department's negotiators had arrived was something with which the Government would agree. Clearly, I was working on a deadline of 11 March, as outlined by SAIT, as to when it might have to consult its membership.

I was somewhat concerned, and I indicated to my departmental officers that they were to advise SAIT that I would, in effect, interpret that as a breach of the confidential undertakings that had been given to me by Clare McCarty, a copy of which I have in writing, that these were to be confidential negotiations entered into between the institute and the department.

In no way was I agreeing as Minister to distribution or release of the institute's undertaking to me about confidentiality on 17 February about those discussions. That is a perfectly proper response, when I had a written understanding from SAIT that these were to be confidential negotiations. Suddenly, six weeks prior to the end of the period we were told, 'All this material is going out to schools and teachers this afternoon because we have decided we want to put it out to our members much earlier than was otherwise contemplated.'

I am advised that, in the discussions the senior officer of my department had with the institute to try to get it to see a little reason so that the Minister could be advised of what on earth SAIT and the departmental negotiators had arrived at, I was to see a copy of that document and that they would hold it up for a period. The advice with which I have been provided is that there were discussions about potentially sharing the cost of the distribution and that the department would consider it. The honourable member suggests that an undertaking was given. As I said, the advice provided to me is that that is not the case but that the department would consider the position. I am still prepared to consider that proposition, but importantly I do so in the context of the institute's wanting, in effect, to release the results of confidential discussions that the institute and the department were having prior to the Minister's being aware of the state of those negotiations and, indeed, being prepared to authorise on behalf of the department and the Government that this sort of information should be released with the support of the department and the Government.

The PRESIDENT: Order! I notice television cameras filming individual members when they are not speaking. It may involve a new cameraman, but the rules are that cameras can pan the room or have a wide angle, but please only film members speaking on their feet.

BLOOD TESTING KITS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about blood test kits.

Leave granted.

The Hon. R.R. ROBERTS: Yesterday, I asked the Minister whether she was confident or whether she had sought legal advice on the validity of the form in which she had approved blood test kits that were in question as a result of the case at Port Pirie. The Minister said she had received no formal legal advice on whether the form in which she had made the approval was legal. Has the Minister sought that legal opinion and what is it?

The Hon. DIANA LAIDLAW: In terms of the legal opinion, I have received opinion. The matter is being considered by the Crown Solicitor's Office at present and the opinion is that the form is satisfactory in terms of approval.

PRISONS, DRUGS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about the Investigation into Drugs in Prisons in South Australia report.

Leave granted.

The Hon. T.G. ROBERTS: On Tuesday a report finalised in January was tabled in this Council on the Investigation into Drugs in Prisons in South Australia compiled by Mr Grant and a series of 46 recommendations was made relevant to the report. One of the criticisms inherent in the statement by Mr Grant is as follows:

> The dearth of relevant data on the Justice Information System, together with the inability to access information from registers and records without a labour intensive manual search, was a major limitation confronting the investigation.
>
> The investigation was acutely aware of the methodological obstacle—

and those two words together are not too good for anyone asking a question in Parliament and using a quote, without losing control of their tongue—

> encountered by all inquiries—the prevalence of data of questionable quality and credibility. The most honourable and best intentioned interviewees often have their own agenda.

That was another inhibiting factor, but that has to be taken into account with all reports. It continues:

> Careful consideration was given to the quality and credibility of all the information accumulated during the course of the investigation to ensure maximum validity in framing the recommendations contained in this report.

As I said, the report goes on to make 46 recommendations in relation to the problems arising out of the information that was gathered and compiled in the report and it was presented to this Parliament. The information that was drawn by Mr Grant into the report has been available to the department and to the previous Government. The previous Government had a policy ready to launch on re-election but unfortunately that did not happen and there was a lot of information that was not assessed that could have been made available without setting up a separate report. However, the report was done and, hopefully, the Government is going to act on that.

The content of the report, the telephone calls and the mail that I have received over this week suggest to me that, although the report is a good collection of available information and perhaps is timely in that the current Government needed it to make its assessment, most of the problems associated with inmates using drugs come from the fact that when they enter the system they have drug problems in relation to their own personal lives. Many other prisoners are in gaols because they have committed drug related crimes. There are not many statistics available on which to make assessments on just what that number is in our current prison system, but Goulburn Gaol, which I visited, put the figure at possibly as high as 80 per cent of prisoners having either drug related problems or convictions related to acquiring drugs.

The recommendations go a long way towards coming to terms with the problems inside the gaols at the moment but are a little short in terms of what happens to the supporting families who, in many cases, have drug and crime related problems as well, and it is very difficult to treat them. The report itself has been put together at a time when restructuring within the prison system is occurring and a cut back in prison officer numbers is starting to impact. My questions are:

1. What resources and extra staffing will be required within the prison system to fill the requirements of the 46 recommendations in the Grant report relating to drugs in prisons?

2. What extra professional support staff will be provided for all prisoners—and it does state that women prisoners have a particular problem associated with drug use and psychiatric problems—to assess prisoners as they enter the prison system, to try to break the crime drug cycle?

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

AGED PERSONS, OUTPATIENT SERVICES

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Ageing a question about a report from the Commissioner for the Ageing.

Leave granted.

The Hon. M.S. FELEPPA: In his annual report for the year 1993-94, the Commissioner for the Ageing makes reference to his concern for the elderly who are being discouraged from accessing hospital out-patient services. At page 81 of the report he states:

> In its response to the selected recommendation of the Audit Commission report, the Office of the Commissioner for the Ageing. . . urged caution in discouraging older people's use of hospital out-patient services, as advocated by the Audit Commission, on both health and economic grants.

In his speech when tabling the report, the Minister drew attention to the Government's 10 year plan, but made no reference which comes near to the issue of policy of the above quote. The concern of the Commissioner for the Ageing does not come directly out of the 77 recommendations made by the Audit Commission on health. The concern may have been raised by some hidden plan of policy known to the Commissioner but not revealed to the public. Since the Commissioner for the Ageing and the Minister for the Ageing should have shared their information, policies and concerns for the ageing, the Minister must have some idea, I believe, of why the Commissioner should see the need to urge caution

in discouraging the elderly from making use of out-patient services.

I therefore ask the Minister: did the Commissioner for the Ageing's concern for the elderly, who are to be discouraged from using hospital out-patient services, arise from the Audit Commission report or from the practice of some hidden policy? Will the Minister reveal to the Parliament the truth behind the Commissioner for the Ageing's concern for the elderly in this matter?

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

BLACKWOOD FOREST RESERVE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the Blackwood forest reserve.

Leave granted.

The Hon. M.J. ELLIOTT: Throughout the term of this Government, people have been complaining to me about the inadequacy of various consultation processes, and an observation that the Government had promised open and accessible government. The future of the Blackwood forest experimental orchard—a significant tract of open space in the Mitcham Hills—is causing a great deal of concern to hundreds of local residents, particularly after the fate of nearby Craigburn Farm. Last year, the State Government began what was supposed to be a community consultation process to decide the future use of the land.

The consultation group included members of the Blackwood Forest Interim Committee representing the public. I have been told that the Environment Minister gave a commitment to the Blackwood Forest Interim Committee last year that he would be led by the community on what they wanted the future use of land to be. At the beginning of the process, members of the public—and I had spoken with these people at the time—were extremely optimistic about the consultation process. In fact, I understand that, for the first month or two, they felt it was going extremely well.

After establishing terms of reference on the future use of the land, the consultative group then received submissions from interested groups about their proposals for the land. Based on that, investigations of the site were to be undertaken to see if the proposals were appropriate for the site, given the environmental sensitivity of the land. The community representatives wanted independent consultants to be used widely to ensure the independence of the process. However, they are now concerned that the Department of Environment and Natural Resources, which is holding the land and wishes to sell it, is using its own staff to carry out the process, and they are most fearful that the investigation will be biased as a result.

They have reported to me that a member of the Department of Environment and Natural Resources—in fact, the person in charge of land disposal—has become a regular observer and participant at these meetings, and that, in their view, he treats the community group representatives with contempt and appears not to take seriously the ideas they put forward, or, indeed, the notion of community input in the process. It is worth noting that the land is not currently zoned for residential development but, if the Minister for Housing, Urban Development and Local Government Relations chose to, he could rezone it of his own volition.

The Blackwood Forest Interim Committee has expressed its concerned disappointment to the Minister with the proceedings at this stage of the consultation process. It says that the Government has contravened the principles of the terms of reference set down for the project in eight specific areas, which it has itemised to me, and also other areas of general concern about the process. They remain most concerned about the future use of this land, as evidenced by a public meeting which was held in November and which 130 people attended to launch a petition to keep the land as open space. Over 400 signatures have already been collected from the surrounding areas on the issue, and more are coming.

At this stage the interim committee is reconsidering its future involvement in this process. There are increasing concerns that this process has become a farce, as it appears that decisions about the future of the land have already been made and that the consultative group has become mere window-dressing and a political exercise simply to provide the excuse the Government needs to do what it intended to do. I ask the Minister the following questions:

1. Is the Minister aware of the public concerns?
2. Why is it that the only option, which all the members of the consultative committee agree is the community's preference for the future use for the site and which is most in line with current zoning (that is, use as open space), is not being considered seriously by the department or the State Government?
3. What resources is the Minister prepared to commit to support the Blackwood Forest Interim Committee in exploring the possibility of establishing a community trust fund to both purchase and manage the land as open space so that it can remain a community asset?
4. What will the Minister do to guarantee the independence and integrity of the consultative group?

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

SPENCER GULF BEACONS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Transport a question about Spencer Gulf beacons.

Leave granted.

The Hon. CAROLINE SCHAEFER: Some time ago a decision was made by the previous Government to remove and replace the safety beacons around the South Australian coastline. It was generally agreed that they were old, unsafe and expensive, and therefore it was justified that they be removed and replaced. However, last year a decision was made that beacons Nos 4 and 9 in Spencer Gulf would be removed and, according to my information, the understanding in the area was that they would not be replaced. This caused considerable concern among recreational boaters and others in the Port Augusta area. Can the Minister say whether there has been any progress in reaching a resolution to this problem?

The Hon. DIANA LAIDLAW: I thank the honourable member. This matter caused great agitation in the community, and I can recall the Hon. Barbara Wiese asking me a question about it in this place on 22 November. At that time on behalf of the honourable member I undertook to have the matter reviewed, because I agreed with her that the range and number of representations certainly warranted a review of the decision.

The Hon. Graham Gunn, as member for Eyre, and the Hon. Carolyn Pickles also contacted me about this issue, and I recall that the Hon. Peter Dunn also had a word to me on more than one occasion. I am pleased to report that, with hindsight, the department did see that there was reason for these two beacons, 4 and 9, to be replaced and converted from gas to solar power so that we would have beacons in this area for commercial and recreational boaters in the future. So, the department agreed to reverse the decision, which was important, and it is a credit to the community that that decision has been reversed.

I only regret that so many in the community and so many members of Parliament had to get so agitated about this matter and that the consultation process was not better in the first place. As I say, it was not my decision to get rid of it, but I think it could have been a better consultation process, and the department and the Marine and Harbors Agency in particular have learnt a lot from this exercise.

The beacons were put to tender in January 1995 and today they were switched into operation, if that is the right term in terms of solar power. Certainly they were commissioned today, so the work has been completed and I am pleased with the outcome in this case.

OCCUPATIONAL HEALTH AND SAFETY

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Minister for Consumer Affairs, representing the Minister for Tourism who, as I understand it, is responsible for the Occupational Health and Safety Act, some questions about the enforcement of that Act.

Leave granted.

The Hon. T. CROTHERS: On page 2 of the *Advertiser* dated Saturday 18 February this year, and headed, 'Safety blitz on high risk firms', written by that paper's political writer, one Greg Kelton, the article opened up with the bold statement which said in part:

> Companies with poor safety records will be targeted in a State Government crackdown.

The main industries identified by the Government in this apparently Government-sourced article for specific targeting, because of the high risk nature, include construction and earth moving, hospitals, sheltered workshops, nursing homes, metal coating and finishing, and cafes and restaurants. In the light of the foregoing, I direct the following questions to the Minister:

1. Does the Minister agree that prevention in these cases is less costly than cure?

2. Why has not the Occupational Health and Safety Act been enforced so as to increase and enhance its effectiveness during the Minister's 15 months in office?

3. Will the Minister put on the additional inspectors who are obviously necessary by his statement last Saturday, if that is what is required to enforce the Occupational Health and Safety Act?

4. Is he prepared to increase the penalties for non-compliance with the Act and, if not, why not?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague the Minister for Industrial Affairs and bring back a reply.

The Hon. K.T. GRIFFIN (Attorney-General): There was no collusion with the honourable member, but by coincidence I have a ministerial statement from the Minister for Industrial Affairs in relation to occupational health and safety, and I seek leave to table it.

Leave granted.

TEACHER PLACEMENTS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the 10 year teacher placement policy.

Leave granted.

The Hon. BERNICE PFITZNER: I read with enthusiasm an article in the *Advertiser* today on the termination of the controversial 10 year teacher placement policy. This policy, as we know, was put in by the previous Government and required teachers compulsorily to move after 10 years' service at a school. It was a blanket edict and did not take into account the excellent rapport that some senior teachers might have built up in perhaps an initially difficult situation. It did not take into account the needs of the school, either.

I note that the Minister has an example of a year 12 chemistry teacher who has been disadvantaged by this very policy. I personally know of a year 12 experienced maths teacher who had to cope with that draconian policy. As was reported, it, '. . . treated some of our best teachers like dirt'. I do know the loss of self esteem that such a move can produce: the change from being a well respected senior year 12 teacher of excellence to a junior position, not because of lack of merit but because of mandatory relocation. I therefore congratulate the Minister on this initiative. However, I have to ask the question: why is this policy to be scrapped for country school teachers immediately and only phased out over four years for metropolitan schools?

The Hon. R.I. LUCAS: The first thing to say is that the proposals which are publicised in the morning newspaper and which have been distributed to all teachers today are the result of some months of negotiation and discussion with the Institute of Teachers and the department, and I have said in a press statement today and I say so this afternoon that I welcome the commitment and willingness of the Institute of Teachers to work with the department on this particular important issue and hopefully to have reached some sort of agreeable resolution to what has been a vexed problem for a long time. The Institute of Teachers is consulting its membership at the moment and over the coming weeks. We, of course, are consulting all members, not just members of the Institute of Teachers, in our schools, and also seeking comment from principals and parents as well in relation to the policy. At this stage it is a package of proposals for further consultation before final decision.

In relation to the specific question from the honourable member, the reason for the package's incorporating a suggested immediate removal of the limited 10-year placement policy in country schools but only a phased withdrawal in the city is that we require a balance of proposals to create the movement in the system that we need to satisfy various teachers who, for example, might return from the country with a guarantee of a city location. So, whilst another part of the package says that the four year guarantee for country teachers will be removed, that will be only for future teachers appointed to the country.

Those teachers who are out there in the country at the moment with an existing right under this package would retain that particular right, so over the coming four years we will have a good number of those teachers pulling in that guarantee, if I can use the phrase, and returning from a

country location to a city school. We must be able to accommodate those teachers in vacancies in city schools. There are other related reasons. It is not as black and white as that, but that is the essential reason why in the package of proposals that is being suggested it may have to be a phased withdrawal of the scheme in the metropolitan area.

In that section of the policy discussion paper, three other options are actually considered for the 10 year limited placement policy. One is the introduction of a modified version of the policy, where at the end of 10 years teachers would not just automatically be dumped from a school and put somewhere else. They might be able to win back the position on some notion of merit as opposed to how many points they might have. There are also two other versions of what might be done for the limited placement scheme in metropolitan schools. All four are being considered, one of which is a phased withdrawal over about four years.

