LEGISLATIVE COUNCIL

Wednesday 7 September 1994

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

LEGISLATIVE REVIEW COMMITTEE

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

CASINO

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Deputy Premier and Treasurer in another place this afternoon, on the subject of 'Scam at Casino uncovered'.

Leave granted.

RURAL SECTOR

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Primary Industries in another place on South Australia's seasonal conditions.

Leave granted.

QUESTION TIME

PRISONS, OVERCROWDING

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about prison overcrowding.

Leave granted.

The Hon. C.J. SUMNER: I note with regret the incident at the remand centre reported in the *Advertiser* of Tuesday 6 September, whereby a prisoner assaulted a Correctional Services Officer. It is further cause for regret that this is not an isolated incident and that these incidents are likely to increase in frequency and severity if the Minister permits the present overcrowding at the Adelaide Remand Centre and elsewhere in the prison system. When the Liberal Party's policy on correctional services was announced prior to the last election, and when the Bill was introduced into this Parliament to give effect to that policy, I and other Labor MPs predicted that there would be an increase in prison unrest because of the policies and the subsequent overcrowding that would result. Regrettably, this prediction is coming true.

Regrettably, the situation with unrest in the prisons is a repeat of what occurred between 1979 and 1982 under the then Liberal Government. The Labor Party in government resisted the proposals to put two prisoners in a cell. We stuck to the United Nations guidelines in this area, did not place two prisoners in a cell and did not have overcrowding to the extent that has occurred under this Government. Many prisoners in the remand centre and elsewhere are being confined two to a cell. This contravenes the United Nations guidelines in respect of human rights in the administration of justice, which are set out in the standard minimum rules for the treatment of prisoners. These guidelines set out what is generally accepted as being good principles and practice in the treatment of prisoners and the management of institutions. Article 86 states:

> Untried prisoners shall sleep singly in separate rooms.

This is clearly not the case at the present time under this Government and there is doubling up in cells in the Remand Centre, contrary to those guidelines. There is general overcrowding in the prison system, which is leading to unrest, tensions and incidents of violence. My questions are directed to the Attorney-General as follows:

1. Does the Attorney-General condone the breach of the United Nations guidelines for untried prisoners, which is presently occurring in the Adelaide Remand Centre?

2. What action does the Attorney-General intend to take to comply with the United Nations guidelines and ensure a reduction in tension and violent incidents in the prison system? I ask these questions of the Attorney-General in his capacity as Attorney-General and as the Minister responsible in this Government for human rights issues through the Standing Committee of Attorneys-General.

The Hon. K.T. GRIFFIN: The Leader of the Opposition draws a very long bow when he suggests that the sentencing legislation we passed in the last session is responsible for unrest in the Remand Centre. It has to be remembered that the incident to which he referred occurred in the Remand Centre while prisoners were on remand and has nothing to do with the legislation enacted by the Parliament in the last session—nothing whatsoever to do with it because they are remand prisoners, they are not—

The Hon. C.J. Sumner: You changed the bail legislation.

The Hon. K.T. GRIFFIN: It has nothing to do—

The Hon. C.J. Sumner: Of course it has. They are in remand and not out on bail.

The Hon. K.T. GRIFFIN: Of course they are, but they are not—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: He is drawing such a long bow and trying to justify the statements made when this legislation was enacted—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. C.J. Sumner: You changed the Bail Act.

The Hon. K.T. GRIFFIN: In relation to domestic violence we did, yes, of course we did.

The Hon. C.J. Sumner: Generally you changed the Bail Act.

The Hon. K.T. GRIFFIN: No, we didn't. In relation to domestic violence legislation there certainly was a change in the Bail Act.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order! The Leader of the Opposition has had a chance to ask his question. I ask him to remain silent.

The Hon. K.T. GRIFFIN: What the Leader of the Opposition is seeking to do is justify statements made by the Labor Party at the time when the sentencing legislation was being debated in the Parliament, and the incident to which he refers bears no relation to that legislation at all. In respect of the occupancy of cells in the Remand Centre, a valid argument exists that, because they are untried prisoners and because for many of them it may be their first time in a remand or prison centre, there is in fact some comfort in sharing a cell rather than being isolated. That is one of the

issues that the Minister for Correctional Services and the Correctional Services Department have considered in the context of doubling up in the Remand Centre. So far as the question of the breach of United Nations guidelines are concerned, I do not have the answer at my finger tips. I would be surprised if, in the context of the United Nations convention, doubling up, even for untried prisoners, is in direct contradiction of that, but I will pursue the issue and bring back a reply.

ISLAND SEAWAY

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about the *Island Seaway*.

Leave granted.

The Hon. BARBARA WIESE: In May this year the Minister advised the Council that a consultant had been appointed to consider whether the *Island Seaway* should be retained and to examine various other options relating to ferry services between Kangaroo Island and the mainland. Four months have now elapsed. The consultant's report has been in the Government's hands for some time.

The two-year operational agreement with R.W. Miller and Co., which runs the *Island Seaway*, expired in June. A private sector operator announced the establishment of a new passenger ferry service, which will apparently also carry some cargo and run from Glenelg to the island. However, the Government still has not released details of the consultant's findings and no decision has been announced about the future of the *Island Seaway*. In the meantime, R.W. Miller, Kangaroo Island Sealink, the crew of the *Island Seaway* and the farmers and other residents of Kangaroo Island, to name a few, are left in limbo as to their future. My questions to the Minister are:

1. Will the Minister confirm that she received the consultant's report some time ago and has been sitting on it because its recommendations are too controversial?

2. Will yesterday's publicity about the commencement of a new ferry service from Glenelg to Kangaroo Island be used as part of the excuse for scrapping the *Island Seaway* operations in an announcement to be made this coming Friday?

The Hon. DIANA LAIDLAW: In terms of the first question, I received the report some time ago. I have not been sitting on it because it is too controversial. I have been working through some of the recommendations with interested parties and others and the report will be released shortly.

In the meantime, I am very pleased to have received the advice, which the Premier announced yesterday, of this very exciting new initiative between Glenelg and Kingscote which will have tremendous benefit for tourism in this State, and that is ultimately our objective in terms of jobs and tourism and the best value for the taxpayer dollar.

The Hon. BARBARA WIESE: As a supplementary question: will the Minister confirm that she is planning an announcement about the future of the *Island Seaway* this coming Friday?

The Hon. DIANA LAIDLAW: I am not able to confirm that or to deny it.

SEXIST LANGUAGE

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the use of sexist language.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday in another place a very unfortunate incident took place when the Minister for Primary Industries (Mr Dale Baker) made the most unfortunate statements in the House. I think that members in this place, if they have not had the opportunity, should refer to the *Hansard* of 6 September (page 348). When discussing a situation in relation to a particular union, Mr Baker made the following statement:

> There was a Mr Geraghty, State Secretary of the Electrical, Electronics, Plumbing and Allied Workers Union, Electrical Division. If my information is correct—and putting it as delicately as Mr Cook did in referring to 'flogging off the forests'—I think this Mr Geraghty is the person who is shacked up with the member for Torrens—putting it as delicately as that. The only advice I have for the member for Torrens, when she slips into the sheets with him tonight—

The Hon. J.C. Irwin: Why do you want to compound it?

The Hon. CAROLYN PICKLES: Because his statements are disgusting. He goes on to say, when he was admonished by Mrs Geraghty, who I might—

The Hon. K.T. GRIFFIN: I rise on a point of order, Mr President. I draw your attention to Standing Order 188, which provides:

> No member shall quote from any debate of the current session in the other House of Parliament or comment on any measure pending therein unless such quotation be relevant to the matter then under discussion.

This is not relevant because there is no matter under discussion.

The Hon. CAROLYN PICKLES: The matter under discussion is the use of sexist language.

The PRESIDENT: Order! I cannot hear the honourable member. I have asked the question myself.

The Hon. CAROLYN PICKLES: I can solve this problem by referring to an article in today's *Advertiser*.

The PRESIDENT: The debate as reported in *Hansard* has been referred to; that is correct. No issue in the other place was being debated, so I rule that there is no point of order.

The Hon. CAROLYN PICKLES: Thank you, Mr President, for your ruling. When the Hon. Mr Baker was admonished by Mrs Geraghty when she called a point of order, he went on to compound the difficulty by trying, in a way, to make it sound better. He said:

> Thank you, Mr Speaker, and I take the advice. There is no more. However, when the member for Torrens gets home this evening and tells the State Secretary what a bad day the Opposition has had in Parliament, I would like the honourable member to say to Mr Geraghty that he should think carefully about what action they might take in the South-East.

I notice that this comment in the House has reached the press: the *Advertiser* mentions it today, and I understand that it was on the media yesterday.

A committee of this Parliament is looking at ways in which to encourage more women to enter Parliament. If women have to put up with this kind of sexist language, I think the women of this State will find it very difficult indeed to try to sit here and take those kinds of offensive remarks. On behalf of Mrs Geraghty I state, for the information of members, that she has been married to Mr Geraghty for at

least 20 years. I think the remarks are offensive in the extreme.

The Hon. Barbara Wiese: It matters not whether she has or has not.

The Hon. CAROLYN PICKLES: Whether she has or has not, it should not even be mentioned in this place. It is nobody's business but her own. The comments were nothing whatsoever to do with Mrs Geraghty; they were to do with her husband in another capacity. My questions are:

1. Does the Minister agree that this language used by the Minister is sexist and tasteless in the extreme?

2. Will she counsel her ministerial colleague about the use of non-sexist and offensive language?

The Hon. DIANA LAIDLAW: I have not read the *Hansard*, but from the story in the *Advertiser* today it was clear to me that the honourable member realised that he had made an error of judgment; he apologised and—

The Hon. K.T. Griffin: And the apology was accepted.

