LEGISLATIVE COUNCIL

Tuesday 11 April 1995

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

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the sitting of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

MINING (NATIVE TITLE) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the sitting of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on the Notice Paper be distributed and printed in *Hansard*: Nos 135, 138, 139, 146, 148 and 154.

MARION CORRIDOR

135. **The Hon. CAROLYN PICKLES:**

1. Can the Minister name which schools in the 'Marion corridor' are currently being reviewed to determine whether they will be amalgamated or closed?

2. Which other schools in South Australia are currently being reviewed?

3. Who are conducting these reviews?

The Hon. R.I. LUCAS: All schools in South Australia are kept under general review for significant enrolment decline and possible rationalisation. As well as the Marion Road Corridor Project, there are a number of other reviews currently in progress. However, to describe the outcomes of these reviews as being amalgamations or closures is oversimplifying the schools' restructure process. There are three main purposes of school restructuring in South Australia.

The first purpose of school restructuring is to improve the educational outcomes for all students in city and country State Government schools.

This means maximising curriculum offerings and subject choice through better access to a wider range of learning technologies and resources.

The second purpose is to ensure that existing and future resources and facilities will have the capacity to be used more effectively. This means ensuring cost effective use of facilities and includes rationalisation and disposal of surplus buildings and properties not required for the core business of the Department for Education and Children's Services.

Thirdly, school restructuring provides the opportunity for creating and establishing new schools and structures such as senior colleges, joint venture programs with developers and non-Government school authorities and the development of close educational, administrative and organisational relationships with institutes of technical and further education.

This is the context in which the current process of school restructuring operates.

The Marion Road Corridor Project involves Sturt, South Road, Marion and Clovelly Park primary schools. (Clovelly Park Primary School was formed at the end of 1994 through the amalgamation of Mitchell Park and Tonsley Park primary schools on the Mitchell Park campus.)

The review into these schools is not simply a matter of determining which schools will be amalgamated or closed, but rather a review of ways in which the educational outcomes for students in this district can be improved.

This review may recommend closures or amalgamations when its report is completed in term 3 1995. However, at the moment the review team is in the process of exploring a number of structures to maximise curriculum offerings and subject choice.

A number of reviews are currently in progress and, in the main, these reviews are focused around districts to meet the purposes described earlier.

Terms of reference for the following reviews have been approved:

- Southern Fleurieu Cluster

  This involves Victor Harbor High School, Mt Compass and Yankalilla area schools, Rapid Bay, Myponga, Goolwa, Victor Harbor Junior Primary and Primary Schools and Willunga High School.

  The resourcing implications of the recommendations from the review committee are under examination.
- Christies Beach High School

  A review has been completed which proposes vacating the west campus of Christies Beach High School and consolidating on the east campus. The educational brief for this proposal is under consideration by DECS officers.
- Eastern Fleurieu Cluster

  This involves Strathalbyn Primary and High Schools, Ashbourne, Milang and Langhorne Creek Primary Schools.

  The report and recommendations are under consideration by officers of the Department for Education and Children's Services.
- Clare Schools Restructure Project

  This project commenced as a response to resolving above capacity enrolments at Clare Primary School. A number of options for education delivery in the Clare district are under consideration by the review team. While the schools immediately outside the Clare township are not under review, they are involved in the consultation process to ensure that any proposed recommendations can be fully assessed for their potential impact on outlying schools.
- Jamestown

  This review, which is about to commence, involves Jamestown Primary and High Schools.
- Enfield, Nailsworth, Northfield High Schools

  Current primary school enrolment information indicates sufficient Year 8 enrolments to support only two secondary schools in this immediate district.

  The relocation of the Secondary Language Centre is also a part of this project.
- Inner City Schools

  This review involves Gilles Street, Parkside and Sturt Street Primary Schools.
- Girls Only Primary School

  A review into the provision of a girls only primary school will be established near the end of term 1, 1995. This review will also investigate the feasibility of establishing a middle school at Mitcham Girls' High School with years 6 and 7 students.

  For all of the above reviews a formal review committee has been established. While each committee is different, according to its terms of reference and local conditions, the following membership is characteristic of review committees in general:
- representatives of schools (including CSO staff if an existing children's services or CPC is located on the campus);
- local communities;
- local Government;
- Government departments and agencies;
- relevant unions.

  The District Superintendent of Education is responsible for the establishment and management of the review team.

NATIONAL HIGHWAY

138. **The Hon. R.R. ROBERTS:**

1. Is the State Government responsible for making the final decision in relation to the re-routing of National Highway One at Port Wakefield?

2. When will construction of the re-routing begin?

3. Who will be responsible for project design and management?

4. What is the estimated cost of the project and what is the South Australian Government's contribution?

The Hon. DIANA LAIDLAW:

1. The Federal Government is responsible for funding improvements to the National Highway. In relation to the National Highway through Port Wakefield, the South Australian Department of Transport has recently engaged consultants to investigate and prepare recommendations on both the need for this section of the National Highway to be improved, and the nature of any such improvements. The State Government will of course be involved in the key decisions about this project, prior to forwarding a submission to the Federal Minister for Transport seeking the necessary funds for the construction of any works. The situation is that the State Government will make recommendations to, and negotiate with, the Federal Government about the nature of any upgrading. However, the Federal Government will make the final decisions regarding funding for this proposal.

2. The timing of any necessary construction works on the National Highway in the Port Wakefield area will depend upon the provision of the necessary funding by the Federal Government. It is hoped that work can commence in early 1998.

3. The State Department of Transport will be responsible for the management of the delivery of this proposal.

4. While it is not possible to give an accurate estimate of the likely cost of this project, as alternative schemes are yet to be developed in sufficient detail, it is expected that the project will cost around $10 million. Although all funds for works associated with the maintenance and improvement of the National Highway are the responsibility of the Federal Government, depending on the final upgrading proposal, a small State Government contribution may be required.

JOB CUTS

139. **The Hon. BARBARA WIESE:**

1. Was the Government's plan to cut 1 300 jobs from the Department of Transport subjected to a Family Impact Statement?

2. If so, what were its conclusions?

3. If not, why not?

The Hon. DIANA LAIDLAW:

1. Prior to undertaking the strategic review of the Department of Transport's future role and function, neither the Government nor the department had any plan to cut any specific number of jobs, a fact confirmed by the four options presented for consideration.

As the honourable member received a copy of the 'Strategic Shift' document on 21 February she would be aware that no formal family impact statement was incorporated in the material prepared by the department.

Also, from a perusal of the document, the honourable member should appreciate that the figure of 1 300 jobs (option 2) is an assumption based on the best information available at the time. The actual number, and the locality, of the jobs in question will be confirmed once the department has gone through the process of tendering for specific jobs on an open tender basis.

2. Not applicable.

3. One of the issues that the department was required to take into account in the preparation of the 'Strategic Shift' document was the social and economic impact of outsourcing and/or competitive tendering of functions on rural and regional communities.

This requirement accounts for the decision to retain road maintenance and construction work undertaken in the Far North and the Far West of the State as an internally managed function. In part, it also accounts for the decision to confine the contracting out of motor vehicle registration functions to the head office, not regional offices.

In relation to the department's mechanical and plant functions, it was recognised that there would be a job arising from outsourcing as the business and the jobs will be transferred to private sector providers of the service.

In the meantime, the Department of Transport has adopted a communications and human resources strategy which will assist employees and their families address the proposed changes during the two year implementation phase of the 'Strategic Shift' document.

TAXIS

146. **The Hon. BARBARA WIESE:**

1. Which of the recommendations contained in the review of the Metropolitan Taxi Cab Industry Research and Development Fund by Dr Ian Radbone (dated 25 August 1993) were adopted by the Government in restructuring the fund and its administration?

2. What are the administrative arrangements for the fund, including the composition of the body with decision-making power?

3. What are the guidelines or terms of reference for the assessment of applications and distribution of moneys from the fund?

4. How many applications for funding were received during the year ended 30 June 1994?

5. How many applications for funding were successful, to whom and for what projects were funds granted and what was the value of each project?

6. How many applications for funding have been received since 1 July 1994.

7. How many applications for funding were successful, to whom and for what projects were funds granted and what was the value of each project?

The Hon. DIANA LAIDLAW: 1. Dr Radbone highlighted the administrative problems associated with the operation of the fund due to a proliferation of regulatory agencies—problems which the Government addressed with the abolition of the Office of Transport Policy and Planning in January 1994 and the repeal of the Metropolitan Taxi Cab Act on 1 July 1994. The administration of the fund is now vested with the Minister for Transport in consultation with the Passenger Transport Board.

The Passenger Transport Act also broadens the criteria for the application of funds, so that the fund can now be used for the passenger transport industry as well as the taxi cab industry throughout South Australia.

Dr Radbone also recommended that:

- the fund have a five year budget indicating a strategic direction;
- a research and development officer be appointed;
- administration grants to eligible organisations continue; and
- the Minister not be confined by a need to maintain the corpus of the fund.

Taking each recommendation in turn:

- the fund now has an annual budget ($600 000);
- a research and development officer has not been appointed, but each successful application to the fund has a project officer appointed to administer and project manage the proposal;
- administration grants to eligible organisations have continued; and
- in setting an annual budget, the Minister is no longer confined by a need to maintain the corpus of the fund.

The remainder of Dr Radbone's recommendations are being considered by me in consultation with the board in order to further improve the administration of the fund.

2. Section 62 of the Passenger Transport Act, 1994 states that the Minister is responsible for the administration of the fund in consultation with the board. In order to facilitate this process the board is currently developing a set of guidelines to assess applications and to improve the administration of the fund.

3. (See above.)

4. During the year ended 30 June 1994 10 applications were received.

5. Of the 10 applications received, eight were granted funds. The successful projects were:

Title:	Survey of the Hills Area
Applicant:	Metropolitan Taxi Cab Board
Amount:	$7 400
Title:	Implementation of Code of Practice
Applicant:	South Australian Taxi Association (SATA)
Amount	$8 000
Title:	Carry out Independent Evaluation of Taxi Cab Age Limit
Applicant:	Office of Transport Policy and Planning
Amount:	$17 500
Title:	Evaluation of Promotion of Taxi Industry
Applicant:	Taxi Talk Back User Group
Amount:	$2 800
Title:	Drink Don't Drive Campaign (over Easter Period)
Applicant:	Taxi Talk Back User Group
Amount:	$9 643.25
Title:	Drink Drive Advertising Campaign
Applicant:	Taxi Talk Back User Group
Amount:	$9 970
Title:	Administration Grant
Applicant:	South Australian Taxi Association
Amount:	$35 800

Title: Promotion of Taxi Industry
Applicant: Taxi Talk Back User Group
Amount: $150 00.

6. During the year commencing 1 July 1995, 14 applications have been received.

7. Of these applications, one has been rejected, three are still in the process of being decided, and 10 have been approved:

Title: Research Project
Applicant: Transport Systems Centre
Amount: $65 000
Title: Promotional and Information Brochures
Applicant: South Australian Taxi Association
Amount: $18 423.30
Title: Indicator Light for Casino Rank
Applicant: South Australian Taxi Association
Amount: $1 000
Title: Establish full time office for Licensed Chauffeured Vehicle Association
Applicant: Licensed Chauffeured Vehicle Association
Amount: $60 000
Title: Torrens Valley Brokerage Scheme
Applicant: Torrens Valley Network Inc
Amount: $9 992
Title: Taxi Advertising Campaign
Applicant: Taxi Industry Advisory Panel
Amount: $165 000
Title: On-Road Audits
Applicant: The Marketing Centre
Amount: $85 000
Title: Dubbing and Labelling of 300 VHS Video Tapes of 'Take a Taxi' Project
Applicant: Taxi Talk Back User Group
Amount: $1 200
Title: On-Road Audit (Trial)
Applicant: Metropolitan Taxi Cab Board
Amount: $28 200
Title: Southern Region Transport Review
Applicant: Alan Wayte
Amount: $15 000

ECONOMIC DEVELOPMENT ADVISORY BOARD

148. **The Hon. R.R. ROBERTS:** What are the names of the members of the Economic Development Advisory Board and what remuneration and allowances do they receive?

The Hon. R.I. LUCAS: The Economic Development Advisory Board was renamed the South Australian Development Council in October 1994.

Current members of the council are:
Mr I.E. Webber, AO, Chairman
Mr R.H. Allert, Deputy Chairman
Mr R. Gerard
Dr D. Williams, AO
*Mr B. Croser
Dr R.J. Blandy (CEO)
Mr R. Champion de Crespigny
Mr J.R. Thomas, AO
Mr M. Crotti
Ms H. Nankivell
Mrs P. Crook

The Chairman of the council receives an annual fee of $30 000 and the members receive $20 000 per annum. Dr Blandy is not remunerated as part of the council but is engaged as a Government employee on contract. No other allowances are received by the council of its members.

* Note: Mr Croser has stood aside from the SADC for the duration of the Industry Commission Inquiry into the wine industry.

ARTS GRANTS

154. **The Hon. ANNE LEVY:** In the last round of project grants in the arts (for January-July 1995) awarded by the Government—

1. How many applications were received from men and how many from women?

2. How many grants were awarded to men and how many to women?

3. What was the average grant (in dollars) awarded to men and the average grant awarded to women?

4. What was the variance of the grants awarded to men and the variance of the grants awarded to women?

The Hon. DIANA LAIDLAW:

1. Out of a total number of 205 applications received, 93 were received from organisations and 112 from individuals. The breakdown of the 112 applications received from individuals is as follows—56 applications from men and 56 from women.

2. Out of a total number of 80 grants awarded, 37 grants were awarded to organisations and 43 to individuals with 21 grants awarded to men and 22 to women.

3. The average grant awarded to men was $3 616 and the average grant awarded to women was $2 628.

4. The success rate (variance) of the grants awarded to men was 37.5 per cent and the success rate (variance) of grants awarded to women was 39 per cent.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Education and Children's Services (Hon. R. I. Lucas)—

Lifeplan Community Services—Registered General Laws—29/3/95.
Lifeplan Community Services—Registered General Laws—31/3/95.
Manchester Unit Friendly Society—Registered General Laws.

By the Attorney-General (Hon. K. T. Griffin)—

Citrus Board of South Australia—South Australian Twenty-Ninth Annual Report.
South Australian Research and Development Institute—Report, 1993-94.

MOUNT GAMBIER PRISON

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a copy of a ministerial statement made by the Minister for Correctional Services in another place in respect of private management of Mt Gambier Prison.

Leave granted.

ENTERPRISE INVESTMENTS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Treasurer today in another place on the subject of Enterprise Investments Limited Group.

Leave granted.

QUESTION TIME

BASIC SKILLS TESTING

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 basic skills tests.

Leave granted.

The Hon. CAROLYN PICKLES: There is a debate among teachers and parents on the introduction of basic skills tests. This would be enhanced if we knew any of the results of last year's trials. Teachers are planning to boycott the tests scheduled for August this year, while the Minister appears adamant that they will proceed. I would like to refer the Minister to questions I asked on 29 and 30 November last year concerning the level of difficulty of the trial tests conducted in 41 schools last year and the results of that trial.

On 14 March this year, the Minister responded by advising that a report detailing the findings of observers to the trials was still being prepared for his department—seven months after the event. The Minister also revealed that a joint DECS/Flinders University task group has been formed belatedly to survey teachers, parents, students and principals about their reaction to the trial testing. They are also going to prepare a report for the Minister's department. There was no mention of any such task force in November and the assessment of these tests seems to be made up as it goes along. The Minister has not answered questions about how test results were interpreted by New South Wales authorities or what the cost will be of the Statewide tests this year—that is in response to questions I asked last year. My questions to the Minister are:

1. Why has the Minister decided to proceed with Statewide tests this year before receiving reports from his department on last year's trials?

2. Will the Minister release all the results of last year's trials and how much will Statewide tests cost?

The Hon. R.I. LUCAS: There is a simple answer to the first question from the honourable member: the valuations done with the pilot were not to determine whether or not we would proceed with testing—that is a given. It is a Government policy: it was announced prior to the election: it will be implemented. The trials were basically conducted in effect to inform us as to any potential problems and to assist in the implementation of the basic skills tests. There was no question of our not proceeding with the basic skills testing: that is Government policy and has been Liberal Party policy for many years. Educators, teachers, parents and principals alike all know that basic skills testing will be implemented under this Government. We decided to conduct the trial in the first year in a small number of schools so that if there were any bugs in the system we could winkle them out. I believe that the full-scale testing for all year three and year five students will commence on 16 August this year.

In relation to the analysis of the survey result of parents, for example, I have made public statements and also statements in this Parliament that there has been overwhelming support from parents for the introduction of basic skills testing. Parents want, and in fact are demanding, more information on literacy and numeracy. I am surprised that the Labor Party and the Institute of Teachers are the only negative influences in this whole debate standing out against a reform that the overwhelming majority of parents want. I understand that the peak parent body in South Australia, SAASSO, has issued a press statement in the past 24 or 48 hours indicating full support for the introduction of basic skills testing. That is the simple answer to the first question in relation to the evaluation and the pilot: it was not a question of whether or not we were going to proceed. It really is a question of ensuring that if there are any concerns we will try, as best we can, to work them out. The bottom line is that, irrespective of what we do, we will never satisfy either the Labor Opposition in this State or the Institute of Teachers on the issue of basic skills testing.

In relation to cost, as I have indicated before to the honourable member, the ballpark figure is about $10 a head for students. With 30 000 students the test costs will be about $300 000. There will obviously also be administration and salary costs over and above that. Claims have been made by the Institute of Teachers and others that this will cost $2.5 million. That claim was repeated yesterday at one of my regular meetings with the Institute of Teachers on a range of issues. One of the issues raised was that of basic skills testing. It was indicated that the institute believed it would cost $2.5 million.

I have indicated on the public record previously and again today that it is nowhere near that sum of money. The reason why we negotiated the arrangement with the New South Wales Government was to reduce the cost of the testing, in order to spend more money on assisting those students identified as having learning difficulties. As to the Flinders University report and others, I will take advice on those from the department and either bring back a reply or correspond with the honourable member during the break between this and the next session.

COLLINSVILLE MERINO STUD

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Treasurer a question about the sale of the Collinsville stud.

Leave granted.

The Hon. R.R. ROBERTS: In an extraordinary outburst in the House of Assembly on Wednesday 5 April the Treasurer, under privilege of Parliament, attacked the credibility of Phillip Wickham, a man with whose company the Liberal Government had signed a contract for the sale of the Collinsville stud. Members would be aware that Mr Wickham is the gentleman who put Collinsville on lay by with a $50 cash down payment. In his outburst in the House of Assembly, the Treasurer claimed that Mr Wickham had been bankrupt and said:

> No-one has actually checked to see what sort of character we are dealing with.

I emphasise that. The Treasurer went on to say:

> Mr Wickham has had a very interesting past, quite frankly.

Here the Treasurer is referring to a cheque that Mr Wickham had once signed which had bounced. The Treasurer concluded:

> . . . his background would indicate that he is not a person of particular standing in the community, whether it be in Tasmania, Victoria or South Australia.

It is no wonder that the Treasurer used parliamentary privilege to make these attacks. The Opposition does not know whether Mr Wickham is a person of repute, but it was not the Opposition that signed a $9 million contract with him for the sale of South Australia's premier merino sheep stud based upon a $50 down payment: it was the South Australian Liberal Government. It appears from the Treasurer's comments of last Wednesday that there was no attempt by the Treasurer to ascertain the *bona fides* of Mr Wickham or his company prior to the signing of the $9 million contract. Given that legal action may now be taken by Mr Wickham against the South Australian Government to enforce the contract, this seems an extraordinary oversight and one that may well cost South Australian taxpayers millions of dollars. My questions to the Minister are:

1. Did the Treasurer or anyone from the South Australian Asset Management Corporation make any attempt to ascertain the *bona fides* of Mr Wickham and his company prior to the signing of the contract for the sale of Collinsville on 24 January 1995 and, if not, why not?

2. In future, will the Treasurer investigate the *bona fides* of companies or individuals bidding for assets under the control of the South Australian Asset Management Corporation prior to signing contracts?

3. Does the Treasurer have confidence in the South Australian Asset Management Corporation's ability to manage the sale of assets, including the Remm Myer Centre?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Treasurer and bring back a reply.

UNEMPLOYMENT

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Employment, Training and Further Education a question about the present unemployment problem in South Australia.

Leave granted.

The Hon. M.S. FELEPPA: In an article in the *Advertiser* dated Wednesday 5 April this year, headed up 'SA lagging in national job revival', the following facts were stated:

> Job prospects in South Australia have dimmed, with more employers using casual labour and shunning taking on full-time employees. Fewer than 4 per cent of South Australian firms plan to hire more permanent staff in the next three months, a major survey shows. . . The Labor survey showed South Australia, on 3.9 per cent, had by far the lowest rate of companies intending to take on more permanent staff.

When compared with interstate figures, in my view this figure appears to be somewhat on the low side. Parallel figures in other States are as follows: New South Wales, 36.2 per cent; Western Australia, 31.3 per cent; and Queensland, 15.3 per cent. According to the *Advertiser* report, the Minister for Employment, Training and Further Education (Dr Such), clearly blames the Federal Government's interest rate hikes for the poor South Australian figures. It is against this background that I direct my questions to the Minister, as follows:

1. Is the Minister alarmed at the decline in available permanent jobs in South Australia compared with the situation in New South Wales, Victoria and Queensland?

2. If the apportionment of blame by the Minister is correct, why are the supposed Federal Government interest rate hikes not having the same shattering effect on New South Wales, Victoria and Queensland?

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

ENVIRONMENT STATEMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about a ministerial statement entitled 'A Cleaner South Australia'.

Leave granted.

The Hon. M.J. ELLIOTT: On Sunday, at the Patawalonga the Premier and the Minister for the Environment and Natural Resources released a statement on the environment entitled 'A Cleaner South Australia—Towards 2000 and Beyond.'

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: Yes. In the foreword to this document, the Premier talks about the natural beauty of this State and the enormous responsibility that we have. He says that this statement is a demonstration of the Government's commitment and determination to lead by example—I stress the words 'lead by example'—to ensure a cleaner and protected environment as we move towards the year 2000.

While the cameras at the Patawalonga were filming the Premier as he said this, a sewer main burst at Glenalta in the Hills and, while the Minister was talking about the cleaning up of the Patawalonga, sewage was flowing out of this main, down the road and gutters, and then running through people's yards into creeks in Bellevue Heights. Those creeks run directly into the Patawalonga. Unfortunately, the cameras were too busy filming the Premier as he spoke about leading by example to be there at the creeks. A person who rang me said that she was alerted to the situation by the sound of running water from a stormwater drain which finished at her property and which then became a creek. The sewage coming straight down the creek could be smelt a mile off. The woman rang the EWS and was told that the sewage outflow was caused by a blocked sewer in a nearby street.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Yes. Apparently, the sewage was bubbling up and down the gutter into the culvert, then into her garden, then into a reserve, and ultimately it flowed down through Marion into the Patawalonga. The statement released by the Premier and the Minister concentrates on water quality and touches on a few other issues. Nowhere in the report does it appear to touch on the issue of EPA staffing (I am told that, within two months of opening its doors, the EPA will have its first cut in staff) nor does the report refer to the Liberal Party's promise to business that it would have by far the lowest levies for pollution in Australia—in fact, half that of the eastern States—and levies are the major source of funding for the EPA.

The report manages, in a matter of three paragraphs, to discuss greenhouse issues. Australia is being roundly condemned in Berlin at this very stage because of Australia's lack of commitment to greenhouse. While the report touches on the fact that the Government is getting 100 natural gas buses it fails to address what else is happening to the public transport system at the same time and it makes no commitments in that area. I ask the Minister the following questions:

1. Will the Minister seek an investigation into the sewage incident?

2. What assurances will be given that, in future, sewage will not find its way into our waterways, consistent with the whole idea of water catchment management?

3. Is the Government planning to release a more comprehensive and proper examination of the environmental objectives which have not as yet been covered by the inadequate statement 'a cleaner South Australia'?

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: The question was wide ranging and rambling and seemed to have little focus. With the high profile the honourable member seeks in the environmental area he seemed to be struggling for criticism of the approach and policy that was released last Friday by the Premier and the Minister. I am not too sure, as the Hon. Legh Davis intimated, how the Premier, or even somebody as fantastic as the Hon. Mr Elliott, could stop a sewage pipe getting blocked with the sewage running downhill into an escape which, on this occasion, happened to be a drain.

The Hon. K.T. Griffin: If it's blocked, it's blocked.

The Hon. DIANA LAIDLAW: Yes, I quite agree—if it's blocked, it's blocked. I am not sure what we are meant to do about that. These are events that happen from time to time—not because we wish them to happen. Nevertheless, I will seek answers to the honourable member's questions and bring back a reply.

WINE IMPORTS

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Attorney-General, representing Minister for Primary Industries, a question about French wine imports.

Leave granted.

The Hon. T. CROTHERS: Reports that have come to hand recently have indicated that some of our larger wine companies have recently been importing bulk French wine. It is said that the purpose for these imports has been made necessary by the recent lower than normal Australian grape harvest, and further it is said that the imports at this stage are in relatively small volumes and, therefore, 'not having any effect on the big picture in Australia'. However, other statements made about this matter may leave people wondering if these initial imports are merely the forerunner of larger imports. For instance, in the same article a spokesperson for two of the largest brand name companies in the Australian wine making industry is referred to a follows:

> The spokesperson blamed the shortages on unsuitable weather conditions, higher grape prices and the growing wine market.

Bad weather conditions with respect to the Australian grape harvest are a risk—but a risk that grape growers cannot do much about. Likewise, the third factor, that is, the growing Australian export market for Australian made wines, is another thing which I think we all should welcome and not cavil about whatsoever. We should be going out of our way to assist the industry with respect to doing what it has done so well with exports over the past several years.

Going back to the second factor in the quote, namely, the statement concerning higher grape prices, that could lead to resentment by the thousands of small Australian viticulturists who have played their part in making the enormous rise in Australian wine exports possible. Further, if this significant upward rise in exports is to continue, then, along with other growers, these small growers will have to increase the volume of their vine plantings. Whilst many would consider that the importing of French wine in this season of shortfall is commendable, in respect of ensuring that Australia in general, but South Australia in particular, can continue to operate at a proper level with regard to its overseas export obligations, it has raised some disquiet amongst the vigneron blockers relative to their own product and the price they receive for their Australian grown grapes.

Because of some matters contained in the foregoing statement, I now direct the following question to the Minister for Primary Industries who himself comes from one of Australia's premier winegrowing areas in the South-East of this State. My question to the Minister, through the Attorney is: will the Minister ensure that his department monitors the importing of overseas produced wines into Australia in order that the South Australian grape growers are not disadvantaged in respect of the prices they receive for their grapes; and also to protect their investment, which, in most cases, represents their life's work; and also to ensure that they continue to be encouraged to affect the additional vine plantings which the industry will require if our wine export trade is to continue to flourish?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague, the Minister for Primary Industries in another place and bring back a reply. I must say, just in passing, that I am not sure how that can be effectively monitored, on the basis that the State has no Customs controls. That is the responsibility of the Commonwealth. But it is an issue that the Minister, I am sure, would be pleased to provide a reply to and I will bring it back in due course.

TAXIS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about the taxi industry.

Leave granted.

The Hon. T.G. CAMERON: The taxi industry in Adelaide has had something like five or six inquiries into it in the years between 1980 and 1990. Each inquiry found that there was a shortage of taxi licences operating in the greater Adelaide area. The most wide ranging and professionally conducted investigation was carried out by Travers Morgan. In 1988, Travers Morgan found that there was an immediate need for the issue of 95 licences. Only 45 general taxi licences have been issued since that time. This leaves a shortfall of 50 licences. In addition to the shortfall of 50 licences in the Travers Morgan assessment, the Passenger Transport Board now states that since 1991 there has been growth in the demand for taxis that requires a further 35 licences.

Therefore, in real terms, there is an immediate need for 85 or more licences to service the Adelaide metropolitan area. This ignores the time between 1988 and 1991 when there was also an increase in demand for taxi services. This need and demand is now reflected in the high leasing and licence costs. There is also a secondary argument that the high prices are also a reflection of the protection levels afforded to investing licence holders. The Passenger Transport Board has further entrenched the industry position by adopting as policy the leasing arrangements for licences as they have existed for some time without any assessment of the marketplace or the economic impact of the policy—that comes from the Taxi Industry Advisory Panel document.

Furthermore, the board has shown a desire that the existing inflated values be preserved. The consideration that licences be issued in such a way that 'would lessen any negative impact on the goodwill value for existing licences' demonstrates this. Again, that is taken from the TIAP report. In 1988 the Travers Morgan study of the taxi industry in Australia cast doubt on the ability of the taxi board to operate in the public interest and indicated that it operated in the industry interest. The Passenger Transport Board is clearly still not acting in the public interest by adopting policies of protection put up by the industry to the detriment of the public. I ask the Minister: is it fair to say that the Passenger Transport Board is acting in the interest of the taxi industry?

The leader of the Taxi Board at the time Travers Morgan questioned its competence to act in the public interest was the same person as is leading the Passenger Transport Board today. Should the Minister be looking for a new leader of the board who will guarantee to the public that the public interest will be served as the law requires? Thirdly, certain sections of the taxi industry claim that the Chairman of the board favours concern interests in the industry, namely, Suburban and Yellow Cabs and that many of the policies were introduced for their benefit; for example, the main beneficiary of the leasing policy at the time of its introduction was Yellow Cabs. It benefited at the time to the tune of about $1 million a year. Will the Minister assure us that this is not the case and that only the public interest is being served?

The Hon. DIANA LAIDLAW: Certainly I can provide such an assurance to the honourable member without qualification. The requirements of the Passenger Transport Board as outlined in the Act are very clear. Public interest is the first such issue and the honourable member would be aware, because of earlier questions he has asked about this matter, that it was the Passenger Transport Board in an information paper released earlier this year that canvassed the issue of further licences over a five year period. It proposed 20 licences for the first three years and then, following an assessment of the criteria, that further licences be issued in the last two years of the five year period.

The Passenger Transport Board has now considered all submissions on the taxi licence issue and has forwarded recommendations to me that I am currently considering and will take to Cabinet shortly. In the meantime, I am well aware that there has been a vendetta against the Hon. Michael Wilson for some years now since the former Government chose quite rightly to appoint him to Chair the Metropolitan Taxicab Board. Some people were aggrieved about that appointment as they assumed that they were entitled to that appointment themselves. They have continued to be aggrieved and have not let up in that position since that time. Those views are held by one and possibly a few more people but are not generally held throughout the industry because it is acknowledged widely within the industry that, under Mr Wilson's chairmanship of the Metropolitan Taxicab Board and more recently as Chair of the Passenger Transport Board, some great initiatives have been taken to broaden the service outlook and standards of service provided by the taxi industry in this State.

There were good reasons for some criticism about some of the actions of the old Metropolitan Taxicab Board and for that reason the Government decided to repeal the Metropolitan Taxicab Act last year. Mr Wilson now chairs a new board with new membership and is responsible for an entirely new Act passed by this Parliament. It is a new set up in that sense. I know from discussions I have had with Mr Wilson and other board members and from minutes of meetings I receive that the public interest is foremost in the minds of members of the Passenger Transport Board, whether they are addressing the issue of taxis, accreditation arrangements or contracting out of bus services.

UNCLAIMED MONEYS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Treasurer, a question about unclaimed moneys.

Leave granted.

The Hon. R.D. LAWSON: Supplementary *Gazette* No. 40, published on 3 April 1995, contains 143 pages. This issue of the *Gazette* is wholly devoted to the register of unclaimed moneys held by Santos Limited. The notice is published pursuant to section 4 of the Unclaimed Moneys Act of 1891, which requires every company to publish each year the details of its unclaimed moneys register relating to all unclaimed moneys exceeding $10 in an account that has not been operated on for six years. The sum of $10 mentioned has been in the Act since 1891, there having been no variations whatsoever.

Most of the information in this *Gazette* relates to small amounts owing to United States shareholders. The vast majority of those amounts are less than $100 and, on quick perusal, 90 per cent of them are less than $200. Not all persons named in the register are United States residents. The name of one prominent South Australian appears as the donor of $79 to the South Australian Treasury, but most are American citizens. I am not aware of the circulation of the South Australian Government *Gazette* in the United States, but I doubt that it is a best seller there. My questions to the Treasurer are:

1. What are the costs to the State of publishing supplementary *Gazette* No. 40?

2. Is the Government Printer reimbursed for that cost?

3. Will the Treasurer examine whether it would be appropriate to seek to amend the Unclaimed Moneys Act to relieve companies of the obligation to publish the register entirely or, alternatively, to limit the obligation to amounts exceeding some more appropriate sum, say, $500.

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Treasurer and bring back a reply.

TORRENS BUILDING

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about the Torrens building project.

Leave granted.

The Hon. ANNE LEVY: I am sure many people are aware that the previous Government had proposals for renovating the Torrens building, which is currently unoccupied and in need of renovation, and making it available as a home for many community groups. I was certainly very pleased when the current Government continued discussions relating to this and endorsed the proposals which had been formulated by the previous Government. As we know, nothing has happened yet, but I understand that discussions have been continuing for some time and it was certainly hoped that they would be finalised in the near future and that actual renovations could begin and various community groups accommodated in the Torrens building.

I understand that not long ago a change was made in the proposals put forward by the Government. There had been agreement that 25 community groups would occupy the space in the Torrens building. Of these 25, 18 are wholly or partially funded by the Government; the remaining seven do not receive Government funding. I understand that not long ago the Government suddenly decided that it would not accommodate the 25 designated community organisations in the Torrens building but would accommodate only 19 of them—that is, the 18 that are wholly or partially Government-funded plus one of the other group of seven that does not receive Government funding—and that the space that would have been occupied by these six community organisations would now be occupied by a Government agency; in other words, a Government department. As I understand it, this has caused a great deal of consternation. The 25 organisations had certainly all planned to collocate into the Torrens building and expected thereby to solve their long-standing problems for accommodation. They are scattered around Adelaide, even though many of them try to work together, in most unsuitable accommodation, usually at rents that they cannot afford even though the accommodation is not of the highest standard, to put it mildly.