BLOOD TESTS

The Hon. T.G. CAMERON: I seek leave to make an explanation before asking the Minister for Transport a question about compulsory blood tests.

Leave granted.

The Hon. T.G. CAMERON: At the outset I say that my question to the Minister is totally unrelated to the question asked by the Hon. Ron Roberts regarding blood tests. Recently my 15 year old son, Paul, was involved in a rather bad motor vehicle accident which required his being taken by ambulance to the Flinders Medical Centre. I subsequently discovered that he was required, as I understand it, under some pressure, to undergo a compulsory blood test at the hospital.

This was despite his having an aversion to needles and, as I understand, expressing some concern and questioning why he was required to do this. Upon hearing this I rang Flinders Medical Centre (and if I am not quite so brief I hope members will indulge me on this one) and was put through to a Doctor Christopher Baggoley who is the Director of Emergency Medicine there. Somewhat indignantly I demanded to know why my son was subjected to what I considered to be an invasive procedure, and why he was coerced into having to undertake this blood test. Somewhat embarrassedly the doctor pointed out to me that this legislation, section 47(1) of the Road Traffic Act, had been in place since 1972 and was introduced by a Labor Government.

I then had quite a detailed discussion with Doctor Baggoley who advised me that he, various committees, the police and others had been trying, with little success, to get this section of the Act reviewed for some time. Apparently, since 1991, 5 192 blood samples have been taken. I think three samples are taken: one is sent to the police, one kept on record and one is given to the individual, and I understand that it is tested. Of those blood samples, 1 827 were taken from passengers—in excess of one third. One suspects that there has to be a better way of attending to the problem of testing both passengers and perhaps drivers. One of the suggestions that was put forward to me by Doctor Baggoley was that if the Act were amended people could be given a random breath test first, and if there was evidence of alcohol in their blood then they would be required to give blood and leave samples with the department.

It would appear that there are a number of anomalies in the Act. For example, if you are a passenger in a taxi and you sustain any kind of an injury and you go to hospital then you are required to give blood. If you do not give it you are advised that you may be committing a breach of the Act and that you are liable to prosecution. As advised by Doctor Baggoley, if, for example, the young children in the gallery were catching a bus on the way home, were injured, attended a medical centre and appeared to be 14 years of age or over, then they would be subjected to the invasive procedure of having a needle stuck in their arm and giving blood. It can be an offence and, as I understand, you are liable to prosecution if you refuse to do so. It seems to me (and I know this is only my opinion) that there has to be a better way of doing this and that it would be a lot less expensive.

Doctor Baggoley said that they consider the procedure unnecessary, that it is too bureaucratic and that a lot of time, effort and unnecessary expense could be saved if some other way around this problem could be found. I am not sure I know the answer to the problem, but will the Minister review this section of the Act and investigate the feasibility and desirability of amending the Act to at least allow people in this situation to undergo a breath analysis test first? If they record a reading of .02 or above then and only then would they be required to undergo a blood alcohol test. I advise the Minister that I am more than happy to provide her with the correspondence I have received from Doctor Baggoley and all the other material in relation to this matter.

The Hon. DIANA LAIDLAW: I thank the honourable member for his offer of that information, and I readily accept. In fact, I was about to ask if he would be prepared to do. The former Government addressed some of these issues in terms of the blood test quite effectively last year. At the time, it won Liberal Opposition support because we saw, as the honourable member indicated, that it needed more efficiencies in the system. It would seem timely, after the experiences that the honourable member has related and the investigations which he has undertaken, that we should look at these procedures in hospitals and not only when police have breath tested a person who is at .05. I will happily pursue this issue and I appreciate the honourable member's cooperation in doing so.

PRISONERS, TREATMENT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about the treatment of prisoners who have been arrested.

Leave granted.

The Hon. A.J. REDFORD: In a recently reported case of *Taleporos v. S.A. Police* a number of comments were made by His Honour Justice Olsson concerning the appropriateness of the manner in which police dealt with a person they had arrested. Without going into the details of the case, His Honour Justice Olsson said in the penultimate part of his judgment:

> However, before parting from this matter, there is one aspect of the case which attracts specific comment. It is beyond question that, having been charged, the appellant was on the night in question strip searched and placed naked in a padded cell where he languished in that condition for at least four hours and possibly longer. At the time, the ambient temperature was below 10 degrees celsius. At no stage was the appellant issued with any blankets or other means of keeping warm, he had been involved in various physical exchanges and was exhibiting overt signs of injury (albeit, perhaps not of a patently serious type), no attempt was made to have him medically examined and he was in extreme discomfort as time went by. Even on the assumption that he was intoxicated and pugnacious, and even assuming that in the circumstances a strip search was warranted, no

justification has been suggested for either the state in which he was left or the period over which that continued. The obvious inference was that this was a deliberate situation engineered by one or more police officers to discipline the appellant for the trouble which he had caused.

As a consequence of that, His Honour Justice Olsson referred the matter to the Commissioner of Police together with a transcript of evidence requesting that he investigate the matter. Has the Commissioner investigated the surrounding circumstances referred to by Justice Olsson and, if so, what has been the result of such investigation? Have police changed their practices in dealing with prisoners as a consequence of the investigation?

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

LEADERS' FORUM

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table copies of a ministerial statement made by the Premier in another place on the subject of the Leaders' Forum.

Leave granted.

TAXIS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question about taxi licences.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to the January 1995 newsletter of the Passenger Transport Board in which it is proposed that 100 new taxi licences will be issued at a rate of 20 per annum over the next five years. The newsletter invites submissions on this proposal for which the deadline is 28 February. The Minister is probably aware that not all taxi drivers are happy with the proposal and that they plan to protest outside Parliament House next Monday.

Clause 47(9) of the Passenger Transport Act provides that the Passenger Transport Board 'must develop, publish and periodically review principles to be applied with respect to the issue, limitation or other regulation of licences under this section that relate to metropolitan Adelaide'. Clause 47(10) of the Act provides that the board, in making decisions about the number of licences to be issued, 'must address issues relating to changes in the population and development of metropolitan Adelaide and may take into account other matters determined by the board'.

The newsletter states that the 45 licences issued since the end of 1991 have had no effect on goodwill values and points out that, in fact, goodwill values have risen steeply since 1991. The spouse of a taxi driver who works for two different companies informs me that, with layover times when business is slow, her husband earns an average of just over $8 per hour before tax, which she says is very hard for her family, which includes three children, to live on, and that the issue of so many new licences will eat further into her family's meagre income. My questions to the Minister are:

1. What exactly are the principles on which the Government will issue taxi licences under the Passenger Transport Act, and why were these not published in the newsletter?

2. Does the Minister believe that a simple comparison of the cab/population ratio with other capital cities is a valid comparison on which to base an increase in the number of licences; does the Minister believe that other factors, such as public transport utilisation, population density and car ownership in each city should also be considered; and, if not, why not?

3. How much of the 9 per cent increase in the use of taxis since the end of 1991 is as a result of the hub service operating at the Hallett Cove terminus?

4. What other matters has the board taken into account in deciding to recommend this increase?

5. Will the Minister give an undertaking that the issuance of more licences will not affect the goodwill values of taxi plates or incomes of non-owner drivers; if not, will she commission a study of the financial impacts of more taxi licences being issued at this time, including a family impact statement, and direct the Passenger Transport Board to postpone any decision on the issuance of more taxi licences until such a study is completed and analysed?

The Hon. DIANA LAIDLAW: I would welcome an opportunity to speak to the honourable member about some of the complexities of the taxi industry and some of the associated emotional issues whenever there is any change, whether it be a uniform, cleaning up a cab or the age of a cab. One can always anticipate, when the issue of plates is even whispered, let alone discussed, that there will be a lot of emotion. I am not the only Minister for Transport to have experienced that; other Ministers for Transport in South Australia and interstate have had that experience. It is a compliment to the work of various Ministers for Transport over the years, and certainly of the South Australian Taxi Association, that this issue is being dealt with in a more mature and considered manner than it was in the past. This paper is out purely for discussion. As the honourable member noted, 28 February is the time that has been set by the board to consider the issue.

Yesterday I received an unsolicited copy of a note that the South Australian Taxi Association had sent to all taxi drivers urging them not to participate in this rally. It considers that from the media perspective they would generate coverage, but not a positive coverage, that would improve the image of the industry at a time when there are great efforts to improve that image and to win more work. It also argued that this was premature and that it was discussing the issues and would be making a submission to the board arguing for 10 licences, not the 20 that the board proposed, and that all of those licences be tendered for, not owned by and leased from the board. SATA will apparently argue that it does not believe the board should be in this business. I have some sympathy with that argument. The board will advise me on its views on this issue some time after the closing date for public comment.

In addition to the issues which are concerning the South Australian Taxi Association, members will be aware that the Government and taxi operators generally believe that there will be a lot more work for taxi drivers with the contracting out of public transport. I know that there are some routes that TransAdelaide, at the suggestion of the work force at one depot, wishes to have contracted out in terms of evening services, and it believes that taxis and taxi buses would be ideal for this work. They have suggested that I authorise that these services be contracted out because they know they are uneconomical to run and they wish to get into a competitive position to win the tenders when the contracts are let from next month. I believe there will be a lot more work for taxis because of the changes that we will see shortly in passenger transport. I also know that the economy is improving. When the economy improves, taxis benefit: people go out more and

are prepared to spend more, and taxis are regularly the beneficiaries of that pattern of lifestyle.

In terms of values, it is important to recognise that the industry represents diverse views. I have received copies of representations that have been sent to the board by taxi companies which have argued for a radically increased number of plates—not keeping to the *status quo* but arguing for many more than the 20 that the board had suggested. It was one of the smaller companies, not one of the two big companies, which made that suggestion. It believes that there is much more work if taxis want to find it. It is suggested that they can generate it and they want more taxi plates to be issued. There is a variety of strongly held views, and one would expect nothing less in the taxi industry.

It is important to note that since 1991, when former Minister Blevins indicated that he would not only deregulate the hire car industry in South Australia but progressively increase the number of licences by 15 over three years, initially the value fell from about 115 to 90 at the time. Today it is at 145. The taxi industry is recognised in this State and elsewhere as one of the best industries in which to invest in terms of capital return.

There are many dilemmas and confusing messages going around the taxi industry. There always are when plates are discussed. I think that this time there is more considered debate on the issue than we have seen in the past. Again, I commend the South Australian Taxi Association for its efforts in that regard. I think that the industry has become more professional and positive in its outlook.

The Hon. SANDRA KANCK: As a supplementary question: as most of the questions that I put were not answered, will the Minister answer the questions in writing to me at a later stage?

The Hon. DIANA LAIDLAW: I shall be happy to do that.

CAMERON, MR PETER CLYDE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by my colleague the Minister for Emergency Services in another place about the dismissal of Chief Inspector Peter Clyde Cameron.

Leave granted.

CORROBORATION WARNINGS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General a question about corroboration warnings.

Leave granted.

The Hon. ANNE LEVY: Members are probably aware that until 1984 whenever there was a trial of a rape or sexual assault matter involving a sexual attack of any form if there were no witnesses other than the alleged perpetrator and the victim the judge was bound to issue a warning to the jury that it should be warned of the dangers of accepting uncorroborated evidence from the victim. This has only ever applied in sex cases. It never applied in a robbery, for instance; if someone is robbed and there is no other witness, there is never a warning that the victim's evidence must be taken as being perhaps a bit dubious in such a case when there is no corroboration. Quite rightly, many women in the community objected to this warning being compulsory, as it suggested that women were likely to lie in such matters, whereas victims of robbery were not likely to lie. The necessity to give the corroboration warning was abolished by the previous Government in 1984 but it has been drawn to my attention that a number of judges are still giving the corroboration warning in sex cases, be they rape or sexual assault cases.

The Hon. Diana Laidlaw: When was it abolished?

The Hon. ANNE LEVY: It was abolished in 1984.

The Hon. Diana Laidlaw: So 11 years later—

The Hon. ANNE LEVY: Yes, 11 years later there are judges who are still using the corroboration warning in cases where a sex offence is involved, though not of course if there is an unwitnessed robbery would they dream of giving such a warning. The removal of the necessity of giving this warning did not of course mean that judges could not give this warning and there are still a number of judges who are in fact giving these warnings in these cases. This is of concern to many women in the community. Therefore, I ask the Attorney whether there are any statistics on how often the corroboration warning is being given in cases involving rape and sexual assault. If there are no statistics on this, will his department undertake to collect such statistics to see whether it is a widespread problem and whether the corroboration warning is still frequently being given and, as a matter or urgency, will he see that there is some gender sensitising educational programs aimed at the judiciary in this State so that they are aware of the implications of giving this corroboration warning?

The Hon. K.T. GRIFFIN: I am not aware of the cases about which the honourable member asserts that judges have been proposing corroboration. I will refer the matter to the Director of Public Prosecutions. I doubt that any statistics are available but I will have to refer it to the Office of Crime Statistics. If the honourable member has any particular instances where that has been drawn to her attention, I would appreciate receiving that information. When I have the facts I will give an appropriate response.

The PRESIDENT: Some of the questions today were quite long. In the last fortnight we have made provision for seven five-minute speeches and I would have thought that that would be a good avenue through which to express the points of view that were in fact made in questions asked today. I listened carefully and found the explanations had little relevance to the questions asked. I remind members that we have introduced the matters of interest debate in the hope of making the place more relevant.

The Hon. Anne Levy: How about the length of answers?

The PRESIDENT: Order! We do not have to go for one full hour. It is not a necessity, but briefer questions would make it a more interesting place. We do not seem to be able to hold an audience long when we get one. If questions and answers were briefer it would make the Council more interesting and people would come and listen.

RESIDENTIAL TENANCIES BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate the relationship of landlord and tenant under residential tenancy agreements; to repeal the Residential Tenancies Act 1978; to make related amendments to the Retirement Villages Act 1987; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

Since coming to office the Government has taken a very strong position on examining all regulatory frameworks carefully and in consultation with those affected by regulation. In January 1994, a Legislative Review Team was established by me as Minister for Consumer Affairs to conduct a review of the regulatory framework of all legislation in the Consumer Affairs portfolio. One of the statutes the review team was asked to review was the Residential Tenancies Act 1978.

The review team went back to first principles in their review of this Act and considered the rationale for the regulation of the relationship between landlord and tenant under a residential tenancy agreement. They looked at ways of streamlining procedures for the hearing of residential tenancy matters before the tribunal and also had regard to the imbalance which is perceived to exist by the community between landlords and tenants. As a consequence of its review of the Act, the Residential Tenancies Bill 1995 has been drafted.

The Residential Tenancies Bill 1995 refocusses the role of administration and client service, which is offered by the Office of Consumer and Business Affairs and which removes any perceived disparity that exists between the position of landlord and tenant. The new Bill also encourages the parties to a residential tenancy agreement to resolve disputes and other matters arising out of the relationship quickly, with recourse to a formal hearing only as a matter of last resort.

The Bill introduces a new and improved system for the payment and retrieval of security bonds by tenants and landlords. The payment of security bonds will be made direct to the Commissioner of Consumer Affairs rather than to the tribunal (as has been the case in the past), and the Commissioner will have the power to pay out bonds in an over the counter payment, where the consent of both parties has been obtained. In situations where there is no consent the Commissioner will, upon the application of either party, serve notice of the application to the other party in a form the Commissioner considers appropriate, giving them seven days in which to lodge a written notice of dispute with the Commissioner.

Failure to respond will result in the Commissioner being empowered to make a payment in accordance with the terms of the application. If the party responds to the notice and indicates that the application is disputed, the matter will be referred to the Tenancies Tribunal. This procedure is similar to one already in operation in New South Wales and should lead to efficiencies in the administration of residential tenancies.