The Hon. DIANA LAIDLAW: And the apology was accepted, and he rephrased the point he wished to make. I accept that he apologised and that the apology was accepted.

Members interjecting:

The PRESIDENT: Order!

EMERGENCY RADIO FACILITIES

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about emergency radio communication facilities for South Australian waters.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to a question that I asked in this place on 10 August 1994 and to an article in the *Advertiser* of 27 July 1994 about the effects of the closure of the Adelaide communications base. I have since been informed that an inexpensive alternative to the building of another communications base would be to utilise the high frequency radio facility operated by the Royal Flying Doctor Service at Port Augusta.

The Royal Flying Doctor Service base has been operating successfully since 1956, is already utilised as a support service for a number of State Government agencies and has been staffed 24 hours a day since 1987.

I am informed that the cost of upgrading the facility to provide emergency radio coverage would be around $165 000, which is less than the cost of many search and rescue operations. For this comparatively small cost, the service would cover all the land of the State and reach far out over the Southern Ocean where many commercial and recreational boats and planes operate. My questions to the Minister are:

1. What is the Government doing to establish more satisfactory emergency communications facilities or arrangements with boats and planes in and over South Australian waters?

2. Is the Minister aware of the option of using the Royal Flying Doctor Service's Port Augusta facility as a base for emergency radio communications? If so, has the Minister raised this matter with his Federal counterpart? If not, will the Minister investigate and report back on the viability of this option?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague the Minister for Emergency Services, in another place, and bring back a reply.

SAND MINING

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Mines and Energy, a question about sand mining near the Gawler River.

Leave granted.

The Hon. R.R. ROBERTS: I was contacted by some constituents living near the Gawler River under the control of the Mallala District Council, in particular section 83 of the Hundred of Port Gawler, who were concerned about a loam-cum-sand mining operation located near their properties. In 1982, approval was given to group called Midway Developments to remove loam from the site for a 10 year period which ended in 1992—although I understand that that permit was under-utilised. Since 1982, there have been significant alterations to the planning and development laws of this State and, indeed, for some time it has not been the practice to allow mining or the removal of earth materials from within 250 metres of the Gawler River. In fact, I am told that at least three applications to remove loam have failed in recent years.

I am advised that a possible development application from Midway was discussed in 1993 which proposed the continued removal of loam. However, the advice given was that, due to the revised planning laws, such an application for operations of this nature were indeed likely to fail. Obviously in a bid to avoid the requirements of the planning and development regulations, the project proponent sought to obtain a miner's licence to mine the same earth product but not to call it loam but rather sand, and I stress that that was exactly the same product. On being consulted, I understand that the Minister for Housing, Urban Development and Local Government Relations placed this application before members of the Extractive Industries Committee, which recommended that it not be approved. They were not the only persons to oppose this: in fact, the Mallala council and 27 other persons, including a constituent, a Ms Kerry Bolland, also opposed this project.

I am advised that the matter was referred to the State Cabinet, as required under section 75 of the Act and, despite all the above, the Minister was rolled in Cabinet by his Cabinet colleagues. I am advised that the application has since been approved. I am also advised that there are some residences within 400 metres of the proposed mining operations but no approaches have been made to obtain a waiver as required by the Act. My constituents further advise that the area to be mined has not been pegged, and this is a requirement of the Mining Act. It is unclear how many residences would actually fall within the 400 metre limit of this proposed sand mine. I understand that a development plan needs to be submitted before a final approval can be given. In conclusion, I bring to the attention of the Minister the concern of the Mallala council and, I assume, that of other councils with boundaries on the Gawler and Para Rivers that in view of this development they may have to rewrite their supplementary development plans. My questions to the Minister are:

1. Will he provide copies of the development plan to the Mallala council, the other 27 objectors and the parliamentary Environment, Resources and Development Committee prior to giving final approval for this sand mining operation?

2. Will other councils need to submit new supplementary development plans to avoid having mining or other extractive industries surreptitiously approved in their areas against the wishes of their constituents, the Minister for Housing, Urban

Development and Local Government Relations and the advice of the Extractive Industries Committee?

3. Will he guarantee councils embracing the Gawler and Para Rivers systems that loam extraction applications refused in the past will not be regenerated as sand mines until this matter has been fully investigated and councils have been given an opportunity to adjust their SDPs to express the desires of constituents and the intent of the development laws of this State?

4. Will he ensure that no mining takes place until the waiver processes required by the Mines Act are fully implemented?

The Hon. K.T. GRIFFIN: I will refer that question to my colleague the Minister for Mines and Energy and bring back a reply.

BREAST IMPLANTS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General a question about breast implant litigation.

Leave granted.

The Hon. R.D. LAWSON: For some considerable time, newspaper reports have appeared on the progress of legal actions on behalf of Australian women against the United States manufacturers of silicone based breast implants. There are variously estimated to be between 50 000 and 100 000 Australian women who may be eligible to make claims, several thousand of those in this State. Most of the publicity appears to emanate from two legal firms—Cashman and Partners of Sydney and Slater and Gordon of Melbourne. The reports suggest there is a publicity contest between these two firms for clients to join their respective actions. The earlier publicity would have given potential claimants expectations of substantial compensation. Now, these same lawyers are reported to be pouring scorn on the judge who is overseeing compromise of a class action in the United States, which would provide Australian and Canadian women with very little compensation. This criticism disguises the fact that the hopes of the claimants are being dashed and that earlier expectations were false. The latest report in the *Advertiser* of 3 September notes:

> A spokeswoman for Melbourne law firm Slater and Gordon—which represents about 2 300 South Australian women—said individual claim actions would. . . be 'stepped up'. Solicitor, Ms Jane Allen, predicted 'hundreds' of claims would be presented in Victorian and New South Wales courts by women from around the nation.

Ms Allen is quoted as saying:

> We think individual actions are the way to go, because it is much more likely that they will receive what they deserve.

Ms Allen said that it was unlikely that Slater and Gordon would consider taking part in a local class action because of the relatively low returns that could be expected. As against that view, Cashman and Partners in Sydney in late July 1994 commenced a class action in the Federal Court of Australia against implant manufacturers. This action was issued on behalf of seven women, two of whom were said to be from South Australia, and it was said to have been issued on behalf of all Australian women with breast implants. However, that action was withdrawn on 21 August this year. My question to the Attorney is: what protection is available to South Australian women to ensure that their interests are being properly protected and they are not being exploited in connection with this distressing litigation?

The Hon. K.T. GRIFFIN: All that I know about the particular actions is what I have read in the newspapers, both local and interstate. It seems to be a particularly confused environment in which women who do have a claim have to make some choices on the basis of what appears to be fairly limited information. I must say that I was somewhat surprised when the United States class action appeared to give to Australian women a minuscule amount of money to compensate them for the loss and injury which they may have suffered. It puzzled me to some extent as to why actions were not initiated in Australia and pursued here rather than in the United States where, of course, there is the problem of distance. There is also the question of contingency fees of a rather significant amount being likely to be charged in the United States. I note, too, that an action was initiated in Australia, but that action was discontinued in August.

My concern is that, if there are women in South Australia who have instructed lawyers but have not instructed those lawyers through a South Australian agent or principal, as the case may be, their recourse to complaints resolution procedures may be somewhat limited.

All that I can suggest at this stage is that if there are women who have concerns about the way in which they may be represented, even by interstate lawyers, they need to make contact with the Legal Practitioners Complaints Committee in South Australia, or the legal practitioners complaints resolution bodies in New South Wales, with a view to pursuing their concerns. I will personally arrange to have some inquiries made as to the way in which the actions are being taken and endeavour to bring back some information to the House. The other point that does need to be made is that, if there is litigation in the United States by Australian, and South Australian women in particular, then again the difficulty in ensuring proper accountability of those who purport to act for them in that class action in the United States will be very difficult and certainly the options available will be very limited.

That is why it is important that if there are actions to be taken, notwithstanding that the gloss and glitter of class actions and contingency fees in the United States might superficially provide some attraction to action rather than in Australia, it is better for actions to be taken in Australia where there is a higher level of accountability required and also a much better opportunity to pursue any complaints against legal practitioners for actions which may or may not be taken in the course of that litigation. There is a facility in Australia for representative actions and also in the Federal court for a sort of class action. So, it is not as though each individual woman must take her own action, but there are better protections available in Australia, notwithstanding that ultimately the damages might be a bit less than is awarded in the United States. But I will undertake to investigate, wherever it is possible to do so, the context of the legislation and endeavour to bring back a reply to the House.

LIBERAL PARTY STRUCTURE

The Hon. T. CROTHERS: I seek leave to make a brief statement before asking the Leader of the Government in this House a question about the way in which the Liberal Party is structured.

Leave granted.

Members interjecting:

The Hon. T. CROTHERS: You will get many more laughs from me yet before I am finished—even I laughed at this one.

The PRESIDENT: Order!

An honourable member interjecting:

The Hon. T. CROTHERS: I think you will ultimately pay for it and very dearly, yes. An article on page 2 of the *Advertiser* dated Saturday 27 August of this year and written by the *Advertiser*'s chief political writer, John Ferguson, contained many quotes by a former secretary of the Liberal Party in this State, Senator Nick Minchin. There were some notable quotes from the good Senator, some of which, in the interests of the question, I will now list. His opening quote was a warning to his Party. He warned the Party that it must 'face up to its intrinsically weak position as a political movement'. He further said 'that the Party had to become more professional about its structure and staffing'. The writer of the article, Mr Ferguson, said:

> Of particular significance is his view that the Party should investigate formalising factions.