I am concerned indeed at this hiccup in a project that has obviously had the endorsement of all political Parties in this State and all Governments. I ask the Minister whether he will

take up the matter with the Premier and, through him, also with the Minister in charge of the Office of Building Management and the Minister for Family and Community Services, given that they are the Minister involved in the building and the Minister who funds most of the groups, to see whether this project can be got back on track as soon as possible and to attempt to ensure that the 25 different organisations that were expecting to be able to collocate into the Torrens building will still be able to collocate there.

The Hon. R.I. LUCAS: I guess the first thing that ought to be said is that this is an extraordinarily generous offer for those organisations. I am unsure about the honourable member, but I have had a number of other organisations approach me asking why it is that these particular organisations are to be collocated and accommodated in this way yet they, in their judgment, equally needy and worthwhile organisations doing good works in the community have not been similarly treated either by the previous Government or, as the honourable member indicated, this Government in agreeing to continue with that arrangement. Those groups that are eventually accommodated in this new project ought to be welcoming of the extraordinarily generous nature of the offer that has been made to them. I can assure them, as I assure the honourable member, that there are many other groups that are not looking on this project as kindly as perhaps are the honourable member and others who have been involved in it. Nevertheless, I will happily refer the honourable member's question to the Premier and, if necessary, to the other appropriate Minister and bring back a reply or correspond with the honourable member during the parliamentary break.

MOUNT GAMBIER PRISON

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

Leave granted.

The Hon. T.G. ROBERTS: The Minister for Correctional Services tabled a ministerial statement in this Council about the private management of the Mount Gambier Prison. In that statement, the Minister describes the Mount Gambier Prison and the fact that Group 4, a British tendering company that operates mainly in the UK and other parts of the world, was successful in winning that tender. The ministerial statement goes on to describe that tendering process. It states:

> The task force was appointed to ensure that the tendering process was impartial, fair and thorough and within the parameters of Government policy. Its membership comprises representatives from the Department of Premier and Cabinet (Office of Public Sector Management), the Treasury, Attorney-General's Department, the Economic Development Authority, Department for Industrial Affairs and Department for Correctional Services.

I would hate to be preparing that tea trolley. The statement continues:

> All staff involved, tenderers, consultants and task force members signed a confidentiality agreement to ensure that all details concerning the process were treated as commercial-in-confidence, excluding the Attorney-General representatives who are bound by a professional code of ethics.

The statement goes on to indicate the public and private participation, the consultants employed and the evidence and tendering process that had to be set up and determined. It also goes on to say:

> The Victoria Police probity investigation of all tenderers was purchased by the Department for Correctional Services as this work had only recently been undertaken by that State. The South Australian Police Department was asked to satisfy themselves as to the content of these reports. The probity checks included both national and international checks on organisations and individuals involved. All tenderers were asked to provide substantial information concerning their financial status, credit rating, copies of audited statements and annual reports. Checks were also undertaken with Dun and Bradstreet. Group 4 will be required to provide a financial guarantee of $250 000 and a parent company guarantee for performance.

So, the successful tenderers will be requested to meet certain financial requirements. The next part of the statement goes on to outline the difficulties that the Government has had in restructuring the prison system and the reason why it had to go into the privatisation mode. The statement continues:

> Private management of Mount Gambier Prison contributes towards a restructuring process. It is the joint view of my CEO, the Correctional Services Department and this Government, that the significant restructuring of the Correctional Services Department to date could not have occurred in the way that it has without employees being aware of that need, under this Government, to compete with the private sector. The next phase of this process is to successfully negotiate the signing of the management contract with Group 4 to allow the opening of the new Mount Gambier Prison. It is anticipated that the contract will be signed within the next two weeks. The prison will then be opened as a management partnership operation between the South Australian Government and Group 4 with three correctional services officers working as part of the prison staffing to ensure that all requirements under the Correctional Services Act are met.

My questions are:

1. Does the Minister believe that the tender system constructed by the Government allowed the Mount Gambier gaol correctional services officers to compete fairly with all other tenderers?

2. When Ian Winton resigned and accepted his release package was the Government aware that he was going to Group 4 to be a part of the preparation of tender documents for that group?

3. Does the Minister feel that all other tenderers were treated equally in access to appropriate information to formalise their tender documents?

4. The ministerial statement indicates that only three correctional services officers will be required to 'ensure that all requirements under the Correctional Services Act are met'. Will the Government ensure that the 25 other officers in the Mount Gambier gaol are reappointed with no loss of benefits or reduction in salary and conditions?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague the Minister for Correctional Services in another place and bring back a reply. I am sure that he would assert that the way in which this was structured would give more than a fair opportunity to the staff of the Mount Gambier Prison to participate. However, without seeking to pre-empt the answers that he sends back through me, I wanted to make that point.

The other point is that he would probably also say that the information available was fairly available to all those who participated in the tender process, including the staff. However, I may be wrong. That is certainly my impression, but we will wait for a considered response, which I will certainly bring back.

TRADING HOURS

In reply to **Hon. G. WEATHERILL** (16 March).

The Hon. K.T. GRIFFIN: The Minister for Industrial Affairs has provided the following response:

Since the introduction of the Liberal Government's reforms to shop trading arrangements in November last year, 244 certificates

of exemption for Friday night trading to 9 p.m. have been issued to stores in the metropolitan shopping district. Fifty certificates have also been issued to stores in the Adelaide shopping district to permit trading on Sundays between 11 a.m. and 5 p.m.

Indications from the retail sector point to Sunday trading in the city being well patronised with late Friday trading in the suburbs being supported to a lesser degree. However, this was the experience when previous reforms to trading hours were introduced involving Thursday nights and Saturday afternoons. It appears that it takes time for altered trading hours to become fully accepted as part of the usual pattern of shopping by the community.

By issuing the exemption certificates pursuant to the Shop Trading Hours Act, Friday night trading is voluntary, with only those stores seeking to trade the longer hours applying for approval to open.

Retailers are in no way forced to open the extra hours under the reforms, and can make individual judgments on the economic viability of trading during these hours. This arrangement, whereby a trader has the ability to respond to customer demand and make decisions based on their own experience, should be supported by all parties in the spirit of free and open competition to the benefit of the consumer.

INTRODUCTION AGENCIES

In reply to **Hon. A.J. REDFORD** (23 March).

The Hon. K.T. GRIFFIN: The Office of Consumer and Business Affairs has received a number of complaints concerning the operations of introduction agencies, in particular those operated by Claire Phillips, also known as Dianne Phillips. In fact, the police suspect that this may not be her correct name. Complaints were referred to the Fraud Task Force of the Police Department in relation to allegations of false pretences against Ms Phillips. However, limitation dates for the lodging of complaints had either expired or drawn close to expiry, thus reducing the time in which these matters could be properly investigated.

It is most important that persons who have had dealings with Ms Phillips report the matter to the Office of Consumer and Business Affairs. However, I understand that some clients are reticent to complain about their dealings with introduction agencies. I am further informed that the current whereabouts of Ms Phillips is unknown. However, it is suspected that she is residing interstate, which additionally confounds the possibility of lodging complaints with the Director of Public Prosecutions.

Investigations conducted by the Office of Consumer and Business Affairs have been conducted in respect to a number of consumer complaints against Ms Phillips and have been successful in obtaining refunds for some of the complainants while Ms Phillips was still resident in South Australia. However, there are complaints currently outstanding which may not be resolved while Ms Phillips cannot be located. The Commissioner for Consumer Affairs' investigation officers are monitoring these complaints in conjunction with a police officer from the Fraud Task Force. Should Ms Phillips attempt to recommence business in South Australia, these outstanding matters will be followed up.

All persons who have dealings with the Office of Consumer and Business Affairs are assured of privacy through the provisions of the Fair Trading Act 1987. This Act provides severe penalties for those responsible where information concerning a complainant is revealed without that person's consent.

With respect to possible legal action against publishers of Ms Phillips' advertisements, I am informed that such action is unlikely, given that they were not a party to Ms Phillips' actions. However, in instances where her advertising can be identified, I am informed that publishers of the print media are co-operative with the Commissioner's officers during their investigations.

I understand that information provided by clients of introduction agencies is often of a personal and confidential nature. However, unfortunately in circumstances where the agency closes its doors, I cannot give any indication as to what the proprietor of the agency may do with the clients' files, if they choose not to return the information or destroy it. In instances where the Commissioner's officers in the past have found client files in vacated premises, they have ensured that the files are returned to the clients.

NANGWARRY MILL

In reply to **Hon. R.R. ROBERTS** (8 March).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

1. No, because the issue of log allocations is to be determined on commercial grounds.

2. No. I am advised that arrangements made by a former Minister in relation to employees of the then Woods and Forests Department at Mount Burr are not appropriate to the current circumstances at Nangwarry.

ALGAL BLOOM

In reply to **Hon. T.G. ROBERTS** (15 March).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

The recent algal bloom in Coffin Bay was particularly extensive. Reports have been received of discoloured water, possibly part of the same bloom, as far as 80 nautical miles out to sea and as far west as Fowlers Bay near Ceduna.

While it is important to remain vigilant of the effects of land-based activities on the marine environment, this is a case of some large-scale regional phenomenon of which we have little understanding.

Staff from the department have been trying to piece together reports and essentially do some detective work to ascertain what may have caused such a large effect. At present only two hypotheses have been put forward, the first of which relates to an oceanographic effect called an 'upwelling'. Under certain meteorological conditions, surface waters on the west coast of Eyre Peninsula are forced offshore. This causes deep water, from below the continental shelf, to rise to the surface. The deep water carries with it relatively high amounts of nitrogen and phosphorus-based nutrients, which may trigger extensive algal blooms.

The second hypothesis relates to the cyclonic depression which cut the main highway between Perth and Adelaide. Rainfall of this magnitude is most uncharacteristic for the area and was high enough and over a large enough area to possibly affect the region. The first reports of blooms seem to have occurred about a week to ten days after the rain event.

Further investigation will help to explain this apparent natural phenomenon and enable improved monitoring and prediction in the future.

With regard to commissioning a study of the effects of land-based discharges, it may be said that a number of such studies are currently under way. Most notable of these is the SA Shellfish Quality Assurance Program (SASQAP) which is conducted at all of the oyster farming sites in the State. The program is specifically designed to ascertain the impact of human, agricultural and industrial activities on oysters.

CADELL TRAINING CENTRE

In reply to **Hon. T.G. ROBERTS** (8 March).

The Hon. K.T. GRIFFIN: The Minister for Correctional Services has provided the following response:

The Government is currently considering the future of the Cadell Training Centre. The Economic Development Authority (EDA) has been requested to carry out an assessment of the alternatives for the use of the Cadell site should the centre be closed, so that the impact of the closure on the rest of the rural community can be considered.

Once the Economic Development Authority's report is available, recommendations regarding the future of Cadell will be forwarded to Cabinet for consideration.

If the Government decides to close the Cadell Training Centre, the following three options will be available to the staff:

- to relocate to other prisons where vacancies exist;
- redeployment within other Government departments;
- request for consideration of a targeted separation package.

WINE INDUSTRY

In reply to **Hon. M.J. ELLIOTT** (15 March).

The Hon. DIANA LAIDLAW: Minister for the Environment and Natural Resources has provided the following information which has been prepared in consultation with the Minister for Industry, Manufacturing, Small Business and Regional Development.

The agreed Flow Policy of the Murray-Darling Basin Ministerial Council is:

To maintain and, where appropriate, improve existing flow regimes in the waterways of the Murray-Darling Basin to protect and enhance the riverine environment.

In order to implement this policy, work has commenced to define more clearly the environmental flow requirements of different systems within the Murray-Darling Basin.

The Murray-Darling Basin Commission has formed a Water Use Steering Committee, the South Australian representative on which is the Chief Executive of the Engineering and Water Supply Department. The report being prepared by the Steering Committee will detail the current and anticipated ultimate level of diversions from rivers within the Basin in an effort to assess what demands are expected of the system. It is expected that the report will be presented to the Murray-Darling Basin Ministerial Council in June 1995.

In addition, initiatives such as the Murray-Darling Basin Commission's Sustainable Rivers Program and the tri-State lower to improve the current knowledge base of water requirements for healthy rivers and flood plains.

However, it should be noted that South Australia already complies with most of the recommendations contained in the Report by the Committee of Inquiry into the Winegrape and Wine Industry.

For example, the relevant recommendations from this report suggest that:

30. Government initiatives to facilitate intrastate and interstate movement of water allocations are to be accelerated.

In 1983 South Australia was the first State in the Murray-Darling Basin to introduce transferable water entitlements. Most proclaimed water resource areas in South Australia operate an effective transferable water entitlement policy. South Australia has initiated talks with the eastern States at Premier, Minister and agency officer level in order to facilitate interstate trade on a sustainable basis.

It is anticipated that much of the water that could be traded is likely to become available from significant restructuring and rehabilitation programs. This implies that the water likely to be traded has always been diverted for irrigation purposes and is therefore not being traded at the expense of the environment.

In particular:

- entitlements to water are to be separate from land ownership; Water has been able to be sold separately for land on the River Murray since 1983.
- concise specification of property rights over water allocations is to be a high priority;

See bullet point below.

- property rights are to detail the quantity of water available, security of supply, tenure of permitted access and conditions under which transfers are allowed.

An explicit volume is specified on all River Murray licences. Because irrigation water is allocated from the State's entitlement flow, its security of supply is implied to be at least 95 per cent. Although River Murray licences are only issued annually there is a clear expectation that they will be renewed without alteration unless there has been some breach of the Water Resources Act. This relatively secure tenure is recognised by most financial institutions which accept water allocations as valued and secure assets. Water allocations can be traded virtually anywhere along the River Murray, but any associated conditions of transfer are regularly reviewed to ensure the process remains sustainable.

31. Irrigation infrastructure is to be provided and operated by a separate infrastructure service entity. Such entities are not to be permitted to restrict transfers out of the region.

The Government Irrigation Areas (GIAs) are operated by the Engineering and Water Supply Department and the State's water resources are managed by the Department of Environment and Natural Resources. This separation of the roles of 'supplier' and 'manager' was initiated by this Government in January 1994. The new Irrigation Act 1994 allows for water allocations to be traded to and from GIAs. These transactions must be considered by the local GIA Board which would take into account the capacity of the existing infrastructure to supply additional water in the case of an incoming transfer or, the impact on per-capita operating costs in the case of an out going transfer.

32. Governments are to minimise transaction costs and other restrictions imposed on water transfers.

Direct transaction costs are minimal ($11.50/ML) and only cover basic administration costs. Additional transactional costs arise from a requirement for the purchaser of water to prepare an irrigation and drainage management plan which details measures to overcome any environmental impacts. The South Australian Government will be maintaining this requirement.

33. Where practicable, irrigation charges are to be structured to account for the external costs imposed by irrigation-sourced salinity increases. Where such charges are not feasible, or adequate differentiation of charges is not possible, restrictions on water transfers between recognised 'low' and 'high' salinity impact areas are to be considered.

No irrigators in South Australia pay for any irrigation induced salinity impacts. At present, South Australia's contribution to Murray-Darling Basin initiatives is funded from the Engineering and Water Supply Department budget. South Australia's water transfer policy aims to, at worst, have a neutral salinity impact on the River Murray.

34. Governments, in conjunction with relevant water authorities and multi-jurisdictional bodies such as the Murray-Darling Basin Commission, are to identify the environmental requirements of river systems and quantify the minimum flow levels necessary to meet these requirements.

As detailed above, the Murray-Darling Basin Commission has established a Water Use Steering Committee to produce a report on water use in the entire Murray-Darling Basin by June 1995. Data from this report will provide valuable input to the Sustainable Rivers Program and the work undertaken by various interagency and community groups within South Australia.

35. Where existing environmental flows are insufficient, governments are to repurchase necessary water entitlements.

South Australia has historically adopted a very conservative approach to water allocations—not all of the State's entitlement flow has been allocated. As various irrigation areas throughout the Basin are rehabilitated and restructured, significant volumes of water will be saved for alternative uses.

SENTENCING COMMENTS

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

Leave granted.

The Hon. G. WEATHERILL: Recently, a Richard John pleaded guilty to misappropriation of $75 000 from a law firm, which money was the law firm's and nothing to do with the public. In the Magistrates Court he was given a 2½ year sentence with a 10 month non-parole period, which was then suspended, by Magistrate Richard Brown. An appeal was made against that sentence and the matter went to the Supreme Court. The Chief Justice said:

> . . . John's crimes were not only serious in themselves but tend to undermine the confidence which the public feels in the legal profession.

People have said to me that when they look at the legal profession it is not those sorts of things they are commenting about, it is because they charge like wounded bulls. The Chief Justice said that the sentencing magistrate 'attached considerable importance' to John's gambling addiction, which was described as 'a disease'. That is the opinion of many people in this place, I imagine, because we pay millions of dollars a year to try to cure people of these addictions. The Chief Justice also made the following comment:

> This court has said on many occasions that the security of the society depends upon the ability of people to resist temptation which arises out of addictions and other forms of human weakness.

I do not know, because I am no lawyer, whether the Attorney can speak to the courts about some of these comments that they make, or even intervene in the case itself, because if

what the courts are saying is right the amount of money that is paid by State Governments to people who have these diseases and addictions appears to me to be wasted. My question is: If Chief Justice King is correct, why do we not withdraw these moneys and spend them on something other than human frailties?

The Hon. K.T. GRIFFIN: I will have some inquiries made about the case and the statements made and bring back a reply. It is important to realise that, in terms of the criminal process, the previous Government brought to the Parliament legislation appointing a Director of Public Prosecutions, which was supported by the then Opposition and passed through the Parliament with general support. The object of that was to remove from the political process, very largely, the decisions about prosecution and about appeals. So, the DPP exercises these responsibilities. But I will have the matter further examined and bring back a reply.

SOUTHERN EXPRESSWAY

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

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to a paper by Mr Bert Edwards of the Public and Environmental Health Branch of the South Australian Health Commission, entitled 'Traffic and health', which said in part:

> There is enough evidence to indicate that air pollution and noise from vehicles can have direct adverse health effects for people living close to major transport routes. It is essential that these issues be addressed in planning documents that provide guidelines and direction for future development, particularly in urban areas.

Already during morning peak hour on South Road traffic can bank up from the intersection with Anzac Highway back to the overpass at Cross Road, that is, covering three suburbs: Everard Park, Black Forest and Glandore. Overseas experience shows that it is inevitable that this congestion problem will become worse if the proposed Southern Expressway is built. My questions to the Minister are.

1. Did the Public and Environmental Health Branch of the South Australian Health Commission make a submission to the Department of Transport on the proposed Southern Expressway? If so, what were the recommendations of the submission?

2. In what ways did the Government incorporate such a submission into the plans for the Southern Expressway?

3. With the increased number of cars on South Road, how many suburbs back does the Minister believe the traffic will bank up from the Anzac Highway intersection in the morning peak hour?

4. Does the Minister agree with the Public and Environmental Health Branch of the South Australian Health Commission that there is enough evidence to indicate that air and noise pollution from vehicles can have direct adverse health effects for people living close to major transport routes? If she does, does the Minister believe that taxpayers would be financially liable for the additional health costs resulting from the inevitable increase in traffic on South Road?

The Hon. DIANA LAIDLAW: I have no idea whether the Public and Environmental Health Branch of the South Australian Health Commission made its views known to the former or the current Government in relation to the southern expressway, as it is now referred to. I could not quite understand what question 2 meant. In respect of question 3, no investigations that have been undertaken to date suggest that there will be a problem any greater than at the present time in respect of bank up and congestion of traffic. In fact, it is suggested that the arrangements we are making will reduce congestion and improve flow.

It is important in terms of the Southern Expressway and Main South Road to appreciate that from the Darlington area the traffic fans out to the east, the north-east, the north-west and west—only about 23 per cent of the traffic that goes through Darlington actually has as its destination the city. There are many arterial roads in the area, some of which the honourable member has referred to, which carry traffic to the diverse destinations that people from the south seek on a daily basis in the morning. As to whether I agree with the Public and Environmental Health Branch about health risks, I will read with interest the article to which the honourable member refers, and at that time I will make an assessment and provide her with an answer if she still wishes.

PUBLIC TRUSTEE BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the office and functions of the Public Trustee; the amend the Administration and Probate Act 1919; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The legislative provisions establishing the Public Trustee are currently located in the *Administration and Probate Act* and were last significantly updated in 1978. Since that time, there have been many proposals for reform mooted, and there has been a systematic assessment of the role of the Public Trustee and the need for the Public Trustee to operate in a competitive market with other trustees, particularly with respect to trustee companies. However, until now there have been no decisions which have led to legislative change.

As part of the reform agenda, and with reference to the recommendations of the Commission of Audit, the Government has determined that the Public Trustee will be better placed if it operates under modernised and separate legislative provisions.

The most significant event to occur in the field of management and administration of trusts and estates in this State in the last few years was the passage of the *Trustee Companies Act* in 1988. This Act replaced the old individual private Acts of Parliament which formerly governed such companies. Unfortunately, at the time of this legislation, which modernised the laws relating to the private trustee companies, the opportunity was not taken to replace those provisions relating to the Public Trustee which are outdated, cumbersome and unnecessarily complex and to enable the Public Trustee to operate its common funds on a similar basis to those of the private trustee companies.

It is therefore considered appropriate that steps now be taken to allow for a more commercially orientated and entrepreneurial Public Trustee, while at the same time ensuring that the Public Trustee continues to fulfil its special statutory responsibilities to provide the range of community services not elsewhere available. It is also appropriate that the

formal relationship of the Public Trustee with the Government be placed on an appropriate legislative footing.

While, initially, it was considered that amendments to the provisions of the *Administration and Probate Act* would be sufficient, once the review project commenced it became clear that the changes required were such that each section needed to be amended and so the end result is a bill for a new *Public Trustee Act*.

The Bill provides that the Public Trustee will continue as a corporation sole that is an instrumentality of the Crown. The Public Trustee and the staff of the office of the Public Trustee will continue to be public sector employees, with the Public Trustee being appointed by the Governor.

All of the current community service obligations which repose in the Public Trustee will be maintained. A community service obligation arises when the Parliament or the Executive expressly requires a Government business enterprise (in this case, the Public Trustee) to carry out an activity which it would not elect to provide on a commercial basis or which could only be provided commercially at a higher price. For example, the Public Trustee may be required to act as executor and trustee of any estate regardless of how small that estate may be. Often private trustees will not administer a small estate as the cost of administration outweighs the fees or commission that can be charged.

Other community service obligations of the Public Trustee include—

- appointment by the Supreme Court (in a variety of circumstances) as the protector of the interests of those who cannot look after their own interests (*eg:* minors, or mentally or intellectually impaired persons, who have been awarded court settlements);
- the examination of financial statements and monitoring of decisions of managers of protected estates and administrators of deceased estates;
- the holding of estates until administration is granted or for any period in which there is no trustee or personal representative;
- administration of deceased estates in a number of special circumstances by order of the Supreme Court;
- acting as the "trustee of last resort" and in some circumstances being required to take over as trustee any trust where the appointed trustees die or are unwilling to act.

Many of the above roles are required to be performed by the Public Trustee without the consent of the Public Trustee as a statutory public service obligation (*ie:* the Public Trustee must perform these roles if called on to do so or required by legislation to do so, regardless of whether or not there is a financial reward). While some of the community service obligations are profitable, often the work is complex and time consuming, not commercially viable and would not be offered on a commercial basis. All of the current community service obligations of the Public Trustee are maintained in the Bill.

The Bill essentially reflects the current provisions in a modernised and updated form. There are several inclusions in the Bill which are drawn mainly from the provisions applying to trustee companies contained in the *Trustee Companies Act*.

The trustee companies operate their common funds under a simple legislative scheme. However, the full application of the rules applying to the private trustee companies to the Public Trustee would allow the Public Trustee to accept money for investment from any member of the public. The Public Trustee in this State has never been permitted to raise funds from the general public. Indeed, it is understood that the Victorian State Trustees is alone among the Australian Public Trustees in being able to raise funds generally from the public. While to permit such fundraising would potentially allow the Public Trustee to generate additional income in competition with private investment offerings, it is not proposed at this time to permit this to occur. However, while offerings to the general public are not considered appropriate, the Public Trustee should not be precluded from inviting organisations such as charities, trustees of scholarships, trustees of minors' estates, etc., from investing in the Public Trustee's common funds. Such investors require a range of safe investments, providing different features, in order to properly diversify their portfolios. The Public Trustee common funds would provide appropriate investment opportunities to this type of trustee. The Bill provides that the Public Trustee may accept money from classes of persons approved by the Minister for investment in common funds. It is envisaged that charitable funds will be the initial class of investment approved under this section.

Many trustee services provided by the Public Trustee to the community are provided on a commercial basis and it is appropriate that in the provision of these services the Public Trustee is not disadvantaged by outdated legislative provisions that do not reflect modern methods of funds management.

Under the regime proposed in the Bill, the following rules would apply to the Public Trustee:

- The Public Trustee would be able to charge for the provision of services related to the management of common funds in the same way as a private trustee company. (At present, the Public Trustee, unlike the trustee companies, cannot charge a management fee on the capital in common funds, which are the investment vehicles used by trustee companies and the Public Trustee. It is proposed to allow the Public Trustee to charge in the same manner as trustee companies charge.)
- The Public Trustee would be able to offer investment of funds in the hands of bodies, such as charities, approved by the Minister. (The Public Trustee may not raise funds from public offerings of investments in common funds.)
- The Public Trustee would be able to charge an administration fee for administering perpetual trusts in the same way as trustee companies do.
- The Public Trustee's fees and commission would be set by way of regulation as they are currently.
- The Public Trustee would be required to report annually to the Minister.
- The Public Trustee would remain subject to general Ministerial direction on matters of policy (as the Public Trustee currently is).

At present, the office of the Public Trustee is self funding. For the last five years, the Public Trustee has made a contribution to Treasury, with the specific approval of the Minister, after defraying expenses incidental to the establishment and maintenance of the office of the Public Trustee. The Bill provides for the Public Trustee to pay the Treasurer notional taxation and other imposts.

The Bill also provides for the Public Trustee to pay, with the approval of the Minister, a dividend at times when there is sufficient surplus to enable this to occur. This formalises the current arrangements whereby the Public Trustee uses a Special Deposit Account under the *Public Finance and Audit*

Act and obtains special approval of the Minister to make payments to Treasury. The Public Trustee will be required to consult with the Minister each year regarding the setting and payment of the dividend (if any). This, too, formalises the current practice.

In order to provide an efficient and responsive service to the community, there are a variety of other amendments which rationalise the provisions formerly found in the *Administration and Probate Act*.

The legislative initiatives contained in this Bill modernise and update the statutory provisions relating to the Public Trustee, maintain the important community service obligations the Public Trustee undertakes and provide a basis on which the Public Trustee can continue to provide a reliable and valuable service to the people of this State in a competitive environment.

I commend the Bill to honourable members. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

The proposed Act has substantially the same effect as Part 4 of the *Administrative and Probate Act 1919* to be repealed by proposed schedule 2.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of expressions used in the Bill.

PART 2
OFFICE OF PUBLIC TRUSTEE

Clause 4: Public Trustee

There is to be a Public Trustee who is an employee in the Public Service of the State appointed to the office of Public Trustee by the Governor which office may be held in conjunction with a position in the Public Service. The Public Trustee is a body corporate, has perpetual succession and a common seal, is capable of suing and being sued, is an instrumentality of the Crown (and holds property on behalf of the Crown) and has the functions and powers assigned or conferred by or under this proposed Act or any other Act.

Clause 5: Functions and powers

Subject to the proposed Act, the Public Trustee has the powers of a natural person and may, for example, act as a trustee, executor of a will, administrator of an estate (whether or not of a deceased person), manager, receiver, committee, curator, guardian, next friend, agent, attorney or stakeholder or act in any other capacity provided for under this proposed Act or any other Act.

Clause 6: Ministerial control

The Public Trustee is subject to control and direction by the Minister on matters of policy but a direction may not be given so as to affect the efficient discharge of the Public Trustee's duties at law or in equity. The Public Trustee must, at the request of the Minister, report to the Minister on a specified matter but must not, in such a report, divulge information in breach of a confidence placed in the Public Trustee by a client.

Clause 7: Execution of documents

A document apparently bearing the common seal of the Public Trustee will be presumed, in the absence of proof to the contrary, to have been duly executed by the Public Trustee.

Clause 8: Delegations

The Public Trustee may delegate any of the Public Trustee's functions or powers to a person employed in the Public Service or to the person for the time being occupying a specified position in the Public Service.

PART 3
APPOINTMENT AS ADMINISTRATOR, TRUSTEE, etc.

Clause 9: Administration of deceased estate

The Supreme Court (the Court) may make an administration order granting administration of a deceased estate to the Public Trustee, or authorising the Public Trustee to administer the estate of a deceased person, in particular circumstances. An application for an administration order may be made by the Public Trustee, a person interested in the estate (including a creditor) or a guardian or blood relation of a person under 18 years of age interested in the estate.

If the Court revokes an administration order, the revocation of the order is without prejudice to any proceedings taken or act done under it. If an order is made authorising the Public Trustee to administer the estate of a deceased person, the Public Trustee will be taken to be the administrator of the estate for the purposes of any other Act but subject to the provisions of the other Act.

Clause 10: Public Trustee need not give security

The Public Trustee need not, on obtaining administration, enter into a bond or give any security.

Clause 11: No action to be instituted after Public Trustee has obtained administration

Subject to this proposed Act, after the grant of administration to the Public Trustee, or the making of an order authorising the Public Trustee to administer the estate of a deceased person, no person may institute an action or other proceeding for the administration of the estate, and any such action or proceeding previously commenced will, on the application of the Public Trustee, be stayed on such terms as the Court thinks fit.

Clause 12: Administrator pendente lite

The Court may appoint the Public Trustee to be the administrator of the estate of a deceased person until an action relating to the validity of the will of the deceased, or for obtaining or revoking a grant of probate or administration, is determined. If thus appointed as administrator, the Public Trustee is subject to control and direction by the Court in the administration of the estate.

Clause 13: Administration of trust estate

The Court may, on the application of a person holding property in trust (whenever or however the trust may have been created or arisen) for any person or purpose, make an order authorising the Public Trustee to receive and administer the property.

Clause 14: Appointment as executor or trustee

A person may appoint the Public Trustee (either solely or jointly with another person or persons) to be executor or trustee of his or her will or to be trustee of a settlement or other disposition of trust property made by the person and the Public Trustee must accept such an appointment unless granted leave to refuse by the Court on the ground that the nature of the trusts and the duties to be performed make it undesirable that the Public Trustee should act.

If the Court grants leave, it may make such other provision as may be appropriate in the circumstances for the administration of the estate or the trust property.

Clause 15: Appointment of Public Trustee by executors, administrators, or trustees

With the consent of the Court—

- executors may, unless expressly prohibited, appoint the Public Trustee sole executor; and
- administrators may, unless expressly prohibited, appoint the Public Trustee sole administrator; and
- trustees (whether appointed by or under a will, settlement, declaration of trust or in any other way) may, unless expressly prohibited and despite the terms of the trust as to the number of trustees, appoint the Public Trustee sole trustee in their place.

An application may be made for consent by less than the full number of the executors, administrators or trustees but the Court may not give its consent if there is another executor, administrator or trustee willing and (in the opinion of the Court) suitable to act.

This proposed section is in addition to and does not derogate from section 14 of the *Trustee Act 1936* and applies to executors, administrators or trustees appointed before or after the commencement of this proposed Act.

Clause 16: Appointment by court as trustee of amount of judgment, etc.

If a court (*ie:* any court, or person acting judicially, exercising jurisdiction either within or outside the State) orders the delivery or transfer of property, to a person, the court may direct that the property be delivered or transferred to the Public Trustee on behalf of that person. The Public Trustee must hold the property on trust to apply it, and its income, in the manner and for the benefit of persons as the court may from time to time direct.

Clause 17: Custodian trustee

The Public Trustee may be appointed to be custodian trustee of a trust—

- by order of the Court made on the application of a beneficiary or of a person on whose application the Court may order the appointment of a new trustee; or
- by the instrument constituting the trust; or
- by any person having power to appoint new trustees.

On such an appointment—

· the trust property must be transferred to the custodian trustee as if that trustee were sole trustee, and for that purpose orders may be made by the Court vesting the property in the custodian trustee; and

· those persons who would, if there were no custodian trustee, be the sole trustees of the trust have the management of the trust property; and

· as between the custodian trustee and the managing trustees (without prejudice to the rights of any other persons) the custodian trustee will have the custody of all securities and documents of title relating to the trust property, but the managing trustees will have free access to them and be entitled to take copies of or extracts from them.

The custodian trustee is not liable for any act or default of the managing trustees to which the custodian trustee has not consented. On application by the custodian trustee, any of the managing trustees or any beneficiary, the Court may terminate the custodian trusteeship and make such vesting orders and give such directions as are necessary, if it is satisfied that termination of the trusteeship is the wish of the majority of beneficiaries or there are other reasons that make such an order expedient.

Clause 18: Power of attorney continues despite subsequent legal incapacity

If the donor of a power of attorney granted to the Public Trustee (whether before or after the commencement of this proposed Act) ceases to have legal capacity, the Public Trustee may (subject to the terms on which the power of attorney was granted) continue to act under the power of attorney, despite the donor's legal incapacity but the power determines on appointment under an Act of an administrator or manager of the donor's property and may be revoked at any time by the Court.

PART 4

ADMINISTRATION OF ESTATES

Clause 19: Payments to or from executors, etc., elsewhere in Australia or in New Zealand

If the Public Trustee has obtained an order to administer the estate in South Australia of a person who at the time of death was domiciled in another State or a Territory of the Commonwealth, or in New Zealand, the Public Trustee may pay over to the executor of the will or administrator of the estate in the place of domicile the balance of the estate after payment of debts and charges in this State, without seeing to the application of any money so paid and without incurring any liability in regard to such payment.