Another innovation contained in the Bill is a provision which allows for interest which has accrued on a security bond whilst in the Residential Tenancies Fund to be paid to the tenant, if the bond is redeemed by the tenant. It is hoped that interest payments to tenants will encourage them to actively recover their security bond and thereby obtain an interest payment, which should overcome to a large extent the practice which has developed of tenants breaching residential tenancy agreements by ceasing to pay rent prior to termination of the agreement, in the knowledge that the security bond will cover the landlord for the rental lost.

One of the most prevalent complaints received by this Government from landlords has been in connection with the procedure and delay involved in the termination of residential tenancy agreements. Under the current Act, termination does not occur until either the landlord or tenant gives notice of termination and either the tenant delivers up vacant possession or the tribunal makes an order terminating the agreement. Under the new Residential Tenancies Bill, a residential tenancy agreement can terminate or be terminated upon a prescribed notice of termination being served upon the tenant without the necessity for the tenant to deliver up vacant possession, or for an order of the tribunal to terminate the agreement.

Another new provision contained in the Bill, is one which results in a reduction to the existing number of days notice required for termination, and the notice structure empowers the landlord to serve notice upon a tenant without tribunal involvement, until the point is reached where the tenant fails to give vacant possession of the property. This will overcome a concern which has been expressed by landlords of additional delay they have experienced in the termination of residential tenancy agreements by virtue of the court hearing process, which currently is involved at an early stage in the termination procedure.

The new termination procedure will therefore reduce the time period necessarily involved in obtaining vacant possession and will streamline the involvement of the tribunal in this process. The current Act provides for a period of notice of termination to a tenant of a periodic tenancy, of not less than 120 days in a situation where no grounds for notice are given. In the new Bill the period of notification in situations where no grounds for termination are specified, has been reduced to 90 days.

Another innovation in the Bill is the procedure for termination where a tenant or a person permitted on the premises with the consent of the tenant has intentionally or recklessly caused or permitted or is likely to cause or permit serious damage to property or personal injury to the landlord, or the landlord's agent or a person in the vicinity of the premises. Many landlords have experienced substantial and costly damage to property at the hands of their tenants. The new Bill will alleviate this problem by making provision for orders to be made by the tribunal giving immediate possession of premises, and for the tribunal to make restraining orders if there is a risk of serious damage to property or personal injury caused by a tenant or a person permitted on the premises by the tenant.

In recognition of the recent amendments that were made to the Waterworks Act 1932 a new provision has been incorporated into the Bill which clarifies the position for landlords and tenants in relation to rates and charges for water supply. In essence, rates and taxes for water supply will be borne as agreed between the landlord and the tenant. In the absence of an agreement the landlord will bear the rates and charges up to a limit fixed or determined under the regulations and any amount in excess of the limit is to be borne by the tenant.

The Bill contains new provisions which clarify the issue of assignment and the rights of the respective parties, including the assigning tenant, the new tenant and the landlord at each step of the assignment process. The Bill also includes rights of redress for damage to property and indemnification for rent between assignee and assignor, for example.

Under the current Act, no protection is afforded to rooming house residents and their security and treatment varied according to the goodwill of their landlords. The exclusion of such persons from the current Act has meant that this form of occupancy arrangement remains substantially

unregulated, with the law offering few protections and only limited and generally unsatisfactory mechanisms to resolve disputes between parties.

The issue of protection for persons in such accommodation has been raised on many occasions, significantly during previous reviews of the Residential Tenancies Act which were conducted in 1986 and 1992. The plight of persons in such accommodation has also been raised in a number of important reviews including the Human Rights and Equal Opportunity Commission's Inquiry into the Human Rights of People with Mental Illness (the Burdekin Report) in 1993.

In looking at the question of whether rooming house residents should be included under the Act, the Legislative Review Team considered that it was vital that a form of protection was given, though not necessarily with the same procedures and legal form as those applying to other forms of tenancy. The team was satisfied that, although the nature of the form of occupation provided by rooming house arrangements was different from that applying in other tenancies, persons who had such living arrangements should have a mechanism to ensure that their rights of occupation, however limited, should be capable of being upheld in an accessible forum. Similarly, the proprietors of rooming houses should also be afforded the opportunity to resolve matters of dispute.

To leave this area without any form of regulation was not regarded as a tenable option as it would leave some of the persons most unable to pursue their legal rights in an even more vulnerable position. Occupants of rooming houses often include persons who are without family or community support and who are unable to afford other forms of living arrangements. In choosing to bring rooming house arrangements within the general scope of the Act, the Legislative review team was sensitive to the fact that such a move might, in effect, result in over-regulation of the rooming house industry and could result in the closure of such premises leaving occupants with no place to go. This would obviously be an untenable result.

It is proposed that all rooming house residents and owners will be required to comply with prescribed codes of conduct to be encapsulated in regulations under the new Act. The codes represent a balanced and responsible approach to the situation. Penalties have been prescribed for non compliance with the provisions of a code and both rooming house residents and rooming house owners are entitled to apply to the Tenancies Tribunal in respect of questions arising under the codes of conduct.

It is further proposed that the Residential Tenancies (Housing Trust) Amendment Act 1993 will be repealed in conjunction with the new Residential Tenancies Bill 1995. The 1993 amendment brought Housing Trust tenancies within the jurisdiction of the Residential Tenancies Act and was passed by Parliament in December 1993. No date has ever been set for its proclamation. It is proposed that the new Tenancies Tribunal will have jurisdiction to hear and determine claims arising from tenancies granted for residential purposes by the Housing Trust. The forum at which Housing Trust eviction matters are currently heard is the Supreme Court of South Australia. By virtue of this change of forum, parties will now have a more equitable, cost and time effective process for the hearing of such claims.

In July 1994, a draft Residential Tenancies Bill 1994 was released for the purpose of public exposure and to facilitate public comment during the recess of Parliament. The Bill was widely circulated and the Legislative Review Team received a considerable number of submissions from interested parties, on the Bill. As a consequence of the consultation process, the Government has incorporated a number of amendments into the Bill. It is also the intention of the Government that this Bill apply to existing tenancies that have been under the Residential Tenancies Act 1978.

The Bill seeks to achieve balance between the rights of the landlord and the rights and needs of the tenant, providing more efficient and less time-consuming (and unreasonable) bureaucratic processes to achieve that balance. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

The new Act may be cited as the *Residential Tenancies Act 1995*.

Clause 2: Commencement

The Act will come into operation on a day or days to be fixed by proclamation.

Clause 3: Interpretation

This clause sets out various definitions required for the purposes of the measure. Many of the definitions are consistent with definitions in the current Act. New definitions include terms relating to rooming house agreements.

Clause 4: Presumption of periodicity in case of short fixed terms

This clause addresses the issue of tenancies that are of short duration. A tenancy of 90 days or less will be taken to be a periodic tenancy (that continues from period to period) unless the landlord establishes that the tenant genuinely wanted a short term tenancy, or that the tenant has received an appropriate notice in the prescribed form.

Clause 5: Application of Act to agreements

The Act will generally apply to residential tenancy agreements. There will be various exemptions from the application of the Act, as is the case with the current Act.

PART 2

ADMINISTRATION

Clause 6: Administration of this Act

The Commissioner will be responsible for the administration of the Act.

Clause 7: Ministerial control of administration

The Commissioner will, in the administration of the Act, be subject to control and direction by the Minister.

Clause 8: The Commissioner's functions

This clause sets out the various functions of the Commissioner in relation to residential tenancy matters and matters concerning rooming house agreements. The functions are similar to section 11 of the current Act.

Clause 9: Immunity from liability

The Commissioner (and any other person acting in the administration of the Act) will be free of any liability for an honest act or omission in the exercise or purported exercise of functions under the Act. The provision is similar to section 12 of the current Act.

Clause 10: Annual report

The Commissioner will prepare an annual report on the administration of the Act, including a report on the administration of the statutory fund. Copies will be laid before both Houses of Parliament.

PART 3

MUTUAL RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT

DIVISION 1—ENTERING INTO RESIDENTIAL TENANCY AGREEMENT

Clause 11: Tenant to be notified of landlord's name, etc.

This clause sets out the information that a landlord must provide to a tenant.

Clause 12: Written residential tenancy agreements

A landlord will be required to ensure that a tenant (or prospective tenant) receives a copy of any agreement or document that the tenant (or prospective tenant) signs. A fully executed copy of the agreement or other document must be provided to the tenant within 21 days after the tenant signs the agreement or document and gives it to the landlord, or his or her agent.

Clause 13: Cost of preparing agreement

The landlord will be required to bear the cost of the preparation of any agreement or other document.

Clause 14: False information from tenant

It will be an offence for a tenant to give a landlord false information about the tenant's identity or place of occupation.

DIVISION 2—DISCRIMINATION AGAINST TENANTS WITH CHILDREN

Clause 15: Discrimination against tenants with children

This clause sets out various offences in respect of discrimination against tenants with children.

DIVISION 3—RENT

Clause 16: Permissible consideration for residential tenancy

This clause regulates the payments that a person may require or receive from a tenant (or prospective tenant) for a residential tenancy, or the renewal or extension of a residential tenancy.

Clause 17: Rent in advance

The rent payable in the first two weeks of a tenancy cannot exceed two weeks' rent. Furthermore, while rent remains up-to-date, further rent is not payable until the end of a rent period. It will be an offence to require a post-dated cheque in payment of rent.

Clause 18: Variation of rent

This clause sets out the various rules that are to apply with respect to the variation of rent. A tenancy agreement will be able to exclude or limit the right to increase rent and a tenancy agreement for a fixed term tenancy will be taken to exclude an increase in rent during the term unless it specifically allows for an increase. Subject to various qualifications, there must be at least six months between increases, and at least 60 days notice of an increase must be given.

Clause 19: Excessive rent

This clause gives the Tribunal the power to declare that the rent payable under a tenancy agreement is excessive and, if appropriate, to fix a new rate of rental.

Clause 20: Landlord's duty to keep proper records of rent

The landlord will be under a duty to ensure that a proper record is kept of rent received under a tenancy agreement.

Clause 21: Duty to give receipt for rent

A receipt for the payment of rent will be generally required. The receipt will need to include the date of payment, the name of the person making the payment, the amount of the payment, and details of the period and premises to which the payment relates. A receipt will not be required if the rent is paid into an account at a financial institution and a proper record of the payment is made by the landlord or his or her agent.

Clause 22: Accrual and apportionment of rent

Rent will accrue from day to day.

Clause 23: Abolition of distress for rent

A landlord will not be entitled to restrain goods of the tenant for non-payment of rent.

DIVISION 4—SECURITY BONDS

Clause 24: Security bond

This clause regulates the payment of security bonds. Only one security bond will be payable for a particular agreement, and a security bond must not exceed an amount determined under this provision. A landlord will be able to increase the amount required for a bond after two years (but not so as to exceed the statutory limit).

Clause 25: Receipt of security and transmission to the Commissioner

A receipt must be given in relation to the payment of a security bond. The bond must be lodged with the Commissioner for payment into the Fund.

Clause 26: Repayment of security bond

The Commissioner will be empowered to pay out undisputed applications for the repayment of a security bond. Any dispute will be determined by the Tribunal. A payment to a tenant will include interest at a rate fixed by the Minister.

DIVISION 5—TENANT'S ENTITLEMENT TO POSSESSION AND QUIET ENJOYMENT

Clause 27: Vacant possession, etc.

A tenant is entitled to vacant possession of the premises from the commencement of the tenancy (except if exclusive possession is not given by the agreement). It will also be a term of the agreement that the landlord does not know of any legal impediment to the tenant's occupation of the premises as a residence.

Clause 28: Quiet enjoyment

This clause sets out a tenant's right to quiet enjoyment of the premises.

DIVISION 6—SECURITY OF PREMISES

Clause 29: Security of premises

The landlord will be required to provide and maintain locks and other devices to ensure that the premises are reasonably secure.

DIVISION 7—LANDLORD'S OBLIGATION IN REGARD TO CONDITION OF THE PREMISES

Clause 30: Cleanliness

The landlord must ensure that the premises and ancillary property are in a reasonable state of cleanliness when the tenant goes into occupation.

Clause 31: Landlord's obligation to repair

The landlord must ensure that the premises and ancillary property are in a reasonable state of repair at the beginning of the tenancy and must keep them in such a state having regard to their age, character and prospective life. A tenant will be able to recover the costs of carrying out necessary repairs in some cases.

DIVISION 8—TENANT'S OBLIGATIONS IN RELATION TO THE PREMISES AND ANCILLARY PROPERTY

Clause 32: Tenant's responsibility for cleanliness and damage

The tenant will be required to keep the premises and ancillary property in a reasonable state of cleanliness, to notify the landlord of any damage to property, and to refrain from intentionally or negligently causing or permitting damage to property. The tenant will be required to give back the premises and ancillary property in a reasonable state at the end of the tenancy.

Clause 33: Alteration of premises

The tenant will need the landlord's consent to make an alteration or addition to the premises.

DIVISION 9—TENANT'S CONDUCT ON THE PREMISES

Clause 34: Tenant's conduct

The tenant must ensure that the premises are not used for an illegal purpose, that a nuisance does not occur, and the he or she does not disturb the landlord, or another tenant of the landlord, if the landlord or other tenant occupies adjacent premises.

DIVISION 10—LANDLORD'S RIGHT OF ENTRY

Clause 35: Right of entry

This clause sets out the circumstances where a landlord may enter the premises.

DIVISION 11—RATES, TAXES AND CHARGES

Clause 36: Rates, taxes and charges

The landlord will be required to bear all statutory rates, taxes and charges (ie. local government rates, EWS rates and charges and land tax) imposed in respect of the premises. However, the landlord and tenant may make an agreement about the payment of rates and charges for water and, in the absence of an agreement, the landlord will bear an amount for water calculated under the regulations, and the tenant will be responsible for the balance (if any).

DIVISION 12—ASSIGNMENT

Clause 37: Assignment of tenant's rights under residential tenancy agreement

This clause sets out the rules and procedures that are to apply if a tenant wishes to assign or sublet the premises. The tenant will be required to obtain the landlord's consent, and the landlord must not unreasonably withhold consent. However, the absence of consent will not invalidate an assignment unless the landlord is a registered housing co-operative. If consent is not obtained, the outgoing tenant remains liable to the landlord under the agreement (unless the landlord has unreasonably withheld consent), subject to the qualification that the continuing liability does not apply in the case of a periodic tenancy after a period of 21 days after the landlord became aware, or might reasonably to have become aware, of the assignment. The landlord will be able to terminate the tenancy in some cases if the tenant has made an assignment or sublet the premises without consent.

DIVISION 13—TENANT'S VICARIOUS LIABILITY

Clause 38: Vicarious liability

The tenant is vicariously responsible for an act or omission of a person who is on the premises at the invitation, or with the consent, of the tenant.

DIVISION 14—HARSH OR UNCONSCIONABLE TERMS

Clause 39: Harsh or unconscionable terms

The Tribunal will be entitled to rescind or vary a term of an agreement that is harsh or unconscionable.

DIVISION 15—MISCELLANEOUS

Clause 40: Accelerated rent and liquidated damages

A landlord must not include in an agreement a provision that requires a tenant, on a breach of the agreement, to pay all or any rent remaining under the agreement, increased rent, a penalty, or an amount by way of liquidated damages.

Clause 41: Duty of mitigation

The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of a tenancy agreement.

PART 4
TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS
DIVISION 1—TERMINATION GENERALLY

Clause 42: Termination of residential tenancy

This clause sets out the circumstances in which a residential tenancy will terminate.