He quotes the good Senator as saying:

> I am rapidly coming to the view that we must decide whether or not to have real factions. Formalised factions could enhance our internal management of power issues and people and establish the formal recognition of the various points of view that co-exist under the Liberal umbrella.

I might say at this point of reading, I wondered whether the good Senator was referring to those elements of his Party known colloquially as the wets and the dries. Perhaps the Leader will be able, in due course, to inform the House whether or not that is a fact. Incidentally, for what it is worth, Senator Minchin is also the parliamentary secretary to Mr Downer, the parliamentary Leader of the Federal Liberal Party, but perhaps the most telling of all his quotes is:

> The Labor Party is an immeasurably stronger political movement.

I could not agree more. Again he said:

> The Party's relatively strong parliamentary position disguises the very weak state of the Party organisation that selects and supports all these Liberal parliamentarians.

These quotes that I have just read, of course, do not by any means represent all the thinking that the good Senator Minchin put on record in the Ferguson article, but they will suffice for the moment. The Council should note the Minister to whom I will now direct my questions. As the Leader has on many occasions in this Chamber set himself up as the guru and expert on factionalism in the Labor Party, I indicate that my questions to him will be very direct and that he should not indulge himself in wandering into other areas that are not related to the following.

1. Does the Leader agree there are currently two schools of philosophical thought in the Liberal Party, colloquially known as the wets and the dries?

An honourable member: Which one does he support?

The Hon. T. CROTHERS: He is a damp.

2. Does he agree with Senator Minchin that it would be in the best interests of the Liberal Party both here and at national level if it formalised its present factional position across the nation?

3. Does he agree with Senator Minchin that the Labor Party is an immeasurably stronger political movement than the Liberal Party?

The Hon. R.R. Roberts: For the first time in his life he is speechless.

The Hon. R.I. LUCAS: No, I can assure members that I am not speechless: I am just trying to work out in which order I will start. What I was going to say is that I do not intend to take the point of order that this is not within my area of responsibility under the Standing Orders and refuse to respond to the question. I must say that one of the frustrations of being in government is that one cannot spend the time looking into the internecine warfare that occurs within the Labor Party in South Australia and have the opportunity during Address in Reply debates or other opportunities to talk about some of the—

The Hon. Diana Laidlaw: You should tell us about the realignment of the factions.

The Hon. R.I. LUCAS: As I said, it is one of the frustrations of being in government, that one is not able to spend the time these days talking about it. But having been given the opportunity by the Hon. Mr Crothers, I do thank him.

The Hon. L.H. Davis: He straddles all factions.

The Hon. R.I. LUCAS: The Hon. Trevor Crothers has been described as one member as being in the left right out faction, and the Hon. Barbara Wiese described him as in the extreme centre. I thought that was a very good description of the Hon. Trevor Crothers. But let me respond in part to some of the questions that the Hon. Mr Crothers has put to me by saying, first, that I do reject the view that the Labor Party is an intrinsically stronger political movement, and I invite the Hon. Mr Crothers to look and see which Party is in Government in every State in Australia with the exception of Queensland. If it is some surprise to the Hon. Mr Crothers, he might find that only in Queensland is the Australian Labor Party actually in government at this time.

The Hon. Anne Levy: Perhaps you want to tell Senator Minchin that.

The Hon. R.I. LUCAS: As I said, I do not share that view that the Labor Party is an intrinsically stronger political movement than the Liberal Party, and I invite members or anyone to look at the state of the political map in Australia at the moment and, with the exception of Queensland, the Labor Party is in opposition in all those States. The strength of the Liberal Party nationally has always been within its State divisions. It has been in very large part based on State divisions with responsibility and political action. If there is a particular problem or weakness, it has been in the strength of the Federal organisation of the Liberal Party and, of course, the performance over the past 10 or 12 years in the Federal arena has seen it lose five elections on the trot. So, I reject the view, as I said, that the Labor Party is an intrinsically stronger political movement.

The Hon. Mr Crothers also asked me whether I agreed that there were two factions or schools of thought within the Liberal Party. I wish there were only two schools of thought within the Liberal Party, because it would be a much more manageable proposition. But any political movement spans a variety of views from one end of the continuum right through to the other, with all shades of grey in between. And I suspect even the Labor Party would like to have just two schools of thought or two factions rather than the right wing, the centre left and then two versions of the left, depending on whether you are with Peter Duncan's group or Nick Bolkus's, and then a variety of other shades in between.

The Hon. L.H. Davis: Then Chris Sumner by himself.

The Hon. R.I. LUCAS: There you are. Then you have those who claim to be non-aligned or unaligned or independent but who were, of course, always added in with John

Bannon's centre left vote within the Caucus anyway. Even the Labor Party may well desire to have a situation where there are only two schools of thought within it. I do not accept the view that there are just two schools of thought. We are—

Members interjecting:

The PRESIDENT: Order! The Minister will proceed with his answer.

The Hon. R.I. LUCAS: As I said, the Liberal Party prides itself on the freedom of the individual. It prides itself on the fact that we do span a broad cross section of views from one end of the continuum right through to the other, which has been made readily apparent on a good number of issues both in the Parliament and in the broad community when a whole variety of issues is discussed. Certainly, with some of the contemporary Federal issues that are being discussed at the moment, all shades of opinion have been shown or displayed by some members of the Federal Liberal Party.

The only other point that I would make is that, if one takes the view that the factions and the organisation of the factions are some way of delivering, in effect, an efficient and professional political movement and a Party in government, I would invite them to look at the South Australian Labor Party and look at the disarray, in effect, that the Labor Party is in here in South Australia. There has been much fanfare since the last State election—I see the Hon. Terry Roberts smiling because he knows what is coming—after the vote of 61 per cent to 39 per cent, and with the left with 40 per cent of the vote in the conventions complaining long and loud—and there are five of them in the nine member Caucus in this Chamber—

Members interjecting:

The Hon. R.I. LUCAS: They have the majority up here. They complained they were being overridden by those nasty troglodytes in the right wing, Labor unity, and those people in the centre left who believed in nothing other than crunching numbers, like the Hon. Mr Crothers. We then had this sort of nationally inspired or coordinated review by Gary Grey which came out with this wonderful faction-delivered compromise where everything was going to be rosy in the future for the South Australian Labor Party in that the left, the right and the centre left were all going to take their share of the preselection spoils over the coming three years. And what happens at the very first test? What happens at the very first test of this wonderful new compromise of working together with the factions and of allowing the left to have a say? What happens at the very first test of this bold—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: 'Common sense', says the Hon. Ron Roberts. That is very interesting.

An honourable member: Deidre was—

The Hon. R.I. Lucas: Deidre Tedmanson, the left nominee on the Senate ticket, the offsider of Peter Duncan, with his supporters in this Chamber, a woman towards the goal of 35 per cent of women being in the Parliament by the year 2000 (or whatever is the date), and the President of the Labor Party in South Australia—

An honourable member: An excellent candidate.

The Hon. R.I. LUCAS: —and an excellent candidate, says the honourable Terry Roberts—is meant to be number one on the Labor Senate ticket. Senator Chris Schacht or Senator Rosemary Crowley were meant to be sent off to Coventry or Siberia. Schachty was even looking at preselections at Kingston and seeing whether he would buy a house down there, but his family did not want to go. His family said, 'We are not moving to Kingston; we are staying where we are.' That was the situation in relation to factions and the alleged professionalism of the Australian Labor Party movement in South Australia. In effect, we only need to see the fact that the Labor Party at the last election delivered itself 39 per cent of the two-Party preferred vote. We only have to look at the fact that the factions, with the Federal support of Gary Gray and others, compromised, where everyone would be happy. However, at the very first test, those within the centre left and Labor unity decided that it was a terrific compromise when working their way but, whoops, if they look at this they may lose one of their numbers and Deidre Tedmanson may get up in one of their positions.

The Hon. L.H. Davis: Do you think Terry Roberts would like to ask a supplementary question?

The Hon. R.I. LUCAS: The proof of the pudding is in the eating, and one can see in the disarray of the Labor Party in South Australia that it certainly is not an inherently stronger political movement, and certainly the actions of the factions here in South Australia have not delivered a strong political movement or political Party in this State.

PEST PLANTS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Environment and Natural Resources, a question on pest plants in the arid zone.

Leave granted.

The Hon. M.J. ELLIOTT: About six weeks ago I had a opportunity to meet with a number of pastoralists in the north of the State and discussed many issues. One matter raised in our discussions was concern about several plants which have been in relatively small areas in the arid zone and which have been reported as a problem, but no action has been taken. One needs to understand that the cost of controlling pest plants, particularly in the arid zone, could be very expensive and, quite possibly, particularly in the current economic climate, too much for anyone pastoralist to be able to tackle.

The two plants that were brought to my attention were the African Rue, botanical name *Peganum harmala*. I was told that it was evident initially on one station, but since it was reported not only had it spread on that station over a significant area but also it had appeared on another five properties. It causes them a great deal of concern. It is worth noting that this plant is inedible and, if one is in a pastoral situation, the inedible plants will gradually take over because they have a competitive advantage. While the kangaroo and sheep are eating the edible plants, this one will take their place. I understand it is spreading relatively rapidly.

These people also expressed concern about prickly pear. Apparently it is present in the ranges and appears to be spreading. I spoke with the Farmers Federation about this, and it believes that the Cactoblastis Moth was controlling the prickly pear, although other notes they provided to me suggest that prickly pear has acclimatised to South Australian conditions and is still spreading, particularly in inaccessible areas. In any event, the pastoralist with whom I spoke raised concern about it.