If the person with duties similar to those of the Public Trustee in another State or a Territory of the Commonwealth, or in New Zealand, has obtained administration of the estate of a deceased person who at the time of death was domiciled in South Australia and whose estate here is being administered by the Public Trustee, the Public Trustee may receive the balance of the deceased's estate after payment of creditors and any charges provided for under the law of that place.

Clause 20: Public Trustee must require delivery or transfer of property to which Public Trustee is entitled

The Public Trustee must require administrators and other persons to deliver or transfer to the Public Trustee all property to which the Public Trustee becomes entitled under this proposed Act. The Public Trustee may institute inquiries regarding the particulars of estates under administration, and held in trust, and may, by summons, require an administrator or other person to appear before the Public Trustee and answer all questions that may be put with reference to any estate.

An administrator or other person who, after receiving a summons, fails to attend at the time and place specified in it, or who fails to answer truthfully the questions put by or on behalf of the Public Trustee, is guilty of an offence and liable to a division 7 fine ($2 000) or division 7 imprisonment (6 months).

Clause 21: Court may summons administrator, etc., on application of Public Trustee

If an administrator or other person fails to deliver or transfer to the Public Trustee all property to which the Public Trustee is entitled or the procedure in proposed section 20 fails to elicit the particulars required, the Court may, on the application of the Public Trustee, summon any person who may be in possession of information relevant to the matter under investigation, to appear at a specified time and place for the purpose of being examined concerning such matters and to produce any books, papers, deeds or documents.

Clause 22: Result of disobedience to summons

A person who—

· after being summoned to appear by the Court, fails (without reasonable excuse) to appear at the time and place specified in the summons; or

· on appearing, refuses to be sworn or neglects to answer a question put by or on behalf of the Public Trustee; or

· after being summoned to produce books, papers, deeds or documents, fails (without reasonable excuse) to produce them, or, if so required, to hand them over to the Public Trustee; or

· disobeys any order made by the Court on the hearing of the summons,

is guilty of contempt of the Court.

Clause 23: Public Trustee to give notice to beneficiary entitled to property

When a beneficiary is entitled to the delivery or transfer of property vested in or under the control of the Public Trustee, the Public Trustee must, when practicable, give notice to the beneficiary that or she is entitled to the delivery or transfer of the property.

Clause 24: Administration of Public Trustee may be referred to Court

The Court may, on application by a person who has an interest in property for the time being administered by the Public Trustee, summon the Public Trustee to appear at a specified time and place for the purpose of answering allegations in the application and, after the hearing, make particular orders.

Clause 25: Public Trustee may make advances for purposes of administration

When the Public Trustee is administering an estate and property is vested in or under the control of the Public Trustee on account of the estate but there is insufficient money to make payments authorised or required to be made on account of the estate, the Public Trustee may advance and pay any sum of money which the Public Trustee is authorised or required to pay (but no greater amount may be so advanced and paid than the value of the property held by in the Public Trustee). The sums so advanced, with interest, are a first charge on all property in the estate.

Clause 26: Public Trustee to keep accounts in respect of estates, etc.

The Public Trustee must cause proper accounts to be kept of all estates under the Public Trustee's control, and of all dealings and transactions in relation to the estates. The Auditor-General may at any time and must in respect of each financial year audit the accounts kept by the Public Trustee under this proposed section.

PART 5

INVESTMENT OF ESTATE FUNDS AND COMMON FUNDS

Clause 27: Investment of estate funds

Subject to this proposed Act and any other Act and the terms of a relevant instrument of trust or order of court, the Public Trustee must invest money comprising or forming part of an estate—

· in a manner authorised by the instrument of trust; or

· in a manner in which a trustee may lawfully invest trust money; or

· in a common fund.

Clause 28: Money from several estates may be invested as one fund

Subject to the terms of a relevant instrument of trust or order of court, the Public Trustee may invest money from more than one estate under the control of the Public Trustee as one fund in one or more investments. Where money from more than one estate is invested, the Public Trustee must—

· keep an account showing the current amount for the time being at credit in respect of each estate; and

· after deduction of charges—divide income arising from investment of the money between the estates in proportion to the amounts invested and the period of each investment and divide profit or loss of a capital nature arising from investment of the money between the estates in proportion to the amounts invested.

Clause 29: Common funds

The Public Trustee may establish one or more common funds for the investment of money comprising or forming part of an estate under the control of the Public Trustee and, with the approval of the Minister, other money. A common fund may not be invested in any investments other than investments of a class determined by the Public Trustee in relation to the common fund prior to its establishment.

The Public Trustee must keep accounts showing the current amount for the time being at credit in the common fund on account of each investor.

The Public Trustee may charge against each common fund a management fee fixed by the Public Trustee in respect of each month of the Public Trustee's management of the fund.

Clause 30: Accounts, audits and reports in respect of common funds

The Public Trustee must cause proper accounts to be kept in relation to each common fund and the Auditor-General may at any time and must in respect of each financial year audit those accounts.

The Public Trustee must include in the annual report to the Minister for each financial year—

- the audited statement of accounts in respect of each common fund for that financial year; and
- the Auditor-General's report on those accounts; and
- particular information for investors and prospective investors in respect of each common fund.

Clause 31: Information for investors or prospective investors in common fund

The Public Trustee must, within four months after the end of each financial year, send to each investor (other than an estate) in a common fund a copy of the Public Trustee's annual report to the Minister for that financial year.

The Public Trustee must not accept money from a prospective investor (other than an estate) in a common fund unless the prospective investor has first been furnished with a copy of the Public Trustee's last annual report to the Minister together with any further information required to update the information contained in the report in relation to the fund.

PART 6
UNCLAIMED PROPERTY

Clause 32: Public Trustee's duties with respect to unclaimed money or land

If the Public Trustee has, as at 1 July in any year, held money to the credit of a deceased estate for at least 6 years and has been unable to find a person beneficially entitled to the money, the Public Trustee must, within one month, pay the money to the Treasurer for the credit of the Consolidated Account.

If the Public Trustee has held land for at least 20 years and has been unable to find a person beneficially entitled to or interested in the land, the Public Trustee may, by leave of the Court, sell the land and pay the proceeds of sale (less costs and expenses) to the Treasurer for the credit of the Consolidated Account.

Clause 33: Provision for parties subsequently claiming to apply to Court, etc.

If, at any time after unclaimed money has been paid to the Treasurer under this proposed Part, the Court is satisfied, on application by a person claiming to be entitled to the money, that the person is entitled to the money, the Court may make an order for payment of the money less any costs and expenses that have been incurred by the Public Trustee in respect of the application and any other order that is just.

Clause 34: Appointment as manager of unclaimed property

The Public Trustee may be appointed manager of property in South Australia if, after due inquiry, it has not been possible to find the owner of the property or an agent or administrator in this State with authority to take possession of and administer the property.

Clause 35: Powers of Public Trustee as manager

The Public Trustee as manager of unclaimed property under this proposed Part has broad powers to deal with the property except where the Court, in a particular case, orders otherwise.

Clause 36: Public Trustee to have discretion as to exercise of powers as manager

The Public Trustee is not obliged to take any steps or proceedings to obtain appointment as manager of any property under this proposed Part and, if appointed manager under this proposed Part, has (subject to any direction of the Court) a complete discretion as to whether any of the powers under this proposed Part are to be exercised.

Clause 37: Public Trustee may apply to Court for directions

The Public Trustee may, as manager of property under this proposed Part, apply *ex parte* to the Court for directions concerning the property, or in respect of the management or administration of the property, or in respect of the exercise of any power or discretion as manager.

Clause 38: Money to be invested in common fund

Money for the time being held by the Public Trustee under this proposed Part must be invested in a common fund.

Clause 39: Remuneration and expenses of Public Trustee

Expenditure incurred by the Public Trustee as manager of property under this proposed Part and all commission, fees, costs and expenses incurred by or payable to the Public Trustee as such manager are a charge on the property that will come next in priority to any mortgage or charge to which the property was subject when the Public Trustee became manager. The amount for the time being so charged on the property bears interest at a rate fixed from time to time by the Public Trustee.

Clause 40: Property managed by Public Trustee to be held for owner

If the Public Trustee, as manager under this proposed Part, takes possession of property or receives or recovers money, damages or mesne profits in respect of any property, the property, money, damages or mesne profits must, after payment of all money authorised to be applied, expended or charged by the Public Trustee, be held by the Public Trustee for the owner of the property.

Clause 41: Termination of management

The Public Trustee ceases to be manager of a property under this proposed Part on the happening of any of the following events:

- if the Court so orders on application made by the owner of the property or by the owner's agent or administrator or by any person having an interest in the property or in any part of it;
- if the Public Trustee publishes notice in the *Gazette* that the Public Trustee has ceased to be manager of the property;
- if the Public Trustee transfers or delivers the property to the owner or the owner's agent or administrator.

The termination of the Public Trustee's management of property does not affect any charge acquired by the Public Trustee or the validity of any act or thing done by the Public Trustee while manager of the property.

Clause 42: Transfer of unclaimed property to Crown

If, after 20 years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any land, no person has established a claim to the land and the Public Trustee has not become aware of the existence and whereabouts of any person who has a claim to the land—

- the land vests in the Crown (if it has not previously been sold by the Public Trustee under this Part);
- money held by the Public Trustee and derived from the land must be paid to the Treasurer for the credit of the Consolidated Account.

If, after 7 years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any property other than land, no person has established a claim to the property and the Public Trustee has not become aware of the existence and whereabouts of any person who has a claim to the property—

- the property vests in the Crown (if, in the case of property other than money, it has not previously been sold by the Public Trustee under this Part);
- money held by the Public Trustee and derived from the property must be paid to the Treasurer for the credit of the Consolidated Account.

PART 7
FINANCIAL AND OTHER PROVISIONS

Clause 43: Expenditure of money on land

The Public Trustee may, with the consent of the Minister—

- acquire an interest in land (either improved or unimproved) for use in carrying out the Public Trustee's operations; and
- erect a building on the land or alter an existing building; and
- provide plant, fixtures, fittings or furniture in connection with any such building.

The Public Trustee may—

- lease, or grant rights of occupation in relation to, part of any land or building acquired or built under this proposed section; or
- otherwise deal with any such land or building in a manner approved by the Minister.

Clause 44: Fee for administering perpetual trust

The Public Trustee may charge against a perpetual trust administered by the Public Trustee an administration fee in respect of each month of the Public Trustee's administration of the trust.

Clause 45: Public Trustee's charges

Subject to this proposed section, the Public Trustee may charge against each estate under the control of the Public Trustee commission and fees (in addition to fees otherwise provided for under this or any other Act and proper expenses in connection with the estate)—

- at rates or in amounts fixed by the regulations; or

· at rates or in amounts determined by the Public Trustee in particular cases subject to maxima or minima rates or amounts fixed by the regulations.

Commission, fees, costs and expenses to be charged against an estate may be deducted by the Public Trustee from money received for the estate or from money in the estate or, with the approval of the Court, be raised by sale or mortgage of, or other charge on, property of the estate (together with the costs and expenses of so raising them).

The Court may, in any event, on application by the Public Trustee or any person interested, if it considers that it should do so having regard to the special circumstances of a particular case—

· fix the commission to be charged at a higher or a lower rate than that fixed or allowed under the regulations; or

· direct that no commission be charged.

Clause 46: Bank accounts, investment and overdraft

The Public Trustee may establish and maintain bank accounts into which he or she may pay money deducted or raised by way of commission, fees, costs or expenses and any other income of the Public Trustee to be applied towards the Public Trustee's operating costs and expenses, etc.

The Public Trustee may, with the approval of the Minister—

· borrow money on overdraft from a bank; and

· deposit with a bank as security for the overdraft any securities representing money invested in a common fund.

Clause 47: Tax and other liabilities of Public Trustee

Except as otherwise determined by the Treasurer, the Public Trustee is liable to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines to be equivalent to—

· income tax and any other taxes or imposts that the Public Trustee does not pay to the Commonwealth but would be liable to pay under the law of the Commonwealth if it were constituted and organised as a public company or group of public companies carrying on the business carried on by the Public Trustee; and

· rates that the Public Trustee would be liable to pay to a council if the Public Trustee were not an instrumentality of the Crown.

This proposed section does not affect any liability that the Public Trustee would have apart from this proposed section to pay rates to a council.

Clause 48: Dividends

If the Minister (after consulting with the Public Trustee) approves payment of a dividend or interim dividend, the Public Trustee must pay the dividend or interim dividend so approved to the Treasurer for the credit of the Consolidated Account in the manner and at the time or times approved by the Minister and the Treasurer after consultation with the Public Trustee.

Clause 49: Responsibility of Government for acts of Public Trustee

Any liability incurred by the Public Trustee may be enforced against the Crown but the extent of the Public Trustee's liability in a particular case is no greater than that of a private trustee in a similar case.

Clause 50: Accounts and external audit

The Public Trustee must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year and the Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of the Public Trustee.

Clause 51: Annual reports

The Public Trustee must, within three months after the end of each financial year, deliver to the Minister a report on its operations during that financial year and the Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

Clause 52: Certain documents may be deposited with Public Trustee for safe keeping

The following documents may be deposited for safe custody with the Public Trustee:

· a will of which the Public Trustee is appointed the executor or one of the executors; or

· a settlement, declaration of trust, or other instrument by which a trust is declared or created concerning property of any kind where the Public Trustee is appointed the trustee or one of the trustees; or

· any other document prepared by the Public Trustee.

Clause 53: Certificate by Public Trustee of appointment to act

A certificate executed by the Public Trustee certifying that the Public Trustee has been appointed or otherwise empowered to act in a specified capacity will be accepted in any proceedings, in the absence of proof to the contrary, as proof of the matters so certified.

Clause 54: Indemnity to persons having dealings with Public Trustee

No person entering into a transaction with the Public Trustee for which the authority of the Court is required is bound or entitled to require evidence that the authority has been given, further than the order or an office copy of the order giving the authority.

The receipts in writing of the Public Trustee for any money payable under this Act are a sufficient discharge for the money to the persons paying it and they will not afterwards be liable for any misapplication of the money.

Clause 55: Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for, the purposes of this Act.

SCHEDULE 1

Transitional Provisions

The schedule contains provisions of a transitional nature.

SCHEDULE 2

Amendment of Administration and Probate Act 1919

The schedule contains amendments to the *Administration and Probate Act 1919* consequential on the passage of this Bill.

The Hon. ANNE LEVY secured the adjournment of the debate.

WATERWORKS (RATING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 April. Page 1778.)

The Hon. T.G. ROBERTS: The Opposition opposes the Bill. I will move an amendment during the Committee stage which will uphold the position of the previous Government. The contributions in the other place covered the Government's position, as did the second reading explanation of the Hon. Mr Olsen. The changes in this Bill are a cross-subsidisation and reclassification of certain categories of users, with definitions for commercial and non-commercial use. There is the explanation that water will be cheaper for some categories, but unfortunately householders will pay extra to cross-subsidise those definition areas which have changed and which will be getting cheaper water.

South Australia has a major problem not only in relation to the pricing of water but also as to how it is priced, harvested and distributed in a fair and equitable way. We also have the problem of privatisation which is being introduced at about the same time as the pricing mechanisms are changing and about which I am sure we will see in a Bill in this place in the not too distant future. It appears to me that this Bill anticipates the restructuring process which will follow the sale and/or outsourcing of a major part of the EWS, and that the pricing mechanisms that are being put in place now will be those that will be convenient for the private management tenderer (whichever one is successful), and that the mopping up process is taking place in anticipation of the Government's sale and outsourcing of our EWS.

I will not debate the merits and demerits of this sale: I will do that at a later date. However, I am sure, as in the United Kingdom and other places, that household consumers and people in isolated areas, including country people in this State, will be the losers. Although members on the other side of the Council, particularly those backbenchers representing country members, will remain silent in the debate that will follow, I am afraid that people in outlying areas where the user-pays principle will apply will be the losers.

The cross-subsidisation which now occurs between city and country users is one of those quietly underdiscussed principles that has been inherent in the EWS program for a long time. Because of the volume which is used and the number of people in the metropolitan area city users have, for a long time, cross-subsidised country users because of the higher cost of infrastructure for smaller numbers of people in a wider range of areas, including some very dry areas where local water is very difficult to harvest and water quality is difficult to maintain for drinking purposes.

I am sure that some members in this Chamber can remember when individual towns and regional areas supplied not only their own water but electricity, and the difficulties that those towns and areas had in maintaining an adequate supply of acceptable quality. We moved away from that to a centralised system of pricing, delivery and quality, and I thought that we are were doing that adequately. I think that the EWS is doing a very good job in the harvesting, treatment, delivery and pricing mechanisms. From time to time there were arguments between the Government and the Opposition about pricing. It was never a position on which we could get bipartisan agreement because the pricing of water became a political football. Over the past 30-odd years, no matter what arrangement was made by whichever Government, in whatever way, and no matter how equitable it was, the Opposition of the day would either put forward a more confused system of water pricing or would contest that the formulas that were being applied by the Government of the day were not equitable.

The previous Government's position was that the water pricing mechanism had a social justice component. It also had a component to encourage frugality and conservation in terms of use and a component which enabled part of the pricing mechanism to be returned to general revenue, to be distributed through Treasury into Consolidated Revenue for use in the budget requirements of the Government of the day.

The collection of revenue was also used for research, development and progress in treating our water from the Murray River that was of particularly low quality at certain times of the year. The positive position we were moving to at that time was that South Australia's EWS Department had the respect of all other water carriers and managers around the world. It had both national and international respect. The EWS was in the good position of being able to sell itself as a single entity nationally and internationally. Its methods were able to be sold into other States and into our regional areas, that is, into Asia and other areas of the Pacific. The respect that it had was equal to some of those dry area States in the United States. Our technology matched any technologies that were able to be balanced against our systems in the world.

Unfortunately, what we have now is a dismantling of the whole of that process. Generations of work is now proposed to be transferred into the hands of overseas companies. The respect that the EWS had will come to a full stop. If it is privatised the process will be—and you can stand by and watch—that whichever company is successful, the successful tenderer will involve itself in selling its expertise into the international arena, but it will not be under the EWS. It will not be under an Australian national brand, it will be under a French, British or another conglomerate brand and Australia and South Australia will lose a lot of the benefits that could have been derived from maintaining a good, firm structure that not only delivered locally but was able to put together packages and programs that were able to be delivered internationally.

I do know that the Japanese companies that tender into other countries for the distribution and sale of water in the Pacific Rim subsidise the steel piping, pumps, motors and so on when they discuss programs with other countries. I know it is something that the EWS was not able to do, but I am sure that it could have sold its management structures, its expertise and technology to other countries had it been left to develop a mechanism in a commercial section or branch of its enterprise.

The changed rating structure that we have before us, as I said, is a cross-subsidisation scheme but, instead of the cross subsidies being applicable to people in the community—householders—who would normally have benefited from the Labor Party's position in relation to how water could be used and directed as a social justice component or strategy, unfortunately, that goes out the window with the Government's position of providing a cheaper form of water than perhaps it would have had that cross-subsidy not been in place. What we have is South Australia on the negotiating auction block again. We are offering up our work force for cheaper rates and undermining the benefits that are enjoyed at the moment by protection from occupational health and safety programs and workers' compensation. We are now on the auction block for resources. There will be cheaper electricity (that will be indicated to industry) where country users again and metropolitan householders will be cross-subsidising industry. Now here we have water which will also be cross-subsidised and residents having to pay those subsidies.

The amendment that I have moved—which is a mirror amendment from the other place—tries to bring back a payment that gives a supply of the first 136 kilolitres of water. Unfortunately, that is not being supported by the Government. But what the amendment tries to do is to bring back a fairer more equitable system that at least cuts the overall rate back to householders, working on average use, by around $25 a year. I indicate that we will be opposing the Waterworks (Rating) Amendment Bill and that we will be moving that amendment in Committee.

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

The Hon. M.S. FELEPPA: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

MINING (SPECIAL ENTERPRISES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 April. Page 1778.)

The Hon. T. CROTHERS: I rise to indicate agreement by the Opposition with most of the substance of the Bill before us. At this stage of my second reading contribution I inform members that in Committee I shall move an amendment to clause 5. This amendment stems in part from representations made to the Australian Labor Party by the Wilderness Society and I indicate that I am persuaded by the concerns it has outlined in one part of its letter. My colleagues on this side agree with that also. However, a couple of other concerns contained in its letter on balance I do not

agree with. Should my amendment be carried, it will, in my view, go a long way towards alleviating those concerns.

Being a grandfather many times over, I certainly share many of the concerns and views held by so many of the environmentally concerned groups in our society. However, I say equally that we as a society have to be aiming for a sustainable environmental economy which, hopefully, will be done in such a way as to fulfil the aims, ambitions and ongoing expectations of the majority of South Australians. The rationale which underpins this Bill relates to the proposal by Penrice Soda relative to its increasing its output of soda ash in South Australia. There will be significant benefits to South Australia should this proposal proceed, which I trust it will. The Penrice company has done and will do considerably more research into matters environmental as they relate to the production of soda ash in this State. I understand that the company intends to spend some $7 million over the next several years in further pursuit of better practices for the industry and I commend it for that.

Further, the proposed methods of production will reduce the price of soda ash by some $30 per tonne, making Penrice competitive with countries like the United States for the soda ash requirements of other nations. These dollars coming into South Australia for soda ash exports will be a most welcome addition to the South Australian economy. Further, it is believed that this proposal will, over time, provide an additional 190 jobs in South Australia and, in addition, the company will require more electricity, several hundred thousand tonnes of Dry Creek salt and extra water. On behalf of the Opposition, I ask that the Government use its best endeavours to facilitate the progress of what I believe is an eminently worthwhile project. The Opposition supports the Bill to which I will, in Committee, be moving an amendment the Opposition believes will have the effect simply of ensuring, in so far as it is possible, that the environmental sustainability of this enterprise will enable the Penrice project to progress without fetter for many a long day to come. In Committee I will move the amendment standing in my name and I commend it to the Council.

The Hon. SANDRA KANCK: This Bill is the indenture Act you have when you are not having an indenture Act. I am told that mining investors are not happy with indenture Acts these days as they do not give them the certainty they want and, horror of horrors, Parliament can revisit an indenture Act once it has been passed. The Democrats are not avid supporters of this Bill, but it is a Bill more about appearances than substances because most of what it sets out to do is already in the Mining Act. However, we will be opposing subsection (2)(g) of the new section 56C as it is too open ended and unnecessary. We cannot see why it needs to be there. I do not mind when there are specific things in there and I know what is being exempted, but that one could mean anything to anyone.

The problems of small mining tenements (and I am told that the maximum size is 250 hectares) with tenements expiring at different times is one with which this Bill attempts to deal. It is a sensible thing to allow some flexibility regarding sizes and terms. This is a Bill about appearances. It puts a few things together in the same place in the one Act and will allow departmental representatives to wave around the Bill and say, 'Hey, South Australia has got it all together.' It will make them feel happy, although I doubt that it will greatly alter anything in the end, but we support the Bill.

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

STATUTES AMENDMENT (CORRECTIONAL SERVICES) BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 1789.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Hon. Terry Roberts for his indication of support for the Bill. My understanding is that there are no issues of substance which he has raised during the course of his second reading contribution that require a response. I must say that at this part of the session I am delighted about that.

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

PETROLEUM PRODUCTS REGULATION BILL

Consideration in Committee of the House of Assembly's message—that it had agreed to the Legislative Council's amendment No. 2 and had disagreed to amendment No. 1 and made the alternative amendment in lieu thereof as indicated in the following schedule:

Schedule of the amendment made by the Legislative Council to which the House of Assembly has disagreed

No. 1 Page 10 (clause 15)—After line 1 insert new subclause as follows:

(3) The Minister—

(a) is, in making a decision in respect of an application, bound by a recommendation made by a person or body to which the matter has been referred under this part that the application should be refused; and

(b) may not decide that an application should be refused unless in receipt of a recommendation to that effect from a person or body to which the matter has been so referred.

Schedule of the alternative amendment made by the House of Assembly in lieu thereof

No. 1 Clause 15, page 10, after line 1—Insert subclause as follows:

(3) If the Minister, in making a decision to which this section applies—

(a) grants an application contrary to the recommendation of a person or body to which the matter had been referred under this part; or

(b) refuses an application contrary to the unanimous recommendations of the persons or bodies to which the matter has been referred under this part,

the Minister must—

(c) give the reasons for the decision in writing at the time of making the decision; and

(d) on application by a person to the Minister's office, provide the person with a copy of the written reasons; and

(e) have a copy of the written reasons tabled in both Houses of Parliament within six sitting days after the making of the decision.

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

That the Legislative Council do not insist on its amendment No. 1 and agrees to the alternative amendment made by the House of Assembly.

The Bill was amended in the Legislative Council in a way that sought to remove the independent discretion of the Minister when exercising certain powers and responsibilities and, in effect, to make the Minister subject to direction by public servants and certain boards and committees. That is not a situation that the Government was prepared to accept and I think constitutionally it creates a problem as well.

In the other House the Treasurer moved an amendment that, to a large extent, overcomes the difficulty. That amendment is to clause 15, which relates to the issue of ministerial responsibility and identifies the criteria for decisions relating to licences. The Minister must take certain matters into account, but, in doing that, has ultimately to be accountable to the Parliament and publicly and not be subject to any direction by a public servant.

The amendment that is now before us from the House of Assembly indicates that if the Minister, in making a decision to which the section applies, grants an application contrary to the recommendation of a person or body to which the matter has been referred or refuses an application contrary to the unanimous recommendations of the persons or bodies to which the matter has been referred under this part, the Minister must give reasons in writing at the time of making the decision, provide a person who makes an application to the Minister's office with a copy of the written reasons and have a copy of the written reasons tabled in both Houses of Parliament within six sitting days after the making of the decision. I am not sure that that is really necessary but it is what the House of Assembly has proposed, and I think it will not compromise the capacity of the Minister to make executive decisions.

The Hon. T.G. ROBERTS: I rise to support the proposition being put forward by the Attorney-General on the basis that clause 15, as moved by the Legislative Council, did complicate the application of the interpretation of the Act and that it would have been difficult if the advice proffered by various representatives and sections under the Act had been diverse. The Minister may have had some difficulty in being able to comply with the Act. The amendment clarifies that situation and makes the Act more workable in a more clearly defined and consistent way.

Motion carried.

PIPELINES AUTHORITY (SALE OF PIPELINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 1641.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill and in doing so I will also address the issues on the partner Bill, the Natural Gas Pipelines Access Bill, which we will be dealing with later. However, as the two Bills come together, I think it will facilitate the process if we deal with them in a cognate debate. I express the grave reservation that a number of people have about the course that the Government is taking with respect to the proposed sale of the Moomba, Adelaide and Katnook natural gas pipelines together with the supporting assets and pipelines business of the Pipelines Authority of South Australia. The main pipeline has been operating for about 25 years. It has served South Australia well. The moderate price of gas in South Australia has been of benefit to both consumers and to industry. There are many smelters and other industrial operations that may well not have been established in Port Adelaide and other places had it not been for secure access to moderately priced natural gas.

In Committee the Opposition will be insisting on the amendments moved in another place that I have placed on file. Our amendments address the three basic concerns that we have with this Bill and its partner Bill, the Natural Gas Pipelines Access Bill. Putting our concerns in logical order, the first is whether the sale of the pipeline should go ahead at all. There is scant evidence to justify such a sale in terms of any cost benefit analysis presented to the Opposition so far.

It is just not clear at this stage that any sale of the Pipelines Authority will be worthwhile. In the short term, I suppose, whether it is worthwhile or not depends on what sort of price we can get for selling off this vital State asset. If we can get a good enough price, then the argument that this sale is for the good of the people of South Australia is bolstered. On the other hand, the higher the sale price the greater the pressure will be on whichever private operator purchases the pipeline to bump up prices exorbitantly in order to get a reasonable return on the capital investment. I will return to the issue of pricing shortly. In relation to cost benefit analysis, it should be noted that the Pipelines Authority of South Australia has operated on a cost recovery basis for about 20 of the past 25 years of its operations.

The economic rationalists will make the point that the money invested in the Pipelines Authority's assets and operations has not been used to make a profit, to gain interest or otherwise to be invested to gain extra income for the State. From the documentation provided to the Opposition in relation to the proposed sale, I cannot see that the social benefits have been fully taken into account. First, there is the benefit that we have had the pipeline at all. It is extremely unlikely that we would have a plentiful gas supply in Adelaide and in the Spencer Gulf cities had it not been for the public investment in infrastructure made decades ago, and industrial and domestic gas consumers have had the benefit of relatively inexpensive access to this energy resource. So, there is a point at the very outset as to whether the sale of these assets will be for the overall benefit of the people and the industries of South Australia.

Secondly, if we get to the stage where a specific proposal has been put to the Government for purchase of the Pipelines Authority assets, then there needs to be very careful scrutiny of this proposal, for the reasons just given. The shadow Treasurer in another place has considered what form this scrutiny should take and has concluded that the most appropriate forum will be the Industries Development Committee (IDC). If the sale is subject to IDC approval, then both Government and Opposition will be able to have some input into this vital question of selling off one of South Australia's most important public assets. Two objections have been raised by the Government in relation to the IDC. The first question raised by the Deputy Premier was in relation to commercial confidentiality.

The point has been made by the member for Giles in another place that, when one deals with Government commercially, one must expect a certain amount of public disclosure. That must be so because the people of South Australia have a right to know that the Government is dealing appropriately with private enterprise when major assets are being sold off. I note that today the Government has placed on file yet another amendment in relation to the IDC—this is called legislation on the run—and I will address that amendment in the Committee stage. The role of the Opposition, no matter who is in Government, is to act as a scrutineer and watch dog in relation to these matters. It is not good enough for the Cabinet of the day to set up deals of hundreds of millions of dollars with private enterprise operators and then to present the rest of us with a *fait accompli*.

The other point about the IDC is that most of its decisions are made within seven to 14 days. I was Chair and have been on that committee for many years, and know that on many occasions in the past we have been called on to make decisions very quickly with information in front of us, and it has not been difficult to do that. So, I do not believe the Government's claims that running proposals past the IDC will hold up or spoil any important deals. The third reservation in relation to the proposal to sell off the Pipelines Authority assets to private enterprise is in relation to pricing. More can be said about this in the Committee debate on the Natural Gas Pipelines Access Bill but, from the way we look at it at present, domestic and industrial natural gas consumers have much to be worried about if this Bill goes through unamended.

Hence, we will insist on the capacity of the Government of the day to intervene if pricing of this monopoly resource begins to get out of hand. In this debate we do not need to talk about ideologies, although I point out that many would see the sale of the Pipelines Authority assets as part of the Government's Thatcherite agenda. More can be said about that when the Government tries to sell off the State's water system. Since we are supporting this Bill in its second reading, we cannot possibly be accused of insisting on the public ownership of key infrastructure assets come what may. As the shadow Treasurer has indicated in another place, the Labor Opposition is prepared to look at each of these public asset sales on their merits.

With all the talk of revenue for the State and improved efficiency, it is all too easy to forget the people who suffer most when private enterprise is allowed to have its way with monopoly industries. Lesson 1 in economics is that private enterprise companies or individuals are out to maximise profits. That is their fundamental reason for entry into the market. The same principle applies whether we are talking about gas, water or electricity. Without adequate regulation, particularly in relation to pricing, the people who suffer most are the ordinary consumers who are faced with huge increases in the cost of receiving these basic resources in their homes. I think that most people would realise that there is a wide range of differing views within the Labor Party itself about these massive privatisation exercises.

At the end of the day I come back to the conclusion that there will always be a case for Government intervention and regulation wherever there is market failure or abuse. The market fails or gives rise to abuse whenever ordinary people are taken advantage of, when profits are made by the wealthier members of our community at the expense of ordinary people, whether they be welfare recipients, wage earners, small business owners or whoever. In this latter half of the twentieth century we realise that these practices are wrong, because people throughout our community have a basic right to be treated as human beings, with a right to at least the basic comforts and social services that our relatively affluent society can provide. It is because of these fundamental concerns, these humanitarian concerns, these community concerns that we will insist on amendments in this place, to ensure that the purchaser of the Pipelines Authority assets acts within reasonable and civilised limits. We support the second reading.

The Hon. SANDRA KANCK: I intend to speak to both the Pipelines Authority (Sale of Pipelines) Bill and the Natural Gas Pipelines Access Bill in this speech. Part of the rationale for dealing with these two Bills at this time was the fact that Federal Parliament in its autumn session was passing legislation to amend the Trade Practices Act, particularly in regard to competition policy. The problem now is that the Senate did not deal with this at all before it rose a week and a half ago, and if we push these Bills through now we will be putting ourselves in the difficult situation of second guessing what the Senate will do with that legislation when it resumes in May. For that reason, I believe we should not proceed past the second reading vote on these two Bills and should deal with the Committee stage when we reassemble here at the end of May.

By that time, even if the Senate has not finally considered the legislation, we will at least have a good indication of the form in which it might finish, and it will be more relevant for us to consider these two Bills. I am also concerned about the number of amendments we have to consider. This is really legislation on the run and allows for mistakes to be made. The Bills came before Parliament on 8 March, so it is not unreasonable to give such important legislation adequate time for deliberation.

The Hon. Carolyn Pickles: A bit more of a public airing.

The Hon. SANDRA KANCK: Absolutely. Usually, things are slow at the beginning of a new session and we should be able to deal with the Bills then and have them passed before the end of the financial year, if that is a consideration for the Government's budget deliberations. I hope that the Opposition will consider this position. These Bills result from a style of thinking I call future inevitable. The future has been decided as a result of slavish worship of competition policy, and it is only because the decision has been taken out of our hands that, ultimately, the Democrats will support the legislation. Competition is the unquestioned truth in everything we do in our economy now, and this is underlined by the fact that the Trade Practices Commission is to be abolished and, together with the Prices Surveillance Authority, it will become the Australian Competition Council.