DIVISION 2—TERMINATION BY THE LANDLORD

Clause 43: Notice of termination by landlord on ground of breach of agreement

The landlord will, by written notice, in the form required by regulation, be able to require the tenant to remedy a breach of the agreement. The landlord must give the tenant at least seven days to do so. If the breach is not remedied within the relevant period, the landlord may serve a notice of termination on the tenant and require the tenant to deliver up possession of the premises within a specified period, which must be at least seven days from the date of the relevant notice. A tenant will be able to apply to the Tribunal for relief.

Clause 44: Termination because possession is required by the landlord for certain purposes

The landlord will be able to terminate a periodic tenancy on a ground set out in this clause. The period of notice for such a termination must be at least 60 days. A landlord who recovers possession of premises under this provision will not be able to grant a fresh tenancy over the premises for six months, unless the landlord obtains the consent of the Tribunal.

Clause 45: Termination of residential tenancy by housing co-operative

A registered housing co-operative will be able to terminate a tenancy if the tenant has ceased to be a member of the co-operative, or no longer satisfies conditions specified by the agreement as being essential to the continuation of the tenancy. The co-operative must give at least 28 days notice of a termination under this provision.

Clause 46: Termination by landlord without specifying a ground of termination

This clause will allow a landlord to terminate a periodic tenancy without specifying a ground of termination if the period of notice is at least 90 days.

Clause 47: Limitation of right to terminate

The approval of the Tribunal will be required if the landlord seeks to terminate an agreement where the premises are subject to a housing improvement notice, or are subject to rent control under the Act.

DIVISION 3—TERMINATION BY TENANT

Clause 48: Notice of termination on ground of breach of agreement

This clause empowers the tenant under a fixed term tenancy agreement to require the landlord to remedy a breach of the agreement. If the breach is not remedied within the period specified by the tenant (being at least seven days), the tenant may, by notice to the landlord, terminate the tenancy. The landlord may apply to the Tribunal for relief.

Clause 49: Termination by tenant without specifying a ground of termination

This clause will allow a tenant to terminate a periodic tenancy without specifying a ground of termination if the period of notice is at least 21 days or a period equivalent to a period of the tenancy (whichever is the longer).

DIVISION 4—SPECIAL CASES OF TERMINATION

Clause 50: Termination on application by landlord

The Tribunal will have power to terminate a tenancy and to order possession of the premises in the case of a serious breach of the tenancy agreement by the tenant or if the Tribunal is satisfied that the tenant, or a person permitted on the premises with the consent of the tenant, has intentionally or recklessly caused or permitted (or is likely to cause or permit) serious damage to the premises, or personal injury to the landlord, an agent, or another person. The Tribunal will be able to make a restraining order in an appropriate case.

Clause 51: Termination on application by tenant

The Tribunal will have power to terminate a tenancy in the case of a serious breach of the tenancy agreement by the landlord.

Clause 52: Termination based on hardship

The Tribunal will be able to terminate an agreement under this clause in a case involving undue hardship to the landlord or the tenant. The Tribunal will be able to award appropriate compensation on account of an early termination of the tenancy.

DIVISION 5—NOTICES OF TERMINATION

Clause 53: Form of notice of termination

This clause sets out the information that must be included in a notice of termination under the Act.

Clause 54: Termination of periodic tenancy

This clause provides that a notice terminating a periodic tenancy will not be ineffectual because the period of notice is less than would, apart from the Act, be required at law, or the day on which the tenancy is to end is not the last day of a period of the tenancy.

DIVISION 6—REPOSSESSION OF PREMISES

Clause 55: Order for possession

This clause entitles a landlord to apply to the Tribunal for an order for possession of the premises if the tenancy has been terminated, or if a fixed term tenancy has expired. A landlord will be entitled to compensation if the tenant fails to comply with an order for possession.

Clause 56: Abandoned premises

The Tribunal will be able to make an order for immediate possession of premises if the Tribunal is satisfied that the tenant has abandoned the premises.

Clause 57: Repossession of premises

This clause regulates the repossession of premises.

Clause 58: Forfeiture of head tenancy not to result automatically in destruction of right to possession under residential tenancy agreement

This clause prevents another person taking possession of residential premises in defeasance of the tenant's rights to possession, without an order of the court or the Tribunal.

DIVISION 7—ABANDONED GOODS

Clause 59: Abandoned goods

This clause sets out the rules and procedures that are to apply in relation to abandoned goods.

PART 5
RESIDENTIAL TENANCIES FUND

Clause 60: Residential Tenancies Fund

The Residential Tenancies Fund is to continue in existence. The Fund will be kept and administered by the Commissioner.

Clause 61: Application of income

Income derived from the Fund will be applied for specified purposes.

Clause 62: Accounts and audit

The Commissioner will be required to keep proper accounts in relation to the Fund. The Fund will be audited by the Auditor-General.

PART 6
ROOMING HOUSES

Clause 63: Codes of conduct

Clause 64: Obligation to comply with codes of conduct

Clause 65: Jurisdiction of the Tribunal

These clauses relate to rooming houses. It is proposed that the regulations will prescribe codes of conduct governing the conduct of rooming house proprietors and the conduct of rooming house residents. It will be an offence to breach a code. The Tribunal will have jurisdiction to resolve any question that arises under a code of conduct.

PART 7
DISPUTE RESOLUTION

Clause 66: Responsibility of the Commissioner to arrange for mediation of disputes

The Commissioner will be given responsibility to make arrangements to facilitate dispute resolution.

Clause 67: Mediation of dispute

A party will be able to apply to the Commissioner for the mediation of a dispute.

Clause 68: Stay of proceedings

The Tribunal or a court will be able to refer a tenancy dispute to the Commissioner for mediation.

Clause 69: Statements made in the course of mediation proceedings

Evidence of admissions or statements made in the course of a mediation under this Division is not admissible before the Tribunal or a court.

DIVISION 2—INTERVENTION

Clause 70: Power to intervene

The Commissioner will be entitled to intervene in proceedings before the Tribunal or a court concerning a tenancy dispute.

DIVISION 3—JURISDICTION OF THE TRIBUNAL

Clause 71: Jurisdiction of the Tribunal

This clause sets out the powers of the Tribunal in respect of a tenancy dispute.

Clause 72: Conditional and alternative orders

The Tribunal will be able to make conditional orders and alternative orders that take effect according to particular circumstances.

Clause 73: Restraining orders

The Tribunal will be able to make orders restraining persons in cases involving the threat of serious damage to property or personal injury.

Clause 74: Substantial monetary claims

Proceedings involving a monetary claim for more than $60 000 will, on the application of a party, be transferred to the District Court.

DIVISION 4—REPRESENTATION

Clause 75: Representation in proceedings before the Tribunal

Special rules will apply with respect to representation before the Tribunal in tenancy matters under the Act. This provision is based on a comparable section in the current Act.

Clause 76: Remuneration of representative

This clause regulates who may charge for representing a party before the Tribunal under this Act.

PART 8

MISCELLANEOUS

Clause 77: Contract to avoid Act

An agreement or arrangement that is inconsistent with the Act is void to the extent of the inconsistency. A purported waiver of a right is void. It will be an offence to attempt to defeat, evade or prevent the operation of the Act.

Clause 78: Overpayment of rent

Any proceedings for the recovery of an overpayment of rent must be commenced within six months after the date of the overpayment.

Clause 79: Notice by landlord not waived by acceptance of rent

A demand for, or the recovery of, rent after the landlord has received notice of a breach of the agreement does not constitute a waiver.

Clause 80: Exemptions

The Minister will be able to confer exemptions from the operation of the Act.

Clause 81: Service

This clause sets out the procedures for the service of a notice or document under the Act.

Clause 82: Regulations

This clause empowers the Governor to make regulations for the purposes of the Act.

Schedule: Repeal and Transitional Provisions and Consequential Amendments

The schedule provides for the repeal of the *Residential Tenancies Act 1978* and the *Residential Tenancies (Housing Trust) Amendment Act 1993*. The schedule also contains various transitional provisions. Consequential amendments are also made to the *Residential Tenancies Act 1987* on account of the abolition of the Residential Tenancies Tribunal.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

TRUSTEE (INVESTMENT POWERS) AMENDMENT BILL

The Hon. R.I. Lucas, for **the Hon. K.T. GRIFFIN (Attorney-General)**, obtained leave and introduced a Bill for an Act to amend the Trustee Act 1936. Read a first time.

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

That this Bill be now read a second time.

This Bill is part of a broader Government strategy to review legislation to improve its effectiveness, to give a lead to the community and to remove unnecessary Government involvement. This Bill substantially alters the law relating to the investment of trust funds. The list of so-called 'authorised trustee investments', currently located in section 5 of the Trustee Act, is repealed and replaced with a general power of investment. A trustee may invest trust funds in a manner authorised:

- by the trust instrument (if any),
- by the Trustee Act,
- by any other statute giving trustees power to invest trust funds (e.g., legislation regulating the investment of trust monies held by land agents and conveyancers),
- by the Supreme Court under section 59B of the Trustee Act.

The powers of investment conferred by the Trustee Act apply if the trust instrument is silent on investment matters and only in so far as a contrary intention is not expressed in the trust instrument. A trust instrument which is professionally drawn will, in most instances, specifically expand the investment powers of the trustee beyond those permitted by the Trustee Act. If there is no trust instrument, the trustee must rely on the investment powers conferred by the Trustee Act, other statutes or the Supreme Court.

The investment policy of trustees can have a profound effect on the degree of real benefit obtained from the trust by its beneficiaries. Generally, every trustee has a duty to invest trust funds in their hands so that income will be earned for the beneficiaries. The trustee must take such care as a reasonably cautious person would take, having regard to the interests not only of those who are entitled to the income of the trust but also of those who will be entitled to its capital in the future. In relation to trust property, the trustee must ensure that all trust property is productive to the maximum degree that the market permits short of speculation.

The trustee must have in mind the objects the trust seeks to achieve, and also the fact that he or she is investing the assets of others for the benefit of others. The trustee may never invest in a speculative manner. In South Australia (as in other Australian jurisdictions), the Trustee Act sets out a list of 'authorised trustee investments' often referred to as the 'legal list'. These investments are *prima facie* presumed to be prudent and thus permissible for trustees, although trustees must still consider whether a particular listed investment is suitable in the circumstances of the trust.

The primary purpose of the 'legal list' approach to authorised trustee investments is to relieve trustees from responsibility for determining whether investment in a particular category (e.g., Government bonds, shares, etc.) is prudent, although trustees are still required to act prudently when considering an actual proposal for investment. The list tends to give an impression of Government or parliamentary backing for a particular investment and one has to ask why Government or Parliament should be placed in that position.

In New Zealand and in some North American jurisdictions, there is no statutory list of investments which are presumed to be prudent. Instead, trustees are empowered to invest in any kind of investment as long as it is prudent, having regard to the circumstances of the trust. This is the so-called 'prudent person' approach to authorised trustee investments. The 'prudent person' rule requires the trustee to act prudently both in determining the suitability of a particular category of investment as well as when considering actual proposals for investment. Although the names given to these approaches to trustee investment may seem in direct contrast, both look at the conduct of trustees in selecting and making investments and are based on the principle applicable generally to the various activities undertaken in the administration of trusts, that the standard by which a trustee's conduct is measured is external and objective (i.e., that of a prudent person).

The essential difference between the 'legal list' and the 'prudent person' approaches to trustee investment derives from the manner in which the objective standard of prudent conduct is applied in practice to test this particular aspect of

trust administration. The 'legal list' relieves trustees from the responsibility for determining whether investment in a particular category (e.g., Government stock, bank accounts, land, mortgages, or the like) is prudent, while still requiring trustees to act prudently when considering the actual proposal for investment within that category. The 'prudent person' approach requires trustees to meet the objective standard of conduct, both in deciding whether a particular category of investment is suitable and then in considering actual proposals for investment in that category.

The legal list approach has many shortcomings. It has the potential to mislead the inexperienced trustee because it embodies a basic presumption that those investments included on the list are 'safe' but does not indicate which investments are suitable for which types of trust. It places far too much significance on the securities of a body achieving trustee status to the point where achieving such status becomes more important than achieving a record of good financial management. The 'authorised trustee status' which the list confers on selected investments is construed by many trustees and members of the general public with money to invest as, has already been mentioned, implying some form of official endorsement or Government guarantee as to the soundness of the particular investments.

The use of the list confers substantial competitive advantages on those institutions which, by explicit statutory authorisation or by meeting a set of largely arbitrary criteria, qualify for 'authorised trustee status'. This label can result in funds being invested in a different manner than if decisions were based on market prices and returns and assessment of financial and other market information. The inflexibility of the list means that in a rapidly changing financial environment many new investment instruments, likely to be just as sound by objective criteria, are not authorised investments. Finally, the list is an expensive approach in terms of the time required to keep the list up to date and the *ad hoc* means by which bodies are added to the list in the Act and in the regulations.

The former Government recognised the need to re-examine the approach to trustee investments in this State and, to this end, established an interdepartmental working party (with representatives from Corporate Affairs, Treasury and the Attorney-General's Department) in 1987. The committee's report was circulated by the former Attorney-General for comment, as was a draft Bill which incorporated the prudent person approach to trustee investments modelled on the New Zealand legislation. It appears that the matter was not progressed further as 'trustee investments' was included on the COAG agenda as an area for the consideration of uniform legislation.

In October 1990, the Special Premiers Conference agreed on the need to reform current State legislation for the supervision of non-bank financial institutions in the context of the stability of the financial system as a whole. Developing a uniform approach to authorised trustee investment status was part of their consideration. The matter of authorised trustee investments was placed on the agenda of COAG and the NBFI (non-bank financial institutions) Working Group was given the task of progressing the matter.

The initial report of the working group (November, 1991) recommended a single limited list of designated investments which would be limited to investments with a Government guarantee, investments with bodies regulated by the Reserve Bank and AFIC, and investments with a prescribed credit rating. Significantly for South Australian trustees (and those in some of the other States such as Victoria), the report did not consider that investment in equities and investment in property either directly or with first mortgage security should be included.

The initial NBFI paper has been refined but the only real change in approach is that public trustees and trustee companies should be able to make investments in accordance with the 'prudent person' rule, while all other trustees should be confined to the narrow band of investments set out in the first paper (Government guaranteed securities, deposits and investments with banks and AFIC supervised institution, investments with a prescribed credit rating, and other investments recommended by a National Trustee Advisory Committee). Significant concern has been expressed in commentary received on this paper about the omission of equities and property investment from the proposed list, as many commentators consider that this will result in difficulties in creating balanced portfolios.

Some concern has also been voiced about placing trustee companies and public trustees in a special position (broad investment powers) *vis a vis* 'other' trustees (narrow investment powers). Whether the COAG consideration of the topic of trustee investments will result in a uniform national approach remains to be seen. There has certainly been much talk about reform in this area over a number of years both in the Standing Committee of Attorneys-General (which failed to reach agreement) and more recently in the COAG forum. There is no guarantee that the current discussions will result in a satisfactory outcome.

It is evident however, that a significant amount of work has been done in this area in South Australia, yet there has been no major reform for a decade since the last Liberal Government made significant changes to the powers of investment. This Government has determined that it is appropriate for this matter to be progressed rather than waiting for uniformity to occur (which may still be years away, if it ever occurs). Maintenance of an up-to-date list in the Act and regulations requires substantial administration by the Government. There needs to be regular monitoring and review of prescribed entities involving checking of their status, credit-worthiness, name changes, and so on. Requests from entities to be included on the list of prescribed entities have to be fully assessed.

Frequent issues of new regulations would be required to keep the schedule fully up to date, and this has not been occurring (although this problem has been identified and the process of reviewing all inclusions in the *Trustee Act* regulations is currently in hand).