At about the same time I received a letter from Clinton Gareth, President of Friends of the Parks and, in particular, Friends of the Whyalla Conservation Park. He wrote to me about another plant currently in the Whyalla region, known

as *Stapelia variagata*. It appears to be an escape from gardens in the first instance. He found a patch on a hill near Whyalla and he and his family removed three trailer loads from an area 300 metres by 100 metres. In subsequent discussions he ascertained that the Whyalla council had found two other patches, which it removed. The council apparently had contacted the Animal and Plant Control Commission seeking that it be declared a noxious weed, but at this stage nothing has come of those representations.

He says that, since then, following a fire on a local golf course, he found large colonies and organised a group of students to go to work and they removed another truckload. At this stage the plant appears to be in the near vicinity of Whyalla, but as it is easily spread by wind and growing on several hills in the area he is concerned that come this summer it will spread over a much larger area and if it gets away we can perhaps put it into the too hard basket.

I ask the Minister what efforts are being made to contain these three plants. I understand that all three are capable of being contained, although two have got away to a significant extent since the first reports. Is the Government prepared to put in the effort, recognising that it is too much for any one individual pastoralist to do so?

The Hon. DIANA LAIDLAW: I would be pleased to pass on the questions to the Minister and bring back a reply for the honourable member.

BUS DRIVERS

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Transport a question on the accreditation of bus drivers.

Leave granted.

The Hon. M.S. FELEPPA: Accreditation of bus drivers is being undertaken under the Passenger Transport Act 1993. Forms have been sent out to the operators so that their drivers can be accredited before the forms for the accreditation will be made available to the general public during this month. Accreditation costs the drivers or employer a fee at the rate of $6 per year and may be paid to cover five years, that is, $30.

Accreditation as a general way of giving approval is to protect the public and the industry from people who are insufficiently able to provide a service or engage in an industry. As I understand the accreditation of drivers, the forms sent out requires the applicant to provide certain details such as driver's license number, experience (taken on his or her own word, of course), and the health of the applicant.

A police check is also made on each applicant. The competence of the driver rests with the motor vehicles department, which tests the driving skills of the prospective licensee. The department takes account also of the health of the licensee. The testing does not rest with the Passenger Transport Board. It seems that accreditation somehow imposes an additional fee on top of the licence to drive fee—double dipping—for which the driver receives no benefit, nor does the public or industry receive any benefit, as the driver's license covers health and ability to drive.

The only check not covered by the driver's licence is the police check, which would be grossly intruding, in my view, into the privacy of the individual. An employer engaging an employee is not permitted to intrude into the privacy of an individual and must come to a decision to employ or not to employ without a police check.

In the case of driver accreditation, such an intrusion is undertaken by the Passenger Transport Board without there being any serious reason for doing so, such as misappropriation or fraud or other criminal activity. The board is required under regulation 9 of the Act to be satisfied that the applicant is of good repute.

My question to the Minister is as follows: for the accreditation fee charge, what benefits, other than its being a revenue raiser, flow from a fee for accreditation, particularly benefits to the drivers, that are not already in place with a driver's licence?

The Hon. DIANA LAIDLAW: This issue was debated a great deal when the Bill was before the Parliament early this year. The South Australian Government and the South Australian Parliament, in fact, agreed to this system of accreditation. Such a system applies in New South Wales and is increasingly being applied in other States and Territories in terms of the licensing and authorisation of people to undertake the business of passenger transport.

In South Australia, the accreditation is to apply not only to the drivers but also to the owners of such vehicles and to the radio cabs in the case of taxis. It is true, as the honourable member said, that eventually all drivers of passenger transport vehicles will require driver accreditation. Essentially this relates to determining that a driver has an appropriate record and background to participate in the industry.

It requires an adherence to a code of conduct. That is what we believe is so essential in terms of this accreditation: that there is an agreed code of conduct between the Government that is issuing the licence and the person participating in this business. All members of Parliament will want to be assured or be as confident as possible that we are licensing and authorising people of good repute, people who have an understanding of the important role of a service industry, not only a transport industry—and that is much of the cultural change that we are trying to bring about—and who have a much stronger customer focus than has been the case in the past.

Those are the reasons why the accreditation and code of practice are being introduced. There will be in time—although I would hope sooner rather than later—considerable benefits for the public on a regular basis and also in terms of tourism. I believe that in passenger transport generally the public will benefit from people in the industry—but not all—who will take a greater pride in providing service in the industry.

SHACKS

In reply to **Hon. CAROLYN PICKLES** (10 August).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

1. The terms of reference require that the Committee provide a final report with recommendations to the Minister for the Environment and Natural Resources no later than 30 November 1994.

2. The terms of reference require the Committee to make a final report with recommendations to Cabinet. The Committee will be making recommendations to the Minister for the Environment and Natural Resources on those shack sites that can be freeholded. It will not be up to individuals to make an application to freehold until such time as the Minister for the Environment and Natural Resources has advised individual shack owners of the outcome from the review.

3. The terms of reference require the Committee to, inter alia,

"i. observe specific health standards as they relate to effluent disposal as a prerequisite to freeholding; . . . " and

"iii. ensure that any shack having potential for freehold is environmentally compatible with the natural landscape and surrounding vegetation;".

The Committee is developing criteria based on the terms of reference that it will use to assess the suitability of shack sites for freeholding. Final recommended criteria will be forwarded to the Minister for the Environment and Natural Resources with the Committees final report.

4. As a requirement of the freeholding process there will be expenses that will have to be met by individuals or groups of shack owners prior to freehold title being issued. These requirements will include the need to have; a Health Commission approved effluent system in place, legal access to the shack site and the shack site and legal access surveyed. It will be the responsibility of the shack owners to fund these costs as well as the purchase price of the land.

In summary, all costs incurred in fulfilling the requirements that must be met before a certificate of title can be issued are to be met by the shack owner.

5. Because the system does not currently consider individual applications for freehold, there have been no applications by individual shack owners to convert their shack sites to freehold. However there have been several letters from shack owners indicating an interest in obtaining the freehold for their shack site, should freeholding of the site be approved.

6. The letters that have been received from shack owners have been noted and filed. However they will not be used as part of the decision making process by the Committee to determine whether a shack site should be freeholded. This decision is based on the ability of a shack site to fulfil the criteria developed by the Committee and approved by the Minister for the Environment and Natural Resources.

BEVERAGE CONTAINER ACT

In reply to **Hon. CAROLYN PICKLES** (2 August).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

The Beverage Container Act has been a source of much debate since its introduction in 1975.

Industry have had difficulties with the Act, and have complained on many occasions about inconsistencies within the Act as it applies differently to different beverages.

The Minister has responded by challenging industry to develop a voluntary scheme to replace the Act, a scheme that includes a container deposit component. The Minister has advised industry that if such a scheme is developed, that is at least as effective as, and hopefully more effective than the existing scheme, then the Minister would be prepared to look at it.

At this stage there is no intention to repeal the Beverage Container Act. Further, this was not raised by the Minister at the seminar as a possible outcome, contrary to the honourable member's suggestion.

As the honourable member correctly states in the early part of her preamble, the Act was introduced as a litter control measure. The Beverage Act will have little effect on waste going to landfill, other than by assisting or maintaining existing recycling rates. The ANZECC targets are based on achievements since 1990, and the Act has been in existence much longer than this. Other strategies such as education, kerbside collection of recyclables, packaging and waste minimisation and recycling have been enlisted to help achieve this target.

Whatever course of action is recommended, we will ensure that it is an improvement on the existing legislation.

NATIONAL PARKS

In reply to **Hon. CAROLYN PICKLES** (9 August).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

1. If the honourable member recalls the Minister for the Environment and Natural Resources statement to the House on 12 April 1994 he indicated that—

(i) work would begin immediately on a parks audit to take stock and identify priorities for works and opportunities for improved performance; and

(ii) a five year plan for development for key infrastructure would be prepared.

Both of these actions are underway.

Since April, considerable work has gone into reviewing the recommendations, especially in the context of the forthcoming budget. After the budget is brought down the Minister will respond in detail by announcing the funding of specific recommendations from the review.

The Minister has also asked for the Director of Natural Resources to work closely with the non government sector to progress the recommendations in the report.

2. As the Minister also indicated in April, consideration was being given to the most appropriate administrative arrangements to achieve a greater focus to the ongoing and high quality management of the State's biological diversity and natural heritage.

A draft discussion paper exploring a range of amendments to the Act has been prepared for the Minister's consideration. Given the extent of consultation that is likely to be required it is the Minister's intention to delay amending the Act until the Autumn session in 1995.

3. Whilst the specific details will not be available until the budget is brought down, the Minister can assure the honourable member that he has arrested the decline in resourcing of the management of the State's parks and reserves and propose a modest increase in overall funding. It is the Minister's intention to restore confidence in our management of parks and wildlife in this State.

POINT OF ORDER

The PRESIDENT: The time for questions having expired, I remind members that the point of order taken during the early part of Question Time was referred to as Standing Order 188. I remind the Attorney that that relates to debate and not to Question Time. Standing Order 109 covers the issue. If members wish to read it, leave was sought to include *Hansard*. I remind all members of that.

MEMBER'S LEAVE

The Hon. J.C. IRWIN: I move:

That one week's leave of absence be granted to the Hon. Caroline Schaefer on account of absence overseas on Commonwealth Parliamentary Association business.

Motion carried.