Our Treasurers, both State and Federal, the intellectual giants that they are, have decided that our gas pipeline must be sold off because it is believed that it will be designated as an essential facility under competition policy. The only real choice left to the South Australian Parliament is to decide whether that selling off is to be done by the Federal Government or the State Government. With that as the only choice, obviously the Democrats want the State Government to exercise the little remaining power that it has in this area. Successive treasurers have given away our power base in the belief that competition is inherently good. Now, if the legislation that we put through is regarded by the Commonwealth as being inconsistent with the agreed competition reform principles, it will be able to come in and stomp all over us.

In the lead-up to debate on this Bill I received three briefings from departmental officials. At one of these briefings I was told that the price we pay for gas haulage in this State is artificially low because of the Government money that has been put into providing infrastructure in the first place—I note that it is apparently Government and not taxpayers' money—and also that the purpose of competition policy is to eliminate pricing cross-subsidies. As a South Australian taxpayer I do not consider that I have been cross-subsidising anything. I thought that I was paying taxes and that, in effect, I was a part owner of this pipeline, which has nothing to do with cross-subsidies, also called artificially low prices. My taxes and the taxes paid by other South Aus-

tralians have helped to pay for this pipeline. We mistakenly thought that we not the Government owned it, but competition policy seems to treat the Government as an entity separate from the taxpayer.

The Pipelines Authority has been breaking even for most of its existence, but it appears that this is no longer okay. South Australians have paid for the Pipelines Authority to construct and operate a gas pipeline, and most South Australians support the way in which it is operated. It is a mighty strange logic which faces us now. We own the pipeline, the Government has used our taxes to operate it, but because we do not charge ourselves more for it and then make a profit out of it, suddenly that is wrong—that is the rationality of economic rationalisation. Too bad if South Australia wants to protect its own interests—'Sorry folks, that's not allowed; its anti-competitive.' So, after years of being anti-competitive, we are now seen as bad children. If what we have been doing is anti-competitive, there is clearly nothing intrinsically wrong with being anti-competitive. Unfortunately, it has become trendy to support competition policy, and no-one dares to question it. I am sorry to be the bearer of bad tidings, but the emperor has no clothes.

The implications of adopting this policy are yet to be realised. A document given to me at one of the briefings talks about third party access to essential facilities but says:

> The precise extent of what can be essential facilities is uncertain; for example, can grain silos be essential facilities?'

I think that is a very interesting question. Does it also mean that our pipeline from the Murray River is an essential facility? Could we see that pipeline being sold from under us too? By an interesting quirk in timing, at the same time as we are considering the future ownership of our gas pipeline the State Government is looking at the future ownership of a coal rail line between Leigh Creek and Port Augusta. What is really of interest in relation to the Leigh Creek coal rail line is that the Government proposes to go exactly in the opposite way from which this Bill is taking us.

In an article in the *Advertiser* of 10 April the Infrastructure Minister said that, in order to keep costs for ETSA down, the Government was considering purchasing the Leigh Creek to Port Augusta rail line to reduce haulage costs of coal. The Minister is quoted as saying:

> It would be cheaper for us to buy the line and run it ourselves than pay the current haulage prices being charged by AN.

What is the difference between haulage of gas and haulage of coal? Gas and coal are both non-renewable fossil fuels used for energy production, one originally having been a plant source and the other an animal source. The method of shifting the fuel might be a little different—a pipeline as opposed to a rail line—but the common garden variety of elector would not be able to work out why the transport of coal should be in the hands of the Government when gas transport is not allowed to be. I think that the Minister for Infrastructure's suggestion to buy that railway line is a good one, and consistent with that it would be just as sensible for us to own our own gas pipeline, because in another decade we could be faced with horrific gas haulage prices.

In his second reading explanation, the Minister acknowledged that the Pipeline Authority's operations are vital to the State. The Democrats agree with him, but where in the Bill is there anything to ensure that the purchaser's prime function is to deliver gas to South Australia? I intend to remedy that with an amendment. The Minister has observed that Governments may be well equipped to provide infrastructure but deal poorly with commercial risk. The question must be asked: what risk was there to deal with anyhow? There is no doubt that what was needed was a certainty of supply to consumers for their gas needs, to ETSA for generating electricity and to keep factories and businesses operating, but is there a risk? If there is a risk involved we need to know about it. I thought that what this Government wanted was certainty. Remember the public outrage over the Torrens Island lease-back arrangements made during the life of the Bannon Government. The anger which many South Australians felt and the posturing by the then Liberal Opposition when it found out about that deal was justifiable. Something as basic as our daily energy needs should be controlled only by a body that has the interests of this State and its citizens at heart.

The Minister has said that national and international companies are interested in the sale of this pipeline. Well, goody, goody! This means that a foreign company could own the pipeline which brings us our gas. Break out the hats and balloons. South Australians will be truly grateful to this Parliament for allowing this through. Another issue of concern for me in this sell off is the future of the Pipelines Authority depot at Peterborough. I was informed during my briefings that one of the conditions the Government will impose on the sale is that the Peterborough depot will be kept open for at least two years. This has been a matter of some concern to the people of Peterborough. I holidayed there for three days last year, and it was mentioned to me by local people in casual conversation then, and in November last year when the Social Development Committee held a public meeting there it was again raised. There are 20 to 25 people employed at the Peterborough depot. For a town that has lost its historic employment base (the railways), the pipeline jobs are a vital part of its economy.

I was pleased to hear that this two year stay of proceedings has been put in place, and I am hopeful that the new owner will see the wisdom of maintaining the depot after that two year period has expired. Whoever controls our pipeline will need such a depot as it takes four hours to get material by heavy transport just to Peterborough, and some sort of a half way point would make sense, so that in the event of a breakdown associated with gas haulage time will be able to be saved in getting the pipes, tools and personnel to a particular site. For that reason I think that the two years of experience with Peterborough will prove to the new operator that it is necessary to maintain the depot there.

But that is about the only good news these Bills bring us, and I would not get excited about that as it still does not provide for the people of Peterborough that magic buzz word of the Government 'certainty'. If anything, we get greater uncertainty out of these Bills. In the longer term, what will be the cost of gas and, therefore, electricity to the consumers of South Australia? I was told at the briefing that gas haulage charges will be capped for the next ten years or so, but what will happen after that? PASA has operated basically as a break even operation. The new operator will be there to make a profit, so at the end of a decade what will happen? Will any controls be put in place? What predictions does the Treasurer wish to make about how it will be for us then? In the meantime, what will happen if the new operators cannot maintain their financial viability? Will they be able just to walk out?

If they do, will the Natural Gas Authority take over? Will the South Australian taxpayer have to prop up the company? There are really no good arguments for handing over our gas pipeline to someone else, but because the leaders of our Federal and State Government's have agreed that competition

is good for us the die is cast and we are forced into it, regardless of whether or not it is actually good for us. The Democrats support the second reading, but I assure the Council that it is the sort of support one gives when one's arm is twisted behind one's back.

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

MINING (SPECIAL ENTERPRISES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1874.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions. As I recollect it, no matters required specific responses at this stage. It is an important piece of legislation which is required to pass before Easter and for that reason I appreciate the cooperation which has been shown by both the Opposition and the Australian Democrats.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Insertion of Part 8A.'

The Hon. SANDRA KANCK: I move:

Page 4, lines 5 and 6—Leave out paragraph (g).

As I indicated in my second reading speech, I oppose subsection (2)(g) of new section 56C because I believe it is too wide. Subclause (2) allows an exemption or modification to be granted in respect of those things specified in paragraphs (a) to (f), such as the size of land, the term of the tenement and so on. When we get to paragraph (g) we find that it allows an exemption or modification to be granted with respect to 'any other prescribed requirement of this Act'. So, we have paragraphs (a) to (f) providing which things can be dealt with and then when we get to paragraph (g) it is open slather. I do not see why this paragraph is necessary. It is too wide. I do not know what is intended by it. Parliament is not going to know what is intended by it. We know what paragraphs (a) to (f) are about, but we have no idea what is intended by paragraph (g). We oppose it because of its openness.

The Hon. T. CROTHERS: I indicate that the Opposition will not be supporting the Democrats' amendment, and in so doing there are a couple of things I would like to put on the record. We understand where the Hon. Ms Kanck is coming from, and to some extent we share some of the misgivings that she feels about the amount of power that that reposes in the hands of the Minister. The Opposition will be monitoring the position very closely.

The Hon. Sandra Kanck: It will be too late once it is done.

The Hon. T. CROTHERS: Nothing is ever too late. If we see some of the vagaries that Ms Kanck describes in support of her amendment we will certainly act.

The Hon. Sandra Kanck: What will you do?

The Hon. T. CROTHERS: We can introduce private members' legislation in this Chamber. We believe that in relation to the timber position in Canberra several months ago, where some of our Federal colleagues were at sixes and sevens, it was a question of 'too many kooks spoiling the coups', and therefore it is much better for us to see the sort of power—which the Hon. Ms Kanck describes correctly—that is enshrined in subclause (2)(g) of the Bill reside in the hands of a single individual, who cannot then, as occurred in the ACT with some of my Federal colleagues, hide one behind another or one blame the other in respect of things not occurring in the way that much of public want them to occur.

That is the Opposition's view with respect to paragraph (g). As I said, whilst we have some sympathy with the position embraced by the Hon. Ms Kanck, we suspect that the amendment we have on file will, at least to some extent, if not totally, ameliorate some of the fears that she has expressed. As I said, if there is abuse of that position it will require a revisitation by the Opposition in this place with a view at that stage of doing something about it.

I understand what the Hon. Ms Kanck says, that once a provision is in it is there, but I would hope that the Minister in another place will read both of our contributions and take on board what we have said. But as I said, the centralisation of power sometimes is essential because it perhaps makes for greater responsibility being exercised, and I referred to the Canberra position with the timber, where 'too many cooks spoiled the coups'. That is our position in respect to the Democrats' amendment.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. The important thing to remember in relation to Part 9B, which we hope will be resolved as a result of a deadlock conference on which I will report later, is that it is not to be the subject of any modification, and for obvious reasons. When the Bill was drafted, the concern was that there may be issues which arise in relation to a particular special mining enterprise which have not been anticipated in the specific requirements under paragraph (a) to (f) of subsection (2). The difficulty was to identify how we should handle that as a Government. We finally took the view that the catch-all provision under paragraphs (g) would be appropriate, considering the sorts of processes that had to be followed to get to the point of declaring a project a special mining enterprise.

This is a prescribed requirement of the Act, which, as I understand it (and I do not have anyone here to tell me about it) would certainly bring a further protection into effect, in that the requirement does have to be prescribed. My understanding of that is that it is basically something which is approved by regulation as a prescribed requirement and it seems, because of that, that there are some safeguards. The requirement is identified by virtue of regulation and can then be modified under the power which is granted by this provision. I add to that, that what I was fishing for was correct: prescribed requirement is a requirement which will have to be promulgated by regulation. There is a capacity for either House to disallow that regulation, so there is some measure of protection there. It is not as open-ended as the Hon. Sandra Kanck suggests and for that reason there are some reasonable safeguards in place to ensure that it is not open slather.

Amendment negatived.

The Hon. T. CROTHERS: I move:

Page 5, after line 7—Insert new subsection as follows:

(2) If—

(a) an existing lease or licence is to be subsumed into a new mining tenement under this Part; and

(b) the existing lease or licence is subject to a term or condition that has been included to protect—

(i) the natural beauty of a locality or place; or

(ii) flora or fauna; or

(iii) buildings of architectural or historical interest, or objects or features of scientific or historical interest; or

(iv) Aboriginal sites or objects within the meaning of the Aboriginal Heritage Act 1988,

then the Minister must ensure that a comparable term or condition is included in the new tenement.

This amendment seeks to do a number of things which are ancillary to or extra curricula to the current Bill that we have before us. It seeks to, if you like, preserve matters that are of Australian historical importance back to the year dot. It seeks to ensure that matters of an environmental nature that are already enshrined in that land about to be leased out as a future mining tenement will have to be included as a term or condition in that mining lease. It also seeks to preserve flora or fauna that are of an endangered nature or that would be endangered by the putting into place of a new mining tenement.

In addition to that, it protects Aboriginal sites or Aboriginal artefacts or objects such as cave drawings, or whatever, or heritage sites such as burial places and so on. It seeks to protect those sites in respect of our Aboriginal native peoples within the meaning of the Aboriginal Act of 1988. It also seeks to ensure that where an existing lease or licence is to be subsumed in the new mining tenement, then the very final two lines of the amendment; that is, that the Minister must ensure a comparable term or condition is included in the new tenement, would then be included in the new tenement. I support the amendment moved by the Opposition and ask my parliamentary colleagues to indicate whether they are in support or not.

The Hon. K.T. GRIFFIN: I indicate the Government's support for the amendment. It is in keeping with the provisions of section 34(6) of the Mining Act. That section does provide that the Minister in determining terms and conditions subject to which a lease is to be granted shall give proper consideration to the various criteria which are referred to in the amendment. The Minister may also take into consideration such other factors as the Minister considers appropriate in the particular case. Therefore, it seems appropriate that, if there is to be a merger of leases or licences into a new mining tenement, then those issues ought to be recognised in that new lease or tenement. I therefore indicate support.

The Hon. SANDRA KANCK: Until I received this amendment earlier this afternoon it had not occurred to me that any subsuming of leases could result in these terms or conditions being lost along the way. Obviously, if this has been prepared that possibility does exist, and I am very pleased that the Opposition has put this amendment up and I am also very pleased to be supporting it.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

MINING (NATIVE TITLE) AMENDMENT BILL

At 4.42 p.m. the following recommendations of the conference were reported to the Council:

Resolutions agreed to at the Conference on the Consent to Medical Treatment and Palliative Care Bill 1994

As to Amendments Nos. 1 and 2:

That the Legislative Council do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 3, page 2, after line 18—Insert:

(ca) by inserting after the definition of 'exempt land' in subsection (1) the following definition:

'exploration authority' means—

(a) a miner's right;

(b) a precious stones prospecting permit;

(c) a mineral claim;

(d) an exploration licence;

(e) a retention lease (but only if the mining operations to which the lease relates are limited to exploratory operations);;

Clause 3, page 3, lines 1 to 3—Leave out paragraph *(f)* and insert:

(f) by inserting after the definition of 'precious stones field' in subsection (1) the following definitions:

'prescribed notice of entry'—*see section 58A(1)*;

'production tenement' means—

(a) a precious stones claim;

(b) a mining lease;

(c) a retention lease (if the mining operations to which the lease relates are not limited to exploratory operations);;

and that the House of Assembly agrees thereto.

As to Amendments Nos. 3 and 4:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendment No. 5:

That the Legislative Council do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 10, page 4, after line 33—Insert new subsection as follows:

(3a) An application for renewal of an exploration licence must be made to the Minister in the prescribed form at least 1 month before the date of expiry of the licence.

and that the House of Assembly agrees thereto.

As to Amendments Nos. 6 to 8:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendments Nos. 9 and 10:

That the Legislative Council do not further insist on its amendments.

As to Amendments Nos. 11 and 12:

That the Legislative Council do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 25, page 9, lines 11 to 20—Leave out proposed new section 58 and insert:

How entry on land may be authorised

58. A Mining operator may enter land to carry out mining operations on the land—

(a) if the mining operator has an agreement[1] with the owner of the land authorising the mining operator to enter the land to carry out mining operations on the land; or

(b) if the mining operator is authorised by a native title mining determination to enter the land to carry out mining operations on the land; or

(c) if—

(i) the mining operator has given the prescribed notice of entry; and

(ii) the mining operations will not affect native title in the land; and

(iii) the mining operator complies with any determination made on objection to entry on the land, or the use or unconditional use of the land, or portion of the land, for mining operations;[2] or

(d) if the land to be entered is in a precious stones field and the mining operations will not affect native title in the land; or

(e) if the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

Explanatory note—

A mining operator's right to enter land to carry out mining operations on the land is contingent on the operator holding the relevant mining tenement.

[1.] If the land is native title land, the agreement is to be negotiated under Part 9B.

[2.] See section 58A(5).

Clause 25, page 9, lines 22 to 26 (new section 58A)—Leave out proposed subsection (1) and insert:

(1) A Mining operator must, at least 21 days before first entering land to carry out mining operations, serve on the owner of the land notice of intention to enter the land (the 'prescribed notice of entry') describing the nature of the operations to be carried out on the land.

Clause 25, page 9, line 31 (new section 58A)—Leave out 'tenure' and insert 'title (other than a pastoral lease)'.

Clause 25, page 10, lines 19 to 23 (new section 58A)—Leave out proposed subsection (7) and insert:

(7) The prescribed notice of entry is not required if—

(a) the land to be entered is in a precious stones field; or

(b) the mining operator is authorised to enter the land by agreement with the owner of the land; or

(c) the mining operator is authorised to enter the land under a native title mining determination; or

(d) the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

and that the House of Assembly agrees thereto.

As to Amendments Nos. 13 and 14:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendments Nos. 15 to 19:

That the Legislative Council do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 29, page 11, lines 20 to 34 and page 12, lines 1 to 20 (new sections 63F and 63G)—Leave out all words on these lines and insert:

DIVISION 1—EXPLORATION

Qualification of rights conferred by exploration authority

63F. (1) An exploration authority confers no right to carry out mining operations on native title land unless—

(a) the mining operations do not affect native title (*ie* they are not wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title[1]); or

(b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.[2]

(2) However, a person who holds an exploration authority that would, if land were not native title land, authorise mining operations on the land may acquire the right to carry out mining operations on the land (that affect native title) from an agreement or determination authorising the operations under this Part.

(3) An agreement or determination under this Part need not be related to a particular exploration authority.

(4) However, a mining operator's right to carry on mining operations that affect native title is contingent on the existence of an exploration authority that would, if the land were not native title land, authorise the mining operator to carry out the mining operations on the land.

1. Cf. *Native Title Act 1993* (Cwth), s. 227.

2. A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or under the *Native Title Act 1993* (Cwth). The effect of such a declaration is that the land ceases to be native title land.

Exploration rights to be held in escrow in certain circumstances

63G(1) If an exploration authority is granted in respect of native title land, and the holder of the authority has no right or no substantial right to explore for minerals on the land because of the absence of an agreement or determination authorising mining operations on the land, the exploration authority does nevertheless, while it remains in force, prevent the grant or registration of another exploration authority for exploring for minerals of the same class within the area to which the authority relates.

(2) The Minister may revoke an exploration authority that is granted entirely or substantially in respect of native title land if it appears to the Minister that the holder of the authority is not proceeding with reasonable diligence to obtain the agreement or determination necessary to authorise the effective conduct of mining operations on the land to which the authority relates.

DIVISION 1A—PRODUCTION

Limits on grant of production tenement

63GA. A production tenement may not be granted or registered over native title land unless—

(a) the mining operations to be carried out under the tenement are authorised by a pre-existing agreement or determination registered under this Part; or

(b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.[1]

1. A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or the *Native Title Act 1993* (Cwth). The effect of the declaration is that the land ceases to be native title land.

Applications for production tenements

63GB.(1) The Minister may agree with an applicant for a production tenement over native title land that the tenement will be granted or registered contingent on the registration of an agreement or determination under this Part.

(2) The Minister may refuse an application for a production tenement over native title land if it appears to the Minister that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the grant or registration of the tenement to which the application relates (and if the application is refused, the applicant's claim lapses).

Clause 29, page 12, lines 27 to 39, page 13, lines 1 to 24—Leave out proposed sections 63I, 63J, and 63K and insert:

Types of agreement authorising mining operations on native title land

63I.(1) An agreement authorising mining operations on native title land (a 'native title mining agreement') may—

(a) authorise mining operations by a particular mining operator; or

(b) authorise mining operations of a specified class within a defined area by mining operators of a specified class who comply with the terms of the agreement.

Explanatory note—

If the authorisation relates to a particular mining operator it is referred to as an individual authorisation. Such an authorisation is not necessarily limited to mining operations under a particular exploration authority or production tenement but may extend also to future exploration authorities or production tenements. If the authorisation does extend to future exploration authorities or production tenements it is referred to as a conjunctive authorisation. An authorisation that extends to a specified class of mining operators is referred to as an umbrella authorisation.

(2) If a native title mining agreement is negotiated between a mining operator who does not hold a production tenement for the relevant land, and native title parties who are claimants to (rather than registered holders of) native title land, the agreement cannot extend to mining operations conducted on the land under a future production tenement.

(3) An umbrella authorisation can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less.

(4) If the native title parties with whom a native title mining agreement conferring an umbrella authorisation is negotiated are claimants to (rather than registered holders of) native title land, the term of the agreement cannot exceed 10 years.

(5) The existence of an umbrella authorisation does not preclude a native title mining agreement between a mining operator and the relevant native title parties relating to the same land, and if an individual agreement is negotiated, the agreement regulates mining operations by a mining operator who is bound by the agreement to the exclusion of the umbrella authorisation.

Negotiation of agreements

63IA.(1) A person (the 'proponent') who seeks a native title mining agreement may negotiate the agreement with the native title parties.

Explanatory note—

The native title parties are the persons who are, at the end of the period of two months from when notice is given under section 63J, registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. A person who negotiates with the registered representative of those persons will be taken to have negotiated with the native title parties. Negotiations with other persons are not precluded but any agreement reached must be signed by the registered representative on behalf of the native title parties.

(2) The proponent must be—

(a) if an agreement conferring an individual authorisation[1] is sought—the mining operator who seeks the authorisation;

(b) if an agreement conferring an umbrella authorisation[1] is sought—the Minister or an association representing the interests of mining operators approved by regulation for the purposes of this section.

1. See the explanatory note to section 63I(1).

Notification of parties affected

63J.(1) The proponent initiates negotiations by giving notice under this section.

(2) The notice must—

(a) identify the land on which the proposed mining operations are to be carried out; and

(b) describe the general nature of the proposed mining operations that are to be carried out on the land.

(3) The notice must be given to—

(a) the relevant native title parties; and

(b) the ERD Court; and

(c) the Minister.

(4) Notice is given to the relevant native title parties as follows:

(a) if a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land;

(b) if there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method prescribed by Part 5 of the *Native Title (South Australia) Act 1994*.

What happens when there are no registered native title parties with whom to negotiate

63K.(1) If, two months after the notice is given to all who hold or may hold native title in the land, there are no native title parties in relation to the land to which the notice relates, the proponent may apply *ex parte* to the ERD Court for a summary determination.

(2) On an application under subsection (1), the ERD Court must make a determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.

(3) The determination may be made on conditions the Court considers appropriate and specifies in the determination.

(4) The determination cannot confer a conjunctive or umbrella authorisation.[1]

[1.] See the explanatory note to section 63I(1).

Clause 29, page 14, lines 1 to 13 (new section 63L)—Leave out proposed subsections (2) and (3) and insert:

(2) If the proponent states in the notice given under this Division that the mining operations to which the notice relates are operations to which this section applies and that the proponent proposes to rely on this section, the proponent may apply *ex parte* to the ERD Court for a summary determination authorising mining operations in accordance with the proposals made in the notice.

(3) On an application under subsection (2), the ERD Court may make a summary determination authorising mining operations in accordance with the proposals contained in the notice.

(4) However, if within two months after notice is given, a written objection to the proponent's reliance on this section is given by the Minister, or a person who holds, or claims to hold, native title in the land, the Court must not make a summary determination under this section unless the Court is satisfied after giving the objectors an opportunity to be heard that the operations are in fact operations to which this section applies.

And that the House of Assembly agrees thereto.

As to Amendments Nos. 20 and 21:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendment No. 22:

That the Legislative Council do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 29, page 14, lines 28 and 29 (new section 63N(2))—Leave out proposed subsection (2) and insert:

(2) An agreement must deal with—

(a) notices to be given or other conditions to be met before the land is entered for the purposes of carrying out mining operations; and

(b) principles governing the rehabilitation of the land on completion of the mining operations.

And that the House of Assembly agrees thereto.

As to Amendment No. 23:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendments Nos. 24 and 25:

That the Legislative Council do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 29, page 15, lines 2 to 4 (new section 63N)—Leave out proposed paragraph *(b)* and insert:

(b) if the Court considers it appropriate, make a determination authorising entry on the land to carry out mining operations, and the conduct of mining operations on the land, on conditions determined by the Court.

Clause 29, page 15, lines 5 to 10 (new section 63N)—Leave out proposed subsection (6).

Clause 29, page 15, after line 10—Insert new section as follows:

Effect of registered agreement

63NA.(1) A registered agreement negotiated under this Division is (subject to its terms) binding on, and enforceable by or against the original parties to the agreement and—

(a) the holders from time to time of native title in the land to which the agreement relates; and

(b) the holders from time to time of any exploration authority or production tenement under which mining operations to which the agreement relates are carried out.

(2) If a native title declaration establishes that the native title parties with whom an agreement was negotiated are not the holders of native title in the land or are not the only holders of native title in the land, the agreement continues in operation (subject to its terms) until a fresh agreement is negotiated under this Part with the holders of native title in the land, or for 2 years after the date of the declaration (whichever is the lesser).

(3) Either the holders of native title in the land or the mining operator may initiate negotiations for a fresh agreement by giving notice to the other.

(4) A registered agreement that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.

And that the House of Assembly agrees thereto.

As to Amendment No. 26:

That the Legislative Council do not further insist on its amendment.

As to Amendments Nos. 27 and 28:

That the Legislative Council do not further insist on its amendments but makes the following amendments in lieu thereof:

Clause 29, page 16, after line 1 (new section 63O)—Insert new subsection as follows:

(5) The representative Aboriginal body for the area in which the land is situated is entitled to be heard in proceedings under this section.

Clause 29, page 16, after line 31—Insert:

Limitation on powers of Court

63PA.(1) The ERD Court cannot make a determination conferring a conjunctive or umbrella authorisation[1] unless the native title parties[2] are represented in the proceedings and agree to the authorisation.

(2) A conjunctive authorisation[1] conferred by determination cannot authorise mining operations under both an exploration authority and a production tenement unless the native title parties[1] are the registered holders of (rather than claimants to) native title land.[3]

(3) An umbrella authorisation[1] conferred by determination—

(a) can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less; and

(b) cannot authorise mining operations for a period exceeding 10 years unless the native title parties[2] are registered holders of (rather than claimants to) native title land.[4]

[1.] See explanatory note to section 63I(1).

[2.] See explanatory note to section 63IA(1).

[3.] Section 63I(2) is of similar effect in relation to native title mining agreements.

[4.] Section 63I(3) and (4) are of similar effect in relation to native title mining agreements.

And that the House of Assembly agrees thereto.

As to Amendment No. 29:

That the Legislative Council do not further insist on its amendment.

As to Amendment No. 30:

That the Legislative Council do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 29, page 17, lines 19 and 20 (new section 63R)—Leave out proposed subsection (2) and insert:

(2) However—

(a) the Minister cannot overrule a determination—

(i) if more than two months have elapsed since the date of the determination; or

(ii) if the Minister was the proponent of the negotiations leading to the determination; and

(b) the substituted determination cannot create a conjunctive or umbrella authorisation[1] if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

Explanatory note—

The scope of an authorisation is extended if the period of its operation is lengthened, the area to which it applies is increased, or the class of mining operations to which it applies is expanded in any way.

[1.] See the explanatory note to section 63I(1).

And that the House of Assembly agrees thereto.

As to Amendment No. 31:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendment No. 32:

That the Legislative Council do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 29, page 18, after line 28—Insert:

Review of compensation

63VA.(1) If—

(a) mining operations are authorised by determination under this Part on conditions requiring the payment of compensation; and

(b) a native title declaration is later made establishing who are the holders of native title in the land,

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.

(2) The application must be made within three months after the date of the native title declaration.

(3) The Court may, on an application under this section—

(a) increase or reduce the amount of the compensation payable under the determination (as from the date of application or a later date fixed by the Court); and

(b) change the provisions of the determination for payment of compensation in some other way.

(4) In deciding whether to vary a determination and, if so, how, the Court must have regard to—

(a) the assumptions about the existence or nature of native title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions; and

(b) the need to ensure that the determination provides just compensation for, and only for, persons whose native title in land is affected by the mining operations;

(c) the interests of mining operators and investors who have relied in good faith on the assumptions on which the determination was made.

And that the House of Assembly agrees thereto.

As to Amendment No. 33:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendment No. 34:

That the Legislative Council do not further insist on its amendment.

And that the Legislative Council makes the following consequential amendments and the House of Assembly agree thereto:

1. *Clause 3, page 2, after line 24*—Insert definition as follows:
   'native title mining determination' means a determination authorising a mining operator to enter land and carry out mining operations on the land under Part 9B;
2. *New clause, after clause 11, page 5, line 8*—Insert new clause as follows:
   Amendment of s. 34—Grant of mining lease
   11A. Section 34 of the principal Act is amended by striking out from subsection (1) 'The Minister' and inserting 'Subject to Part 9B, the Minister'.
3. *New clause, after clause 15, page 6, line 21*—Insert new clause as follows:
   Amendment of s. 41A—Grant of retention lease
   15A. Section 41A of the principal Act is amended by inserting in subsection (1) 'and Part 9B' after 'subject to this section'.
4. *Clause 19, page 7, after line 31*—Insert new paragraph as follows:
   (aa) by striking out from subsection (3) 'subject to this Act' and substituting 'subject to Part 9B and the other provisions of this Act';
5. *Clause 29, page 17, line 7 (new section 63Q)*—Insert '(subject to its terms)' after 'is'.
6. *Clause 29, page 17, line 11 (new section 63Q)*—Leave out 'mining tenement' and insert 'exploration authority or production tenement'.
7. *Clause 29, page 17, after line 12 (new section 63Q)*—Insert the following proposed subsections:
   (4) If a native title declaration establishes that the native title parties to whom the determination relates are not the holders of native title in the land or are not the only holders of native title in the land, the determination continues in operation (subject to its terms) until a fresh determination is made, or for 2 years after the date of the declaration (whichever is the lesser).
   (5) A determination under this Part that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.
8. *New clause, page 19, after line 32*—Insert:
   Insertion of s. 84A
   35A. The following section is inserted after section 84 of the principal Act:
   Safety net
   84A. (1) The Minister may enter into an agreement with the holder of a mining tenement—
   (a) that, if the tenement should at some future time be found to be wholly or partially invalid due to circumstances beyond the control of the holder of the tenement, the holder of the tenement will have a preferential right to the grant of a new tenement; and
   (b) dealing with the terms and conditions on which the new tenement will be provided.
   (2) The Minister must consider any proposal by the holder of a mining tenement for an agreement under this section.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

It is appropriate that I make a few observations for the record about the agreements which have been reached at the conference. This Bill is part of the package of four Bills that the Government introduced in October into the House of Assembly relating to native title issues. The Bills were the Government's response to the decision of the High Court in the Mabo case and also to the Commonwealth Native Title Act passed in December 1993.

Three of the Bills passed, one being the Native Title (South Australia) Act, part of which was proclaimed to come into effect just prior to Christmas and that part related particularly to validation. The Mining (Native Title) Bill, because it related to exploration and mining development, was a more sensitive piece of legislation and in the mass of legislation that we dealt with before we rose for Christmas it was not possible to give proper attention to all issues that arose from that Bill. Notwithstanding that, the time was put to good use. The Government, in particular, has undertaken further consultations, particularly with the Commonwealth as well as with other interested groups including representatives of the mining industry as well as the Aboriginal Legal Rights Movement and representatives of other Aboriginal organisations. As a result, we proposed a significant number of amendments, some of which were accepted, some of which were modified by the Legislative Council majority and others

of which were rejected but with alternatives approved in their places.

After consideration of the issues in the House of Assembly and before the matter went to conference, the Government undertook further consultations with Commonwealth officers, as a result of which further amendments were proposed. We prepared what one could call a mock-up of the Bill that we wished to have passed. That was forwarded to Commonwealth officers to get an indication of whether or not the Commonwealth officers would be prepared to recommend the approval of our Bill to the Federal Special Minister for State, Mr Gary Johns, MP. Some further minor amendments were proposed by the Commonwealth and were accommodated in the amendments that the conference considered.

From here we will have to make representations to the Commonwealth Special Minister for State for his approval to the compromise reached by the conference. I would hope that, notwithstanding the fact that no party gained everything that he or she wished out of the conference, this Bill represents a workable compromise and the fact that it is accepted by the Parliament and all Parties within the Parliament would, I hope, carry significant weight with the Special Minister for State. One of the difficulties is that he will have to give consideration to the views of a variety of people and organisations with respect to whether or not this should be approved, but if it is approved it will provide for South Australia an alternative right-to-negotiate regime and also provide a structure that is more certain, clearer and likely to provide more positive outcomes.

It is in the interests of native titleholders, miners, the Government and the whole State that we have what is a more certain process and structure in place than under the Commonwealth Native Title Act. To digress, there is a growing recognition at the Federal level that significant changes must be made to the Commonwealth Act to make it workable and to put more certainty into it. The Hon. Sandra Kanck might react to the reference to 'certainty', but one of the difficulties with all areas of the law, particularly where the interests of third parties are involved, is to try to make it certain. It is not always achievable, which is where the lawyers and courts come in to endeavour to resolve the uncertainties. From a Parliamentary viewpoint it is important to try to get certainty into it and what we have come out of the conference with will provide a greater level of certainty than is available at the Commonwealth level.

Before dealing with the detail, I want to make one other observation, namely, that the conference process used on this occasion was productive. Not everyone got everything that he or she wished out of the conference, but it was an important compromise on some issues which will enable the exploration activities to go ahead in a more certain environment while still protecting the rights of native titleholders, particularly at the production stage. I record my appreciation of the way in which the parties contributed to the development of the compromise. Some of the discussions were quite heated. We adjourned and met informally involving officers and then finally resumed to reach the compromise.

In relation to amendments Nos 1 and 2, the major issue was in relation to the inclusion of a miscellaneous purposes licence. Miscellaneous purposes licences are not covered within the description of 'mining' under the Commonwealth Native Title Act. It was the South Australian Government's view that they were not mining but incidents of mining and that it would be quite inappropriate to have them included in the right-to-negotiate process. The conference finally agreed that that would be the case. In the alternative amendments to the Legislative Council amendments Nos 1 and 2 we have also the beginning of a division in procedure for the granting of a tenement. I will deal with that later in relation particularly to proposed sections 63F and 63G. In that respect we have separated the granting of a tenement in respect of expiration from the granting of a tenement in relation to production. What we have compromised on that is an important consequence of the consultation process.