Having regard to all that has transpired in this State over the past decade, and with regard to the New Zealand experience, where five years ago their equivalent of the list of authorised trustee investments was repealed and replaced with a prudent person regime, this Bill (which is closely based on the Bill released by the former Attorney-General which in turn was closely based on the New Zealand legislation) will change the rules relating to trustee investment in this State.

The Bill gives trustees power to invest in any property, unless the instrument creating the trust otherwise provides. A trustee exercising any power of investment is required to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. A trustee whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others is required to exercise the care, diligence and skill of

a prudent person engaged in that profession, employment or business in managing the affairs of others. (This requires a higher standard for professional trustees).

One of the important features of the provisions is the codification of factors which should be considered by trustees in making investment decisions. The purposes of the trust and the needs and circumstances of the beneficiaries are important factors. Other matters include diversification, and factors such as value of the trust estate, duration of the trust, risks of capital losses/gains, costs, tax, and marketability can all be critical depending on the circumstances of each individual trust.

Experience in other countries which operate a prudent person investment regime indicates that the courts regard such provisions as defining a standard of conduct to be observed by trustees when investing rather than the investment performance they must achieve. A court, in considering whether a trustee is liable in respect of any investment made for a breach of trust, is required to have regard to the nature and purposes of the trust; whether the investments of the trust are diversified, so far as is appropriate to the circumstances of the trust; and whether the investment was made pursuant to an investment strategy formulated in accordance with the duty of the trustee.

Further, the court may set off investment gains against losses. These provisions recognise that in a managed portfolio of investments a trustee should be given protection against the claims for loss on an individual investment if they can demonstrate that the investments were part of a diversified investment strategy which was established and operated in a prudent manner.

The flexibility and diversification that the 'prudent person' approach brings to investment choices could be considered to be vital to the well-being of any trust fund in today's economy. Indeed, the practice among professionals who draw trust instruments frequently to confer wide investment powers on trustees has meant that, to that extent, those trustees have been (perhaps unwittingly) subject to 'prudent person' requirements. Many commentaries and articles on the 'prudent person' approach in New Zealand adopt the phrase, 'Prudence is a test of conduct, not of performance.' Investments should be labelled as prudent or imprudent not because of their nature but because of their appropriateness, taking into account the terms, purposes and circumstances of the trust.

This Bill is the result of consideration by successive Governments in this State spanning a number of years and I commend the Bill to members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause removes definitions that are obsolete.

Clause 4: Substitution of Part 1

This clause repeals Part 1 of the principal Act and substitutes a new Part dealing with investments. The substituted Part is based on the 'prudent person' approach to trustee investments.

PART 1
INVESTMENTS

5. Application of Part

New Part 1 applies to trusts created before or after the commencement of these amendments.

6. Power of trustee to invest

A trustee may (unless expressly forbidden by the instrument creating the trust) invest trust funds in any form of investment and vary or realise an investment of trust funds and reinvest money resulting from the realisation in any form of investment.

7. Duties of trustee in respect of power of investment

Subject to the instrument creating the trust—a trustee whose profession, business or employment is (or includes) acting as a trustee or investing money on behalf of other persons must exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons.

All other trustees must—subject to the instrument creating the trust—exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

When exercising a power of investment, a trustee must comply with any binding provisions of the instrument creating the trust requiring the trustee to obtain consent or approval, or to comply with any direction, with respect to trust investments.

Subject to the instrument creating the trust, at least once annually, a trustee must review the performance of trust investments.

8. Law and equity preserved

Any rules and principles of law or equity that impose a duty on a trustee including rules and principles that impose—

- a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust;
- a duty to act impartially towards beneficiaries and between different classes of beneficiaries;
- a duty to take advice,

continue to apply except so far as they are inconsistent with this proposed Act or any other Act, or the instrument creating the trust.

Any rules and principles of law or equity that relate to a provision in an instrument creating a trust that purports to exempt, limit the liability of, or indemnify a trustee in respect of a breach of trust, continue to apply.

9. Matters to which trustee must have regard in exercising power of investment

When investing trust funds, a trustee must—so far as they are appropriate to the circumstances of the trust—have regard to a number of factors, among them, the following:

- the purposes of the trust and the needs and circumstances of the beneficiaries;
- the desirability of diversifying trust investments;
- the nature of and risk associated with existing trust investments and other trust property;
- the likely income return and the timing of such return;
- the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment;
- the aggregate value of the trust estate;
- the effect of the proposed investment in relation to the tax liability of the trust;
- the likelihood of inflation affecting the value of the proposed investment or other trust property.

10. Powers of trustee in relation to securities

If securities of a body corporate are subject to a trust, the trustee may concur in various schemes or arrangements in the same manner as if the trustee were beneficially entitled to the securities. If a conditional or preferential right to subscribe for securities in a body corporate is offered to a trustee in respect of a holding in that body corporate or another body corporate, the trustee may (as to all or any of the securities)—

- exercise the right; or
- assign the benefit of the right, or the title to the right, to another person (including a beneficiary); or
- renounce the right.

A trustee accepting or subscribing for securities under this proposed section is, for the purposes of any provision of this new Part, exercising a power of investment.

New section 11 applies in relation to securities acquired before or after the commencement of the section but subject to the instrument creating the trust.

11. Power of trustee as to calls on shares

Subject to the instrument creating the trust—

- a trustee may apply capital money subject to a trust in payment of calls on shares subject to the same trust;
- if the trustee is a trustee company—it may exercise the powers conferred by this proposed section despite the shares on which the calls are made being shares in the trustee company.

12. Power to purchase dwelling house as residence for beneficiary

Subject to the instrument creating the trust, a trustee may purchase a dwelling house for use by a beneficiary as a residence or enter into another agreement or arrangement to secure for a beneficiary a right to use a dwelling house as a residence.

A trustee may permit a beneficiary to use as a residence a dwelling house that forms part of the trust property and may for that purpose retain the dwelling house as part of the trust property despite the terms of the instrument creating the trust.

The trustee may retain a dwelling house or any interest or rights in respect of a dwelling house acquired under this new section after the use of the dwelling house by the beneficiary has ceased.

13. Power of trustee to retain investments

A trustee is not liable for breach of trust by reason only of continuing to hold an investment that has ceased to be—

- an investment authorised by the instrument creating the trust; or
- an investment properly made by the trustee exercising a power of investment; or
- an investment made under Part 1 as previously in force from time to time; or
- an investment authorised by any other Act or the general law.

13A. Loans and investments by trustees not breaches of trust in certain circumstances

If a trustee lends money on the security of property, the trustee is not in breach of trust by reason only of the amount of the loan in comparison to the value of the property at the time when the loan was made—

(a) if it appears to the court—

- that, in making the loan, the trustee was acting on a report as to the value of the property made by a person reasonably believed to be competent to give such a report and whom the trustee instructed and employed independently of any owner of the property; and
- that the amount of the loan did not exceed two-thirds of the value of the property as stated in the report; and
- that the loan was made in reliance on the report; or

(b) if the trustee is insured by a prescribed body carrying on the business of insurance against all loss that may arise by reason of the default of the borrower.

A trustee who lends money on the security of leasehold property is not in breach of trust by reason only that the trustee dispensed with the production or investigation of the lessee's title when making the loan.

This new section applies to transfers of existing securities as well as to new securities and to investments made before or after the commencement of this proposed Amendment Act.

13B. Limitation of liability of trustee for loss on improper investments

If a trustee improperly lends trust money on a security that would have been a proper investment if the sum lent had been smaller than the actual sum lent, the security is to be taken to be a proper investment in respect of the smaller sum, and the trustee is only liable to make good the difference between the sum advanced and the smaller sum, with interest. This new section applies to investments made before or after the commencement of this proposed Amendment Act.

13C. Court may take into account investment strategy in action for breach of trust

If a trustee has been charged with a breach of trust in respect of a duty under this new Part relating to the power of investment, when considering the trustee's liability, the court may take into account—

- the nature and purpose of the trust; and
- whether the trustee had regard to the matters set out in proposed section 9 so far as is appropriate to the circumstances of the trust; and
- whether the trust investments have been made pursuant to an investment strategy formulated in accordance with the duty of a trustee under this new Part.

13D. Power of court to set off gains and losses arising from investment

When considering an action for breach of trust in respect of an investment by a trustee where a loss has been or is expected to be sustained by the trust, a court may set off all or part of the loss resulting against all or part of the gain resulting from any other investment whether in breach of trust or not. The power of set off conferred by this proposed section is in addition to any other power or entitlement to set off all or part of any loss against any property.

13E. Transitional provision

Any provision in an Act or any other instrument (whether or not creating a trust) that empowers or requires a person to invest money in the investments authorised by the *Trustee Act 1936*, is to be read as if it empowered or required that person to invest that money according to the provisions of this new Part as to the investment of trust funds.

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

CO-OPERATIVES (ABOLITION OF CO-OPERATIVES ADVISORY COUNCIL) AMENDMENT BILL

The Hon. R.I. Lucas, for **the Hon. K.T. GRIFFIN (Attorney-General)**, obtained leave and introduced a Bill for an Act to amend the Co-operatives Act 1983. Read a first time.

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

That this Bill be now read a second time.

The purpose of this Bill is to amend the Co-operatives Act 1983, to remove the provisions establishing the Co-operatives Advisory Council and its functions.

The Council was established to provide advice to the Minister principally in relation to promotion in forming, and improvement in operation of, cooperatives, and also model rules for cooperatives and proposed regulations under the Act.

There are 88 registered cooperatives in South Australia, a few of which are in liquidation or are otherwise inactive. The number has been in decline in recent years and this is principally due to what were the larger cooperatives transferring their activities to companies. This has occurred primarily in the face of increased competition and an inability to raise sufficient funds within a cooperative structure to, for example, finance expansion. During the last term of office of members, no meetings of the council were convened.

The issues currently confronting some participants in the industry in South Australia, and particularly cooperatives which are registered in the Eastern States, are those which relate to the ability to trade freely across State boundaries under the various State and Territory cooperatives legislation.

The Cooperative Federation of S.A. Incorporated has provided a forum for its member cooperatives on representations to the Government in relation to these issues. It also canvassed the views of cooperatives which are not members of the federation during this process of providing comments to the Government. The President and Secretary of the federation are the delegate and alternate delegate to the National Cooperative Council of Australia, which is an industry umbrella body of the various State cooperative federations or associations.

In the absence of a formal mechanism for industry consultation with the Government, the Cooperative Federation will be invited where necessary to submit the industry views in relation to any future legislative proposals, on the basis that it will circularise all registered cooperatives. These processes will not preclude individual cooperatives from making representations to Government.

There seems no point in maintaining a statutory committee which does not meet and whose functions can be better fulfilled by other means. The objective of disestablishing the Council is consistent with Government policy to provide for statutory committees only where they are necessary. I commend the Bill to the House, and I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Repeal of s. 3

Section 3 sets out the arrangement of the Act which is obsolete and superseded by the Summary of Provisions.

Clause 4: Repeal of Part 2 Division 2

This Division contains the sections dealing with the Co-operatives Advisory Council which is no longer required. By repealing this Division, the Council is abolished.

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

WORKERS REHABILITATION AND COMPENSATION (BENEFITS AND REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1264)

The Hon. G. WEATHERILL: Since this Bill was introduced to the Parliament, it has been vacillated on for quite some time by—

The Hon. L.H. Davis: Who's vacillated?

The Hon. G. WEATHERILL: —members who are not prepared to speak. They want to keep this thing going for as long as they possibly can. There are workers out there worried to death about what you are trying to do to them. It is about time it stopped. So, Mr President—

The Hon. L.H. Davis: It has been on the Notice Paper for weeks.

The Hon. G. WEATHERILL: And what have you done about it?

The Hon. L.H. Davis: We are waiting for you to speak on it.

The Hon. G. WEATHERILL: Well, I have spoken on it. Mr President, I move:

That the question be now put.

The Council divided on the question:

While the division was being held:

There being a disturbance in the President's Gallery:

The PRESIDENT: Order! Would that person in the gallery please remove himself.

There being a further disturbance in the President's Gallery:

The PRESIDENT: Order! Would that person please remove himself from the gallery. You cannot interrupt the proceedings of the Parliament. Order! The count will proceed.

AYES (8)

Cameron, T. G.	Crothers, T.
Feleppa, M. S.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Weatherill, G. (teller)	Wiese, B. J.

NOES (11)

Davis, L. H.	Elliott, M. J.
Griffin, K. T. (teller)	Kanck, S. M.
Laidlaw, D.V.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

PAIRS

Levy, J. A. W.	Irwin, J. C.

Majority of 3 for the Noes.

Motion thus negatived.

The PRESIDENT: Order! I ask the Hon. George Weatherill to continue his second reading speech.

Members interjecting:

The PRESIDENT: Order! The Minister will resume his seat.

The Hon. G. WEATHERILL: Could I suggest what an excellent trade union official he was. His members were very proud of him. If you took a vote by his members of how many members within his union supported him, you would find they all did, because he always did the right thing by the workers.

The Hon. L.H. Davis: Which union?

The Hon. G. WEATHERILL: The Storeman and Packers Union. If you did not know that, you should have.

The Hon. R.I. Lucas: Did Mike Rann support him?

The Hon. G. WEATHERILL: We all support good trade unionists—those of us on this side of the Council.

The PRESIDENT: Order! I suggest we come back to the subject of the debate.

The Hon. G. WEATHERILL: Mr President, I can understand quite clearly the frustration of members opposite in reference to my moving that question. They would like this to go on and on, because they still have not made up their mind on what they will do with this Bill.

The Hon. K.T. Griffin: We have.

The Hon. G. WEATHERILL: You have not. You can go and talk with Liberal members in this Parliament and they will tell you that they do not agree with 70 per cent of it. Trevor Crothers said it last night, and it is true.

The Hon. R.I. Lucas: Who?

The Hon. G. WEATHERILL: I am not going to tell you. I would not dob in your mates, and they are your mates, by the way. Nevertheless, you people know that you are just playing around with this. You do not know what you are doing with it. That is why you are not prepared to make your second reading speeches. I will be quite frank with you: when I moved that motion today, I knew you would be disappointed. I was very disappointed in what the Democrats did because the Democrats have been going to the press, the news media, on the air, saying they would knock this Bill off. They had the opportunity today but they did not do anything about it.

The Hon. M.J. Elliott: I have not spoken yet.

The Hon. G. WEATHERILL: We have asked you for the past couple of weeks whether you were prepared to speak. What have you done? Nothing. It is so, so wrong, and I will tell you why—

The Hon. L.H. Davis interjecting:

The Hon. G. WEATHERILL: You can yell and scream as much as you like, but I am going to yell as well. I will tell you why it is so wrong: because there are people out there who are worried to death about what you are going to do to them. What annoys me is that it is like the tail wagging the dog. You have this person—and it did not just happen in your Government, I will be fair, it happened in ours as well—who, every two years, or more often than that, comes down from his ivory tower, and I refer to Mr Lew Owens. Mr Owens tells the Minister, 'Oh, my God, we have all this money that we are in debt for.' Prior to the last election we were in the black; we owed no money. Now, all of sudden, we owe money. After Mr Owens comes down here and sees the Minister what does the Minister do? The Minister turns around and says, 'I have to do something about it—let's attack the worker.' That is what he is saying.

The Hon. L.H. Davis: Are you suggesting that the figures have been fiddled with?

The Hon. G. WEATHERILL: I am glad you mentioned that; thank you very much for that Dorothy Dix. I appreciate a Dorothy Dix when I am speaking, and that is a beauty—I will inform the Council why it is a beauty. I refer to the story of Father Christmas, who was kicked in the groin, which the *Advertiser* printed. The article said that Father Christmas received $4 300. I think that is disgusting. I do not think there is a male in this place who has not at some time or another been kicked there, particularly if you played soccer.