COMMERCIAL TENANCIES BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to regulate commercial tenancies; to amend the Landlord and Tenant Act 1936; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

This issue was raised with the Democrats before the last election, and at the time of the last election we promised that we would legislate in this area. Early this year we circulated surveys to some 1 000 small retailers and also had a large number of meetings with small traders, their representatives and other interested parties just to get further evidence as to the severity of the problems.

It is worth noting that legislation similar to this has been introduced in New South Wales, Queensland and the ACT, although I also note that the small traders in South Australia feel that that interstate legislation is relatively weak and does not give them the level of protection that they would like to have.

I also note, before talking about particular problems that the local traders have, that when the Government announced an inquiry into shop trading hours the Democrats said that

there should be a full inquiry into shop trading issues so that the question of shop trading hours could be looked at in conjunction with problems such as landlord and tenant difficulties, among other things.

Instead, the Government announced that it would set up two separate inquiries, and it has moved a lot more rapidly on the shop trading issue than it has on the question of landlord and tenant issues.

I would suggest that small traders are already carrying an enormous burden in relation to landlord and tenant issues. What the Government has now done in relation to shop trading hours really is for many the straw that will break the camel's back. I am appalled that the Government has treated them in that way.

I also note that not only have we had feedback from small independent traders but also that we have had survey forms returned from several chain stores, which echoed very similar concerns to those of the small traders. From recent reading of national newspapers, I note that even our two biggest traders—the Coles-Myer group and the Woolworths group—are extremely unhappy with some of behaviour of some of the landlords.

When you consider that Coles-Myer and Woolworths are not too happy, what hope do small traders have? It is worth looking at the sorts of things that have been happening. I raise these issues in no particular order, but just to give a general idea of the difficulties that are faced. The first issue is the question of the level of rent. There is no doubt that the small traders in shopping centres cross-subsidise the larger traders. I have heard instances of people paying between $1 500 and $2 000 per square meter in the same shopping centre where one of the large traders maybe paying only $135 per square meter. The small traders often sell the same items as the big traders, and that is an enormous burden to be placed on them when they are, in many cases, in direct competition. They are also often asked to share an unreasonable level of the costs of the lighting and heating of the common areas within shopping centres, and often get an unfair burden in relation to the costs of garbage removal, car parking and the like.

There is a very high level of concern about levels of rents. Some people are paying in excess of 30 per cent of turnover as rent. Material I have seen suggests that, in the retail sectors where this is happening, a more reasonable level would be between 10 per cent and 15 per cent. There is not only the question of the level of rent but also the question of the way in which rents change. The survey that we have carried out over recent years indicated that rent has been escalating at about 8 per cent per annum, well ahead of the rate of inflation. People have gone in, quite often with fairly high rents to start with, and they then find that it escalates to a level that is beyond what they can cope with.

The next point at which they are caught is when it is time for renewal. You might argue that at least at the beginning they had a contract to which they agreed, so whatever happens to rents after that they have to accept. I could take that argument further, and I will later. Putting that to one side, they have often mortgaged their home and made quite significant investments, and then the landlord lays pressure on them at the time of renewal. What do you do if you have everything you own invested in a business and the landlord says, 'I am going to put up your rent.'? You say, 'I am barely making a profit now', but they say, 'You have the choice: either you accept this higher rent or you do not.' If you do not, the 'either' in all this is that you lose your whole investment.

There are always people waiting in the wings to take that vacant spot. Sometimes there is no choice at all. A baker who has been at the Parabanks Shopping Centre for seven years was recently told that he was no longer required, that they were going to put in a Bakers Delight franchise operation. Exactly the same thing happened to another baker at the Castle Plaza; the Castle Plaza gave 30 days' notice to a baker who had been there for several years. I will not go into the hard times this person had been through, but he was running a successful business and had increased trade quite significantly. He was told, 'You are no longer needed. We are putting a Bakers Delight franchise operation into this shopping centre.' He was given 30 days' notice.

There was a fellow at the Parabanks Shopping Centre with a $280 000 investment in a chicken store (not roast chicken, but various poultry meats). He had been there for seven years and was a highly successful trader. After his leased had expired (he had been on monthly renewals for a short while), the landlord told him, 'We are not going to renew your lease. We are going to put in a franchise operation. If you like you can become a franchisee of this franchise operation.' He made inquiries and found that it would require a further investment of $200 000 to become a franchisee to run in exactly the same location and to sell exactly what he was already selling. That is grossly immoral. It is not at this stage illegal, but grossly immoral for a small business, for a person who has done everything in good faith, to be put in that position. As a consequence, I understand that this person faces losing everything he and his family owns.

Time after time people are losing their livelihoods and homes—everything they own—because of the way landlords are treating them. One of the crucial times happens to be at lease renewal time. It is not a question of whether or not the business is successful or whether or not they are good tenants. The landlord can simply decide that they no longer want them and want somebody else. Some might argue that that is their right, but I would argue that many people have rights in such situations. You do not allow people to be thrown out of homes that they lease, let alone have their life savings and investment destroyed by these sorts of decisions by landlords.

At the time of signing a lease a tenant can be told what they can and cannot sell, and that is very clearly written into their lease. At the same time they are given undertakings that nobody will be competing with the merchandise they sell, in competition with them. They go into a shopping centre and, within months of setting up, the landlord puts in somebody else who is selling exactly the same items. You do your sums in relation to the turnover of the business, and maybe you are going into an existing business; you know how good an operator you are; you have assurances that nobody else will sell in this area; and then somebody comes in and your business is halved overnight yet your rent and so on was set against certain expectations and undertakings.

If it is good for one it is good for the other. The landlord is willing to tell the tenant what they can and cannot sell, but the tenant, having gone in in good faith, suddenly finds that good faith means nothing because the landlord has decided, for whatever reasons, that they will allow somebody else to sell in direct competition. It does not cut both ways. If the landlord wants to be able to control—

The Hon. C.J. Sumner: How can they do that if they have given an undertaking?

The Hon. M.J. ELLIOTT: I think you just have to know how these guys operate. Most of these people are without conscience. I have had conversations relayed to me about

what some centre managers have said to tenants. I have heard terms like, 'It's scum like you who help pay for the centre.' Those sorts of words have been used by the managers of major shopping centres in Adelaide against tenants. They basically tell them to go away. What choice do you have at the end of the day? If your lease is up for renewal within a year or two, or if you are on a month-by-month renewal, and if you have your life's investment tied up in it and they change the rules on you, there is nothing you can do. There is very little protection—virtually none—under the law.

The Hon. C.J. Sumner interjecting:

The Hon. M.J. ELLIOTT: Talk to the Small Traders Association and it will tell you how much recourse it has. Hundreds of people in South Australia have been losing their businesses because of these sorts of things. In another shopping centre alterations were under way, and getting in and out of a store was almost impossible. Where modifications are carried out in a shopping centre turnover plunges, but there is no willingness by the landlord to change the rent. The landlord is responsible for those sorts of alterations and for making it a place where a customer does not want to go; the turnover drops, but the landlord says, 'Here it is. I am entitled to this rent. You will continue to pay it.' These sorts of things have gone on for extended periods of time. There is also the potential that the traffic flows in a particular part of a shopping centre might be changed. For example, the entrances or whatever else might be altered, so that what was formerly a busy flow area in terms of traffic flow, people walking past, might be changed. Unfortunately, nothing in the current lease arrangements makes allowance for these sorts of things.

At this stage, I have given just a small number of examples, but I can assure members there are many more examples of these abuses. Through this legislation, all I am seeking to ensure is fair treatment for tenants. Some of the things that are happening are legal but, in my view, they are immoral. The law needs to be more prescriptive in some areas. There needs to be ways of ensuring that better information gets to the small traders when they are making their decisions first to go in, before they sign up for their lease. The tribunal needs to be more accessible. As I suppose I have already said, effectively, landlord and tenant responsibilities need to be clearly spelt out.

At the heart of all this is the need for a standard lease in plain language. That is one of the issues tapped within the legislation itself. There should be a standard lease. At the moment, the leases are unnecessarily complex, inadequate in areas where they should be covered and some of the sorts of problems I have been raising could be handled if we had an adequate lease document to start off with. We require that the issues be covered within the lease itself. There may still need to be an agreement between the landlord and tenant, but at least there is a requirement that the lease itself address some of these issues.

The Bill addresses questions as to what happens if renovations are occurring. It allows for disclosure statements, and the expectations of tenants and landlords when entering leases have to be made clear within those disclosure statements to ensure that tenants' rights are protected. There is an expectation that the lease will be renewed and that a greater lead-up period for renegotiation of leases will be provided. At this stage, people often find themselves right at the end of their lease, with no negotiations whatsoever started in terms of a possible renegotiation. In fact, they often find themselves on month by month renewals, for no good reason. It is quite clear that, if there is a to be a renewal, or even if there is not to be a renewal, there should be a period well before the expiry of the lease when these issues are addressed. People should not be left in limbo right at the end of their lease without being able to make any plans about their business and their future.

The procedures surrounding the sale of a business are safeguarded; that is, a landlord's attempt to stymie business sale by forcing the tenant onto short-term leases will be discouraged. That is a subject that I did not touch on. A successful business builds up an enormous amount of goodwill. In many cases, if you are able to sell your business you sell the goodwill with it. But, if you are suddenly on a month-by-month renewal—and those sometimes run for years—you have a business that is unsaleable. You could have a highly successful business, you could be doing everything that the landlord requires, but you could be trapped there.