Some of the amendments also were amendments which the Government proposed in the Legislative Council and which were agreed to, but in the process of getting the matter to a conference the Assembly disagreed with everything. I will not deal particularly with those amendments made in this place that were, in effect, Government amendments because we are now recognising that they are appropriate in the Bill. Amendment No. 5 related to the renewal of an exploration licence. The Bill deals with the issue of the holding over of an exploration licence. It provides that an exploration licence can be granted for up to five years. Mostly they are granted for a year and, as they are renewed, so the areas are reduced. If there is a right of renewal, the aggregate term of an exploration licence cannot be for any longer than five years before going through the right-to-negotiate process again. The Australian Democrats moved an amendment that an application for renewal of an exploration licence should be made to the Minister not less than three months and not more than six months before the end of the term.

On the basis that an exploration licence was granted for 12 months and that the exploration activity, the assessment of data, may not be available within even the first nine months of the exploration licence, it would have been quite likely that an application for renewal could not be made because there was insufficient information available upon which the miner could make the decision. In those circumstances there was no power in the Minister to renew. The compromise reached by the deadlock conference in the light of that background was that the application for renewal should be made at least one month before the date of expiry of the exploration licence, and we are comfortable about that.

Amendment No. 9 related to precious stones and the proposal that precious stones claims should not be pegged on freehold land, which, of course, was broadened to be non-discriminatory unless the owner consented in writing. There was a proposition that that should be broadened to include notice to the person who holds native title in the land. We thought that was quite unworkable in relation particularly to precious stones claims. The amendment recognises that and it is proposed that the Legislative Council do not further insist on its amendment.

Amendment No. 10 related to notification of abutting owners. When the amendments to the Development Act were made about two years ago, a provision was inserted that notice should be given to abutting owners. The Government sought to take this out of the Act on the basis that if it were to be non-discriminatory and extended to native title holders the whole process would be bogged down by bureaucracy for no good purpose. The conference finally agreed with that. Therefore, the Legislative Council will no longer insist on its amendment. Amendments Nos 11 and 12 are very largely redrafts of Government amendments in relation to entry on land. Notice of entry provisions under amendment No. 12 in our view were unnecessary and the conference finally accepted that. There are some consequential amendments that relate to that proposal in the recommendations of the

conference. The major amendments relate to amendments Nos 15 to 19. This is where the substance of the Government's concern was reflected in an agreement at the conference to make a distinction between exploration and production. The Government had proposed that to facilitate the issuing of tenements the tenements should be issued even where native title may be involved in the land over which the tenement was granted and that the onus should be placed upon the miner to ensure that the appropriate agreement or determination with respect to native title land was achieved.

It was provided that the granting of the tenement did not confer a right to enter and to explore or to mine until the agreement or determination in relation to native title had been achieved. The Opposition had a view that that was much more constrained than that: that there ought to be negotiation or determination in relation to native title by an applicant for a mining tenement before the tenement was granted by the Minister. The Government took the view that was unworkable. It certainly placed a significant onus upon Government officials with a potential ultimate liability of the Government to the explorer if the Government had not adequately checked the existence of native title and had made a mistake. In fact, there was always the prospect that the tenement would be invalid as a result of such an error.

The compromise reached was that the process that the Government wished to have in place for the issuing of tenements would apply in relation to exploration with an added protection under proposed section 74A that, in relation to compliance, both the Director of Mines and the owner, which included native title holders, could apply to the court in relation to compliance issues. The Government agreed that it could accommodate the proposal of the Opposition in relation to production tenements, because by that time there would have been a relationship built between the miner and the native title holder or other Aboriginal people in relation to exploration, recognising that companies do seek to reach agreement rather than confrontation and that it would therefore be much easier after the exploration phase to put in place an agreement or determination in relation to compensation and other issues relating to native title before moving on to a production tenement.

We have provided in the resolution of the conference that the production tenement is not to be granted unless there is a pre-existing agreement or determination relating to native title. We think that that will work quite satisfactorily. It enables to us get on with exploration now, subject to the protections that the legislation provides for native title holders, but also to provide those protections in relation to the grant of a production tenement. Our view is that that will work satisfactorily, will put South Australia out in front of other States in relation to the way in which exploration and production tenements are dealt with and should give us an edge in attracting exploration investment into this State, of course subject always to the Special Minister for State agreeing to it.

Consideration was given to proposed section 63A, which relates to umbrella authorisations, where it was proposed by the majority in the Legislative Council that an umbrella authorisation could relate only to prospecting or mining for precious stones over an area of 100 square kilometres or less. The Government took the view that that was too small. We did compromise on 200 square kilometres, which if one looks at it objectively is only 10 kilometres by 20 kilometres. An umbrella authorisation will allow miners to go into such an area with fewer impediments in relation to the right to negotiate than previously applied.

There are some amendments to section 63IA, 63J and 63K. However, to some extent they are consequential on the other issues that have been negotiated. In relation to amendment No. 22, the Hon. Sandra Kanck moved an amendment that sought to impose in relation to the grant of a tenement the negotiation of an agreement that also included conditions regarding rehabilitation right from the outset.

We put the position that that was not practicable because, until you know what is in the ground and what sort of development you want, you cannot talk about rehabilitation. In any event, what is done now through the Department for Mines and Energy is to ensure that there is a focus upon rehabilitation when the tenements are being granted. What we compromised on at the conference was that the principles governing the rehabilitation of the land on completion of the mining operations should be set out in the agreement at first instance. That will overcome the difficulty one had with the detail of the proposed Legislative Council amendment. In relation to amendments Nos. 24 and 25, the Government proposed a new section 63NA, because we felt that there needed to be some comprehensive package that dealt with the effect of a registered agreement.

There are adequate protections for new native titleholders who come out of the woodwork. If a native title declaration establishes that native title parties with whom an agreement was negotiated are not the holders of native title in the land or are not the only holders of native title in the land, the agreement continues in operation subject to its terms until a fresh agreement is negotiated with the holders of native title in the land or for two years after the date of the declaration, whichever is the lesser. That provides protections for the company, for those who have negotiated the agreement and for the other native titleholders who are determined to have an interest in that land.

In relation to amendment No. 26, which relates to an application for a determination, there was concern by the Government that this would open up the opportunity for the court to award a substantial change in share of profits or income, and the Government has persuaded the conference that we should maintain the Government's preferred position in relation to that. I think it is also important to recognise that, although some members had a concern that the ERD Court was constrained not to provide for payment to the native title parties of compensation based on profits or income derived from mining operations on the land or the quantity of minerals produced, that was in fact consistent with provisions in the Commonwealth Native Title Act, and we took the view as a Government that it was important that that matter be put beyond doubt.

In relation to proposed section 63PA, which seeks to put limitations on the power of the court, there is a consequential amendment there in relation to an umbrella authorisation that can relate only to prospecting or mining for precious stones over an area of 200 square kilometres or less. Amendment No. 30 dealt with section 63R of the Act, the power for the Minister to override a determination of the court. I could agree that, where the Minister had been a proponent of the negotiations, the Minister should be bound by any decision of the court. On the other hand, it is quite likely that the Minister may be a party to proceedings involuntarily, and it seemed inappropriate in those circumstances that the Minister should not be able to override the determination, remembering that at the Commonwealth level the Federal Minister does

have this power in the interests of the Commonwealth, and the State Minister is empowered to exercise this responsibility in the interests of the State.

The other point to be made in relation to that is that the determination by the Minister is subject to judicial review by the Supreme Court. So, there is a check on the exercise of that power by the Minister. In amendment No. 32, the amendment passed by the Legislative Council was similar to that of the Government but without subsection (4). Subsection (4) inserted a number of criteria that the court must have regard to in deciding whether or not to vary a determination about compensation. There was an issue about the extent to which the interests of mining operators and investors should be taken into consideration. Following consultations with the Commonwealth, we have revamped it slightly, particularly in proposed subsection (3)(a), which allows the court to increase or reduce the amount of the compensation payable under the determination as from the date of application or a later date fixed by the court. That is important.

In relation to the contested subsection (4) paragraph (c), we finally compromised on the form of words; that, in deciding whether to vary the determination, the court must have regard to the interests of mining operators and investors who have relied in good faith on the assumptions on which the determination was made. In relation to amendment No. 33, proposed section 74A relating to compliance orders, that issue has now been satisfactorily resolved and the House of Assembly will not further insist on its disagreement to the proposal of the Legislative Council. In relation to amendment No. 34, dealing with extractive minerals, the Government took the view that, with respect to the mover, it did not really make sense, and that has now been adequately resolved.

There are some incidental and consequential amendments, particularly a proposed section 84A, which is a safety net provision and, from the point of view of the holders of a mining tenement, that is particularly important in terms of priority and the protection of what might be substantial investment. I think that addresses the issues that have been the subject of debate in both Houses and the subject of consideration by the deadlock conference. As I said at the commencement of these remarks, the resolution by the deadlock conference will provide a workable solution to the concerns that the Government had about the amendments moved and carried by the Legislative Council, and will also put in place a significantly improved process that miners and native titleholders or claimants can access in establishing rights with a greater level of certainty than provided under the Commonwealth Act.

I repeat that this has been the subject of extensive consultation that has involved both me and my officers. Whilst it has been rather time consuming, I think the outcome is rewarding.

The Hon. CAROLYN PICKLES: The Opposition supports the recommendation from the conference of managers. During the Committee stage of the Bill the Opposition moved a whole raft of amendments, as did the Australian Democrats, which were rejected in their entirety by the House of Assembly—including some of the Government amendments. The conference of managers had a lengthy job before it. I do not intend to go over in detail the amendments to which we have agreed as, I believe the Attorney has covered those quite carefully and I understand the Bill is required to be dealt with expeditiously in this place so it can pass through the Lower House without delay. However, I would like to put on the record on behalf of the Opposition our appreciation of the method with which we have dealt with this raft of four Bills that were passed previously and this particular Bill with which we have had to deal at some length. This Chamber is often criticised for the way in which it goes about its business, but I must say that, when Bills pass through another place in an hour and a half having been introduced during the week before, it is contingent upon the Legislative Council to give careful and detailed consideration with good grace, good spirit and cooperation to such an important piece of legislation as this.

As the Attorney has indicated, he has had close consultation with the Commonwealth, and of course the Commonwealth has the final say as to whether or not this legislation is acceptable to it. The Opposition has approached this Bill differently. At all times it has gone to great pains to ensure that the spirit of the Commonwealth legislation is adhered to, and that is why it moved its amendments. The Opposition is satisfied that, following the conference of managers, some of the concerns of the Government have been accommodated, while at the same time the concerns that the Opposition maintained following on the amendments that it moved in Committee have also been accommodated. We have come out of this process with a piece of legislation with which, hopefully, we can all work. It is a very important piece of legislation, one which the Opposition has supported all the way along the line—the legislation moved by the Commonwealth on native title—and with this facilitating process that has been conducted by the Government the Opposition believes that its amendments, which have been accepted in part by the Government, have facilitated that process, and we look forward, following the introduction of some regulations which I understand will be moved later, to seeing the legislation put in place and the whole issue of native title dealt with expeditiously.

The Hon. SANDRA KANCK: It was interesting to observe the way in which the amendments to the Bill which were made in this place were treated by the Government in the House of Assembly. Rather than effectively evaluating them, their reaction was a knee-jerk one which appeared to say, 'If it's come from the Legislative Council, vote it down.' I think it is somewhat ironic that some of the amendments voted down by the House of Assembly included some successful ones of the Attorney-General. I would particularly like to acknowledge the Attorney-General for the process that he advanced which allowed us to participate in more informal negotiations outside the deadlocked conference. I think it allowed us to proceed at a much faster pace than we would have otherwise.

As regards the amendments themselves as they finally emerged, I will not be able to speak on them because of my other legislative load, but I will refer to a few of them in passing. I was disappointed that the reference to a miscellaneous purpose licence has been deleted in the definitions of 'mining operations' and 'production tenements'. When we debated this issue on a number of occasions in Committee, I stressed that 'miscellaneous purposes' includes a lot of sometimes very large things such as poppet heads, crushes, mills, winding houses, settling ponds, tailing dams and skip dumps. In Broken Hill, those sorts of structures take up approximately one third of the land, so their impact can be quite massive. 'Miscellaneous purposes' comes up again with regard to clause 22. I succeeded in Committee to retain the original wording of the Act, but I was not successful in the conference. With the Bill going back to its original form in respect to clause 22,

property owners whose land abuts the area over which a miscellaneous purposes licence is proposed will no longer be advised. I think this is a backward step. Not surprisingly from my point of view, this Bill in the form in which it has emerged as a result of the deadlocked conference is not as satisfactory as when we completed its third reading a month ago. However, I recognise the reality of the numbers, and I will not kick up a huge stink about it. Generally, I support the outcome of the conference.

The Hon. R.D. LAWSON: I support the recommendations of the conference, and I welcome the passage of this Bill which will effect amendments to the Mining Act to accommodate native title. Personally, I do not consider that the amendments which have been effected as a result of the conference have improved the original Bill. However, it was necessary to compromise issues in order to secure the passage of this very important legislation for the benefit of the whole of the South Australian community. The Mining Act is of tremendous importance to this State. Mining has been a significant part of our economy since the early days, and mining is an industry or activity which is largely dependent on an appropriate statutory framework. In this respect, mining is different from many other activities. Agriculture is a very important activity for the purposes of this State, but farmers are not dependent in any day-to-day sense upon legislation to conduct their activities.

So, too, as regards manufacturing: manufacturing is very important to the economy of this State and to the employment of the work force but, again, manufacturing is not largely dependent upon a statutory regime. However, mining is based almost entirely upon the provisions of the Mining Act, and appropriate provisions are critical: they must be clear; they must be certain; and they must be well understood. With the passage of this legislation there will be removed doubts that exist about our mining regime as a result of native title deriving from the decision of the High Court in *Mabo No. 2* and also from the passage by the Commonwealth Parliament of the Federal Native Title Act.

As I have said, the passage of this Bill should lead to a resumption of exploration and mining activity in this State, and that will be to the benefit of the whole of the community as well as to the benefit of the Aboriginal community and those people within it who have native title claims and wish to prosecute them. Their interests will be appropriately protected under this legislation in which the Government has sought to conform strictly with the spirit and the letter of the Commonwealth Native Title Act. Ordinary citizens, ordinarily, do not have great control, influence or say in respect of mining or even prospecting which is conducted on or adjacent to their property. However, the Mining Act does contain rights which entitle citizens, whether black or white, Aboriginal or non-Aboriginal, to receive notice of proposals.

In relation to native title, a special regime is in place as a result of the Federal Native Title Act. Some of us believe that in many respects some of the provisions of that legislation are not only difficult to interpret—that is undoubted—but are unworkable and will require amendment. The sooner the Federal Government comes to acknowledge the need for sensible amendment the better for all concerned. Notwithstanding the fact that under South Australian law owners of land and persons with interests in land do not have a substantial say in relation to mining exploration and projects, this legislation will give particular and special protection to those who have native title claims. I applaud the resolution of the conference and the passage of the Bill.

The Hon. T.G. ROBERTS: I was in the gallery in Canberra when the Mabo legislation went through in 1993, and there was a lot of excitement as to how the changes would impact on those people who had special interests, that is, the Aboriginal people. The history of development in this State in relation to the interests of Aboriginal people, particularly those in the northern regions, has been applauded by the rest of the nation because we have a history of bipartisanship in dealing with such matters. David Tonkin and Don Dunstan, two previous Premiers, were able to put together a policy which took into account the special requirements of Aboriginal people.

Although the Government started out playing hard ball with some of the provisions of this Bill, I think there has been, through the conference, a more bipartisan approach to the whole affair. The Democrats have brought a balanced view to it. It has been hard work sitting down at the table and working through the clauses, and I congratulate the Attorney-General in his dogged work in putting together the final proposals. It was not an easy process because we started from fairly wide positions but, in the end, we drew our arguments together to bring about a bipartisanship which, I hope, will be supported and protected in relation to the application of the Bill.

In the early days of granting land rights to Aboriginal people one of the things that was missing was the ability of Aboriginal people to be able to determine incomes or to undertake any enterprise that they considered appropriate for the area. We were never, as a Government, able to provide the infrastructure support and the right levels of advice, support and assistance without patronisation. That was a problem, because Aboriginal people were able to obtain land rights but were not able to obtain economic independence. It is now incumbent on the mining industry, on primary industries, and on any other industries that have claims, to protect South Australia's, Australia's and Aboriginal people's interests and to sit down with Aboriginal people and work out favourable circumstances in which those enterprises can live side by side with a protection of Aboriginal people's interests and to determine total exclusion areas and those areas where limited activities can occur.

It is difficult for constituencies in metropolitan areas to understand why there needs to be total exclusion, and I guess we have the equivalence in national parks and in wilderness areas as far as conservationists are concerned. I think in this State we are well on the way to being able to balance those interests properly, because the debate has been held at close quarters around tables and we have been able to determine each other's position. The responsibility then falls back on to those vested interests in, first, being able to carry out the negotiations, in apportioning the royalties and/or the benefits to those interest groups which may be a part of the negotiations and in making sure that the interests of Aboriginal people, the environment and all the other vested interests are maintained and protected.

Hopefully, we will be able to go from land rights and land ownership to being able to identify land rights and land ownership with land use and responsibilities. I think it is a major step forward. The other balancing act we had to apply was the application of the Act to the Federal system. Paul Keating has certainly put the intentions of the Bill in the Act and the intentions of the next development stage for Aboriginal people on the agenda for the next century. It is incumbent on the States to work with the Federal Government's intentions in order to make sure that those balances

are maintained and that the interests of all South Australians are preserved, particularly the interests of Aboriginal people who need our support and assistance.

Motion carried.

HOUSING AND URBAN DEVELOPMENT (ADMINISTRATIVE ARRANGEMENTS) BILL

Adjourned debate on second reading.

(Continued from 21 March. Page 1604.)

The Hon. DIANA LAIDLAW (Minister for Transport): I thank members for their contributions to this debate. They raised a number of matters which I would like to address briefly. In relation to the concerns which were expressed by the Australian Democrats about ministerial powers being excessive, I indicate that this Bill is simply about administrative arrangements within a Minister's own portfolio. It does not and cannot increase a Minister's powers. The Minister is a body corporate under the Administrative Arrangements Act 1994. It is open to a Minister to exercise all their powers through a department, which is a traditional arrangement of Governments.

However, over a number of years successive Governments have set up authorities to exercise ministerial powers in ways which have often been conferred by special Acts of Parliament. For a long time it has been assumed that by doing so Ministers were protected from the consequences of actions of those bodies. If that was ever the case it is certainly not now, as the repercussions of the State Bank disaster have shown. Accordingly, it makes sense that the responsibility of the Minister should be supported by full accountability of the boards and corporations that report to him or her. This Bill is to clarify that position and to enable the Minister to properly exercise his or her powers, not to extend them.

A further concern expressed by the Hon. Sandra Kanck related to the social objectives not being specified for the corporations and the belief that this signalled a change to a purely commercial approach to public housing. I am advised that the functions of the Minister are set out in clause 5. The first seven of these all encompass social objectives. I highlight in particular the following objectives: strong housing sector within the community, provision of public housing, housing finance or assistance, development of land and housing in the public interest, facilitate appropriate planning and ensure well planned and appropriately serviced development, improve the amenity of existing communities, promote and improve housing and urban development, respond to community interest and contribute to informal debate. Only then do the functions include the management of property and protect the value of assets and, even then, these are public assets.

The facts are that public housing is not a commercial operation in these days of an adequate housing industry and a shortage of public capital. The intention is to manage the operations of the portfolio on commercial lines which are perceived as being cost efficient methods. If the social objectives of public housing are to be properly achieved, it is essential for them to be properly managed. Here is the commercial objective not in place of social objectives, but in support of such social objectives.

Both the Hon. Sandra Kanck and the Hon. Terry Roberts expressed concern about the repealing of the Housing Trust Act and recommended that it be amended. This concern seems to rely on some notional connection between the repeal of the existing Act and the demise of the South Australian Housing Trust. That is certainly not the Government's intention. We can understand the uncertainty that might arise when a fixed arrangement is to be replaced with a more flexible one, but we have hoped to assure members of the Government's good intentions by releasing the draft gazettal indicating a continuing role of the South Australian Housing Trust.

The South Australian Housing Trust, of course, is continued by the new Bill: it is not to be abolished, stripped or gutted in the Minister's plans. I am encouraged by the Australian Democrats' recognition of the need to amend the South Australian Housing Trust Act. They have drawn attention to, as the honourable member says, 'the astounding' section 3(2) of the Act. Unfortunately, there are many other sections which inhibit current practice with respect to the board, its operations, the reporting and investigation provisions and so on. The possibility of amending the South Australian Housing Trust Act was considered early in the process. For an acceptable solution that accords with current companies and public corporation practices the amendment would have to be so extensive as to amount to a complete new Act.

That is what we have here. This Bill is—with its regulations and gazettals—a new South Australian Housing Trust Bill, with the added facility to set up other new statutory corporations. It would be possible to create a new and separate South Australian Housing Trust Act but it would look just like this one. This one would then still be required to establish the other corporations and we would then have two Bills doing the job of one. While I agree with the honourable member that the mere reduction in the number of Acts is not a compelling objective, it does seem sensible to avoid unnecessary duplication.

The Hon. Terry Roberts made a number of statements on behalf of the Labor Party. He indicated that the trust could have done what is required of it by Government, but has not been given a charter or objective. My response is, that the Bill envisages that the trust will have its charter spelt out in a gazettal by the Minister. There will also be performance agreements on the way the charter is to be fulfilled and the resources available to it. The Hon. Terry Roberts stated that there are currently democratic structures such as the Tenants Association. It is the case that this Bill will not alter any of these structures which are, in any case, of an advisory nature.

A further concern related to the new proposal which has 'the legitimacy of a $2 shelf company'. He also believed that there will be a massive cut back in status, power and influence of the trust. My response is, that there is no intention to cut back the trust standard in the community. Its status does not depend on the method of its incorporation but on the goodwill which has accumulated and which will continue to accumulate through its actions. The trust remains incorporated by this Bill. It is not correct that the new charter does not allow dwellings to be sold to tenants. It is intended to continue the current program of sale to tenants.

The Hon. Terry Roberts advised that the Bill is not based on the regeneration of stock based on finance from sales—these programs will continue. The precise method is independent of the Bill, as it is under the current Act. It is essentially a policy administrative decision. The Hon. Mr Roberts said that 40 per cent of trust tenants are on some form of assistance. The correct figure is now over 70 per cent. In addition, the trust assists over 20 000 tenants in private sector tenancies. The differential between full market prices

and subsidised price rent was highlighted with the concern that this would possibly disappear. I am advised that, on the contrary, as rebated rentals are tied to income, it is likely that the differential would increase in this period of economic difficulty, not disappear or decrease.

The Hon. Terry Roberts indicated that the triennial review of the South Australian Housing Trust has still not be seen. I am advised that the triennial review was tabled in the House of Assembly by the Minister for Housing, Urban Development and Local Government Relations on 16 March 1995. I assume that must have been just after the honourable member had made his contribution to this Bill. He indicated that tenants feel that they will have to pay for the restructuring. Again I have been advised that the restructuring is intended to save money so that a better service can be offered to tenants. There is no question of tenants having to pay for the restructuring process.

A final concern relates to the checks and balances in public housing provision and a concern that these would be lost. The advice I have received is as follows. At the moment there are few checks and balances. The South Australian Housing Trust board is responsible for the administration of the current Act. Any dispute with tenants is settled by the trust itself. Under the new proposals the Minister will oversee the board's activities in accordance with the performance agreement. The Minister's view will be improved by the property management being separately accountable from the tenancy services and the other methods of delivering housing assistance such as cooperatives, housing associations, rental assistance and home purchase assistance. Disputes with tenants will be settled by the Residential Tenancies Tribunal, an independent body. Hence, there will be more checks and balances in the system, not less, and the individual transactions and provision of community service money will be more readily accountable.

I believe I have covered most, if not all, of the concerns expressed by honourable members in their contributions to the second reading debate and I look forward now to proceeding to the Committee stages of the Bill.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. SANDRA KANCK: I move:

Page 2, lines 3 and 4—Leave out 'continued in existence under Division 1 of Part 3'.

This clause foreshadows my Opposition to clause 8 and the Government's plan to repeal the South Australian Housing Trust Act. If the Opposition supports me in opposing clause 8, then the words 'continued in existence under Division 1 of Part 3' obviously will not be needed.

The Hon. DIANA LAIDLAW: The Government strenuously opposes this amendment. I outlined in summing up the debate that we had a choice in seeking to address this Bill of whether we would do so by amendment or by bringing in this new Bill. It was considered that this approach was the most constructive because, noting that this Act was written in 1936 and for very different purposes—

The CHAIRMAN: I was only one then.

The Hon. DIANA LAIDLAW: Yes, and some of us know that you have gained a lot of wisdom over the years and one could argue that the Housing Trust has done so, too. However, the Housing Trust Act has not kept pace with the times, unlike you, Mr Chairman. Considerable amendment is required to update and upgrade this Bill. We can mess around with a Bill which requires extensive amendment and which would essentially reflect what is required in this Bill to date and may well require a second Bill to address other issues such as corporations.

We have to recognise that the times have changed, that the Bill does not correspond with current companies law, with the Public Corporations Act that has been through this place or with amendments that I understand are proposed to that Act which are to come to this place in the next session. It certainly makes no allowance for competition policy, and the Hilmer report is being discussed today by the Premiers' COAG meeting. Nor does the amendment make allowance for the need for ministerial accountability following the Commission of Audit. I would have thought, following the State Bank episode, that no person in this place would want to argue that there is no need for ministerial accountability.

The current board of the South Australian Housing Trust supports the new Bill and the repeal of the South Australian Housing Trust Act, so it is not something that is being imposed on the board by a Government that simply wants to increase ministerial power. It does none of those things but it requires accountability, upgrading and updating. It is unfortunate that this amendment has been moved by the Hon. Sandra Kanck. I certainly hope that it does not gain majority support.

The Hon. T.G. ROBERTS: I support the Democrat amendment.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5—'Functions.'

The Hon. SANDRA KANCK: I move:

Page 4, lines 4 and 5—Leave out ', in accordance with the policies and determinations of the Government'.

I refer particularly to clause 5(a), which currently reads: The functions of the Minister include—

(a) to promote a strong housing sector within the community and to provide public housing, and housing finance or assistance—

and these are the words I find offensive—

in accordance with the policies and determinations of the Government.

As it is, it means that a good part of the housing and urban development portfolio will be handled at the whim of the Minister of the day. Obviously Cabinet will have its say, but Cabinet is in turn advised by the Minister. If the Minister and the Government have to be guided by anything, the Democrats would want to see it be by community interest as referred to in paragraph (g). We believe it is very dangerous, particularly in light of the stuff that occurred with Catch Tim, to allow a Minister to be driven by a Government, which in turn is to be driven by unsourced political donations or money in brown paper bags. I am moving that these words be amended because of the implications if they remain in.

The Hon. DIANA LAIDLAW: Notwithstanding the crazy arguments by the honourable member in support of this amendment, we do support it.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 4, line 16—After 'urban development' insert ', to consult with community groups on issues associated with housing and urban development'.

I am referring to paragraph (g) here. It provides that the Minister, as one of her or his functions, will respond to community interest. As it is currently worded, it gives no guidance to the Minister as to how she or he will find out

what the community is interested in in the first place. My amendment sets this firmly in place by including public consultation as one of the Minister's functions. After she or he has consulted with the public, there is more chance that the community's interest will be more defined, but without public consultation being part of the Minister's functions she or he could be operating in a vacuum.

Amendment carried; clause as amended passed.

Clause 6—'Delegations.'

The Hon. SANDRA KANCK: I move:

Page 4, line 29—After 'functions' insert 'conferred on or vested in the Minister under this Act'.

This amendment simply makes it clearer as to what powers and functions it is that the Minister may delegate and sets some limits by specifying that they are the powers and functions that this Act gives to the Minister.

The Hon. DIANA LAIDLAW: We support the amendment.

Amendment carried; clause as amended passed.

Clause 7—'Advisory committees, etc.'

The Hon. SANDRA KANCK: I move:

Leave out this clause and insert new clause as follows:

7. (1) The Minister must establish—

(a) a housing and urban development industry advisory committee; and

(b) a residents and consumers advisory committee,

to provide advice on matters relevant to this Act, the Minister, the Department, a statutory corporation or SAHT.

(2) The Minister may establish other committees and subcommittees.

(3) The procedures to be observed in relation to the conduct of the business of a committee will be—

(a) as determined by the Minister;

(b) insofar as the procedure is not determined under paragraph (a)—as determined by the relevant committee.

The existing clause says that the Minister 'may' establish advisory committees. My amendment says that the Minister 'must' establish two specific advisory committees and 'may' establish others. The two committees I have indicated must be established represent the two major interests in this portfolio. One of the committees will represent the industry, the others the consumers of housing and land development.

The interests of the housing industry and land speculators are often at odds with prospective home and land buyers, but the industry bodies have much more money and in a tax deductible form to present their case than do the consumers of the product who are often out on a limb and on their own. Therefore, the views of industry are more likely to be heard by the Minister. Even though I believe the industry can look after itself because of its finance and lobbying powers, I have to be seen to be preserving the balance, and have provided that they be represented by a committee.

Of greater importance to me is the establishment of a committee that represents more of the community's views. I would envisage that the groups that might be represented on such a committee would include Shelter, the Housing Trust Tenants' Association, SACOSS and other groups like that, but obviously that would be up to the Minister.

The Hon. DIANA LAIDLAW: I oppose this amendment. The provision about advisory committees is in the current Act. It is one of the provisions which has worked well and which has served Ministers well in the past, notwithstanding my earlier comments about the Act's being outdated in many respects. However, it gives the Minister the flexibility to establish committees and the amendment seeks to do so by compulsion. Without the need for compulsion, I understand that the current Minister and past Ministers have formed committees in relation to Housing Trust tenants. I know that when I worked with the former Minister of Housing, Murray Hill, there was such a committee. It was a respected committee and we did not need compulsion to establish such committees when trying as a Government through the Housing Trust to meet the best interests of tenants because they are our customers.

Also, the Minister has a number of housing advisory committees, including an advisory committee on urban development. So, while those committees have been long standing in practice, we feel that it is not necessary to introduce this new issue of compulsion to establish such committees. We also feel that there is no point in setting up structures to compel the Minister to receive advice on various matters. One could assume that, as has happened in the past, a Minister for Housing would do this as an automatic part of good Government and good administration. That is what happens now.

The Hon. T.G. ROBERTS: I support the amendment. It is not important as to why, how or whether it is by compulsion, legislation or agreement. I think that the Government will thank the Opposition for this inclusion. It is only advice after all. However, the South Australian Housing Trust has had a history of consultation with consumer and user groups. In many cases they have been able to change or influence policy development and the implementation of policy. On occasion they have been able to go out and sell the Government's position in relation to changes that occur in the many applications of the Housing Trust Act. In cases of rent and application of water charges and so on it is a two-way thing: it is not only advice being given by a committee to Government. If Government can use those committees constructively then it can remove a lot of the pain from many proposals.

In relation to being able to determine solely the financial and economic direction of the State's programs, I think that the Hilmer report itself has not examined many of the outfalls that may occur as a result of many of the policies that have been developed. This is one case where the Government can be assisted by advice and committees to work in close liaison with the community to achieve the objects of its policies if it is in the best interests of tenants generally. It is a two-way exchange.

Clause negatived; new clause inserted.

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

Clause 8—'Continuation of SAHT.'

The Hon. SANDRA KANCK: The Democrats are opposing clause 8. I think that the repeal of the Housing Trust Act is the most fundamental clause in this Bill. I must say that I was surprised, when actually looking at the Housing Trust Act, since it was being repealed, to find out that it was in itself not a particularly outstanding piece of legislation and one that I have indicated does need a fair bit of work put into it. I was shocked to find that it has no charter or any description of its functions built into the Bill in the first place. Nevertheless, as a separate entity the Housing Trust has done a great deal in advancing South Australia. It has made a huge contribution to the lives of many people, and I cannot see that some of the other alternatives that are being provided for housing in this State and nationally will be able to make up the difference for the public housing function that has been performed by the Housing Trust.

Simply putting it all under the control of the Minister as part of a corporation will remove any opportunity that we can have under the Housing Trust Act to keep an eye on things and to make sure that it does remain socially responsible and accountable to the people of South Australia. I hope that members of the Opposition will be supporting me on this. I guess the fact that they supported my amendment to clause 3 is an indication that they will support me on this. I look forward to the Housing Trust's being able to retain its separate existence.

The Hon. T.G. ROBERTS: I support the Democrats' position on this and hope that the Government can work the changes that are required to streamline the administrative processes that will be the Government's responsibility in working with the Commonwealth to make sure that South Australia's administrative program, its construction program and its relationship with the Urban Land Trust are maintained, that the responsibilities are maintained and that the trust is intact. The public of South Australia would suffer some sort of future shock if it all happened at once: if the whole of the negotiated changes around restructuring were somehow to remove the trust's role and responsibility, because it has been a large part of many people's lives.

I know that the Government wanted to streamline the administrative process and wanted to place more responsibility on the Minister to be able to deal directly with many of the new programs that may emerge in the new role and functions of the trust, but if the restructuring program is such that it maintains the confidence of the South Australian people in the near future, it may be that the Government, with a new Bill, will be able to come back to the Parliament and seek support for a revamped structure with the removal of the trust. However, at this stage the Opposition, which had a position of its own, is supporting the Democrats.