The Hon. L.H. Davis: Speak for yourself.

The Hon. G. WEATHERILL: You haven't? Half your luck. There are not many males who have not had that happen to them. The great Mr Owens obviously provided the figures to the Minister; the Minister did not just grab them out of the air—I hope he did not. So, what happens, the Minister gets up and says this in Parliament, believing it to be the truth. I truly believe the Minister meant it to be the truth, but the figures he had were wrong. The next day we read that Father Christmas received $600. That is $3 700 he did not receive. Where was it? Where did that $3 700 go. Where did the Minister grab that figure from? The Minister was then quoting $140 000 and $120 000. Were any of these figures correct? Has anybody checked them?

When this scheme was started in 1986 and taken out of the hands of private insurance companies it was a very good scheme for the injured worker—that is who you have to think about. The worker does not go to work to get injured and he does not go to work so that he can be on WorkCover all his life. I have been in the embarrassing situation where I was injured at work. I went to a specialist who told me that there was nothing wrong with my back, that it was simply torn fibres. I believed the specialist, which shows how gullible I was. I went to two specialists and I saw the x-rays which showed me that there was nothing wrong. But when I finally had a cat scan quite a number of years later after putting up with the agony for years I found that I had a disk broken in two. The black and white x-ray did not pick it up. That happens to so many people who go on for years believing these specialists and these stupid black and white x-rays that do not pick things up.

It was Doctor Ritson from the then Opposition who fixed it up. I told him that I was in that much pain that I could not stand it any longer, and I asked whether he could do something about it. Doctor Ritson did it that night. When the black and white x-rays came back he said, 'George, they do not show that there is anything wrong.' I went there the next day and had a cat scan and found that I had a disk broken into three pieces. One piece had not only gone through the rear fat between the disk but it had struck through the nerve and that was what was crippling me. The silly thing is that I believed these doctors for all these years. If I had known otherwise I would have sued the suits off them, because I was that wild about it.

Afterwards, I rang my son, who is an industrial lawyer, and asked him, 'What can I do about this; I have suffered all these years?' There are lots of people out there who are really suffering. They are walking around with electrodes on their bodies that keep killing the pain. That is what they are doing and it is wrong. When we bring in a Bill that affects these people (and we should not be considering a Bill that reduces their allowances) we should get on with it straight away and as quickly as possible. The homework should be done and it should go through this place not in a day or two but in a maximum of one or two weeks. When it comes to dealing with injured workers we cannot afford to mess around. As far as I am concerned it is draconian legislation that has to be cleaned up. The approach that should be taken, provided the Bill is drawn up in time, is for the trade union movement, the Government and the Democrats—if they want to be part of it, and I know that they do because they need the press—to get together and work out a fair and equitable thing for these injured workers—we have to do that.

The Hon. L.H. DAVIS: I move:

That the debate be further adjourned.

The Council divided on the motion:

AYES (11)

Davis, L. H.	Elliott, M. J.
Griffin, K. T. (teller)	Kanck, S. M.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Pfitzner, B. S. L.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

NOES (8)

Cameron, T. G.	Crothers, T.
Feleppa, M. S.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Weatherill, G. (teller)	Wiese, B. J.

PAIRS

Irwin, J. C.	Levy, J. A. W.

Majority of 3 for the Ayes.

Motion thus carried; debate adjourned.

RETAIL SHOP LEASES BILL

In Committee.

(Continued from 22 February. Page 1281.)

Clause 43—'Notice to lessee of lessor's intentions at end of lease.'

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The amendment, to insert a new subclause (1A), seeks to place a significant impediment upon the right of a lessor to let premises at the end of a period. Clause 43 deals with the notice to the lessee of the lessor's intentions at the end of the lease. The Government believed it was appropriate to recognise that at the end of a lease there is no agreement and that, if the landlord decides not to offer a new lease, an extension or a further renewal, that has to be the subject of a written notification by the lessor to the lessee not less than six months and not more than 12 months before the expiry of a lease.

I know that this is a difficult area and it has strong supporters as well as opponents. This has no bearing on a situation where there is a lease for, say, five years and a right of renewal for five years. If there is a right of renewal, it is a right which is set down in the lease and which can be exercised at the discretion of the lessee. If the conditions which have to be complied with in order to satisfy the provision of the right to renew are complied with, there is an automatic right to renewal. Questions of rent and conditions are generally dealt with in the renewal clause. If it is a renewal for a further five years, so that a 10-year period has expired, at the end of that further renewal there is no lease. At the time when the lessee and the lessor negotiate to enter into that lease, they know what the period of time might be. It is a question then whether the landlord is prepared to grant

a longer period, whether the lessee wants anything longer than that, and whether they can come to an agreement. We are providing in the Bill a mechanism which will minimise disputes in relation to the rent by proposing to outlaw ratchet clauses.

It seems to me that if we get to the point where we acknowledge there is a lease, a renewal has been exercised and the renewal has expired, it is a new ball game for both parties. I think it is an unreasonable restriction on the right of the lessor to be bound by a provision which states that the lessor must offer the lessee a renewal or extension at a reasonable rent—and that issue will be not just negotiable but subject to review by the tribunal—and on reasonable terms and conditions, whatever they may be (not necessarily terms and conditions upon which the original lease was based but reasonable terms and conditions, which is an objective standard), unless the lessor, who may decide to keep the premises vacant or to have a different tenant mix, which is covered by paragraph (b), has genuinely been offered a higher rent for the premises by another person, which is covered by paragraph (a). That, of course, opens up a Pandora's box in the sense of an inquiry into whether or not the other person has made a genuine offer. Having gone through the process of advertising, calling for expressions of interest or having someone to whom the lessor wishes to lease the premises, that cannot be done under this clause until the lessee has been given an opportunity to match the higher rent and has declined to do so. That means that an extremely large amount of administration, bureaucracy and cost is involved in juggling through this process. The other reason, in paragraph (b), is:

> the lessor proposes to lease the premises for a different kind of business in order to enhance the opportunities for increased turnover or other businesses conducted in other premises leased by the lessor in the vicinity. . .

It is not sufficient that the lessor proposes to lease the premises for a different kind of business; it has to be 'in order to enhance the opportunities for increased turnover'. There may be other reasons for it, but one would expect it would be for that purpose. However, that is again subject to objective review. Or the lessor, in paragraph (c), 'requires the premises for demolition'. We have talked about demolition, but again that has to be established. Paragraph (d) is:

> 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).

There are reasons to be given, but there is also the question: what is 'to a satisfactory extent'? It is a question not of negotiating but of an objective standard being set and how these criteria which are to be applied are to be determined and then applied.

Although one might have sympathy with this amendment, and I know there are concerns in the retail industry in relation to this issue, we must not lose sight of the fact that at the commencement of a lease there is an agreement for a fixed term and, generally speaking, a right of renewal, and then everybody knows that at the end of that period it is a new ball game.

It seems to me we have to be careful that we do not get so legislatively involved in all of these activities that the market is so regulated that not only does it distort the market but it encourages devices. I have a concern not so much about the devices but about the impact that this is going to have on the retail market in South Australia, and I think unfairly in so far as landlords and tenants are concerned. I have no doubt that whilst the Hon. Angus Redford remarked on a previous clause that this might well be a lawyers' picnic, it is certainly an encouragement to litigation because of the criteria that have to be met. Therefore, I indicate opposition to the amendment.

The Hon. M.J. ELLIOTT: I think I heard amongst what the Minister said that he had some sympathy or concern about shopkeepers. He knows that retailers feel strongly about this issue. The Attorney talked about the concern that devices may be created. Unfortunately, landlords have created all sorts of devices such as key money, etc., that this legislation is trying to stamp out. I have made the point already that we will not succeed in stamping out rorts where a landlord is in a position to refuse a person the option of having a rent renewal, even though there is no-one else in the wings who is wanting to pay more, even though the landlord does not intend to change the mix, but the landlord wants that threat of non-lease renewal for one reason and one reason alone, that is, to use all the other devices that this Bill at this stage is theoretically trying to stop.

Perhaps the only useful thing that will come out of this legislation if we do not tackle the question of lease renewal would be the banning of ratchet clauses. That would be one significant benefit that would remain, because most of the others will be undermined in the absence of such a clause. Unfortunately, it is not uncommon for the Attorney-General when he does not want to support something rather than suggesting there might be another way of wording it, as a lawyer might he starts to get very legalistic—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Just let me finish. I disagree with his analysis. Even so, generally speaking my approach with clauses is to say that I disagree with wording but indicate that there could be some substance in the issue. The Attorney spent time trying to nitpick over various words and I do not think the concepts of reasonableness and the like are unusual within the law. Rather than going through the sorts of analysis he tried to do on the clause, it would be better for the Attorney to say he does not support it and that he believes the threat of non-lease renewal is not a major problem. If he wants to say that—

The Hon. K.T. Griffin: I said the Government opposed the amendment.

The Hon. M.J. ELLIOTT: Let us understand the reasons. Do you oppose it because of the wording or because you do not think—

The Hon. K.T. Griffin: Just read the analysis I made, word by word instead of—

The Hon. M.J. ELLIOTT: I am posing the question and you can come back to it. My question is this: at the bottom of all this, is the major problem the fact that the Government thinks that a reasonable prospect of rent renewal should not occur? Does the Attorney not believe that the threat of non-rent renewal will be sufficient to stop people from enforcing all the other rights that this Bill purports to grant?

The Hon. K.T. GRIFFIN: I have said as clearly as I can and I cannot say it any more clearly than that. The Government opposes the amendment and I endeavoured to analyse the reasons. The honourable member wants to establish a new form of title that will be subject to meeting the conditions—almost a form of perpetual lease. The fact of the matter is that it creates a significant impediment to the opportunity for a landlord to make decisions about investment. The certainty is given for a fixed period—whether it is five or 10 years or

whatever—with a right of renewal where the conditions are set out in detail. If they are exercised, then it will be for a longer period. That is the period, and I do not think anyone ought to misunderstand what is being done. The Bill gives a guarantee of a fixed term with rights that are clearly enunciated, but it does not, it is not intended and it will not give a right to anyone to extend indefinitely the right to occupy particular premises.

It is all very well for the Hon. Mr Elliott to say that there are concepts of reasonableness in the law. I do not deny that and I support generally, where we put in criteria, that there ought to be objective standards. What I am saying is that, in the context in which he is moving to impose the so-called objective standards, it is an invitation to litigation and uncertainty and it is an invitation to create problems on both sides. It will be a lawyers' picnic; there is no doubt about it if there is a sufficient vigour by both landlords and tenants to dispute the right of a landlord at the expiration of the term set at the commencement of the lease, when both parties knew what they were entering into, to say, 'No, you are not going to get what you agreed. The law will give one more, the other less.' That is the fact of the matter.

It will be a significant impediment to investment in this State, because South Australia will be the only State in Australia to have this sort of impediment on investment opportunities. We are saying, 'Look, the Bill we have presented is reasonable. It provides a good balance between the rights and interests of the landlords and the rights and interests of tenants and the public interest at large.' The honourable member is seeking to create a situation where there are significantly greater changes in the balance which we believe ought to be set.

The honourable member is entitled to argue those and if he argues them rationally, that is fine. If he starts to embark upon other criticisms not based on rational and reasonable debate, that is another issue. The fact of the matter is that the Government does not support the amendment.

The Hon. M.J. ELLIOTT: I will continue this rational debate because the issue is fundamentally important to the whole Bill, and I am being told that by retailers. First, as to the suggestion that this clause would be an impediment to investment in this State, someone will not build a shop in Melbourne for Adelaide people to shop in. If there is a demand for shops in Adelaide, that demand will be met. It is absolute nonsense to suggest capital flight in terms of investment in shopping centres. Some people would say it would not be a bad thing because we are over shopped and it is a pity that, before the State plunged all that money into the REMM centre, it was not realised. Building shops does not drive the economy: shop building follows the economy.

We have to be sensible about that. The fact is that demand for retailing will ensure that the shops get built. If the Attorney-General looks at the criteria that I have inserted in the clause, I challenge him to think of a reason a landlord would want to remove a tenant that the clause does not satisfactorily comply with. What other reason could there be—that there is someone else who is willing to pay more? That is a pretty good reason and it is allowed for. Are there any other reasons—that you want to put in someone else with an entirely different kind of business, that you want to demolish the building or that the lessee has not been complying with the terms of the lease? Are there any other good reasons why the landlord would not want a tenant to remain?

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: If there are other good reasons, I would like to know about them because I am prepared to insert them. Let us be honest. If we are talking about the landlord being disadvantaged, I want to know precisely what the landlord is being prevented from doing in any reasonable manner.

The Hon. K.T. Griffin: I've told you.

The Hon. M.J. ELLIOTT: Which one?

The Hon. K.T. Griffin: I've told you. I've been through it.

The Hon. R.D. LAWSON: I oppose this clause. The Hon. Mr Elliott says he has been told by retailers; he has been told by some retailers perhaps, but certainly not—

The Hon. M.J. Elliott: I have been told by lots of retailers.

The Hon. R.D. LAWSON: But not all retailers. The Hon. Mr Elliott told the Committee yesterday that he had been told by retailers that, in three other States of the Commonwealth that had legislation such as this, public companies were exempted from it. I have taken the trouble to examine the legislation in Victoria, Queensland, Western Australia and the latest legislation, which is something of a model on this subject, in the Australian Capital Territory and, in each of those cases, retail premises are defined so as to exclude premises leased by a public company.

The model is to define 'retail shop'; for example, in Western Australia, it does not include a retail shop exceeding 1 000 square metres or where the lease is held by a corporation within the meaning of the Act that would not be entitled to be registered as a proprietary company, which means that it is a public company.

So, although the Hon. Mr Elliott says that he has been told by retailers, he has not necessarily been told the full position. The difficulty about this clause is that it is thought of by people who have a mind set about retail shopping centres, and they are focused entirely on what happens in retail shopping centres. However, in South Australia at least, the market is far more extensive than simply regional, retail shopping centres. A provision of this kind applies across the board. For example, it would preclude any landlord from saying at the end of a five year lease, 'I want to resume these premises myself and not lease them to anyone.' He would be obliged to offer the premises to his tenant. That is tantamount to a perpetual renewal.

Take the case of a bank; it might have a banking chamber in one part of the building and some other retail tenancies on the other side; and it might decide for some benevolent reasons to let the shop to the Saint Vincent De Paul Society or have a charity Christmas card shop there, or whatever. Then, those who support the Hon. Mr Elliott would say, 'You can't do that because you are not doing it for the purpose of enhancing the opportunities for increased turnover.' Their tenant would go along to the court and say, 'They are not doing it for the purpose of enhancing their turnover: in fact, it won't enhance their turnover. I can say that my chicken shop will produce far more turnover for them in their business around the corner than this charity card shop or book shop or any other form of shop.' The landlord is precluded actually from changing the character of his building and tenancy.

There is another reason why this and other measures like it are unsatisfactory. You will find at the moment that, when they get near to the end of their economic life, many buildings are being wound down with a view to ultimate redevelopment. A developer can even let the building go to rack and

ruin, put up some galvanised iron sheeting around it and have a blot on the landscape, sometimes for many years, or he can take the alternative position of letting the building out to people for charitable purposes or businesses that do not pay high rent. You will find that no landlord will be prepared to let premises for what one might call *quasi* charitable purposes or purposes which do not seek to derive the maximum economic advantage from the building if he feels that there is a prospect that he will be locked into a particular tenant, and if he gives the tenancy to a particular organisation he is bound, when the property is redeveloped, to let to that person again.