I know of people who are on month-by-month renewals, who have their life savings invested, who are not making the returns they would like to make, or who, perhaps because of age or other reasons, want to get out of the business, but it is unsaleable. What do they do? Do they walk away and lose everything or do they stay there, hang in, hoping that they will be smiled upon with grace by the landlord, hoping that they will get a renewal and that the rent will not go up too much in the process, so that they will be in a position to sell their business and get on with the rest of their life?

The Bill also provides a mechanism for rent increase. There should not be ratchet clauses that allow the landlord to choose one of several methods—whichever gives the best return to the landlord is what they opt for at present. There needs to be a mechanism which stops ratchet clauses. This matter has been tackled in the New South Wales legislation, and I hope in those circumstances the Government would look favourably upon that as well. There may be some exceptional circumstances where perhaps rents can be reduced. I have given examples already; for example, where there has been a change in traffic flow through a centre, or where the landlord by some action has caused the trade to drop-off, in which case there may be the potential to go to a tribunal to have a rent reassessment. It is important that as far as possible rents be as near as possible to true market rates.

There are perhaps some other rackets that need to be looked at. For example, the big shopping centres buy electricity at a discount. They will sell it to their tenants at full rate odds. I suppose one could say that is good business for them, the fact that they can buy in bulk and sell cheaply. They also had a habit of charging for the meters to be read. Sometimes they would charge hundreds of dollars a year to read the electricity meter. They screw the tenants to the wall every chance they get, and there is another one.

There is a need for greater tenant control over the use of promotional funds. Management gets hold of promotional funds and quite often tenants have no idea of how what are essentially their funds are being spent, and they often get diverted into other management purposes. For instance, perhaps the cars used by management are being paid for, because they are being used for promotional purposes. The promotional funds are being abused, so we would be looking for those funds to be audited annually. They should be available for the scrutiny of the tenants themselves. After all, the money is being taken from them to be spent for their benefit, not just for the benefit of the landlord.

The impact of fitouts for stores is also another issue which is tackled within the legislation. There are cases where landlords make unreasonable requirements in terms of frequency and the extent of a fitout. I know of one case where a person was told to fitout his store. He carried out the fitout and the manager came in and said, 'I'm not happy with this,' and arrived the next day with a new set of doors for the fridges. He said, 'These doors are better than the doors you put on your fridges and here is the bill.' I do not recall the exact amount, but it was a significant sum, after the person had already done a fitout. The requirement for fitouts and the detail in relation to those fitouts has to be clearly spelt out so that the rights of landlords and tenants are far more explicit than they are at present. There have been cases where people have sold their store and then been told, 'Look, before you leave, you will do a fitout.' In some cases, people have gone into a store, having borrowed themselves to the hilt to get in, then the landlord has said, 'I require you to do a fitout.' Of course, that blows all their calculations out of the water. The issue is not whether fitouts may be required but that the issue of fitouts be adequately addressed.

The Council is about to go into a four week break from sitting, and it is possible that there maybe some minor changes to this legislation. I have had it out for consultation, but there has not been adequate time for a full response at this stage. I indicate that I may come back with some minor amendments to this legislation, but I am not aware that I will be looking for any major change.

I will go through the Bill—the issues have largely been covered already—and deal with the major areas. The first important area is part 3 on page 6, which deals with negotiation of commercial tenancy agreements. Under this part, I seek to ensure that tenants have as much information available to them as possible before they enter into a tenancy agreement. Rarely, on the evidence I have received, are tenants given sufficient information at the beginning. For instance, clause 9 provides a requirement that the landlord or the person acting on behalf of the landlord ensures that a copy of the lease is provided well before the negotiations have got under way and that the tenant be given a disclosure statement. The substance of the disclosure statement would be covered by regulation.

Under clause 11, the tenant is not required to pay undisclosed contributions. Too often, tenants find themselves with all sorts of costs over and above those which have been agreed to and which should be covered by rent. This is something that I passed over in the interpretations section, but I refer there to 'periodic outgoings'. It appears to me that tenants need to know what expenses they will face. When they sign the agreement, the rent is pretty obvious. At present, they find that they have to pay rent, electricity and gas, which one would expect to be separate costs. Then there is a further additional cost of advertising and promotion, particularly in centres—and that is probably reasonable—but then they find that they have to pay for heating and lighting of the centre, garbage removal, the reading of metres and a whole rash of other things quite separately from the rent.

I argue that the vast majority of those things should be incorporated in the rent, so that there are probably only three costs: rent; matters which relate to consumption by tenants, such as, electricity, gas and water where variable amounts are involved; and advertising and promotion, which I see as periodic outgoings. Any other items should properly be contained within the rent itself, so that, if the landlord wants to charge for lighting, heating and various other things, those matters should be included in the rent and not seen as an additional charge. The rent would, of course, be set appropriately to allow for the inclusion of those things, but it would at least stop some of the quite gross games that are being played by certain landlords at this time.

Part 4, which relates to monetary obligations, is fairly self-explanatory. It makes clear that no security bond can be greater than four weeks' rent, as agreed under the agreement, and sets out the circumstances under which there will be repayment of a security bond. Part 6, which refers to the premises, spells out a warranty of fitness for purpose and completion of fit-out obligations and makes plain the responsibility of tenant versus landlord in that area. Under part 7, which deals with rent and outgoings, key money is prohibited. Key money is monetary or other benefits given to or at the direction of the landlord or the landlord's agent in connection with the granting, renewal, extension or assignment of a commercial tenancy agreement. Essentially, it is a payment for being given the lease in the first place and is just another one of those additional charges which landlords will try to get away with. Quite simply, under this legislation they would be banned.

Clause 21 relates to restrictions on adjustment of base rent and refers to the methods by which rent will be adjusted. Clause 22 provides for a review of current market rent. Two ways of setting rent are spelt out within this Bill: first, current market rent (clause 22); alternatively, turnover rent (clause 23). It is quite self-explanatory: it relates to rent which is a proportion of the turnover of the tenant. Under clause 26, the tribunal can, on the application of a tenant, declare that the rent payable under the commercial tenancy agreement is excessive. It is conditional—and I may look at amending this area further—but earlier in my second reading contribution I made plain that I felt that various things occur which cause rent to be excessive. There need to be some mechanisms by which that issue can be examined. Obviously, that would have to be done with some caution, but at present no such mechanism exists.

Part 8, which deals with alterations and other interference with premises, spells out the obligations of a landlord in relation to a tenant where it is proposed that there will be any alteration to or, indeed, demolition of premises. Clause 33 limits the landlord's power to interfere with the employees of the tenant with some qualifications. Under part 9, the use of key money for renewal or extension is prohibited. It is probably at that time that a tenant is at the greatest risk of the landlord's power, because they have made an investment at that stage, they are there, they have made a commitment, and they stand to lose a great deal. At that point extortion by the landlord or the landlord's agent is more easily carried out.

In relation to premises within shopping centres, there are some requirements which are not relevant to people in strip shops, so questions such as confidentiality of turnover information are necessary for the tenant. It is necessary also to look at advertising and promotion requirements, something which you would not see in strip shops or individual shops but certainly within shopping centres. You will find that within shopping centres there may be times when the landlord wants to cause a tenant to relocate, and that can have a quite profound impact. Again, it is necessary for some conditions to be included in the legislation to cover that issue.

Clause 46 talks about tenants' committees. It makes quite plain that the tenants have a right to establish a tenants' committee and that that committee can, to the extent authorised by tenants, act on their behalf in discussions and

negotiations. The landlord must, at the request of the committee, make himself or herself available, or a representative available, for discussions. A commercial tenancy agreement cannot prevent a tenant from joining or taking part in the activities of a tenants' committee. Finally, a landlord or a person acting for a landlord must not attempt to prevent a person from becoming or continuing to be a member of a tenants' committee. That basically gives them the right to form their own enterprise based union of tenants and stops the landlord from interfering with their right to meet collectively, which is something that, at present, landlords avoid like the plague.

The Hon. R.R. Roberts: They could join the UTLC.

The Hon. M.J. ELLIOTT: You never know. Part 11 relates to dispute resolution. Division 1 talks about mediation. It is important that as far as possible we keep things both out of the courts and out of the tribunal. Division 1 looks at mediation, and wherever possible mediation will be encouraged and should be the first step where there are difficulties. But, ultimately, things may find their way before the tribunal, as covered by division 2, and in cases where a monetary claim exceeds $250 000 they may be referred into a court with jurisdiction to hear and determine the claim. There is a clear instruction, nevertheless, that the tribunal must not make a final order in contested proceedings unless it has brought or uses its best endeavours to bring the parties to a negotiated settlement.

Under part 12 the commercial tenancies fund, which is in existence, continues. In part 13—and this becomes relevant in the shop trading hours debate—under clause 58 a provision of a commercial tenancy agreement purports to require the tenant to keep the premises open for business at particular times or during particular periods is void. In other words, it gives the freedom of choice to the individual trader as to when they open.

I think that covers the essential features of the legislation. This is long overdue. I assure this House that the level of suffering among small tenants in South Australia is very great. It is not peculiar to South Australia; it is why other States, including New South Wales, Queensland and the ACT have also legislated in this area, although I add the rider that, on the advice I am receiving from small traders, the legislation brought in in those jurisdictions has been inadequate. I think it would be a travesty if we gave them legislation which did not do what we said it would do, which is simply to give them a level playing field, particularly in relation to negotiations, and an assurance that they are treated properly as tenants. I seek the support of the other members of this Chamber. This is an important piece of legislation. No excuse will be good enough not to give these people the protection that they deserve.