The Hon. DIANA LAIDLAW: I take some heart from the honourable member's comments about a revamped Bill removing references to the Housing Trust and, on that basis, and acknowledging the earlier majority support for clause 3, I accept that we do not have the numbers.

Clause negatived.

Clause 9—'Formation of bodies.'

The Hon. SANDRA KANCK: I move:

Page 6, line 11—Leave out 'The Minister may, by notice in the *Gazette*' and insert 'The Governor may, by regulation'.

This is simply a question of accountability. I am addressing this because, although the Housing Trust will remain as a separate entity, I know that the Minister has in mind to form other corporations. I believe that the process as in the Bill has the formation's occurring and the Minister's advising after the event. This is providing instead that it be done by regulation, which means that Parliament has the opportunity to have some say in the formation of those corporations.

The Hon. T.G. ROBERTS: I move:

Page 6, line 15—Leave out 'A notice under subsection (1)' and insert 'Regulations establishing a statutory corporation'.

This amendment also deals with parliamentary scrutiny and is consequential upon the previous Democrat amendment.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 6, line 24—Leave out 'Minister' and insert 'Governor'.

This amendment is also consequential.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 6, line 30—Leave out 'The Minister may, by notice in the *Gazette*' and insert 'The Governor may, by regulation'.

This amendment is consequential.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 7, line 3—Leave out 'Minister' and insert 'Governor'.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 7, line 5—Leave out 'The Minister may, by notice in the *Gazette*' and insert 'The Governor may, by regulation'.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 7, line 8—Leave out 'determined by the Minister' and insert 'specified by regulation'.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7, after line 10—Insert new subparagraph as follows:

(iia) to SAHT; or.

This amendment is consequential following the removal of clause 8.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7, line 11—Leave out 'with the concurrence of the Treasurer—'.

This amendment is consequential on the change in subclause (5) to 'regulation' from 'notice'. The Government will not be required to consult with the Treasurer.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7, line 11—Leave out 'an' and insert 'another'.

This amendment is consequential.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7, line 13—Leave out 'in prescribed circumstances, subject to prescribed conditions (if any), and'.

This amendment is also consequential, because 'prescribed circumstances' are not appropriate to the Governor.

Amendment carried.

The Hon. T.G. ROBERTS: I move:

Page 7, line 16—Leave out 'Minister' and insert 'Governor'.

This amendment is consequential.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 7, lines 18 and 19—Leave out subclause (6) and substitute—

(6) However, if a regulation is in force under paragraph (e) of subsection (2) in respect of the statutory corporation, a statutory corporation must not be dissolved unless the Governor is satisfied that any relevant procedure prescribed under that paragraph has been followed.

(7) If a regulation establishing a statutory corporation under this section is disallowed by either House of Parliament, the assets, rights and liabilities of the statutory corporation become assets, rights and liabilities of the Minister.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 10—'Ministerial control.'

The Hon. SANDRA KANCK: I move:

Page 7, after line 22—Insert—

(2) A direction given by the Minister under this section must be in writing.

(3) If the Minister gives a direction under this section, the statutory corporation must cause a statement of the fact that the direction was given to be published in the next annual report.

This wording is lifted *holus bolus* from the Passenger Transport Act, which has become my Bible as regards what a good Act should be, which the Minister for Transport would be delighted to know. I think it is perfectly reasonable to expect that the members of the board will not place themselves in a position of gaining financially from any transaction of the board, but in case some of them might be tempted this clause spells it out. It adds a division that provides for imprisonment for up to four years or a fine of up $15 000, either of which I hope will be suitably off putting. It is a fairly important clause, because as this Government ventures further into private management and outsourcing there is a greater risk that such mistakes could be made. A clause such as this will make the members of the board conscious of the risk they might be running. This clause inserts greater ministerial accountability, and the Passenger Transport Act has been used as a model.

The Hon. T.G. ROBERTS: The Opposition opposes the amendment on the basis that enough cross-over responsibilities and cross-checks have been included in the Bill by way of the previous amendments and the changed principles which have been accepted.

The Hon. DIANA LAIDLAW: This is a bit of a dilemma for me because personally I feel very comfortable with the amendment; my instructions are to oppose it.

Amendment negatived; clause passed.

Clause 11—'Appointment of boards of statutory corporations.'

The Hon. T.G. ROBERTS: I move:

Page 7—
Line 25—Leave out 'Minister' and insert 'Governor'.
Line 26—Leave out 'Minister' twice occurring and insert, in each case, 'Governor'.
Line 28—Leave out 'Minister' and insert 'Governor'.
Line 29—Leave out 'Minister' and insert 'Governor'.
Page 8—
Line 1—Leave out 'Minister' and insert 'Governor'.
Line 9—Leave out 'Minister' and insert 'Governor'.
Line 16—Leave out 'Minister' and insert 'Governor'.

The Hon. SANDRA KANCK: We support the amendments.

The Hon. DIANA LAIDLAW: I oppose the amendments. The whole scheme of this Bill is for the operating corporations to be wholly under the control and direction of the Minister. That direction and control should extend to the right to hire and fire the people who are to carry out the tasks allotted to them by the Minister. Therefore, these amendments are not acceptable to the Government. There is no useful purpose in requiring the Minister to obtain the consent of his Cabinet colleagues before making good appointments in his own portfolio. That is the view of the Minister.

Amendments carried; clause as amended passed.

Clause 12—'Allowances and expenses.'

The Hon. T.G. ROBERTS: I move:

Page 8, line 20—Leave out 'Minister' and insert 'Governor'.

Amendment carried; clause as amended passed.

Clauses 13 and 14 passed.

New clause 14A—'Transactions with member or associates of member.'

The Hon. SANDRA KANCK: I move:

Page 10, after line 3—Insert new clause as follows:
Transactions with member or associates of member
14A (1) Neither a member of a board nor an associate of a member of a board may, without the approval of the Minister, be directly or indirectly involved in a transaction with the statutory corporation.

(2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
(a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and
(b) despite the fact that neither that person nor an agent, nominee or trustee or that person becomes a party to the transaction.

(3) Subsection (1) does not apply to a transaction of a prescribed class.

(4) If a transaction is made in contravention of subsection (1), the transaction is liable to be avoided by the board of the statutory corporation or by the Minister.

(5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.

(6) A member of a board must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty: If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment.
In any other case—Division 6 fine.

This amendment has come out of the Passenger Transport Act as my model. I believe that something such as this is appropriate to give direction to the board so that it does not place itself in an invidious situation. It is perfectly reasonable that this be there as a guide, but I guess it is more than a guide because it has a division 6 fine associated with it. I think the fact that we have it in the Passenger Transport Act is proof that something such as this is already workable.

The Hon. DIANA LAIDLAW: I oppose the amendment. Similar provision as this was not included in the initial Bill which I introduced in this place; it followed amendments which were introduced and ultimately accepted during the conference. The amendments relate to the public corporation provisions. The Government essentially remains of the view that these provisions are not necessary in an Act of Parliament. As I say, they are already in the Public Corporations Act. While they are present in that Act, they are merely a procedural embellishment of the duties of board members and are properly placed in a management handbook to acknowledge the provisions that are already in the Public Corporations Act.

The Hon. T.G. ROBERTS: The Opposition opposes the amendment.

New clause negatived.

Clauses 15 and 16 passed.

Clause 17—'General management duties of board.'

The Hon. SANDRA KANCK: I move:

Page 10, line 35—After 'performance' insert 'while also securing continuing improvements in attaining any social objectives of the statutory corporation'.

In my second reading speech I referred to the lack of any consideration given in this Bill to social objectives. As currently worded, subclause (1)(a) could be interpreted to be about economic performance only, so I am seeking to add these words so that it does impose, I hope, some moral obligation on the board to examine its performance against social responsibilities.

The Hon. DIANA LAIDLAW: I oppose the qualifying provisions which the honourable member seeks to introduce by way of this amendment. We consider that these words do not add to the existing meaning. The words themselves will not be construed, other than by someone who is paranoiac,

I suspect, to be only related to economic matters. They could be taken to imply that performance and improvements and attaining social objectives are mutually exclusive. The Government's view is the performance of the corporation delivering community service must be measured primarily against social and economic objectives. As I say, we do not accept that the paranoia, the basis on which the honourable member is moving this motion, is valid.

The Hon. T.G. ROBERTS: I was tempted to support the Democrats' amendment but, in the light of the commitment the Minister has now given, I will now oppose it.

Amendment negatived; clause passed.

New clause 17A—'Statutory corporations charter.'

The Hon. SANDRA KANCK: I move:

Page 11, after line 21—Insert new clause as follows:

Statutory corporations charter

17A.(1) The board of a statutory corporation must prepare a charter for the statutory corporation after consultation with the Minister.

(2) The charter must be prepared within six months after the statutory corporation is established.

(3) The board may, with the approval of the Minister, amend the charter at any time.

(4) On a charter or an amendment to a charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both House of Parliament.

This again is modelled on what this Parliament has put in place for the Passenger Transport Board. It is a needed requirement of the board so that it is not operating in a vacuum. As a comparison, when I receive a Bill introduced by this Government I always go back to my Party's policy documents as a reference to check which way I should go. It is helpful also to MPs and the public, so that actions taken can be compared to the objectives of the charter.

The Hon. DIANA LAIDLAW: Again, this was a matter that was accepted as a compromise arrangement when the Passenger Transport Bill was before the conference. We believe that it is not fair or reasonable to relate what was deemed to be appropriate in a compromised situation in the Passenger Transport Act to the nature of this Bill. The whole arrangement and the basis of this Bill is quite different. This Bill requires, for the conduct of all the obligations outlined in the Bill, a performance agreement between the Minister and the South Australian Housing Trust, which is quite different, as I indicate, than the contracting out work, contract work, competitive tendering thrust of the Passenger Transport Bill (now Act) where the Minister was forced—and I voluntarily put that in the Bill and it was accepted by Parliament—to stay well out of all of those procedures. The whole basis of this Bill is quite different in terms of the relationship between the Housing Trust and the Minister compared with the Passenger Transport Act between the Minister for Transport and the Passenger Transport Board. We therefore oppose this amendment.

New clause negatived.

Clause 18—'Staff, etc.'

The Hon. T.G. ROBERTS: I move:

Page 11, line 29—Leave out 'a notice under Division 2' and insert 'regulation'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 19 to 21 passed.

Clause 22—'Specific powers.'

The Hon. T.G. ROBERTS: I move:

Page 12—

Lines 31 and 32—Leave out 'a notice under Division 2' and insert 'regulation'.

Line 34—Leave out 'a notice under division 2' and insert 'regulation'.

Page 13—

Line 3—Leave out 'notice under Division 2' and insert 'regulation'.

Line 12—Leave out 'notice under Division 2' and insert 'regulation'.

Amendments carried; clause as amended passed.

Clause 23 passed.

Clause 24—'Transfer of property, etc.'

The Hon. SANDRA KANCK: I move:

Page 13, line 20—After 'statutory corporation' insert 'or to SAHT'.

This is consequential on the removal of clause 8 from the Bill.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, after line 23—Insert—

(iia) to SAHT; or.

This amendment is consequential.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, line 24—Leave out 'an' and insert 'another'.

This amendment is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment. We see it as an improvement of the wording.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, line 26—After '(if any),' insert 'after having given at least two months notice of the proposed transfer in the *Gazette*,'.

I envisage that this provision would apply to any proposed transfer of public assets to the private sector and, if the Minister is contemplating such action, it is only reasonable that the public should know that this is about to take place. It will allow members of the public and MPs, once aware of the proposed action, to make contact with the board or the Minister and to raise any issues surrounding such transfer of assets. I suspect, too, that some other private companies would be very interested to know of any such proposals. Again, this is a move that will increase the accountability of the Minister to the public.

The Hon. DIANA LAIDLAW: The Government strenuously opposes the amendment. We believe that there is no need for a statutory delay of two months in a transfer. It is envisaged that these transfers would be mainly equity in individual houses to, for example, cooperatives, and such a delay would be onerous and unreasonable on such organisations.

The Hon. T.G. ROBERTS: For those very honourable reasons I would oppose the amendment.

Amendment negatived; clause as amended passed.

Clauses 25 to 30 passed.

Clause 31—'Annual report.'

The Hon. SANDRA KANCK: I move:

Page 16, after line 33—Insert new subclause as follows:

(1A) If the statutory corporation's activities during the financial year have included the provision of public housing or housing finance, the report must include a summary of the social outcomes that the statutory corporation considers have been achieved through its activities in these areas (giving particular attention to any relevant community service obligation of the statutory corporation).

This is dealing with the annual reports. As with my earlier amendment to clause 17, this puts some obligation on the

corporations to consider social objectives rather than straight economic performance. As my clause 17 amendment got knocked back, this one will too, but we can only try. I propose this amendment because nowhere in the Bill do we see anything about social objectives, and I repeat that. Given the way the Government is heading on a whole lot of other issues, I do fear, with economic rationalist trends, that we will see fewer and fewer considerations about social justice and social objectives. It will not add a great burden to the corporation if once a year it is asked to evaluate its performance in this way.

The Hon. DIANA LAIDLAW: I take some offence to the reference that there is no mention of social objectives. This concern was outlined at some length by the honourable member in her second reading speech and I answered at length in summing up the debate. I refer the honourable member again to the functions of the Bill, in particular clause 5 relating to the functions of the Minister, which would include 11 functions, of which five or six of them would definitely in my view be in the category of social objectives. The Government strongly recognises the social and economic role the Housing Trust plays in this State.

Heavens above, I think it was a Liberal Premier who introduced the Housing Trust. Those conservatives, those with long memories and those who have been encouraged to learn about Liberal history in this State have all learnt about and have pride in the efforts of Premier Playford in establishing the trust. We will hardly overturn that in any rush of blood to the head. We take offence to those references. The honourable member said that she was moving this amendment, even though she had lost an earlier amendment to clause 17 and it was a good try. I commend her for her try, but again we strenuously reject the amendment.

The Hon. T.G. ROBERTS: Given the reaffirmation of the Minister's social objectives and vows, I support the Government's position at this time.

Amendment negatived; clause passed.

Clauses 32 to 35 passed.

Clause 36—'Registering authorities to note transfer.'

The Hon. T.G. ROBERTS: I move:

Page 17—
Line 30—After 'by' insert 'regulation,'.
Line 33—After 'a body by' insert 'regulation,'.
Line 37—After 'by' insert 'regulation,'.

The Hon. DIANA LAIDLAW: We support the amendments.

Amendments carried; clause as amended passed.

Clause 37 passed.

Clause 38—'Regulations.'

The Hon. SANDRA KANCK: I move:

Page 18, lines 17 and 18—Leave out paragraph (c).

This amendment is consequential.

The Hon. DIANA LAIDLAW: We do not see this as consequential at all. That is not the reason we oppose it, but rather because we see the subclause as being essential for the regulation of day to day management of the aspects of public housing which are outside the residential tenancies system, which applies to private tenancies. It does not only apply to Housing Trust tenancies. We see this as being very basic to the daily operation and regulation of the Act.

Amendment negatived; clause passed.

Schedule 1.

The Hon. SANDRA KANCK: I move:

Clause 1, page 19, lines 4 to 6—Leave out clause 1 and insert new clause as follows:
1. The *Urban Land Trust Act 1981* is repealed.

This amendment is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 2, page 19, after line 15—Insert new subsection as follows:
(3) A proclamation must not be made under subsection (1) unless the making of the proclamation has been approved by both Houses of Parliament.

With this amendment I am saying that we cannot transfer the administration of the Housing Improvement Act from the Housing Trust to another statutory corporation without the approval of both Houses of Parliament.

The Hon. DIANA LAIDLAW: The Government opposes the amendment as it would place an unnecessary constraint on the Minister by allotting parts of the Housing Improvement Act to a body other than the Housing Trust. It is tantamount to requiring a new Act of Parliament simply to alter administrative arrangements. Certainly the Government sees such references to the Parliament as necessary in looking at matters as substantial as national parks and other matters relating to our heritage. We do not see these references to the Housing Improvement Act in the same category.

The Hon. T.G. ROBERTS: We oppose the amendment on the basis that, if the intentions of the changes are to administer benefits in relation to some of the new administrative procedures, they need to be as streamlined as possible, but if you are dealing out bad medicine you may want some constructive clauses in there to slow it down so that public consultation can take place. I suspect that the proof ultimately of the results of what we are discussing in relation to the Bill will be in the eating of the pudding and therefore we are putting a watching brief on it, but support the Government's position.

Amendment negatived; schedule as amended passed.

Schedule 2.

The Hon. SANDRA KANCK: I move:

Clause 1, page 20, lines 6 and 7—Leave out the definition of 'Housing Trust'.

This is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 3—Leave out this clause.

This is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 5, page 20, line 19—Leave out 'the Housing Trust,'.

This is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 6, page 21, lines 1 and 2—Leave out paragraph (b).

This is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 7, page 21, lines 13 to 16—Leave out this clause and insert new clause as follows:

Statutory fund

7. The South Australian Land Trust Fund vests in the Minister.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Clause 8, page 21, line 19—Leave out 'the Housing Trust,'.

This is consequential.

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried; schedule as amended passed.

Long title.

The Hon. SANDRA KANCK: I move:

Leave out 'the South Australian Housing Trust Act 1936 and'.

This is consequential

The Hon. DIANA LAIDLAW: The Government accepts the amendment.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

WATERWORKS (RATING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 April. Page 1778.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the honourable member for his contribution. There is a key amendment in the Committee stages that we will address and debate. I think that the positions of the Government and the Opposition are clear on that. However, I do not intend to delay the second reading debate unduly and I think we can have that debate during the Committee stage of the Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Substitution of divisions 1 and 2 of part 5.'

The Hon. T.G. ROBERTS: I move:

Page 3, after line 9—Insert subsection as follows:

(6) Payment of the supply charge in respect of residential land for a financial year must be credited against so much of the water consumption rate as accrues from the supply of the first 136 kilolitres of water to be supplied to that land in the consumption year that ends in that financial year.

I understand that this is against the principles of the Bill being moved by the Government. It is an attempt to bring the legislation into line with the Opposition's position in relation to allocation of an amount of water for householders that will bring about some $25 relief in one financial year. I understand that it is not being supported by the Government.

The Hon. R.I. LUCAS: The honourable member is right: there has been a debate on this in another place. The Government's position is fundamentally and implacably opposed to this amendment. As the honourable member has accurately reflected it, in one fell swoop it guts the Bill and changes the whole purpose of the new legislation that is before Parliament at the moment. In fact, the rates for residential land for 1995-96 were set in December of last year. All members would acknowledge that the Minister does have the power in the Waterworks Act to have no free allowance for residential land. The purpose of the changes in the legislation broadly are to encourage the more efficient use of water by adopting a true pay-for-use system that is in accord with the recommendations of the report of the Working Group on Water Resource Policy adopted by COAG on 25 February 1994.

Importantly, the Government has the view that it will yield important State development and environmental benefits as well. To reintroduce the free water allowance for residential land in the way proposed would create conflict with the existing publication of water rates for residential purposes. It would frustrate, importantly, the environmental protection elements pursued through the rating system—the conservation elements that the Government believes will exist in relation hopefully to encouraging water users in homes to be cautious about the use of their water and, in effect, to adopt a conservation strategy or approach to the use of water in their residential premise.

The other key issue is that, given everything else that has been structured in this Bill, if this amendment were to be accepted it would incur a revenue loss to the EWS in excess of $10 million. It depends on a number of different provisions and assumptions in the amendment, but at the very minimum it is a revenue cost of $10 million. As the honourable member would be well aware, the EWS is paying a significant dividend to Treasury, in 1995-96 in particular. If that dividend is reduced by the $10 million then, clearly, there will be $10 million less to spend on schools, hospitals and a variety of other important services that the Government is endeavouring to deliver. For all those reasons, as the Government indicated in another place, we are strongly opposed to this amendment.

The Hon. SANDRA KANCK: The Democrats will be opposing this amendment. I think we probably have two competing principles here: one is the social justice aspect that the Opposition is trying to put in place and the other is the environmental one. One has to choose a balance between these two things. Perhaps there is not a question of balance in this case: one simply has to make a choice, and the Democrats are coming down on the environmental side. Putting in a user pays mechanism such as this will encourage people to use water more responsibly. Given that our population continues to increase and nobody is doing anything to stop it—in fact I think the Government every now and then laments that it is not going fast enough and we are not getting enough migrants here—we will need to do something, and more and more, to try to reduce the rate of water consumption in this State.

This happens to be one way to do it. The extra amount of money that would be payable is not large. We are probably looking at 50¢ a week maximum and, in some cases, even less. As I see it, the rates are being made up of a supply charge and then the actual consumption of water on top of that. That access charge is being lowered and at the same time we are seeing the actual rates for consumption increasing. I believe that it balances itself out within the social justice aspects overall. So, the Democrats will be opposing this amendment because of the environmental imperative.

Amendment negatived; clause passed.

Remaining clauses (4 to 7) and title passed.

Bill read a third time and passed.

PARLIAMENTARY REMUNERATION (BASIC SALARY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 1820.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading and the measures contained in this Bill. The purpose of the Bill is to set salaries payable to members of Parliament from 1 July 1995. My understanding from reading the Bill is that it will be a $1 000 reduction in the basic salary for a member of Parliament compared with what it would have been had the previous parity with the Federal Parliament been fully restored. The honourable member will recall that last year a wage freeze was imposed on members of Parliament. However, since that time it has become apparent that we are falling behind. I understand that the Government has made inquiries of State Parliaments in New South Wales, Victoria, Queensland, Western Australia and the Northern Territory, which all received salary increases last December. It is this that now makes our State parliamentary salaries lower than those in every other State in Australia except Tasmania.

The Opposition supported this measure in another place and a number of members contributed to the very lengthy debate. It has often been said that no time is a good time to introduce this kind of measure (on parliamentary salaries), and it does not seem to matter what we do or say or what we contribute, we are never in the right. I do not believe that it is tenable that the members of this place should be paid the lowest salaries in the country apart from those in Tasmania. It is a much better method for members of Parliaments to have their salaries tied to our Federal colleagues. In fact, we will no longer be $1 000 per annum below our Federal colleagues; we will be $2 000 below.

I understand that the result is that the basic salary of a member of Parliament will be $72 460 per annum, to which one adds the electorate allowance, which one must emphasise is to be spent on one's electorate. Although I am quite sure that there will be accusations that we have tried to pass this Bill in the dead of night, that is not true. It is now 8.53 in the evening, and I understand that the debate in the other place took place in the afternoon, when members of the media were present, so it is clear that we are an open book as far as our salaries are concerned. The Opposition supports the second reading.

The Hon. L.H. DAVIS: I have been a member of Parliament in the Legislative Council for almost 16 years and in that time I cannot think of one year in which parliamentary salaries or the thought of a parliamentary salary increase has not been a contentious issue. I can remember that, when the Liberal Government was in power from 1979 to 1982, under great political pressure Premier Tonkin deferred a salary increase that was due. In those days the parliamentary salaries of South Australian politicians were established by a remuneration tribunal. In other words, evidence was taken from members of Parliament and a decision was made. Of course, it was said that politicians had some measure of influence over the salary levels that obtained in those days.

The problems continued during the 1970s. In fact, I represented the Liberal Party at Remuneration Tribunal hearings, which of course also looked at electoral allowances paid to members of Parliament in both the Legislative Council and the House of Assembly.

In the late 1980s a major increase occurred. Because it was so contentious, it was decided in South Australia that the increase would be taken in several bites. Of course, this compounded the problem, because every time part of that increase, which was staggered over a period of many months, took place, it was seen to be yet another increase for politicians rather than part of one increase. About five years ago, in the face of this continuing problem of how to set politicians' wages without being seen to be unduly influencing the situation, the South Australian Parliament resolved to fall into line with other States which had decided to link their parliamentary salary levels with those paid to Federal politicians. A $1 000 differential was set between Federal and South Australian politicians. Generally speaking, that was the gap which existed between Federal and State political salaries, certainly in mainland Australia.

In 1991, the last big increase occurred. Four years ago, the salary level was about $61 000. Until this recent increase, the salary had increased from about $61 000 to just $68 000, an increase of only 11 per cent in about four years—not an extraordinary increase in anyone's language. Federal Government political salaries increased last year and, as a sign of recognition of the particular economic difficulties in South Australia, the Liberal Party in South Australia moved legislation to suspend the nexus which existed between Federal and South Australian politicians' salaries. For many months, there has been a freeze on political salaries in South Australia.

As the Minister responsible for political salaries and the spokesperson, the Hon. Graham Ingerson, has said, there is never a popular time for salary increases for politicians. The increase which will be made possible by the legislation now before us will take effect from 1 July 1995. Instead of taking the full increase, which is legitimate under the existing legislation, the Government, with the support of the Opposition, has accepted economic reality and has doubled the gap which exists between Federal and State political salaries from $1 000 to $2 000. Political salaries in South Australia are now the lowest in mainland Australia.

One other point which should be made and which has not been mentioned in the inevitable public debate on this point is that another component of the politicians' package is, of course, the electoral allowance, which takes into account card expenses, electorate expenses and the many and varied commitments which politicians have in going about their daily duties. That electorate allowance, certainly in the case of the Legislative Council, has remained unchanged for a period of four years. That is not a popular point in the public domain; nevertheless, it is a fact.

The matter of political salaries will always be contentious. Many members of this Council could receive much greater remuneration in the private sector; others in the Parliament, quite candidly, are probably better off here than in the private sector—that will always be the case—but it seems paradoxical to me that, in the face of the State Bank and SGIC debacles, there is agitation about increasing political salaries. If one lesson came out of the ashes of the 1980s, it is that, even though the salaries of SGIC and State Bank executives were extraordinary, the salaries paid to directors of commercial statutory authorities in South Australia were miserly in comparison with their private sector counterparts. My view has always been very much that if we had had stronger boards in the State Bank and SGIC some of the excesses and massive losses suffered in those two institutions would have been avoided.

In a way there has been recognition of that in the public arena. A measure of public duty is always involved whether we are talking about politicians at State or Federal level or about people who serve in commercial arms of Government as board members; nevertheless, there must be recognition of the weight of performance expected from them, the ability

that they must necessarily possess if they are to discharge their duties effectively, and also the fact that they are expected to contribute a measure of expertise in a range of areas, whether they be economic, financial, social or general community services. I do not resile from the fact that having to debate this measure we are again making ourselves subject to public scrutiny. Of course, we are debating this measure because we suspended the arrangement which linked our salaries in the State Parliament with those in the Federal Parliament. We are debating this measure tonight because politicians in South Australia voluntarily imposed a freeze on their salary. That freeze has now been lifted, but with a caveat that an increased gap has been created between Federal and State political salaries. South Australian politicians accepted that in a responsible way, and that should be respected by the voting public. I support the second reading.

The Hon. R.D. LAWSON: I also support this measure. It is often said that there is never a good time for the reviewing of salaries of members of Parliament, and that is probably true. Those whose salaries are less than the salaries of members of Parliament will always condemn us for our supposedly high salaries; those whose salaries are greater than those of members of Parliament—and there are many—will commiserate with us and wonder why members of Parliament undertake the responsibilities and duties required of them for so low a salary. It is appropriate that the salaries of members of Parliament in South Australia bear some relationship to salaries paid to members of comparable legislatures elsewhere.

As is well known, the decision of a former Parliament was to establish a nexus between the South Australian parliamentary salaries and those paid to Federal parliamentarians. That nexus was established in this State and in other States. The original nexus was $1 000, and the Bill before the Parliament will increase the differential from $1 000 to $2 000, which is a fair and appropriate reflection of the economic situation in this State. I do not believe that this is a measure about which members of Parliament should be ashamed or feel any reticence. The Bill will make appropriate provision for the remuneration of members of Parliament, and I support it.

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

RESIDENTIAL TENANCIES BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, after line 19—Insert:

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

I suppose that this is the point at which we need to deal with some policy issues, and even though to the outside observer it might not seem particularly appropriate to use this as a test case for the differing frameworks for the Residential Tenancies Tribunal, we can argue the case and deal with it here. I think that there are two different approaches. The Government was seeking initially, with the Magistrates Court (Tenancies Division) Amendment Bill (which is still on the Notice Paper), to endeavour to move completely the residential tenancies jurisdiction to the Magistrates Court. Even though we called it the Tenancies Division, it was in fact a division of the Magistrates Court and we took the view that it was more appropriate and efficient that that be done. From the debate on that Bill so far we recognise that in this Chamber the majority view is that we should not be moving in that direction, and a majority in this Chamber (although it it will not be a majority in the other House) is for retaining the existing Residential Tenancies Tribunal.

In the light of the debate on the Magistrates Court (Tenancies Division) Amendment Bill, the Government has given further consideration to how we can address this issue. We have tried to look at it in terms of the principles that we want to apply. The first is that we want to endeavour to ensure that there is Statewide coverage provided by whatever body resolves disputes relating to residential tenancies, retirement villages and so on—the jurisdiction which currently the Residential Tenancies Tribunal has but not, of course, retail shop leases disputes.

We looked at how this could be best achieved. At the moment the Residential Tenancies Tribunal does not sit extensively outside the city of Adelaide. There are some part-time members of the tribunal who will sit in Mount Gambier or Port Augusta, and one or two other locations, but the bulk of the hearings are in the city of Adelaide. There are certainly no hearings within the suburbs or even near country areas around Adelaide. A significant number of the matters which presently come before the tribunal relate to bond issues. As honourable members recognise, we are taking those away from the tribunal and dealing with those on an administrative basis through the Commissioner for Consumer Affairs and, if there is a dispute, of course then they will go to the tribunal.

We looked to see what would be the most effective way of providing State-wide coverage, including hearings in the suburban areas of metropolitan Adelaide. We decided that magistrates, who sit in a wide range of locations throughout the metropolitan area and in the country, would be the best basis upon which to focus the residential tenancies jurisdiction. Magistrates go on circuit across the State—the Riverland, Port Augusta, Port Pirie, Whyalla, Mount Gambier, Port Lincoln, Coober Pedy, a whole range of places—and sit particularly in Adelaide, Port Adelaide, Christies Beach, Para Districts and Holden Hill. So you have a fairly good coverage of magistrates.

We recognised that there may not be a magistrate on hand on the day after it might be necessary to make an application, but, of course, that is the position already in most of South Australia, apart from the city of Adelaide. We decided that we would try to build upon that, and to accommodate what I suspect would be the concern of the Opposition and the Democrats, having regard to some immediate action in those emergency cases where it was needed and which could not be dealt with by telephone or otherwise. We decided that in our proposal, not only should the magistrates constitute the Residential Tenancies Tribunal—not as a separate division of the Magistrates' Court but as a separate tribunal—but also we would have an opportunity for other members—whether full-time or part-time—and that they should be legal practitioners of not less than five years standing, so that we did have the prospect of being able to broaden the numbers to accommodate any holes that might appear in the system, even though magistrates would cover most of the work.

We also looked at the magistrates, because it is the Government's very strong view that the Residential Tenancies Tribunal needs to be separate from the executive arm of Government and a number of observations are made which

reflect upon the proximity of the tribunal to the Office of Consumer and Business Affairs. We have taken the view that that does not create the perception of independence which is important in dealing with the resolution of disputes. We decided that we should endeavour to bring the Residential Tenancies Tribunal under the responsibility of the Courts Administration Authority and that that would provide, in conjunction with the magistrates, a framework for dealing efficiently with issues which need to be resolved by the tribunal, remembering that we are trying to get a much greater emphasis upon earlier resolution of disputes through the administrative arm of Government, through the Commissioner for Consumer Affairs and that only the disputes which cannot be resolved will go to the tribunal.

If we bring the tribunal under the Courts Administration Authority, one of the difficulties that has certainly been raised by the Chief Justice in the past—I think with my predecessor as much as with me—is that term appointments are inappropriate. There are differing views within the judiciary about whether or not term appointments can be accommodated within the framework of the Courts Administration Authority. Of course what we are trying to do is to have a blend of both with permanent appointments, where the Chief Magistrate has the overriding responsibility for the administration of the tribunal but has a power to delegate, and also to provide for some part-time appointments.

Following the consideration of the appropriate body which would resolve disciplinary and other issues in the real estate package and the second-hand motor vehicles legislation, we have taken the view that we ought to provide for some lay assessors. They would be only used in the most complex cases, but at least we recognise that there needs to be provision for those so that they can be used if necessary. If the Parliament accepts that finally, then that will have to be implemented and we will then examine how effective it is over a period of time. That is the framework that we are proposing.

There are other differences between the scheme of the amendments proposed by the Hon. Anne Levy and ours, but they are not the fundamental issues. The fundamental issue is: how should the tribunal be constituted; where should it be located; what sort of service should it be providing to the whole of South Australia and how can that be best achieved; and is it appropriate to put the management of its affairs in the hands of Courts Administration Authority and quite clearly identify that it is separate from the executive arm of Government? The view which we have taken, as I say, is what is now reflected in a package of amendments that seek to put that into place.

There may be other issues which arise as a result of the consideration of this in Committee, and I am happy to address those as we debate it. The proposal merely to continue the existing tribunal is not acceptable to the Government. There have been criticisms of the way in which the present tribunal operates. It has a number of deficiencies. It is not the highly regarded scheme that some have made it out to be. We want to improve the system and we believe that by going down the path which my amendments encompass we will be able to achieve that.

The Hon. ANNE LEVY: I am sure the Minister will not be surprised that I do not support his amendment, trivial though this one appears, of course, but it is part of the package for changing the Residential Tenancies Tribunal. The Opposition made very clear that it supports the current Residential Tenancies Tribunal and, while not pretending that it is absolutely perfect, we feel that it should be maintained in the interests of tenants and landlords in this State.

The data does show that they behave without bias, fairly, expeditiously and cheaply. We do not support the suggestions the Attorney is making. One could misquote and say 'a court is a court is a court'. What the Attorney is proposing in his set of amendments is to destroy the Residential Tenancies Tribunal, establish a court or give a court the powers that the Residential Tenancies Tribunal currently has, and merely call it the Residential Tenancies Tribunal but that, from his amendments, does not prevent it from being a court. He is proposing that the Chief Magistrate will be the President of the tribunal. All other magistrates who hold office under the Magistrates Act can also act as the tribunal and other persons, if any, may be additional members of the tribunal.