Of course, commercial reality is such that any tenant in that situation would seek to derive advantage from it. He would say, 'I demand my statutory right; I have no intention of actually going into this new building myself, but, because I have this pre-existing right, I will secure for myself a lease for 10 years; I will go for as long as I like.' Of course, as soon as the building is redeveloped he will not be conducting his hairdressing salon or newsagency there: he will be selling it to whichever national chain is prepared to take it. That is not the intention of legislation of this kind. It is here to protect tenants, not to give them a windfall benefit.

The fact that no landlord would be prepared to let to tenants who want to use buildings not for their maximum economic advantage will mean that those buildings will remain unlet and a blight on our community. This proposed clause would prevent a landlord in this situation, for example, occupying part of a building himself; he may have a furniture store occupying a large part of the building and a number of stores along the side. It would prevent that landlord, at the end of a term, which may be 10, 15 or 20 years, saying, 'I want to resume that shop for my own uses; I do not want to resume it for the purpose of giving it to some person at a higher rent. I want to change the nature of my business; I want to increase the size of my showroom.' He would be precluded from doing that if this clause passed and I oppose it.

The Hon. A.J. REDFORD: I endorse wholeheartedly what the Hon. Robert Lawson just said. I add another element to show just how ridiculous this clause is. This clause relates to a retail shop, which has a very broad definition. In fact, it covers offices, legal offices, accounting offices, doctors' surgeries and all sorts of commercial enterprises. If I were a landlord and wanted to change the essential nature of my business from a retail high turnover business to a mix of doctors and other professional suites, I might never be able to do that. If you look at the term 'turnover' and if you look at a business, such as a petrol station, which has an extraordinarily high turnover but very low profit margins, you will see that that petrol station has effectively entrenched itself into that premises forever because no other sort of business could reasonably approach that level of turnover.

I am sure other people who have better knowledge of retail would give me other examples where there are businesses with extraordinarily high turnover but very little or no profitability. One has only to look at the State Bank where executives were encouraged to develop business on the basis of turnover, but we all know that we lost a lot of money out of that. So, turnover is an absurd notion to bring into that clause, and we can see the sorts of injustices that could occur if this clause were allowed to be inserted into the Bill. I urge members to consider those aspects. Turnover really is an ill-chosen concept, and I ask members to bear in mind that this Bill talks about more than the shops in Westfield: it covers an extraordinary range of transactions. As I said, it covers office premises of all sorts, and the fact is that the Hon. Michael Elliott seems to have taken his advice from one particular lobby group in one area without looking at the broad area that is covered by this legislation; and, if this clause passes, it will visit upon all those people who are not in retail shops, a bureaucracy that is inappropriate to all those other business enterprises.

The Hon. M.J. ELLIOTT: I find it interesting that Angus Redford knows exactly to whom I have spoken. I can assure him that I have spoken personally with large numbers of people, surveyed literally thousands of shops and had responses from hundreds of shops which were located not just in Westfield shopping centres; they were in the strip shops as well. I was actually surprised. I anticipated that the problems would be largely in those big centres, but I was wrong. If the Hon. Mr Redford had spent the same time working on this issue as I have, he would appreciate that the problems are widespread and not happening just in the big centres. Certainly, there are a couple of big centres and a couple of big landlords that are particularly appalling, but I can assure the honourable member that that is not the only place where problems are occurring.

The Hon. Mr Redford came in part way through the debate on this clause. Certainly we can have some arguments about the wording, but I ask the honourable member at least to consider the concept, because the wording is capable of being altered. If ultimately it is the concept, why are we wasting time on the wording? The challenge I make is—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: It is, in fact. If you oppose the whole concept of the clause then you should say that and that actually makes things a lot shorter.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: It was—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: If you do not mind: you were the one who raised that. I had responded to that but I had not finished. You were busy playing your usual game of interjecting. I said earlier, in response to the Hon. Mr Griffin, that if it is possible to identify other legitimate reasons why a landlord would not want to renew a lease I think this clause is quite capable of sensible amendment, and wanting to take possession is very similar to a clause occurring in relation to domestic housing rentals as well.

In terms of responding to other things, the honourable member was analysing individual parts of clauses and, quite frankly, paragraph (b) of this clause is capable of significant simplification. It is possible simply to say, 'The lessor proposes to lease the premises for a different kind of business.' We could then play another nitpicking game about whether or not the words could be changed again. But, at the end of the day, I am really asking people whether they are opposed to the concept underlying the clause as distinct from the wording. Words are capable of being fixed, I believe.

On many occasions I have had grave problems with many pieces of legislation this Government and previous Governments have introduced, but I have agreed with the underlying concept. I have been prepared to spend my time to try to sort it out. I am asking people whether they are prepared simply to say, 'Yes, the lease is for this period. There is no prospect of renewal whatsoever,' and to acknowledge that, as a consequence, the so-called protections which this Bill purports to offer will not be real protections because they will not challenge the landlord for $2 000 worth of key money

(which is illegal), when they have $200 000 invested in a business and they are told that the landlord will not renew their lease.

It makes economic sense for that person not to enforce the right that this Bill purports to give them—and that will be true of almost all the rights that this Bill purports to give—if there is no lease renewal or if they are threatened with non-lease renewal, and that happens regularly. In response to the Hon. Mr Lawson, I am not relying upon the advice of just the peak organisations: I have spoken, as I said, to hundreds of retailers, and it is not an uncommon occurrence. There are many good landlords, but there are a couple of real mongrels, and they are destroying people's businesses and their families, and I should have thought that any reasonable and honest person would not have a bar of that sort of behaviour and would look to do what could reasonably be done about it.

The Hon. CAROLYN PICKLES: The Opposition supports the principle of protection. As the Hon. Mr Elliott has indicated, he is prepared to look at some wording. I think that some points have been raised in the debate which indicate that I would support some kind of an amendment that the Hon. Mr Elliott might consider. But, I think that at this stage we intend to support the amendment to facilitate a reworking of the wording of this clause.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

Consideration in Committee.

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

That the Legislative Council do not insist on its disagreement to the House of Assembly's amendments.

I expect that by the weight of numbers the motion will not be carried and we will then proceed toward a deadlock conference. I do not intend to divide on the issue, as I think the numbers are well identified.

The Hon. CAROLYN PICKLES: On behalf of the Hon. Anne Levy, I inform the Committee that we do not support the motion.

Motion negatived.

SECOND-HAND VEHICLE DEALERS BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

Consideration in Committee.

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

That the Legislative Council do not insist on its disagreement to the House of Assembly's amendments.

This is for the same reason as indicated previously.

The Hon. CAROLYN PICKLES: The Opposition insists on the disagreement.

Motion negatived.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons. K.T. Griffin, Sandra Kanck, R.D. Lawson, Anne Levy and Barbara Wiese.

RETAIL SHOP LEASES BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1304.)

Clause 44 passed.

Clause 45—'Premium for renewal or extension prohibited.'

The Hon. M.J. ELLIOTT: I seek leave to withdraw my amendment. It is identical to an amendment that I lost earlier, and there does not seem to be much point in protracting the debate and giving time for some people to come back to rejoin the debate on other clauses.

Clause passed.

Clauses 46 to 50 passed.

Clause 51—'Advertising and promotion expenditure statement to be made available to lessees.'

The Hon. K.T. GRIFFIN: I indicate opposition to this clause, because it is no longer required in the light of the change that is proposed to the time frame that we are proposing to insert in clause 52. I know that is a subsequent amendment, but I will be moving an amendment to clause 52 to leave out 'six months' and insert 'three months'; therefore, we no longer need clause 51.

The Hon. CAROLYN PICKLES: The Opposition opposes the clause.

Clause negatived.

Clause 52—'Lessor to provide auditor's report on advertising and promotion expenditure.'

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

Page 25, line 23—Leave out 'six months' and insert 'three months.'

As I have just indicated, it is a matter of drafting. Industry asked that the time frame set out in clause 29 equate with that set out in clause 52. The Government agrees with the industry's suggestion.

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

Amendment carried; clause as amended passed.

Clause 53 passed.

Clause 54—'Relocation.'

The Hon. M.J. ELLIOTT: The two amendments I have on file with respect to this clause will not be proceeded with because I have another amendment on file which simply leaves out the whole of clause 54 which is consequential on a previous vote where in fact the contents of 54 were moved to 35A.

Clause negatived.

Clauses 55 to 57 passed.

Clause 58—'Trading hours.'

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

Page 27—

Lines 4 & 5—Leave out paragraph (b) and insert:

(b) the lease does not reduce the trading hours for which the shop is permitted to be open for trade to less than 50 hours per week; and

After line 16—

(4) If a retail shop—

(a) is within an enclosed shopping complex; but

(b) public access to the shop is not limited to access through the common area;

the lessee may apply to the lessor for exemption from the provisions of the retail shop lease regulating trading hours.

(5) On receiving a written application for an exemption under subsection (4), the lessor must not unreasonably withhold the exemption (but it may be granted on reasonable conditions).

These amendments have arisen out of a consultation process with industry following the release of the Bill. They provide for a minimum period of 50 hours per week and provide flexibility for retail shops operating as chicken shops, pizza bars, video shops, for example, to negotiate with their landlord in relation to their operating hours. Clause 58 deals with the issue of trading hours and this fine tunes the arrangement which has been agreed between all sectors of industry.

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

Amendments carried; clause as amended passed.

Clause 59 passed.

Clauses 60 to 64.

The Hon. K.T. GRIFFIN: I am proposing that we oppose these clauses and I am proposing to insert new clauses. As it stands, this provision makes the Registrar responsible for the mediation of disputes and gives the Registrar the power to intervene in proceedings before the tribunal. This provision having been reviewed, it was considered to be more appropriate and in keeping with the Government philosophy of litigation being an option of last resort that the power to mediate disputes be a function of the Commissioner for Consumer Affairs and not the Registrar. It was also deemed more appropriate that the Commissioner and not the Registrar should have the power to intervene in proceedings. I am advised that it is the intention of the Government therefore to replace all references to the word 'Registrar' that appear in these clauses and replace them with references to the 'Commissioner for Consumer Affairs'. I indicate opposition to clauses 60 to 64 and move:

Insert new clauses as follows:

Responsibility of the Commissioner to arrange for mediation of disputes

60. The Commissioner is responsible for making arrangements to facilitate the resolution of disputes between parties (or former parties) to retail shop leases.

Mediation of dispute

61. (1) A party (or former party) to a retail shop lease may apply to the Commissioner for mediation of a dispute arising from, or related to, the lease.

(2) A fee prescribed by regulation is payable on an application under this section.

Stay of proceedings

62. (1) If a dispute between parties (or former parties) to a retail shop lease is the subject of proceedings before the Tribunal or a court, the Tribunal or court may refer the dispute to the Commissioner for mediation under this Division.

(2) The Tribunal or court may stay the proceedings while an attempt is made to settle the dispute by mediation.

Statements made in the course of mediation proceedings

63. Evidence of admissions or statements made in the course of the mediation of a dispute under this Division is not admissible in evidence before the Tribunal or a court.

DIVISION 1a—INTERVENTION

Power to intervene

64. (1) The Commissioner may intervene in proceedings before the Tribunal or a court concerning a dispute about a retail shop lease or rights or obligations under a retail shop lease.

(2) If the Commissioner intervenes in proceedings the Commissioner becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

Clause 60 negatived; new clause 60 inserted.

Clause 61 negatived; new clause 61 inserted.

Clause 62 negatived; new clause 62 inserted.

Clause 63 negatived; new clause 63 inserted.

Clause 64 negatived; new clause 64 inserted.

Clauses 65 to 69 passed.

New clause 69A—'Industry Advisory Committee.'

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

Page 30, after line 24—Insert new heading and clauses as follows:

PART 9A
INDUSTRY ADVISORY COMMITTEE

Industry advisory committee

69A. (1) The *Industry Advisory Committee* is established.

(2) The Committee consists of—

(a) the Minister or the Minister's nominee (who is to chair the committee); and

(b) three members appointed by the Governor to represent the interests of landlords under retail shop leases; and

(c) three members appointed by the Governor to represent the interests of tenants under retail shop leases.

(3) A member appointed by the Governor is to be appointed for a term (not exceeding three years) and on conditions specified in the instrument of appointment.

In discussions with representatives of various retail organisations, they have really appreciated the process of sitting around the table with BOMA, in the preparation of the legislation, and I understand that, with their having had discussions with the Minister, the Minister may at least have been prepared informally to have some sort of structure like that on an ongoing basis. The retail organisations were rather keen for that process to be recognised within the legislation, although as I hope people will see by way of my amendments that I have on file, with a fair degree of informality.

I am simply proposing that there be an advisory committee set up under the Act. The Minister or the Minister's nominee would chair the committee. There would be three people representing the interests of landlords and three representing the interests of people who are lessees. If you look at later amendments, you will see that they should meet at least four times a year, and subject to regulations conduct business as appropriate. Its function would be first to keep the administration of the Act under continuous review, report annually to the Minister on the administration and operation of the Act, and to make special reports to the Minister on subjects that, in the committee's opinion, justify a special report or on which the Minister requests a special report.

I do note that the Opposition has some amendments on file which I have no problem in supporting in relation to ensuring, in each case where three members are appointed, at least one be a man and at least one be a woman. That was a bad oversight on my part, and I have no problem in supporting it. I guess my only defence was I was trying to keep the wording as simple as possible—

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: No, not at all. I had simply given some fairly basic instructions and said I wanted to keep the wording simple. When one does that, sometimes you can leave out some very important things. As I said, I do not see this committee being a highly formalised operation but to have such a group meeting on a semi-regular basis, given the reports I have had on how things have proceeded in the preparation of this Bill, would be a very healthy thing.

The Hon. K.T. GRIFFIN: I appreciate the remarks of the Hon. Mr Elliott in relation to the process which I established in relation to the consultation on this Bill. It was probably the first time that a Minister had been able to get all of the groups with differing interests, and sometimes at odds with each other, to sit down and work through some of the issues. My experience has been that if you bring everybody who has an interest together you have a better prospect of getting some resolution. Although we were not 100 per cent successful, we were 95 per cent successful. It was acknowledged that there would be some issues where there would be diametrically opposed points of view. The process was helpful because it

did not always need the Minister or even an officer to be present, because these organisations gave a commitment to each other that they would meet with a view to trying to resolve some of these issues. So, it was a mature approach and I think they need to be complimented on the approach which they have taken. We had the Building Owners and Managers Association, Westfield Shoppingtown, Retailer Traders, Small Retailers, Newsagents Association and Australian Small Business. We actually had more than three representing the interests of landlords and three representing the interests of tenants. I think that was particularly effective.

The only concern I have about formalising it in this way is that it tends to become somewhat more bureaucratic. I know that the honourable member has said that he has tried to keep it as informal as possible, but the fact is that it will be formally constituted and there will be appointment by the Governor for a term. That tends to restrict the various bodies in the sorts of people they can send along. It must meet at least four times in each year. So, if we did not need to meet for six months then there would be an obligation to meet. It has to keep minutes. I must confess that we did not keep minutes of what went on at these meetings, but when there was an agreement on issues that was recorded. It has to report annually to the Minister. It has to report before 31 October and that has to be laid before both Houses of Parliament. I think that that establishes too formal a process and too restrictive a structure, and something which is not necessarily conducive to the sort of discussions that have occurred in the lead up to this Bill.

I can give a commitment to the Council that there will be an ongoing consultation involving all of those groups meeting together with me or my nominee. It may not meet at least four times each year. There will be meetings to discuss regulations and implementation of this, and once we have it in place there will be a monitoring process. I can give a commitment that I will be maintaining that present structure in the process of continuing the development and implementation of the legislation and regulations. I am reluctant to support such a formal structure because I believe that it is too constraining.