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

STATUTES AMENDMENT (CLOSURE OF SUPERANNUATION SCHEMES) (EXTENSION OF TIME) AMENDMENT BILL

The Hon. M.J. ELLIOTT obtained leave to introduce a Bill for an Act to amend the Statutes Amendment (Closure of Superannuation Schemes) Act 1994.

WORKERS' REHABILITATION AND COMPENSATION (MENTAL INCAPACITY) AMENDMENT BILL

The Hon. R.R. ROBERTS obtained leave and introduced a Bill for an Act to amend the Workers' Rehabilitation and Compensation Act 1986. Read a first time.

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

That this Bill be now read a second time.

On 28 July 1994 the Full Court of the Supreme Court of South Australia handed down a decision in the case of Hann. The worker involved in the case, Elizabeth Hann, was the receptionist in a dental practice. As a result of her continuing difficulties with one of the dentists in the partnership, she developed a major depression. She developed a recognised psychiatric illness arising out of her employment. In fact, her treating psychiatrist was clearly of the view that Mrs Hann had suffered a permanent disability of a known kind. It is not necessary to go into the details of her illness and her symptoms—suffice to say that the Full Court found that there was 'no dispute about the nature or extent of the respondent's injury'.

Since our workers' compensation system, like all workers' compensation schemes, provides for lump sum compensation for permanent disabilities, naturally enough Mrs Hann applied to WorkCover for lump sum compensation. Work Cover's response was to reject the application for lump sum compensation on the basis that the legislation, as it now stands, does not provide for any lump sum compensation at all in respect of psychiatric disabilities. Of course, Mrs Hann's lawyer argued that the third schedule to the Work Cover Act must have provided for lump sum compensation, even for injuries of this kind, since section 43 of the Workers' Rehabilitation and Compensation Act provides generally for lump sum compensation in respect of permanent disabilities.

For the benefit of members who are less familiar with the WorkCover legislation, I point out that the third schedule is a list of various names and disabilities to which a certain percentage is attributable, along with some explanatory notes. The percentage attached to each particular disability indicates the proportion of the prescribed sum which is payable for lump sum compensation in respect of the disability.

So, after going through the appeal process, the argument in the Full Supreme Court was about the interpretation of the third schedule to the Workers' Rehabilitation and Compensation Act. Of course, once legislation is passed through Parliament, from time to time the courts are called upon to interpret the legislation—that is one of the essential functions of the courts.

In this case, the presiding judges in the Full Court had no doubt about what Parliament intended in respect of the 1992 amendments. His Honour Justice Debelle said:

> In my view, these amendments indicate a clear intention on the part of Parliament to remove mental disability from the disabilities for which section 43 provides an entitlement to lump sum compensation for non-economic loss.

Her Honour Justice Nyland, with whom Justice Mohr agreed, stated:

> In my opinion, Parliament, by deleting the reference to 'mental' from section 43, evidenced a clear intention to exclude lump sum payments for loss due to the impairment of a mental faculty from the operation of that section and the schedule.

The surprising thing is that the court does not seem to have considered *Hansard* at all. I will refer to *Hansard* to demonstrate that the Supreme Court justices got it terribly wrong

when they drew conclusions about Parliament's intentions—and if they did not get it wrong then Parliament got it terribly wrong at the end of 1992 when these amendments were rushed through.

As some members of another place and this House may recall, the third schedule, in its present form, was part of a package of amendments to the WorkCover legislation which was presented by Norm Peterson and rushed through Parliament at the end of 1992.

My first reference is to page 1087 of *Hansard* for 1992. On 27 October 1992, the Hon. Norm Peterson moved various amendments to the Labor Government's Bill which was then being debated in the other place. One of Mr Peterson's amendments was to section 43 of the principal Act—that is, the Workers' Rehabilitation and Compensation Act—by striking out subsections (3), (4) and (5).

The primary effect of these amendments (which were carried) was to remove the subjective element from assessments of permanent disability, so far as reasonably practicable. In other words, rather than the worker describing his or her changes in lifestyle, including the ways in which the disability affected his or her domestic and recreation activities, much greater emphasis was then placed on the percentages which various medical practitioners came up with in respect of the permanent disability of the worker.

In support of this particular amendment, Mr Peterson's relevant remarks were:

> This is one of the most important elements of my proposal and will result in significant savings to the scheme. It needs to be stated that these lump sums are paid over and above the ongoing income maintenance that is paid under section 35; my amendments leave these income benefits intact. The non-economic lump sum changes I propose will make this area much fairer for injured workers, and provide higher sums for the severely incapacitated—those whom we really have to look after in this scheme.
>
> First, I propose that the third schedule be extended to include those specific disabilities that were added by regulation in June 1992. Secondly, I propose that the schedule be amended to include a provision that any disabilities not specifically identified in the Schedule be compensated on the basis of an assessment of the permanent loss of total bodily function, expressed as a percentage, to be applied to the prescribed sum.

Mr Peterson goes on to say:

> These changes would make the current section 43(3), which relates to disabilities not on the schedule, unnecessary as all permanent disabilities would be compensated under the third schedule. This would remove a very contentious and costly aspect of the scheme, which currently requires a subjective assessment of the impact of the disability on the worker's normal life. This would remove a major area of litigation and save the associated legal costs. It would bring the compensation back to being related to a medical assessment of the extent of the disability, rather than how convincingly or creatively the worker, or his or her representative (the lawyer), can argue the impact on the worker's normal life.

The Hon. R.J. Gregory opposed the amending clause, on behalf of the Labor Government. The Hon. Mr Ingerson, who is still with us, supported the amendment on behalf of the then Opposition. But I stress that nowhere in the debate in relation to the amendment of section 43 was there discussion of excluding stress claims or other psychiatric injuries from the entitlement to lump compensation. It must also be noted that Mr Peterson intended:

> All permanent disabilities would be compensated by the third schedule.

I must now refer to page 1093 of 1992 *Hansard*. It was later—on 27 October 1992—that Mr Peterson moved a further amendment to the Workers' Rehabilitation and Compensation Act in the following terms:

> The third schedule of the principal Act is repealed and the following schedule is substituted:

Mr Peterson then presented a revised third schedule. The word 'mental' had been deleted from the third schedule which was presented by him. There was no clear reference at all to psychiatric illnesses. This is the third schedule that was ultimately passed and the subject of interpretation in the Full Court recently.

Now I come to the point. After presenting this revised third schedule, Mr Peterson said:

> This new clause is consequential and is additional to the section 43 of the amendment.

The House of Assembly evidently accepted that the amendment was consequential, because it was passed without debate. I stress that it was passed without any debate.

The subsequent chapter in the history of this particular revised third schedule is very brief. In this place, it was simply passed without discussion. The conclusion I draw then, which is plain for everyone to see, is that there was absolutely no discussion in this place or the other place about an amendment which utterly extinguished lump sum compensation entitlements for a very significant class of injuries.

But my purpose in introducing this Bill to amend the Workers' Rehabilitation Compensation Act (the third schedule in particular) is not simply that Parliament overlooked the effect of what they it was doing back in 1992. There are very significant and substantial reasons why the third schedule should not remain as it is.

Surely, as a civilisation, we have come to recognise that psychiatric illnesses are just as debilitating and worthy of compassion as are physical injuries. I should say that this Bill has not only the support of the Labor Party and the union movement: the College of Psychiatrists, the South Australian Branch of the AMA and the Law Society's Accident Compensation Committee are all in favour of this Bill. Indeed, I will quote from a press release issued jointly by Dr John Emery (President of the South Australian Branch of the AMA), Professor Sandy McFarlane and Dr Jo Lammersma on behalf of the College of Psychiatrists, and Mr Geoff Britton (Chairperson of the Accident Compensation Committee of the Law Society). The press release was issued on 29 August 1994 and it is important because it clearly underlines the need for remedial legislation. The statement read:

> The clearly unintentional omission by Parliament in November 1992 of words which show that permanent psychiatric or psychological injuries arising from employment will be compensated in the same way as permanent physical injuries should be rectified immediately in the parliamentary session commencing next week.
>
> Parliament should ensure that any person whose claim has been denied since late-1992, through reliance on this error, be compensated without delay.
>
> The principle that the integrity of a workers' compensation system can only be maintained if there is no distinction made between compensation being paid for some injuries but not for others should be affirmed. To deny this principle would create hardship and injustice, and bring the WorkCover system into disrepute.
>
> It would be ironic if the clock was turned back 50 years to deny the developments in treatment and understanding of psychiatric illness, particularly at a time when social legislation acknowledges its significance and past discrimination.

I hope that the members opposite will support this Bill out of a sense of justice and, if there is some concern about the so-called 'stress claims', I stress that people applying for lump sum compensation must not only prove that they have a work-related disability but also prove that it is permanent. In most cases where people claim they are under stress at work, I suggest it would not be easy to persuade psychiatrists that

the disability is permanent, particularly where the worker is unlikely to have to face the stress factors which led to the worker taking time off from work.

This Bill is designed to allow lump sum compensation for those people who are genuinely going to be left with a psychiatric disability or mental illness of some kind which will last for the rest of their working life.

Numerous examples have been given to me of workers who have been injured and are unjustly excluded from the lump sum compensation entitlement as a result of the present state of the legislation. Bus and truck drivers have been involved in horrific accidents and are literally never able to drive again because of the shock and the enduring anxiety which these traumatic accidents lead to. It is also easy to imagine fire officers or police officers developing some kind of psychiatric disability as a result of exposure to a particularly traumatic disaster scene, or exposure to road accident carnage over a period of time—and it is quite conceivable that these sorts of psychiatric disabilities could have lasting effects on the individual. There is no good reason why they should not be entitled to lump sum compensation. In commending the Bill to members, I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 2 makes the amendment effective as from the date of operation of the Peterson amendments of 1992. The effect will be as if the deletion of entitlement for loss of mental capacity never occurred.