Currently the tribunal consists of a legal practitioner as the Chair or President (to avoid sexist language, as is common in legislation at the moment) of the tribunal. The Attorney is proposing use of people other than magistrates to constitute the tribunal as required. The Attorney's proposal is more expensive because it involves mainly the use of magistrates and it is also a court. The suggestion in the Attorney's amendments that assessors can be used is of little relevance in this case. No technical matters need to be determined before the Residential Tenancies Tribunal. It is not a matter like second-hand motor vehicles, where a detailed knowledge of cars can be relevant in particular cases and consequently assessors are very useful. However, in residential tenancy matters there is no need for assessors and such a procedure in the Act would either add to the costs involved or, my guess is, would never be used because one does not have technical matters before the Residential Tenancies Tribunal. The Attorney speaks about having a statewide service. The Residential Tenancies Tribunal can sit anywhere.

The Hon. K.T. Griffin: It doesn't though.

The Hon. ANNE LEVY: It can. There is no reason why it cannot. There are members of the tribunal, as the Attorney indicated, in Mount Gambier and Port Lincoln. There is no reason at all why members cannot be appointed in other areas. There is no reason why the tribunal cannot, under its current constitution, sit in the suburbs or in country areas. That is not a defect in the legislation and certainly does not necessitate turning the Residential Tenancies Tribunal into, in effect, part of the Magistrates Court. I agree completely with the Attorney that the bond issues are to be handled under this legislation by the Commissioner for Consumer Affairs rather than the tribunal. As I indicated in my second reading speech, I certainly supported that measure, but this can be achieved without destroying the Residential Tenancies Tribunal.

The Attorney spoke of the advantages of having the Residential Tenancies Tribunal under the Courts Administration Act. I do not disagree with this. In fact, in the second to last of his amendments on page 15 he proposes putting the Residential Tenancies Tribunal under the Courts Administration Act. With this I have no quarrel. There is no reason why it cannot be under the Courts Administration Act. He mentions that the current Chief Justice does not like people with fixed terms being part of the courts' system or under the Courts Administration Act, yet his own amendments allow for members of the tribunal to be appointed for fixed terms.

So, while I oppose this amendment and the Attorney's proposal for the so-called Residential Tenancies Tribunal, which will in fact be simply a division of the Magistrates Court, I do not oppose his second to last amendment putting

the administration of the Residential Tenancies Tribunal under the Courts Administration Authority. It seems that what the Attorney wishes to achieve can be achieved quite readily without destroying the Residential Tenancies Tribunal that we have currently and that the matters he has raised can certainly be achieved while maintaining the current structure and practice of the Residential Tenancies Tribunal. In consequence, I oppose this amendment, which is the first of many amendments that would establish the Residential Tenancies Tribunal as part of the Magistrates Court.

The Hon. SANDRA KANCK: I, too, will be opposing this amendment. When I spoke at the second reading stage I said then that I welcomed the Opposition's undertaking to ensure that the Residential Tenancies Tribunal continued in existence and I would be looking forward to being able to support a large part of the amendments when introduced. The arguments that have been put for replacement of the Residential Tenancies Tribunal have not been convincing, nor have I been convinced that the Attorney's proposal is an improvement. I have been on record in a number of other Bills in other contexts of opposing courts and legalistic frameworks. My belief is so often that the law is expensive and out of touch. Very often what people get out of the courts' system is law and not justice.

The Residential Tenancies Tribunal, however many its little flaws might be, is fundamentally a very just group. A court is not required. These are simple things that need to be sorted out—basically disputes—and it does not require the legal training of a judge. It is over the top as far as I am concerned. As to question of the Residential Tenancies Tribunal not sitting in enough places, that is something about which the Government can do something—maybe establishing more Offices of Consumer Affairs in country towns might be a suitable venue for the Residential Tenancies Tribunal. That is a question of political will. I am indicating that, in the main, I do not have any enthusiasm for the rest of this package of amendments that the Attorney has proposed.

The Hon. R.D. LAWSON: The Hon. Sandra Kanck has suggested that courts administer law and not justice.

The Hon. K.T. Griffin: That is the greatest load of nonsense I have ever heard.

The Hon. Sandra Kanck: I am sure you have had complaints from constituents over the years about law and not justice.

The Hon. R.D. LAWSON: That is an oft and easily made charge but one that is simply not sustained. Were it true or not, what we are here examining is an existing tribunal that is staffed by persons who are legally qualified. It is a tribunal the members of which are, by and large, legally trained; it is a tribunal that administers presently the Residential Tenancies Act. The tribunal behaves in all respects as if it were a court. It is one of those tribunals so widely referred to now as 'Mickey Mouse tribunals'.

The Hon. Sandra Kanck: Who refers to it as a 'Mickey Mouse tribunal'?

The Hon. R.D. LAWSON: It is widely referred to by anyone in the field of judicial administration as a 'Mickey Mouse tribunal'. The existing residential tribunal is ordinarily presided over by a legal practitioner and conducts itself with all of the accoutrements of a court. The Hon. Sandra Kanck says that it does not require legal training to sit on the tribunal. In my experience, many of the decisions of the Residential Tenancies Tribunal do require legal training and an understanding of not only this legislation but of interpretation and construction of leases and the appropriateness and otherwise of evidence. The current tribunal does have all the accoutrements of a court.

Why is it necessary, one might ask, to have a separate Residential Tenancies Tribunal staffed quite separately from the existing courts' system? We have a system with professional magistrates. We have had professional magistrates in this State doing the substantial bulk of the work of the summary judiciary for a number of years. By and large we have done away with the amateur judiciary that once comprised justices of the peace. We have a professional, highly paid, highly competent magistracy. Why not use the services of that magistracy to dispense this justice?

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: Quite so, they deal with things more expeditiously; they have a greater appreciation of the legal rules and of the requirements of law and justice.

The Hon. Sandra Kanck: You are selling the tribunal members short.

The Hon. R.D. LAWSON: It is no particular personal criticism of the amateur tribunal members who are currently conducting the tribunal. It is just that it would be better for professional magistrates to dispose of such matters as arise under this legislation. They do it more expeditiously, efficiently and fairly. The State has already provided the courts, the reporters and the clerical staff in the magistracy. Why duplicate it with yet another tribunal? The days when Governments were fond of establishing tribunals for anything that came into their mind are well and truly over. It is appropriate now to let the courts administer the judicial functions of legislation, and we should let the courts do this one. If you want to have a Residential Tenancies Tribunal, so named, the Attorney's amendments with allow that. However, it will be a tribunal that is by and large staffed by the Chief Magistrate and other magistrates with, of course, power of the Executive Government to appoint additional members to it.

The Hon. ANNE LEVY: I think the Hon. Mr Lawson has clearly demonstrated why we do not want to lose the Residential Tenancies Tribunal. He confirmed that it would, as in the amendments, be just a court—that it would not differ from a court—and that it would be run by lawyers, unlike the current tribunal, which has many members who are not legally trained. There is and always has been provision for matters of law to be referred to a superior court. That does not happen very often because most of the matters being dealt with are not strictly legal matters. The decisions from the Residential Tenancies Tribunal have always been appealable, yet the number of appeals from its decisions is minuscule. Its judgments are accepted by landlords and tenants alike. Obviously in any one particular case there will dissatisfaction on the part of those who have lost. However, in general there is agreement that the tribunal is fair, does dispense justice and that its decisions are accepted and not appealed against.

The tribunal does act expeditiously. It is rare for any application to the tribunal not to be dealt with within a week. I doubt if the Magistrates Courts could better that record. There is no reason whatsoever to turn this over to the lawyers and to the courts. I again point out that I oppose this amendment.

The Hon. K.T. GRIFFIN: I understand that there are different points of view on this issue. The Hon. Anne Levy and the Hon. Sandra Kanck are wedded to the existing system, which does have its failings. We are trying to remedy those failings. I know that people hate lawyers and courts and are highly critical of them, but they have never really had

much experience of them. The fact is that there are criticisms of the present Residential Tenancies Tribunal.

The Hon. Barbara Wiese interjecting:

The Hon. K.T. GRIFFIN: They are not all from landlords; there are questions from tenants as well. However, I do not want to get into the business of dealing with issues affecting individual members of the tribunal: I want to deal with it on a practical basis. From the information that the Government has, the tribunal is not working perfectly. It has many faults and needs to be reformed.

The fact is that we want to establish a separate tribunal. Whilst it will be staffed essentially by magistrates, there will be a proper management of its work flow. It will be conducted with informality because that is the requirement of the legislation. Members opposite have accepted that in relation to the Consumer and Business Division of the Magistrates Court in relation to the real estate package that we passed recently.

They have accepted it in relation to secondhand vehicle dealers legislation. There is an acceptance by courts these days of a need to place a great deal more emphasis upon conciliation, pretrial conferencing and getting issues out of the way as quickly as possible without resort to technicalities and to formal proceedings. It is correct that the present tribunal can sit in country areas, but it has shown no inclination to do so. In fact, we offered teleconferencing to enable quicker resolution of disputes, and I think that that offer has been taken up on only one occasion by the existing tribunal. It is important for the tribunal to keep pace with changes that bring it into a more modern environment.

If the existing Residential Tenancies Tribunal finally remains, it will not be a participating jurisdiction of the Courts Administration Authority, because it is staffed by and comprises lay persons. It is not in any way equivalent to any of the jurisdictions administered under the Courts Administration Authority. It will need to have its separate administration as it has at the moment but, in some way or other, we will need to find a way to ensure that it is kept more aloof from the day-to-day administration of the Office of Consumer and Business Affairs. Unless the tribunal is differently constituted, it is quite inappropriate for it to be part of the Courts Administration Authority.

Amendment negatived.

The Hon. ANNE LEVY: I move:

Page 3, line 28—Leave out the definition of 'Tribunal' and insert—

'Tribunal' means the Residential Tenancies Tribunal.

I note that the Attorney has an amendment in which he says that 'tribunal' means the Residential Tenancies Tribunal of South Australia, whereas mine just says that 'tribunal' means the Residential Tenancies Tribunal. I admit ignorance as to the significance of whether 'of South Australia' should be there or not: my guess is that it makes very little difference. Is the Magistrates Court known as the Magistrates Court or as the Magistrates Court of South Australia? Is the Supreme Court the Supreme Court or is it the Supreme Court of South Australia? Certainly, they are commonly called the Supreme Court, District Court and the Magistrates Court without the 'of South Australia' tacked on, but if there are good reasons for tacking on 'of South Australia' I will not go to the barricades over it. My guess is that there is no significance at all.

The Hon. K.T. GRIFFIN: The reason why we are seeking to change the name to the Residential Tenancies Tribunal of South Australia is to distinguish it from the existing Residential Tenancies Tribunal. Quite obviously, we were seeking to establish a new tribunal, whereas what the Hon. Anne Levy wishes to do is retain the existing tribunal. The Magistrates Court is the Magistrates Court of South Australia. However, I do not think that you need to have the Residential Tenancies Tribunal of South Australia. If you are to retain the existing tribunal you might as well leave it with the same name, so I do not intend to move my amendment, because I regard that as consequential on the earlier amendment in which I have been unsuccessful.

The Hon. SANDRA KANCK: I do not intend to stand up on the amendments one by one and give a speech. I indicate that I will support the Opposition's amendment.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5—'Application of Act.'

The Hon. ANNE LEVY:I move:

Page 5, lines 6 and 7—Leave out paragraph (h).

The Bill as currently drafted would prevent the Residential Tenancies Tribunal ever acting in cases involving the Housing Trust and one of its tenants.

The Hon. K.T. Griffin: That is not right.

The Hon. ANNE LEVY: An agreement under which the South Australian Housing Trust confers a right to occupy premises for the purpose of residents is to be omitted as something to which this Act applies. As is obvious from an amendment I have further, I feel that the Housing Trust and its tenants should be able to go to the Residential Tenancies Tribunal in certain circumstances; not the same as applies to private landlords and tenants but in some situations. Particularly in questions of eviction, it should be possible for the Housing Trust to apply to the Residential Tenancies Tribunal.

My advice is that this is best achieved by omitting paragraph (h) of clause 5 and later in the amendments indicating the situations to which the Residential Tenancies Tribunal is limited in dealing with the Housing Trust and its tenants.

The Hon. SANDRA KANCK: The Democrats will be supporting this amendment.

The Hon. K.T. GRIFFIN: I am disappointed to hear that the Australian Democrats will support this, because certainly there is an intention on the part of the Government to ensure that, when there have been some negotiations with the Housing Trust, the Residential Tenancies Tribunal will be available for the resolution of disputes in relation to the agreements that are made between the Housing Trust and its tenants. We want to make clear from the outset that we do want to facilitate access by Housing Trust tenants to the tribunal. We do not agree that Housing Trust tenancies generally should fall within the ambit of the residential tenancies legislation, which was intended to regulate the relationship between landlords and tenants in the private rental setting. I acknowledge that, during the term of the previous Government, an Act entitled the Residential Tenancies (Housing Trust Amendment) Act 1993 was passed, but it has never been proclaimed.

Under the provisions of this Act, it was abundantly clear that the Housing Trust was not bound by a considerable number of matters of substance. For example, under the Act the Housing Trust was given the following exemptions from the application of the provisions of the Residential Tenancies Act 1978: exemption from the provisions regulating security bonds (for instance, the requirement to lodge bonds with the tribunal) and also the provisions dealing with increases in

security bonds, as well as being granted an exemption from the provisions regarding notices for rent increases; exemption from the termination provisions under the Act with provision for the grounds of termination to be prescribed by regulation under the South Australian Housing Trust Act 1936; exemption from the excessive rent provisions under the Act and also from the method of issuing receipts; exemption from certain aspects of the provision relating to a landlord's responsibility for cleanliness and repairs; and exemption from the provision giving a tenant the right to assign or sublet. Any of these exemptions are major departures from the provisions of the Act and even from this Bill. I would expect that, if Housing Trust tenants were to be covered by this legislation, similar exemptions would be sought.

The point needs to be made that, at present, there is a clear distinction between public housing and the private rental market. When one stands back and looks at what is left of the Bill, if the provisions subject to exemptions are removed there are very few provisions left. For example, one of the provisions that might apply is that relating to abandoned goods. This provision is directed more towards the landlord than the tenant. So this type of provision would, therefore, be of little benefit to Housing Trust tenants. With reference generally to the Housing Trust, at this stage, the Government does not want to see the Housing Trust covered by this legislation, although in relation to the resolution of disputes under tenancy agreements we are prepared to give some consideration to that; in fact, part of our package addressed that issue.

The difficulty with that, though, is that if you open up the Residential Tenancies Tribunal to Housing Trust tenancies without any qualification it does two things. First, it means that the Housing Trust can, in a sense, shift its responsibility to the tribunal. The Government has been anxious to try to ensure that the processes within the Housing Trust for dealing with disputes relating to public housing are reviewed and refined and are much more readily accessible so that only a very small number of matters finally get to the Residential Tenancies Tribunal. The other issue is that when we made an assessment of the likely cost of all tenancy disputes from the Housing Trust coming before the Residential Tenancies Tribunal, the cost was something in excess of $800 000 a year, because there was no clear indication of how many disputes would be resolved, and every time the matter was reviewed by the Housing Trust the numbers kept increasing. It was likely that we would have to appoint at least, I think, four more full-time members of the tribunal to deal with disputes that were predicted to come from the Housing Trust.

So, regarding the matter of funding alone, the Government was not prepared at that stage to allow Housing Trust tenancies to come within the ambit of the Residential Tenancies Tribunal, although one can see that there may be some value as a last resort in having a body such as the tribunal to resolve disputes and deal with some debt and rent recovery matters. So that is the frame work. Quite obviously, if this amendment is carried—and it seems that the majority wish to do so—the issue will have to be revisited in another place, because it is unacceptable that without qualification public housing tenancy disputes be dealt with by the tribunal. We are prepared to provide a mechanism to allow issues to be worked through by the Housing Trust with an acceptable format for dealing with disputes internally before using the tribunal as a last resort. We are prepared to accommodate that, but to suggest that all disputes in the public housing area should come before the Residential Tenancies Tribunal is not acceptable.

The Hon. ANNE LEVY: The Attorney is being most disingenuous in trying to revisit our 1993 debate, to which the Hon. Ms Kanck was not a party but at which both the Hon. Mr Gilfillan and the Hon. Mr Elliott agreed with the then Government. Removing paragraph (h) will not open the floodgates to all disputes involving the Housing Trust going to the tribunal. My next amendment which follows after paragraph (i) seeks to add a new subclause to provide that this Act will apply only to new agreements between the Housing Trust and its tenants when it is specifically stated that they apply to them or where regulations apply to them. In other words, unless it is specifically mentioned, Housing Trust disputes will not go to the Residential Tenancies Tribunal.

Pretending that it will cost $800 000, because they will all go before the tribunal, is ridiculous. Furthermore, when the 1993 Act was passed, it was to refer specifically to evictions so that the Housing Trust would not go to the Supreme Court to evict an unsuitable tenant, which is the current situation. It is tedious, expensive and certainly not expeditious, although justice may result, but we can get much simpler results by using the tribunal. Furthermore, the Housing Trust indicated that it would pay the costs of the Residential Tenancies Tribunal which were attributable to cases taken before the tribunal involving the Housing Trust and its tenants. That was clearly stated, and it seems to me that there is no reason why that cannot occur again. I am happy to draw the Attorney's attention to my next amendment which clearly limits the application of this Act to the Housing Trust and its tenants and is not opening the floodgates to $800 000 worth of expense.

The Hon. K.T. GRIFFIN: The fact of the matter was that I was talking about the previous Government's legislation. It was quite clear from figures produced by the Housing Trust in consultation with what was then the Office of Fair Trading and the Residential Tenancies Division that it would cost in excess of $800 000. Every time one got some new figures they had always increased. The fact of the matter is that that 1993 legislation did not deal only with evictions; it dealt with applying the provisions of the Residential Tenancies Act to Housing Trust tenants, but with some exemptions. So, it was not about just evictions. I note the honourable member's next amendments but, whilst I acknowledge that they make qualifications, the fact of the matter is that their form is unacceptable to the Government.

The Hon. R.D. LAWSON: Could I direct a question to the mover in relation to this amendment, which inserts a clause which provides that the Act applies to a residential tenancy agreement 'only to the extent that the application of this Act is expressly extended to such an agreement by this Act'. It is not clear from my reading, as the amendments are rather voluminous, but does the honourable member have other amendments on file which expressly extend particular provisions of this Act to the Housing Trust?

The Hon. ANNE LEVY: The Housing Trust is mentioned in further amendments. Off the top of my head I cannot indicate which clauses they are, although Parliamentary Counsel could probably remind me which ones they are. There are situations where the Housing Trust is mentioned and where it will apply to the Housing Trust, but only for those circumstances.

The Hon. R.D. LAWSON: It seems to be a very unsatisfactory drafting device to say that a particular Act applies to a particular agreement only to a certain extent, which is not

clear to anybody reading the residential tenancy agreement. It is required re not only the agreement but the whole of the Act, to know whether or not particular provisions of it apply. It does seem to be a very unsatisfactory way of achieving this objective, if it is to be achieved. Philosophically, I personally have to say that I would favour the same legislation applying to both the private and the public rental sectors, but that philosophical purity has to bend practical considerations, because the public housing sector has a very substantial welfare element in it.

The Housing Trust is now engaging in all sorts of innovative ways of providing public housing. It is no longer confining itself merely to the owning and renting out of its own premises to tenants; it is now, as I understand it, securing private rental accommodation and placing tenants in that accommodation, the tenant paying the rent to the trust or perhaps to the private landlord, but the Housing Trust, as it were, going bond of particular tenants. This is the sort of arrangement which, as I understand it, is becoming increasingly prevalent and which will continue to be expanded, and will, it seems to me, be circumscribed if we have this hybrid provision allowing some parts of the agreement to be governed by this Act and others not.

The Hon. ANNE LEVY: I suggest that the honourable member take up the question of the wording with Parliamentary Counsel.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 5, after line 8—Insert new subclauses as follows:

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

(3) If a regulation is made extending the application of specified provisions of this Act to residential tenancy agreements, or residential tenancies, under which the South Australian Housing Trust is the landlord, the regulation may modify the relevant provisions in their application to such agreements or tenancies.

We have debated this provision already. It is a package with the amendment we have just carried.

The Hon. K.T. GRIFFIN: I indicate opposition to the amendment.

The Hon. SANDRA KANCK: The Democrats support the amendment.

Amendment carried; clause as amended passed.

Clauses 6 to 9 passed.

Clause 10—'Annual report.'

The Hon. ANNE LEVY: I move:

Page 6, line 31—Leave out 'as soon as practicable' and insert 'within six sitting days'.

This amendment relates to how soon the Minister must lay a copy of the report before Parliament after receiving a report from the Commissioner for Consumer Affairs. Recently we have had numerous pieces of legislation where the Minister must, within six sitting days—

The Hon. K.T. Griffin: It is 12 days under retail shop leases.

The Hon. ANNE LEVY: It was six days under one of them.

The Hon. K.T. Griffin: Second-hand vehicles.

The Hon. ANNE LEVY: Yes. It seemed to me to be desirable that we follow the practice of indicating a time limit rather than have vague words such as 'as soon as practicable'.

The Hon. K.T. GRIFFIN: I have no opposition to the amendment.

Amendment carried; clause as amended passed.

New Part.

The Hon. K.T. GRIFFIN: There is no point in moving the amendment that I have on file for this. We have used an earlier clause as a test case for the former tribunal which the Government wishes to have included in the Bill. I think the Hon. Anne Levy's amendments, when she moves them, will be the package which the majority will give support to. I indicate opposition to them, but it does not appear that that will carry the day.

The Hon. ANNE LEVY: I move:

After clause 10—Insert new part as follows:

PART 2A
RESIDENTIAL TENANCIES TRIBUNAL
DIVISION 1—THE TRIBUNAL AND ITS MEMBERSHIP

Continuation of Tribunal

10A. The Residential Tenancies Tribunal continues in existence.

Membership of Tribunal

10B. (1) The Governor may appoint a person to be a member of the Tribunal.

(2) The Governor may appoint a member of the Tribunal who is a legal practitioner to be the President of the Tribunal.

(3) The Governor may appoint a member of the Tribunal who is a legal practitioner to be the Deputy President of the Tribunal.

(4) If the President of the Tribunal is absent or there is a temporary vacancy in the office of the President, the Deputy President has all the powers, authorities, duties and obligations of the President.

(5) A member of the Tribunal is appointed on conditions determined by the Governor and for a term, not exceeding five years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(6) The Governor may remove a member of the Tribunal from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(7) The office of a member of the Tribunal becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence; or

(e) is removed from office under subsection (6).

Remuneration

10C. A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Governor.

Registrars

10D. (1) The Governor may appoint a person to be the registrar or a deputy registrar of the Tribunal.

(2) The office of registrar or deputy registrar may be held in conjunction with another office in the public service of the State.

Registrar may exercise jurisdiction in certain cases

10E. The registrar or a deputy registrar may, subject to direction by the President of the Tribunal, exercise the jurisdiction of the Tribunal in a class of matters prescribed by the regulations or in circumstances prescribed by the regulations.

Immunities

10F. A member or officer of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

DIVISION 2—PROCEEDINGS BEFORE THE TRIBUNAL

Constitution

10G. (1) The Tribunal is constituted for the purpose of hearing proceedings of a single member of the Tribunal.

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

Times and places of sittings

10GA. (1) The Tribunal may sit at any time (including a Sunday).

(2) The Tribunal may sit at any place.

Duty to act expeditiously

10GB. The Tribunal must, wherever practicable, hear and determine proceedings within 14 days after the proceedings are commenced and, if that is not practicable, as expeditiously as possible.

Offices of the Tribunal

10GC. Offices of the Tribunal will be maintained at such places as the Minister may determine.

DIVISION 3—THE TRIBUNAL'S JURISDICTION

Jurisdiction of Tribunal

10H. (1) The Tribunal has exclusive jurisdiction to hear and determine a matter that may be the subject of an application under this Act.

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

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

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

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

Application to Tribunal

10HA. (1) An application under this Act to the Tribunal must—

(a) be made in writing; and

(b) contain the prescribed particulars.

(2) Before the Tribunal proceeds to hear an application it must—

(a) give the applicant notice in writing setting out the time and place at which it will hear the application; and

(b) give to any other party—

(i) notice in writing setting out the time and place at which it will hear the application; and

(ii) notice of the nature of the application as it thinks fit.

DIVISION 4—EVIDENTIARY AND PROCEDURAL POWERS

Tribunal's powers to gather evidence

10I. (1) For the purpose of proceedings, the Tribunal may—

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

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

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

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

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

(2) If a person—

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

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

(c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

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

Procedural powers of the Tribunal

10IA. (1) In proceedings the Tribunal may—

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

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

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

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

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

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

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

(h) allow the amendment of an application;

(i) hear an application jointly with another application;

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

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

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

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

(3) The Tribunal may, on the application of the South Australian Co-operative Housing Authority, allow the Authority to intervene in proceedings before the Tribunal.

(4) The Authority may only be allowed to intervene if the Tribunal is satisfied that it is fair and reasonable that the Authority participate in the proceedings.

(5) If the Authority is allowed to intervene in proceedings, it may intervene in the manner and to the extent directed by the Tribunal, and on other conditions determined by the Tribunal.

General powers of the Tribunal to cure irregularities

10IB. (1) The Tribunal may, if satisfied that is would be just and equitable to do so, excuse a failure to comply with a provision of this Act on terms and conditions the Tribunal considers appropriate.

(2) The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

DIVISION 5—MEDIATION

Mediation

10J. (1) If before or during the hearing of proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, the person constituting the Tribunal may—

(a) interview the parties (and their representatives) in private; and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

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

(3) The person constituting the Tribunal who attempts to settle proceedings under this section is not disqualified from hearing or continuing to hear the matter.

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

DIVISION 6—JUDGMENTS AND ORDERS

Interim injunctions, etc.

10K. The Tribunal may, on just terms, grant an injunction or make any other order that may be necessary to preserve the subject matter of proceedings before the Tribunal until questions arising in the proceedings have been finally determined.

Interlocutory orders

10KA. The Tribunal has power to make interlocutory orders on subjects within its jurisdiction.

Enforcement of orders

10KB. (1) An order of the Tribunal may be registered in the Magistrates Court and enforced as an order of that Court.

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

Maximum penalty: $2 000.

Application to vary or set aside order

10KC. (1) A party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order made in the proceedings.

(2) An application to vary or set aside an order must be made within three months of the making of the order (unless the Tribunal allows an extension of time).

Costs

10KD. The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—

(a) all parties to the proceedings were represented by legal practitioners; or

(b) the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

DIVISION 7—OBLIGATION TO GIVE REASONS FOR DECISIONS

10L. The Tribunal must, if asked by a person affected by a decision or order, state in writing the reasons for its decision or order.

DIVISION 8—RESERVATION OF QUESTIONS OF LAW AND APPEALS

Reservation of questions of law

10M. (1) The Tribunal may reserve a question of law for determination by the Supreme Court.

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

Appeals

10MA. (1) An appeal lies to the District Court from a decision or order of the Tribunal made in the exercise (or purported exercise) of its powers under this Act.

(2) On an appeal, the District Court may (according to the nature of the case)—

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

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

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

(d) make incidental and ancillary orders.

(3) The appeal must be commenced within one month of the decision or order appealed against unless the District Court allows an extension of time.

(4) If the reasons of the Tribunal are not given in writing at the time of making a decision or order and the appellant then requests the Tribunal to state its reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

Stay of proceedings

10MB. (1) If an order has been made by the Tribunal and the Tribunal or the District Court is satisfied that an appeal against the order has been commenced, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) If the Tribunal suspends the operation of an order, the Tribunal may terminate the suspension, and if the District Court has done so, the District Court may terminate the suspension.

The effect of these provisions is to restore the existing Residential Tenancies Tribunal. However, there is one minor change, and I do not know whether or not the Attorney picked it up. New clause 10M(1) provides that the tribunal may reserve a question of law for determination by the Supreme Court. In the existing legislation it says the District Court. The Supreme Court was suggested to me as being a more appropriate place for determinations of questions of law. This was the legal advice which I received. I have no fixed view on the matter, but legal advice was that that was more appropriate, seeing that appeals would go to the Supreme Court, anyway. That is the only difference from the existing Residential Tenancies Tribunal.

The Hon. SANDRA KANCK: New clause 10L provides that the tribunal must give reasons for its decision, and the same provision in the Government's amendment was new clause 10FE. First, I am not clear whether the Residential Tenancies Tribunal, as it is currently constituted, has a right for appeals in it anywhere. If so, do we need the new subsection (2) that the Attorney has in his section 10FE? Secondly, both the Opposition and Government amendments have the tribunal giving reasons for its decisions when it is at the request of a party to the proceedings. I am wondering about the tribunal being able to give reasons for its decisions as a matter of course. I would welcome any feedback from either the Hon. Ms Levy or the Attorney on those matters.

The Hon. ANNE LEVY: My proposed new section 10L is the existing legislation. It is usual for the tribunal to give its reasons in writing and these do serve as precedents and are widely used within the industry and, as a result, probably prevent many cases ever going to the tribunal, people being guided by the reasons which have been given. In relation to whether the Attorney's proposed new section 10FE(2) is necessary or not, it may be desirable to have it, but the tribunal has certainly worked without it up until the present time because I merely asked Parliamentary Counsel to repeat the existing situation.

The Hon. R.D. LAWSON: I would be opposed to any requirement that the tribunal state reasons for every decision of the tribunal. There is a general rule that all tribunals are required to state reasons where the exigencies of the case require, but many of the decisions of the Residential Tenancies Tribunal are of a minor and interlocutory nature. They simply allow orders to be made. Some of them are made by consent. Some of them are simple injunctions restraining tenants from taking material or undertaking some act or another, in which case it would be highly undesirable and contrary to the desire of the movers to have the simplicity to require the tribunal to sit down and write a written reason unless specifically requested by the party.

Another amendment that the Hon. Anne Levy mentioned was the provision relating to the statement of a case on a question of law. The appeals under the honourable member's proposed new section 10MA is to the District Court. That will be the court which is vested with appellant jurisdiction in this field and it would be usual to give to that court the power, at least in the first instance, to determine questions of law. However, it is somewhat unusual to have a case where there is an appeal to the District Court. There are certain appeals from the Magistrates Court to the District Court and there are certain other appeals but, by and large, the first appellant court in our system of justice is the Supreme Court and it is the court that usually determines questions of law.

Consistency, I would suggest, would dictate that the power to reserve questions should be to the District Court because, of course, there would be an appeal against any decision of the District Court to the Supreme Court, in any event. Such an appeal would go to three judges of the Supreme Court rather than to a single judge and ordinarily, if one is reserving

an important question of law, it is desirable to get the opinion of the Full Court. A question of law reserved under proposed new section 10M would ordinarily go to a single judge of a court. I would favour the District Court having, at first instance, the power to answer a question of law and, of course, if it were a very serious question of law, that court itself might state the case for the Supreme Court.

The Hon. K.T. GRIFFIN: There are in fact a number of changes from what are the present provisions under the Residential Tenancies Act. I have been through them and there has been summary redrafting and some new provisions—and not just the issue to which the Hon. Anne Levy has referred. For example, in section 10H(2) there is a new jurisdictional amount. In relation to the new provision under 10GA—previously the tribunal could sit at any time but at the Minister's direction in such other places—the declared area provision has been removed, which is fair enough as they are outdated. Section 10IA paragraph (b) and section 10IB are new provisions. Section 10J is a revamp of the existing section 26. Sections 10K and 10KA are new provisions, and of course there is the issue about the appeals. I tend to the view that the appeals ought to be to the District Court and then up to the Supreme Court, rather than mixing and matching the jurisdictions. But the view I have taken about these amendments is that basically the Government does not support them, but if they ultimately stay in the Bill we would certainly want to see some changes, which we will resolve at a deadlock conference, where I am sure it will end up during the budget session.

The Hon. ANNE LEVY: I point out to the Hon. Sandra Kanck that the question she raised about 10FE(2) in the Attorney's amendments is covered in 10MA(3). It is in slightly different ordering, but the matter is covered. I also understand that the Attorney mentioned 10IA; in fact this is the old clause 23(1)(a) and (b) and clause 23(2)(a) and (b)(i) and (ii). I agree that the jurisdictional limit has been changed to $30 000. The proposed new section 10IB is not exactly found in the existing legislation. They basically relate to existing parts of the residential tenancies legislation. The order may be slightly different and the language is more modern, reflecting that the original legislation was 1978 and that it is now 1995, and Acts are now drafted in more modern English.

Basically there are no changes. The jurisdictional change to $30 000 was in the Attorney's amendments anyway, and it certainly seemed reasonable to make that change. As it was the jurisdictional limit he suggested, I presumed that he would not object to it.

New part inserted.

Clauses 11 to 17 passed.

Clauses 18—'Variation of rent.'

The Hon. SANDRA KANCK: I move:

Page 9, line 19—Leave out '6' and insert '12'.

I move this amendment because I find that the concept of varying the rent after just six months is somewhat unfair to a tenant. I do not think that most tenants are incredibly rich people, otherwise they would probably have their own houses to start off with. They tend to be more the average wage earner and will not have increases in their wages at six monthly intervals. It is likely that many will not have had increases in their wages for two, three, four or five years in some cases. It is a bit much to allow that variation to creep in after just six months. It could also be used by a landlord or owner as a way of jacking up the rent and thereby forcing out a tenant, which again is very unfair.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. The reference to six months in this clause maintains the *status quo* in relation to the period that has elapsed since the rent for the premises was fixed or last increased. I understand that no complaints have been received requesting an increase to this time period.