The Hon. CAROLYN PICKLES: The Opposition supports the Democrat amendment. As the Hon. Mr Elliott indicated, I have two amendments to the amendment. I move:

Subclause (2)(b)—After 'three members' insert '(at least one being a man and at least one being a woman)'.

Subclause (2)(c)—After 'three members' insert '(at least one being a man and at least one being a woman)'.

These amendments are consistent with Labor Party policy in relation to Government instituted boards, that there must be a gender balance. I am wondering whether we can expect that for some future Bills the Government will do this automatically.

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: I know it is not tokenism.

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: Let us have a reversal at some stage. Let us have a few token men on a few boards and let us see what the Attorney might think about that. It is not tokenism. It was supported by the Hon. Diana Laidlaw previously and I am quite sure she would support it again.

The Hon. R.D. LAWSON: I think there is a need for consultation between landlords and tenants in this field. There is no doubt that the process the Attorney went through was entirely appropriate in the past and he is to be commended for it. I am not sure that one needs to have this 'institutionalisation' of the process which is inherent in these amendments. The need for consultation is highlighted by something that I have just noticed in relation to this Act generally. Section 66A of the Act provides that, if a lease is granted for less than five years, the tenant has an option to go to the landlord and give him a notice, in which case the term will be extended automatically to five years. So, the tenant has that opportunity. However, clause 13 of the Bill, which is apparently forged in this process of consultation, has completely overlooked the interests of tenants emphasising this need for consultation. Under clause 13, if a lease contravenes the Act by not providing for a term of five years, the term is automatically extended to five years.

If a tenant went to his landlord—and this could quite easily happen—and said, 'Look, we will have a lease for two years for this property, I am going overseas, I am only prepared to take it for two years, I only want to be committed for two years,' or if a landlord said, 'I am only prepared to give it to you for two years,' under this new clause the lease would be automatically extended to five years whether the tenant liked it or not. He would be committed and locked in. It seems to me that there is a need for consultation. That is a matter in clause 13 of the Bill which ought to be looked at further before it is enacted, because that is a highly retrograde provision.

The Hon. K.T. GRIFFIN: I note that the honourable member raised this earlier. I must confess that I have overlooked responding to it. All I can suggest is that I will give some further consideration to it over the next week, and if it is a matter from which there should be an amendment we will address that in the House of Assembly. In relation to this issue, industry was not concerned about the extension to five years and thus binding the tenant. It is something I would want to have discussions about, to see whether there needs to be that flexibility built in which is in the present Act. All I can do is undertake that we will examine it over the next few days before the Bill is finally resolved in the House of Assembly. I do not object to the Hon. Carolyn Pickles' amendment: I accept it. But I hardly think it is necessary with the sort of focus that both Government and Opposition are now placing on the desirability and pursuit of getting women on to boards and committees in Government or created under statute.

Amendments to new clause carried; new clause as amended inserted.

Progress reported; Committee to sit again.

LOTTERY AND GAMING (MISCELLANEOUS) AMENDMENT BILL

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

CORPORATIONS (SOUTH AUSTRALIA) (JURISDICTION) AMENDMENT BILL

Returned from the House of Assembly without amendment.

THOMAS HUTCHINSON TRUST AND RELATED TRUSTS (WINDING UP) BILL

Returned from the House of Assembly without amendment.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL AND SECOND-HAND VEHICLE DEALERS BILL

A message was received from the House of Assembly agreeing to a conference, to be held in the second floor conference room at 10 a.m. on Tuesday 28 February.

RETAIL SHOP LEASES BILL

In Committee (resumed on motion).

(Continued from page 1306.)

New clause 69B—'Procedures of the Industry Advisory Committee.'

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

Page 13—Insert new clause as follows:

69B. (1) The committee must meet at least four times in each year.

(2) The committee may, subject to the regulations, conduct its business as it considers appropriate.

(3) The committee must keep minutes of its proceedings.

This is a consequential new clause.

New clause inserted.

New clause 69C—'Functions of the Industry Advisory Committee.'

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

Page 30—Insert new clause as follows:

69C. (1) The functions of the Industry Advisory Committee are to—

(a) keep the administration of this Act under continuous review; and

(b) report annually to the Minister on the administration and operation of this Act; and

(c) make special reports to the Minister on subjects that, in the committee's opinion, justify a special report, or on which the Minister requests a special report.

(2) The committee's annual report must be given to the Minister on or before 31 October in each year and must relate to the previous financial year.

(3) The Minister must, within 12 sitting days after receiving the committee's annual report, have copies of the report laid before both Houses of Parliament.

Again, this is consequential.

New clause inserted.

New clause 69D—'Special provision for sub-leases.'

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

Page 31, after line 3—Insert new clause as follows:

69D. (1) If a retail shop lease is a sub-lease, the following provisions apply—

(a) the lessee is, if authorised by the tribunal, entitled to exercise rights of the head lessee under the head lease; and

(b) if the head lessor becomes entitled to possession of the retail shop as against a head lessee, a court before which proceedings for possession of the premises are brought, or the tribunal, may, on application by an interested person, vest the retail shop lease in the head lessor so that the lessee under the retail shop lease holds the shop directly from the head lessor.

(2) An authorisation or vesting order under this section may be made on terms and conditions the court or tribunal considers just.

The principal reason for moving this new clause relates to franchise operations, but it can apply more generally. My concern was that a person may not be the direct lessee of particular retail premises, and in most franchise arrangements the franchisee is not the direct lessee; the franchisor is. I am not sure whether this has happened in South Australia yet, so it is hypothetical, but it is only a matter of time before it happens. If the franchisor gets into serious financial difficulty and does not pay the rent and defaults on the lease requirements, where does that leave a sub-lessee in regard to their entitlement because their lease is not directly with the owner of the building but is with an intermediary? What I am proposing is that the sub-lessee or franchisee should be able to take over the responsibilities that the intermediary previously had.

The Hon. K.T. GRIFFIN: This will no longer apply to franchising because the Hon. Mr Elliott's amendments relating to franchise agreements were not carried.

The Hon. M.J. Elliott: The word 'franchise' was mentioned.

The Hon. K.T. GRIFFIN: It is no longer relevant to that, but it is relevant to sub-leases. The Government's intention was to allow some protection for sub-lessees. The definition of 'lessor' and of 'lessee' includes the sub-lessor and sub-lessee. Whilst we have not made a final decision on the matter, at this stage I will not oppose it, but I want to keep open the opportunity to give further consideration to this issue.

The Hon. CAROLYN PICKLES: As previously indicated, when debating the other new clause, the Opposition will be supporting this new clause and new clause 69E. We think they are sensible provisions.

New clause inserted.

New clause 69E—'Special provision about franchises.'

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

Page 31, after line 3—Insert new clause as follows:

69E. (1) If a franchise agreement incorporates a retail shop lease as part of the franchise agreement, the lease must be clearly segregated from the other provisions of the agreement.

(2) A provision of an agreement that treats, or allows a franchisor to treat, a breach of a franchise provision as a breach of a retail shop lease provision, or a breach of a retail shop lease provision as a breach of a franchise provision, is void.

A franchise provision is a provision that properly relates to a franchise.

A retail shop lease provision is a provision that properly relates to a retail shop lease.

This clause is not consequential on others in relation to franchises. I may have lost other amendments in relation to franchise operations, but this is not consequential and should not be treated as such. Some franchisees have to arrange their own leases directly with the landlord, and in other cases the franchisor takes out the lease and sublets. Where a franchisor is not only allowing a person to operate in a particular form of business but is also providing the premises, at least as an intermediary with the landlord, I believe that it is sensible and would give some protection to franchisees if the franchise agreement was clearly segregated from the lease.

As I have said in relation to other amendments, at least as regards leases, I want to make sure that franchisees have the same protection as other retailers. This is not a consequential amendment, although it confronts similar issues. I do not think that it is an unreasonable or burdensome requirement that matters relating to the lease should be segregated from the rest of the franchise agreement so that added protection is provided for the franchisee.

The Hon. K.T. GRIFFIN: I acknowledge that my initial reaction, that it was consequential on the earlier provisions

that the honourable member has lost, is not correct, although there is a relationship between the two. I indicated that we have taken the view, and the advice I have, is that the franchise should not be in any way affected adversely or positively by this Bill. All I can say about this is that, whilst presently I indicate opposition to it, recognising where the numbers are, the issue of franchises and subleases is something that I will look at again in light of the debate and I will give some further consideration to it. Most likely, this is an issue that will be discussed at some later time, in any event.

The Hon. R.D. LAWSON: It seems to me that this clause, although the sentiment behind it might be worthy, is one that will have no effect in practice, because it simply will mean that the draughtsman of the franchise agreement that is granted in connection with the retail shop lease, and who is by this provision obliged to segregate the provisions between the two agreements, will actually simply incorporate all conditions in both agreements and, thereby, the objective sought to be achieved in subclause (2), namely, to prevent a breach of the franchise provision being made a breach of a retail shop lease, will be avoided. In other words, if the franchise provision is to sell hot dogs of a certain brand, that will appear as a condition of the franchise agreement and will also appear as a term of the retail shop lease agreement, and failure to do so will constitute a breach of both. So, it seems to me that this provision will not confer any benefits on either franchisees or tenants.

New clause inserted.

Clauses 70 to 74 passed.

Clause 75—'Amendment of the Landlord and Tenant Act.'

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

Page 33, lines 20 to 28—Leave out subclauses (2) and (3) and insert—

(2) This Act applies (subject to exclusions and modification prescribed by regulation) to a retail shop lease entered into before the commencement of this Act.

(3) If a retail shop lease was entered into before the commencement of this Act—

(a) a right to renew or extend the term of the lease cannot be exercised after the commencement of this Act; but

(b) such a right will be construed as a right to a new lease (to be entered into in accordance with this Act) on the same terms as if the right of renewal or extension had been exercised.

During the second reading debate I raised the issue of timing, and I think that perhaps the Government would not have too many problems with what I propose, because it will be able, by regulation, to choose the timing for various provisions under this Act. I am making it possible for some backdating, but what backdating occurs will ultimately be in the Government's hands.

The Hon. K.T. GRIFFIN: I oppose the amendment. I did indicate that it is the Government's intention that the former legislation will continue to apply to leases entered into before the date of proclamation subject, however, to modifications prescribed by regulation. Industry generally agrees—with some reservations—that commercial arrangements currently in place between lessors and lessees that were freely entered into between the parties should be untouched by the provisions of the new Act. So, the proposals by some members are out of kilter with that agreed position.

We are, as I indicated earlier in the debate, having discussions with industry at the present time to determine exactly what provisions in this Bill will be applied to existing agreements. As I have indicated already, one example will be a provision to bring existing tenancies under the new regime for settling disputes. It may be, of course, that records of outgoings, auditors' statements and a whole range of matters will apply, but the commercial arrangements are arrangements which should not be affected.

The honourable member seeks to turn around the provision, seeking to apply everything except those which are excluded by regulation. We say nothing applies in the former legislation except where it has been prescribed by regulation. Of course, what the honourable member does in his amendment is negate that in his proposed subclause (3), which overrides the existing tenancy agreements in respect of rights to renew, so that, in every respect, the new legislation will not apply, as I understand it, to that existing tenancy agreement in so far as it relates to the right of renewal.

The Hon. M.J. ELLIOTT: I am not sure that my motion made it clear that I have treated this in two parts because there are some quite different ideas and concepts in my proposed clauses 75(2) and 75(3). Clause 75(2) relates to issues as to when the Act comes into effect. Clause 75(3) covers some other issues. The effect of what I am trying to achieve in clause 75(3) is that it should have the effect of applying all provisions of the Act at the time of exercising an option to renew in, say, a five and five-year lease arrangement. Where there is a five and five-year arrangement at the time that renewal is due to occur, the renewal would have to occur in accordance with this Act and not with the old legislation. As I said, that is a different concept. The Government may or may not agree with it, but with your guidance, Mr Chairman, I would like to put those as two separate questions.

The CHAIRMAN: Yes, it is accepted that way.

The Hon. A.J. REDFORD: In my second reading speech I challenged the Hon. Michael Elliott to justify this issue of retrospectivity. Indeed, I asked him if he could produce some hard evidence as to why retrospectivity is required in this particular matter. I note in his contribution on this clause to date he has not provided any such information, and I renew that invitation.

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

The Hon. M.J. ELLIOTT: Thank God we have the Hon. Angus Redford because, frankly, I had been short of things to do in the past 36 hours or so, and it gave me an opportunity to rush out immediately and start compiling that list of names! I had told him that I had those reports. He can make up his own mind about whether or not I was lying to him. In the time available, I have not had the chance to go back on that. The honourable member wanted to raise the matter again, so I am responding. I simply have not had the time, and I have reported to this place what has been reported to me first hand and not on hearsay.

Amendment carried.

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

Page 33, after line 28—Insert—

(4) The fund established under the former legislation is dissolved and the money constituting that fund at the commencement of this Act is incorporated in the fund established under this Act.

(5) References in the former legislation to the fund established under that legislation are to be construed (so far as the relevant provisions give rights or impose obligations on parties to leases) as references to the fund under this Act.

This is essentially drafting to clarify the position of the fund at the time of proclamation of the new Act.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; clause as amended passed.

New clause 76—'Amendment of Commercial Tribunal Act.'

The Hon. CAROLYN PICKLES: I move:

Page 33, after line 28—Insert new clause as follows:

76. The schedule of the Commercial Tribunal Act 1982 is amended—

(a) by striking out clause 1 and substituting the following clause:

1. In this schedule—

'retail shop lease' means a retail shop lease within the meaning of the Retail Shop Leases Act 1994.;

(b) by striking out from clause 2(1) 'Part IV of the Landlord and Tenant Act 1936' and substituting 'the Retail Shop Leases Act 1994';

(c) by striking out from clause 3(1)(a) 'landlords under commercial tenancy agreements' and substituting 'lessors under retail shop leases';

(d) by striking out from clause 3(1)(b) 'tenants under commercial tenancy agreements' and substituting 'lessees under retail shop leases'.

This is consequential upon our amendment at the outset to have disputes under the Act dealt with by the Commercial Tribunal. A consequential amendment is required to ensure that the tribunal has a jurisdiction which it presently has with respect to commercial tenancy agreements.

The Hon. K.T. GRIFFIN: I recollect having lost the debate on this, but we will revisit it at a later stage.

The Hon. M.J. ELLIOTT: This issue was raised at the beginning of the debate in Committee and I said that on recommittal we may take a different position because of the interaction with some other pieces of legislation currently before both Chambers.

New clause inserted.

Schedule.

The Hon. R.D. LAWSON: The schedule contains a list of outgoings to be paid by the lessee. This is the disclosure statement to be given to a lessee prior to entering into the agreement. Line 10 contains provision for the payment of land tax as one of the outgoings. However, clause 26 of the Bill prevents a landlord under a retail shop lease from requiring a lessee to pay land tax or to reimburse the landlord for the payment of land tax. It seems to be anomalous that a form of this kind includes a provision for something that is not chargeable.

The Hon. K.T. GRIFFIN: I think that is right. Everyone has given attention to the substance of the Bill and not looked at the schedules which, very largely, have come from the New South Wales legislation. I had hoped that we would pass the Bill so that it could be considered by the other place. However, the House of Assembly is not sitting and, in any event, the Hon. Michael Elliott and the Hon. Carolyn Pickles have indicated that they would like to reconsider certain matters. The Hon. Michael Elliott has just indicated again his position in relation to the Commercial Tribunal. For that reason I think that this is probably an appropriate time to report progress. I will have the matter investigated.

Progress reported; Committee to sit again.

ADJOURNMENT

At 5.57 p.m. the Council adjourned until Tuesday 7 March at 2.15 p.m.