The Hon. ANNE LEVY: While I am sympathetic to the amendment, I feel it might be a bit unfair to support it. The existing situation is that rent increases can occur only at six-month intervals. While it is true that at the moment there is very little increase in the CPI and virtually static wages, that has not always been the situation and may not be the situation in the future. It may well be at times of rapid inflation, if they should ever recur, that it would be unfair to limit rent increases to only once every 12 months. I feel we must think beyond the current situation to what may occur in the future. The fact that rent increases can occur only every six months does not mean to say that they will occur every six months. As far as I am aware, while wages and the cost of living are virtually stationary, rent increases are not occurring. Even if there is the right to increase them in fact they are not increased. It seems to me that a six-monthly increase would not be unfair in times of rapid inflation and considerable wage rises, if we should ever return to the days when that occurred.

Amendment negatived; clause passed.

Clauses 19 to 24 passed.

Clause 25—'Receipt of security and transmission to the Commissioner.'

The Hon. ANNE LEVY: I move:

Page 13, lines 1 and 2—Leave out subclause (2) and insert—

(2) A person who receives an amount by way of security must pay the amount of the security to the Commissioner—

(a) if the person is a registered agent—within 28 days of the date of the receipt;

(b) in any other case—within seven days of the date of the receipt.

I referred to this in my second reading contribution. The Bill as before us states that when a bond has been paid, either to a landlord or an agent, it must be paid to the Commissioner for Consumer Affairs within a period allowed by regulation. I see no reason why Parliament cannot make this decision as to what that period should be rather than leave it to regulation. It would make it clearer for any new landlord or new tenant who read the Act. They would not have to chase around in the regulations to find out what was the period. My amendment seeks to insert again what is in the existing legislation: that if it is an agent who takes the bond, that agent has 28 days to transmit the money to the Commissioner—which presumably means that once a month the agent would send a whole lot of bonds to the Commissioner—but in any other case within seven days of the receipt of the money.

The Hon. K.T. GRIFFIN: I oppose the amendment. I hope I will be able to persuade the honourable member that there is a good reason for putting it in the Bill in the way in which we have provided. It is correct that under the present Act there is a requirement for payment of the security bond to the tribunal within seven days of the receipt of the payment. We have drafted it in this alternative way so that the period is prescribed by regulation to take into consideration the discussion that is currently under way in relation to the facilities to which security bonds may be paid. For example, we are currently negotiating with Australia Post with the

intention of implementing a system that will significantly reduce the time to produce receipts as well as payments. Of course, that is a Statewide coverage again. Because there are these discussions going on and they depend on what comes out of the legislative process, we really cannot put in a firm period and therefore prefer to leave it that it is open for provision in the regulation. That is the reason why we have drafted it in this way. It may be that there are other agencies to whom the bond may be paid, for example, a bank if there is no Australia Post office within close proximity. It is those sorts of variables that prompted us to draft it in the way in which it is proposed in the Bill.

The Hon. ANNE LEVY: I am not convinced. If the bond must reach the Commissioner within seven days, I do not see that it matters much whether it does so via Australia Post or via a bank. I think it is important that the money reaches the Commissioner as early as possible. The person collecting the money should not have the use of it for any period. It is important that the Commissioner receives it and is able to add it to the fund and invest it as quickly as possible, given that it is the interest on the investment of this bond that provides resources that pay for the tribunal. So it is certainly important that it reaches the Commissioner as soon as possible. If it is to go via some other method, I do not see that that is incompatible with saying that it must reach the Commissioner within seven days.

The Hon. K.T. GRIFFIN: One can ask: in the light of that, why then does the amendment say that if a person is an agent who receives the amount it should take 28 days to reach the Commissioner?

The Hon. Anne Levy: I agree, but they apparently want to send it only once a month.

The Hon. K.T. GRIFFIN: I do not know what they want to do now. The fact is that we are trying to update and upgrade this legislation. It makes sense that if the Government is negotiating with Australia Post, for example, there are two issues that have to be addressed. First, if Australia Post is the agency, how quickly should the bonds be paid to it? That is the critical issue. How quickly should the bond be paid to the agent of the Commissioner for Consumer Affairs? Secondly, how quickly should Australia Post pay it to the Commissioner? That will not so much be dealt with by way of regulation but by way of agreement between the office of the Commissioner and Australia Post or a bank. There are various procedures that apply depending on the agency to which the money is paid.

It seems to us that there is a very good argument for flexibility to enable this to be regulated by regulation rather than putting in the Act something that is inflexible in the context of trying to modernise the approach to handling bonds, recognising that what we want to do is to ensure that the bonds are dealt with by the Commissioner and not by the tribunal, where, of course, perhaps some differing considerations apply.

There needs to be some flexibility, and regulations provide it. We are not stupid in terms of not wanting to get our hands on the money as quickly as possible. It is in the interests of the Government as much as in the interests of anyone else to get the money into the fund, earning money as quickly as possible through investment. It is not as though the Government is going to say, 'You take six months or three months or whatever period you want to pay it': we are going to negotiate the leanest possible period within which the payments have to be made. But we are trying to give the consumer better service by providing for agencies, if we can negotiate the agreement with Australia Post, to pay them to agencies close by rather than having to trek into the city or to a regional office of the office of the Commissioner.

The Hon. SANDRA KANCK: Is the Attorney considering what the period will be in his part 2? He seems to be suggesting that seven days will be too short. I take that as being the implication, anyhow.

The Hon. K.T. GRIFFIN: I am not aware of the time frame. I know that discussions have been taking place between the Office of Consumer and Business Affairs and Australia Post. The difficulty is that you cannot conclude any arrangements until this legislation is through. There have been preliminary discussions, but I do not think there has been any final decision about what time frame should apply. All I can say is that it is not in the interests of the Government to have too long a time frame, but it is in the interests of consumers as well as in the interests of the Government that there be a bit of flexibility in negotiating these arrangements. That is why we want to do it by regulation. All we want to do is ensure that the person who collects the bond or has the responsibility for paying the bond pays it to the Commissioner or an agent of the Commissioner as soon as possible. Then it is a matter for agreement between the Commissioner and Australia Post, for example, just how quickly that is transferred.

Whether it is done by electronic funds transfer or some other means, it is important to have that process set up after consultation, rather than seeking to make an inflexible provision of seven or 28 days, as the case may be, as provided in the amendment.

The Hon. R.D. LAWSON: It seems to me that 28 days is too long a period within which registered agents can retain moneys, which are trust moneys, not their own. The funds ought to be paid to the Commissioner as soon as possible so that those funds can earn interest for the benefit of the scheme generally. If it is the intention of the mover, as the honourable member said, to permit registered agents to make a payment once a month, this clause does not achieve that objective. If, for example, an agent wishes to pay on the first day, the last day or the fifth day of the month, as a matter of course, the agent will invariably be in breach of the 28 day provision. The design of permitting agents to pay once a month is not achieved by this proposal.

I support the existing provision, which provides flexibility. In many cases there is no reason at all why an agent should hang onto the money for one month and there are good reasons why the agent ought to hand it over. It is not the agent's money: he or she has no entitlement to it. It is actually the tenant's bond and ought to be paid in immediately.

The Hon. SANDRA KANCK: On the basis of what the Attorney has said about the negotiation with Australia Post currently occurring, I will not be supporting this amendment. Obviously, we do not quite know what the situation will be as a result of that negotiation and we accept that some flexibility is required.

Amendment negatived; clause passed.

Clause 26—'Repayment of security bond.'

The Hon. ANNE LEVY: I move:

Page 13, line 22—Leave out 'seven' and insert '10'.

We want to change the suggested time of seven days to 10 days, which is what is currently in the Act. This would give the respondent 10 days to indicate in writing that he wished to dispute the payment of the bond. Whatever the Attorney may feel about payment to Australia Post, Australia Post has

not greatly increased its speed of delivery of notices and, if a notice has to go from the Commissioner to the tenant, it may well have to go to the wrong address first and then be sent on to the new address and then the tenant get a written notice back to the Commissioner. It seems unreasonable to expect that to occur within a week, and the existing 10 days seems far more reasonable, allowing for the vagaries of postal deliveries.

The Hon. K.T. GRIFFIN: I oppose the amendment. The Government is trying to streamline the whole process and shorten the time frames within which steps must be taken, and this is one of those areas. In relation to bonds, it is probably advantageous for the Government to retain the funds for longer. It gets a bit more interest if there is no dispute after 10 days rather than after seven days. We believe that it is important to have issues of dispute resolved as quickly as possible, and we have taken the view that the seven day period after notice is given, within which to notify a dispute, is an adequate time frame within which to give the notice, for it to be received and for a notice of dispute to be lodged with the Commissioner.

The Hon. Ms Levy has given an example whereby, if the notice to the tenant goes to the wrong address and is redirected, seven days will not be enough. I would suggest that 10 days will not even be enough in those circumstances, from my experience with redirections. It really makes very little difference in that respect, but for the bulk of cases it seems to us that seven days would be more than adequate. In any event, under the Act the notice has to be addressed to the last known place of residence, employment or business of the person or agent. So, if there has been a change of address, no-one can blame the Commissioner or anyone else for a notice not getting to someone.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They do move, but you have to have a place of residence or a place of service.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: That is right, and perhaps if there is that movement it will not get there even within 10 or 15 days. It is the Government's intention—

The Hon. Anne Levy: I'll make that 20, if you like.

The Hon. K.T. GRIFFIN: I don't want to make it 20; make it five, if you like, that would be better. The Government is trying to develop a procedure by which if there is no dispute the funds can be paid out over the counter with current identification. That is a better service than is provided at present.

The Hon. Anne Levy: I agree.

The Hon. K.T. GRIFFIN: So, we ought to speed up that process. The Government says that a seven day period is adequate, and that is the reason for opposing the amendment.

The Hon. SANDRA KANCK: I would be inclined to support what the Attorney-General says if he were talking about seven working days. As I read this, it sounds as though the Commissioner sends off a letter—I assume that is the date on which the notice is given—and something must be sent back to the Commissioner within seven days of the date of that notification. Easter is coming up, and Australia Post does not work hard over Easter. I think it would be more reasonable under the circumstances, given that these are not seven working days, to have 10 days instead.

The Hon. K.T. GRIFFIN: I am not prepared to accept seven working days. Under the Acts Interpretation Act service is deemed to have been effected when, if it is sent by post, it would have been received in the ordinary course. So, if it is posted on Friday it would ordinarily be expected to be delivered in the metropolitan area on the Monday. The time runs not from the date of the notice but from the date upon which it is deemed to have been received, which is the Monday. So, you are looking already at 10 or 11 days from the date when it has been posted. If it is posted over a holiday period and if, say, Christmas intervenes or there is a four day weekend such as at Easter, and if it is posted on Thursday, ordinarily you would expect it to be delivered in the metropolitan area on the Tuesday. So, the time would run from that date. If you make it 10 days, you are really blowing it out. The Government takes the view that if you say seven days after the notice is given, there is a bit of flexibility in terms of what occurs in the ordinary course of the post.

The Hon. Anne Levy: It takes an extra day each way.

The Hon. K.T. GRIFFIN: That may be, and if you say 10 days you are extending it to perhaps 14 days, effectively. If you look at the service provisions—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It does, I agree, but seven days is not unreasonable, because if you receive it on the Monday you should be able to send something back by the following Monday, which is seven days.

The Hon. Anne Levy: It must be readdressed first.

The Hon. K.T. GRIFFIN: Clause 81 of the Bill provides:

> 1. A notice or document required or authorised to be given to a person under this Act may be—
>
> (a) given to the person, or an agent of the person, personally; or
>
> (b) sent by post addressed to the person, or an agent of the person, at the last known place of residence, employment or business of the person or agent; or
>
> (c) left in a letterbox or other place where it is likely to come to the attention of the person, or an agent of the person, at the last known place of residence, employment or business.

Plenty of options are contained in that provision, and it seems to us that, as I have explained, seven days are more than adequate.

The Hon. SANDRA KANCK: The Attorney referred to the Acts Interpretation Act from which this provision emanates. If the letter is being sent to a suburb in metropolitan Adelaide or Coober Pedy who will determine the time lag?

The Hon. K.T. GRIFFIN: Normally, this would only happen in the case of a dispute. If there is a dispute, if I did not get the letter or if I got it two days after the seven days had expired and if it cannot be resolved by the Commissioner it will ultimately be resolved by the tribunal. The same thing happens whether it is seven days or 10 days.

The Hon. ANNE LEVY: This is a case where the money will be paid. Application is made to have the bond refunded, say, by the landlord, because he says that the place has been damaged. The tenant has moved. Obviously, if the tenant had not moved there would be no question of the bond being repaid. The new address of the tenant may not be known; he might have moved interstate. A notice is sent to the tenant. It can be sent only to the address which he has just left, and then it must be sent on. Again, it may have to be sent to the country or interstate, and with Australia Post the days tick on. When the tenant eventually gets it, he must quickly send a notice back objecting to the payment if the matter is to go before the tribunal to determine what is to happen to the money. If he does not get the notice back in time, the bond will have been paid to the landlord and there will not be much point in going to the tribunal, because he did not get the letter

in time and the money has been paid. I am not arguing about how much of the money he should get—the money has gone.

The Hon. K.T. Griffin: That is a problem under the present Act.

The Hon. ANNE LEVY: I agree that that is a problem under the present Act, but under the present Act the tenant has 10 days in which to indicate that he wishes to dispute the payment of the bond. So the bond money cannot be paid out for 10 days. I think that with the vagaries of Australia Post, if mail must be readdressed if it has to go interstate or to the country, it would not be unreasonable to allow 10 days for the notice to catch up with the person and for them to send back a notice. If the Commissioner posts a letter on a Monday afternoon, which is when many Government departments do, it might be delivered on the Tuesday but it might not be delivered until Wednesday in the Adelaide metropolitan area. So the Commissioner may well take it that the tenant received it on the Tuesday, and the notice must be sent back to the Commissioner by the following Tuesday.

The person at the address may not get it until Wednesday. They then have to readdress it and send it on, and may not put it in the letter box until Thursday. It may be Friday or even the following Monday before the former tenant receives it. In those circumstances, it is not possible for the tenant to get the notice back by the following Tuesday, and if he does not get it back until the Wednesday the money may have gone and not much can be done about it. The commissioner would say, 'You did not get it back to me within the stated seven days, so I was entitled to pay out the money. Bad luck, you have lost it.' If we allow 10 days it gives the former tenant the opportunity to receive the letter and send back a letter if he wishes to object to the payment of the bond and dispute the matter with the tribunal. Three days will not make that much difference to the person collecting the money. Given Australia Post, I think it is reasonable to allow the tenant 10 days.

I am not the only person who has received a bill one or two days before it is due to be paid. It constantly seems to happen to me that bills take five, six or more days to arrive from the time they were sent. I only collect my mail at midnight, and more often than not they have a date on them which makes it impossible for me to pay in time. I find this extremely irritating—and that is when I am paying money. Because of this late arrival, if a tenant were to miss out on receiving back his bond, which may be $400 or $500, or disputing that $400 or $500 of his money be paid to someone else, merely because it was impossible to get a notice back in time, I can imagine that the tenant would feel extremely irate, and with good reason.

The Hon. SANDRA KANCK: I will support the Hon. Ms Levy's amendment. I cannot see that any extra administrative burden will fall upon Consumer Affairs as a result of this change. I think we should err on the side of caution.

The Hon. K.T. GRIFFIN: I do not want to prolong the debate. You can drum up any hypothetical case to justify 10 days or even 20 days. I repeat that the Government does not believe, from our experience, that seven days will be a problem. It is all part of trying to speed up the process.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 13, line 27—Leave out 'seven' and insert '10'.

This amendment is consequential.

Amendment carried.

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

Page 13, after line 33—Insert:

(6A) Despite a preceding subsection, if—

(a) the security has been provided or paid by a third party prescribed by the regulations, or in circumstances prescribed by the regulations; and

(b) the Commissioner is given notice of the third party's interest in accordance with the regulations,

then—

(c) the third party is entitled to make application to the Commissioner for the payment of the whole, or a specified part, of the security; and

(d) —

(i) if the application is made with the consent of the landlord—the Commissioner must pay out the amount of the security as specified in the application;

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

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

· in any other case—the Commissioner must refer the matter to the Tribunal for determination.

(6B) If a payment is made under subsection (6A) and the tenant is still in possession of the premises, the landlord may require the tenant to provide a new security bond in accordance with section 24.

This amendment is designed to overcome the problems that have been experienced by third parties, such as the South Australian Housing Trust, in recovering security bonds from the Residential Tenancies Fund which have been paid into the fund by way of subsidy, for example, to trust tenants at the end of a tenancy.

Under the existing Act the Housing Trust subsidises the payment of numerous security bonds by tenants. The trust provides the tenant with a cheque which the tenant lodges at the Residential Tenancies Tribunal. The trust in these situations is not named as a party to the residential tenancy agreement. The existing Act has not made it easy for the trust to retrieve these funds at the end of a tenancy. The amendment will facilitate the retrieval by the trust of these bonds, and I suggest that is a commonsense approach.

The Hon. ANNE LEVY: I appreciate the reasons for moving this amendment. While I support the principle behind it, I note that under clause (6A)(d)(ii) the first dot point provides seven days. I wonder whether that could be amended to 10 days to make it consistent with the amendment to which the Committee has just agreed.

The Hon. K.T. GRIFFIN: I do not support 10 days, but I can see the logic of consistency in view of the earlier amendment. I seek leave to amend my amendment as follows:

By changing 'seven' to '10'.

Leave granted; amendment as amended carried; clause as amended passed.

Clause 27 passed.

Clause 28—'Quiet enjoyment.'

The Hon. SANDRA KANCK: I move:

Page 14, lines 19 to 23—Leave out paragraphs (b) and (c).

I think that paragraph (a) alone is adequate. It puts unnecessary pressure on a landlord, especially if they do not live in the same block of units, to be given this responsibility. If a tenant does not get quiet enjoyment they could take the matter to the tribunal, anyhow, and it seems to me to be over the top.

The Hon. K.T. GRIFFIN: I am not prepared to support the amendment. Whilst I can understand the argument, the provisions are in the present Act and I am more comfortable with them staying in. The tenant does need an assurance that he or she is entitled to quiet enjoyment of the premises and the landlord ought to be restrained from doing anything which will interfere with that.

The Hon. ANNE LEVY: I tend to agree with the Attorney on this, particularly subclause (c) which provides that:

> . . . the landlord will take reasonable steps to prevent other tenants of the landlord in occupation of adjacent premises from causing or permitting interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises.

If a landlord has a whole block of flats and there is one tenant who is causing immense distress and disturbance to all the other tenants in the block of flats, there is not much that the suffering tenants can do except approach the landlord, who can insist that the rowdy tenant turn down his stereo at 3 in the morning, or whatever can be done. The landlord is only being asked to take reasonable steps to stop one of his tenants interfering with the privacy and peace and enjoyment of the premises by other tenants. It is not unreasonable to expect a landlord to take reasonable steps in this regard. I doubt if any landlord has felt particularly put upon by this provision in the existing Act.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

> Page 14, lines 24 to 39—Leave out subclause (2).

I suspect that this will probably get knocked back, but I will still have a go at it. This subclause deals with the question of permitting interference. If a landlord lives across the other side of town, I fail to see how he or she cannot permit interference in some cases. It seems to me again that, under those particular circumstances, a penalty of up to $2 000 is a bit extreme.

The Hon. R.D. LAWSON: I oppose this amendment which seeks to delete a provision which is in the current legislation that, so far as I am aware, has caused no difficulty. The sting in subclause (2) is 'in circumstances that amount to harassment of the tenant'. That is the critical element. There must be circumstances that amount to the harassment of the tenant before the landlord can be guilty of an offence. The fine in the present Act is $1 000: the maximum penalty is now increased to $2 000. This is a beneficial provision for the protection of tenants and I have heard no good reason advanced for its withdrawal.

The Hon. K.T. GRIFFIN: I indicate that I agree with the Hon. Robert Lawson. The Government opposes the amendment. It gives teeth to paragraphs (b) and (c) in particular, which the Hon. Sandra Kanck wished to remove and it is for that reason that I would have difficulty supporting the amendment that she proposes.

The Hon. ANNE LEVY: I indicate that I do not feel this is an excessive penalty where actual harassment of the tenant is occurring and, for that reason, I do not support its deletion.

Amendment negatived; clause passed.

Clause 29—'Security of premises.'

The Hon. R.D. LAWSON: I move:

> Page 15, after line 11—Insert:
>
> (4) The regulations may prescribe a maximum amount that a tenant may recover from a landlord for a breach of the term referred to in subsection (1).

I mentioned in my second reading speech that the equivalent of clause 29 in the existing Act has, in a number of cases, given rise to potential difficulties. At the present time, if a landlord fails to provide locks or if the locks are found to be inadequate or, in the particular cases that I was considering, such as *Cantrell v Zanetta*, the tribunal has found that a previous tenant has retained a key or made a key which has apparently been used to gain access to the premises, the landlord is liable in a claim to the tribunal to reimburse the tenant for whatever loss is sustained.

That is an unlimited liability. The landlord has no means of knowing whether the Crown jewels are stored under the bed of the apartment and in respect of it the landlord has little control. It is not a liability which he can insure. The tenant of course could insure against burglary—and the cases I have mentioned, for various reasons, the tenant did not have an insurance policy. It does seem to me appropriate that there be a capacity in the landlord to limit his liability. I would envisage that regulations made under this provision would specify, for example, a monetary amount—$2 000 or $5 000 or $1 000, or perhaps a multiple of the rent. I would further envisage that, in order to obtain the benefit of such a limitation of liability, the landlord would be required to give notice to the tenant—either stipulated in the lease or at the time of entry into the lease—that the landlord's liability was being limited to a certain amount, and also perhaps a notice informing the tenant that he or she would be wise to insure goods against burglary because of the limitation of liability. It seems to me that this clause gives sufficient flexibility to enable the regulations to fashion a reasonable balance between landlord and tenant in relation to liability for breach of this clause.

The Hon. K.T. GRIFFIN: The Hon. Robert Lawson did raise this issue in the second reading debate and I did give some consideration to it. What we were trying to do was to maintain as much as possible the *status quo* in our amendment, but I recognised that there is a particular issue of difficulty relating to liability of landlords. In circumstances where the landlord has done all things reasonable to ensure that locks are properly maintained and that there are no keys floating around other than with the tenant, it seems unreasonable that if, for example, the tenant gives a key to somebody, the landlord should carry a liability for what may flow from that. The amendment will go some way towards resolving the difficulty. There may be other ways of doing it but, in those circumstances, I am prepared to indicate that I will agree with the amendment.

The Hon. ANNE LEVY: I have great problem with this amendment and I wonder if the Attorney can perhaps look at another way of solving the problem.

I appreciate the problem that the Hon. Robert Lawson raised in his second reading speech, but it seems that this is not the way to go about remedying it. The amendment is saying that for any breach of the term referred to in subclause (1) there will be a limit to the liability. The breach may be that there is no lock in the place at all and it would seem that, if a landlord lets premises without a lock on the door at all, it is unfair to expect the tenant to carry the full risk of having his valuables stolen. It would seem that we should be able to find a formula whereby a limit is placed on the liability if the landlord has taken reasonable care to abide by subclause (1), or to allow for the circumstances of a limited liability where the landlord has done what he can to supply a lock and key. If a previous tenant had had an extra key cut and had passed it around, I agree that that is rough on the landlord and one could have a liability limit.

If a landlord lets a place without a lock on the door at all and then says, 'Tough mate; if you are robbed because there are no locks on the door, I do not have to pay more than $1 000 and it is tough on you.' That seems quite unreasonable on the part of the landlord and it should be worded in such a way that a limit on the landlord's liability is where the landlord has taken every reasonable means to abide by the terms of subclause (1). As I read it, the Hon. Robert Lawson's amendment is very wide: it could apply in any circumstances where there is a breach of subclause (1), in other words, where the landlord has not bothered to supply locks and keys at all.

The Hon. R.D. LAWSON: In relation to the possibility of a landlord not providing any locks at all, that in a sense would be an easy case because that would presumably be manifest to any tenant entering the premises. This Act applies not only to flats which may have only two doors but to ordinary houses in the suburbs which are let by people who are travelling overseas on some posting or moving interstate for a year. Having no lock, for example, on a bathroom window or a lock that the landlord thought was a sound lock on a bedroom window but turned out to be not a sound lock at all, having only one possible entrance to the house not secured by a lock means the house is not secure and the landlord is in breach. Frankly, having just one defective lock is as bad as having no locks at all because there is a means of ingress into the property. I would have envisaged that the regulations would not only prescribe the maximum amount but also the circumstances in which the limitation of liability might be availed of.

The Hon. Anne Levy: It doesn't say that. It only prescribes a maximum amount. It does not say 'a maximum amount in specified circumstances'.

The Hon. R.D. LAWSON: I would envisage that the power in the particular subclause would enable a regulation to be fashioned which says that the maximum amount is, say, $5 000 in a case where the following conditions are satisfied, or something greater where those conditions are not satisfied.

The Hon. K.T. GRIFFIN: It is an issue to which I have given some thought. It is difficult to know how we should address it to remedy the circumstances. The issue now having been canvassed, I suggest that we report progress on this clause and, if we can find some means by which we can further pursue it tomorrow, I would be happy to arrange for that to occur. We will further consider it and endeavour to deal with it when we get to the issue again tomorrow.

Progress reported; Committee to sit again.

SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA BILL

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

CATCHMENT WATER MANAGEMENT BILL

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

PARLIAMENTARY REMUNERATION (BASIC SALARY) AMENDMENT BILL

Adjourned debated on second reading (resumed on motion).

(Continued from page 1896.)

The Hon. M.J. ELLIOTT: I have only just read the Bill and, fortunately, it runs to only three clauses so it did not take long. The effect of the Bill is to change the linkage between the basic salary of members of the South Australian Parliament from $1 000 to $2 000 below that of the basic salary for members of the Commonwealth Parliament, effective as of 1 July. There has been a so-called freeze in place for close to 12 months, although that freeze did not have effect for some time because there had been no movement in the Commonwealth basic salary. So, it is only over the past couple of months that that freeze had any real effect. That effect has been temporary, except that the differential between the base salaries of the State and Commonwealth has increased from $1 000 to $2 000.

I do not agree with the editorials in the *Advertiser* too often, but it did repeat a truism that has been said about Parliamentary pay rises, namely, that there is no such time as a good time. I have been critical of pay rises and some people have put different interpretations on what I have said. I will try to make clear the perspective that I have. I have not criticised the level of salary that members of Parliament receive. I think there are certain elements of the salary, and particularly that of some of the higher officers and some of the things that they receive, that may be capable of criticism, but that is not the point of this Bill, so I will not address that now. Over the past couple of years I have been critical of the fact that whilst Governments—and not just the present Government, the previous Government as well—have been asking other people to tighten their belt, there has not been a willingness to be part of that process.

If I can make a comparison or analogy, I am told that one of the strengths of the Australian Army—and I do not know whether it is a myth or reality—was that the officers tended to believe that if they asked the troops to do something it would not be something they would not do themselves. Accordingly, that meant that their leaders were respected and it made the army as a whole function better as a consequence of that. If we carry the analogy into society generally, I fail to see how Government can ask the public to take cuts and to tighten their belt if those people who ask that are not prepared to make the same moves.

I have also been on the record as saying that I believe that the Government has been overreacting in terms of some of the cutbacks and I do not believe that some of them are justified. However, as long as a Government is prepared to justify cutbacks and is prepared to ask people to take cuts in their lifestyle and so on, is the Government going to act like the leaders of the Australian army or some other armies where the officers do not believe in setting the pattern? They simply ask for things to be done; they demand respect rather than command respect. I do not intend to speak further. As I said, I have not been critical of the level of salaries of MPs: I have been critical of whether or not in times of stringency, or claimed stringency, those who ask others to take cutbacks are prepared to do the same.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contributions. The Hon. Carolyn Pickles, the Hon. Legh Davis, the Hon. Robert Lawson and the Hon. Michael Elliott have put important perspectives to the debate about parliamentary salaries. I think the one common theme through all their contributions is that there has never been and there will never be a right time for a salary increase for members of Parliament, fullstop.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: There might be worse times but there will never be an appropriate time. I know that, without revealing too much of the confidences of the Party room, in one of the debates we have had on this issue a member said—and I guess this narrows the field—when a relative of theirs came home to the evening dinner table over a 20-year parliamentary career there was never one day in that 20 years that that member said,'Today's the right day: today is it. Everyone is ready for it. Now is the day for the salary increase for members of Parliament.' Not once in those 20 years was there the appropriate day or time for a salary increase. I have been here for 12 years and have been involved in politics for 20 years and I attest to that fact: there has never an appropriate time and there is never an appropriate way.

There was a readjustment a number of years ago involving a significant catch up. Everyone thought they were doing the right thing by doing it over a three-phase increase. All it meant was that every six months you got another belt and when people read about it on the front page of the *Advertiser* they believed that, whatever the increase—and let us say it was overall 10 per cent or 15 per cent—we were getting another 15 per cent. Of course, the journalists accumulated all three every time. They said that this will be the pay rise and the second time they said that the rise was part of the 15 per cent pay rise, and the third time they said the same. Of course, the poor suffering community thought the members of Parliament had their snout in the trough three times in 12 months getting 15 per cent each time. So, with every best intention in the world, that was an attempt to phase it in and bring in the adjustment over a period.

There is never an appropriate mechanism. We have tried everything, including members setting the salary level themselves. Clearly there is a problem with that. There was great criticism of the use of the Remuneration Tribunal. Eventually we have settled, as every other Parliament has, on the nexus with the Federal parliamentarians. I think the issue that has not been understood by a number of people is that the nexus is not with Federal parliamentarians: it is actually with Federal public servants. Everyone talks about our salary being 'x' dollars below that of the Federal parliamentarians. However, the true nexus is with the not too senior executive level—at the lower end of the senior level—of the Federal Public Service. When an adjustment is made to those levels of salary a corresponding adjustment is made to the salary of Federal members of Parliament and that flows through to State members of Parliament. So, State members are logged into a level a fair way down pecking order in the Federal Public Service and also adjusted along the way with the nexus to Federal parliamentary salaries as well.

In terms of comparisons, I look around the Education Department, for example, for officers earning a similar salary to that of a backbench member of Parliament. We would have probably 50 plus people within my department earning more than a backbench member of Parliament at various salary and benefit levels.

I tell a story against one of my country members, who will remain nameless. He was taking one of my district superintendents to lunch, obviously trying to ingratiate himself to that person. I asked him why he was paying for the lunch. He said, 'Well he's a public servant.' I said, 'He's earning more money than you are earning. He is on $67 000 plus a car, which is worth $8 000 or $10 000 and you are on $68 000. He ought to be paying for your lunch.' He proceeded to ring that district superintendent and say, 'Blow this for a joke. I'm not taking you to lunch, you are taking me. You're earning more than I am.' In the latest Federal log of claims from the Institute of Teachers the top range of principals (class A principals) will be earning $70 000 to $71 000, which is above the current level for a member of Parliament and just below the new level that is recommended in this legislation.

If members look at salaries paid to town clerks for local council—senior officers within councils—and a whole range of occupations they will see that a good number are earning more than the backbench member of Parliament within our parliamentary system. Frankly, with any occupation one obviously has the extraordinarily hard workers, those in the middle and, as is the case in any occupation, the odd one who does not merit the pay they are getting.

The Hon. R.D. Lawson: Not in this Chamber.

The Hon. R.I. LUCAS: Not in the legislative Council. I thank the Hon. Mr Rob Lawson for that interjection. However, I would have to say that from my experience of members of Parliament—Labor, Liberal and Democrat—they work their backside off generally for their beliefs, Parties and causes within this Chamber and within another Chamber.

They are the only points I would like to make. As I said, I do not have any problem standing up in this Chamber or anywhere else and speaking in relation to this issue. It is important to note the calculations show that this is a 5.5 per cent increase for members of Parliament. The Government offer to public servants is approximately a 6 per cent increase on the average public sector salary. For those public servants earning less than the average public sector salary, it obviously would be a higher level because it is a flat sum of $35 over the next 14 or 15 months. Obviously, for those who are earning more than the average, the per cent might be less. However, for the average is it 6 per cent and this will be a 5.5 per cent increase for members.

I note the points the Hon. Mr Elliott made. He made a temperate and moderate contribution to this legislation. It is sometimes difficult when Governments—and in this case Parliaments—in effect, make decisions to reestablish a nexus if they are asking others to do something that they are not already doing themselves.

Members of Parliament at the start of this financial year demonstrated, as did no other occupation in the public sector, that they were prepared to have a wage freeze for 12 months. Since then, there has been a whole series of claims. We now have the offer from the Government to all public sector workers of $35 a week; teachers are going for somewhere between $55 and $60 a week; nurses are going for an 8 per cent plus pay increase; and I think the Miscellaneous Workers Union (or whatever the latest derivation is) is going for $68, in terms of its recent industrial disputation. Members have certainly demonstrated that they were prepared to try to take the lead.

As other members, in particular the Hon. Mr Davis, have indicated, this notion of members taking a lead and anyone following has never worked in the past. The time of David Tonkin was the example the Hon. Mr Davis gave. Clearly, on this occasion it has not worked. Other members and occupations obviously have felt that they must push ahead with wage claims and wage increases. My final point is that I think it is important, in terms of measuring our salary package with that of Federal members, that it is not just the $2 000 differential that we are talking about. One can go into the gory detail of all that Federal members are entitled to, but I want to refer to just one matter, that is, their entitlement to $8 000 to $9 000

worth of car package, to see that in essence State members will be logged in at around $9 000 to $10 000 less than a Commonwealth member, if you take just that benefit.

There is a whole range of other benefits that we can only look at enviously on occasion but, if you take just that minimum comparison, we are logged in at around $9 000 to $10 000 less than Commonwealth members of Parliament, not the $2 000 that we are talking about in terms of the formal provisions of the legislation. With that, I thank members for their contribution. As I said, I have no problem standing in the Chamber supporting this legislation and, in fact would be pleased to do so in a public arena on any occasion.

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

ADJOURNMENT

At 12.04 a.m. the Council adjourned until Wednesday 12 April at 11 a.m.