Subclause 3(a) replaces the "brain damage" item with a disability to be known as "loss of mental capacity" which should cover all manner of (permanent) psychiatric disabilities, as well as impairment of mental capacity as a result of brain damage.

Subclause 3(b) ensures that the amount of compensation awarded will be proportional to the severity of the loss of mental capacity.

Subclause 3(a) provides for the loss of mental capacity to be diagnosed and assessed according to the same, supposedly objective, set of guidelines against which physical disabilities are assessed.

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

SUPREME AND DISTRICT COURTS (APPOINTMENT OF JUDGES) AMENDMENT BILL

The Hon. SANDRA KANCK obtained leave and introduced a Bill for an Act to amend the Supreme Court Act 1935 and the District Court Act 1991. Read a first time.

The Hon. SANDRA KANCK: I move:

That this Bill be now read a second time.

It takes the lead in Australia in setting up a community-based committee to assist in the selection of judges to our Supreme and District Courts.

I became intensely interested in the issue of judges following the publication of comments made by Justice Derek Bollen last year. Those infamous 'rougher than usual handling' comments have done a lot to concentrate my thinking and that of others about the selection of judges. At that time I drew up a petition which asked for Justice Bollen's sacking, and, without having to do any work myself in soliciting or gathering signatures, more than 11 000 people around Australia signed the petition.

His comments were followed in a short space of time by similarly outrageous comments from Judge Bland in Victoria and Justice O'Bryan in NSW. I was, by the way, accused by some of taking Justice Bollen's comments out of context. However, let me assure members that when I read the transcript and read the remarks in context, it actually made them worse.

I refer members to another case a couple of years ago which has been raised with me by a constituent. Without naming the judge or the case, it came down to which person the judge was prepared to believe, and legal precedent. The judge explained his decisions in terms of 'I prefer the evidence of the other man' and used twelfth century British precedent to justify his decision. Now this may be law, but it is certainly not justice.

The Hon. C.J. Sumner: Where was that?

The Hon. SANDRA KANCK: In South Australia, in the Supreme Court. If this is how judges make their decisions, surely the people chosen to serve as judges must have highly-developed communications skills; they must know how to really listen; and they must listen with empathy. In the case of this particular judge, I have heard from a number of sources that he is prone to dozing-off during cases, so how capable is he of listening?

I use the phrase 'serve as judges' but 'serve' hardly seems the appropriate word in this particular case. The constituent who raised this matter of his treatment at the hands of the judiciary, is now a broken man—he has lost his home, his property and his dignity. From a man who had his future in his own hands, a man who was well-respected in the community, he has become a recipient of Social Security, and is now living in Housing Trust accommodation with debts of $50 000 hanging over his head, all because we have judges who dispense law and not justice. A solicitor friend of mine tells of one judge who discriminates against migrants on a regular basis, probably because of the difficulty of understanding them through their accents. When that particular judge is listed to hear a case which involves a migrant, the solicitors groan, because they know that the case is all but lost before it is heard.

I developed this Bill in consultation with approximately a dozen different groups and people, and its support base has increased with circulation of a draft copy of the Bill to the other groups that I have named as suitable to be on the Judge Selection Committee. I noticed comments from the Attorney-General in last Monday's *Advertiser* regarding an impending replacement for the bench. The Attorney-General was obviously feeling quite pleased with himself because he is going to discuss the matter with the judiciary, people originally from the legal profession, the Law Society, again people from the legal profession, and the shadow Attorney-General, also from the legal profession. I am sure that all these people are most learned, but where is there someone from the community—someone on the receiving end of the law which is dispensed? Surely there is a place for community input?

In my political Party, the Australian Democrats, when candidates go through their initial approval process, they have to appear before an assessment panel. We are not content to have that panel made up of all the same type of people. We go to a lot of trouble to ensure that both men and women are represented, that metropolitan and non-metropolitan people are there, that young and old and a mixture of people representing a cross-section of branches make up that panel. We would not consider a panel made up of people all from the one background would give us balanced decision-making. However, in our society, when a person has to be found to fill that very responsible position of being a judge, we allow

people who all have the same background to make the decision.

In my Bill, I propose a Judge Selection Committee comprised of 14 people, whose job it would be to compile and maintain a register of people suitable to fill positions on the benches of two South Australian courts, namely, the District Court and the Supreme Court. When a position becomes or is about to become vacant, the committee would act like any other selection panel for a job. It would shortlist the applicants, could interview them if it liked, until a final list of three is arrived at. However, unlike the present system, which requires a law degree and a minimum of seven years working in the system, the characteristics that would be sought in choosing people for the shortlist would include people skills. The seven years direct experience would no longer be a necessity, but extensive experience and knowledge of the law would be. This would mean, for instance, that lecturers in our university law schools could be considered, and there is no doubt that their understanding of the law would be significant.

In clause 6 of the Bill, we are asking that the Judge Selection Committee should consider 'practicality and commonsense' as desirable characteristics of a judge, and 'personal qualities, such as fairness, empathy, integrity, patience and even temper and gender and cultural sensitivity'. The community is looking for judges who are in touch with community attitudes, and so we have included as desirable characteristics 'wide community awareness and an interest in issues that are broader than simply the law' and, if it is at all possible, 'a history of involvement in community organisations'.

The Hon. C.J. Sumner: It sounds as though it fits me.

The Hon. SANDRA KANCK: You had better make the offer then. You have to speak to the Attorney-General about it; he has been known to do this sort of thing before.

The Hon. C.J. Sumner: Have you written this Bill for me?

The Hon. SANDRA KANCK: You had better speak to the Attorney-General about it. He is prone to do these things. A former judge of the Family Court, Peter Nygh, in an article in the *Australian Magazine* in April this year, said:

> Ideally, a judge requires patience, an ability to listen and try to understand what each side is saying and, above all, an ability to make decisions.

What he says is not at all unlike the qualities and characteristics we decided were desirable. He goes a bit further than I have gone in the Bill by stating that 'knowledge of the law would be useful but not essential'. I think that an inclusion like that in the Bill would have brought a strong negative reaction from some in this place. Last but not least among the characteristics and qualities we have listed as desirable is 'a willingness to participate in professional training'. The question of education of judges came under quite a deal of scrutiny in my discussion group, and we reluctantly came to the conclusion that you can lead a horse to water, but you cannot make it drink.

There was much discussion in the community last year following publicity around the comments of Justice Bollen, Judge Bland and Justice O'Bryan about re-education of judges and the general conclusion was that, because of the independence of the judiciary, you could not make it compulsory. For my own part, I fail to see what that has to do with their independence, because we ask our teachers and our doctors and nurses to keep up to speed with the developments in their professions, with knowledge about appropriate methods and skills, and surely it must be equally as important for judges. However, the view held by many politicians is that making education compulsory would be interfering with the independence of judges, and so we have respected that view—

The Hon. C.J. Sumner: I do not agree with that.

The Hon. SANDRA KANCK: I am pleased to hear that. So, we have simply made a willingness to participate in professional training a desirable characteristic. That willingness could be easily assessed by what sort of ongoing training or education the applicant has been undertaking throughout her or his adult life. In the *Australian Magazine* article I referred to earlier, Peter Nygh made some comments about the education of judges. He said:

> It is very important then that people appointed as judges undergo some degree of training. The theory used to be, and sometimes still is today, that 'If I'm not fit to do the job straightaway, I should not have been appointed.' In other words, 'I've got nothing to learn.'

But he goes on to say that:

> The reality in Australia is that a new judge can be sworn in the morning, and start sitting in the afternoon.

It is comforting for me to hear a retired judge say all the things that I have been saying for some time. It is glaringly obvious to the layperson that the need for education is becoming more and more urgent in a society which is changing so rapidly. So, having worked through all the desirable qualities and characteristics of the applicants for a position on the bench, the committee would recommend three names to the Attorney-General. The Attorney-General would be the chair of that committee, so would be party to the discussion, and would know the strengths and weaknesses of the final three.

The Hon. C.J. Sumner interjecting:

The Hon. SANDRA KANCK: That is an option.

The Hon. C.J. Sumner: In public?

The Hon. SANDRA KANCK: No.

The ACTING PRESIDENT (Hon. G. Weatherill): Order!

The Hon. SANDRA KANCK: It has to be an improvement on what we currently have.

The Hon. M.J. Elliott interjecting:

The Hon. SANDRA KANCK: It gives me the opportunity to say that it still has to be better than what we have if we are talking about secrecy. It would not be a radical departure from what currently happens, because the Attorney-General would still get the ultimate say. The difference is that he would have to listen to input from a wide range of groups, and different characteristics might be emphasised than is currently the case. I have heard via media reports that the Attorney-General has already said this scheme is unworkable. I find this a surprising comment, as it is not substantially different from any other job application process. It might take a little more time than some but why should it not be a slightly time-consuming process when the people who are chosen will ultimately hold people's futures in their hands?

Fifty years ago it would have been unrealistic to introduce a Bill like this. Twenty-five years ago Justice Bollen could have made his 'rougher than usual handling' remarks and a majority of people would have nodded their head in agreement. However, the fact is that times have changed. We are, sadly, following the US example and becoming an increasingly litigious society and, whether we want to or not, more of us are being forced into the court system. Again, I refer to comments from retired Family Court judge Peter Nygh, about the position of judges in our society. He states:

I am certain about a change in public attitude to judges—the age of deference is gone. In the old days we had a hierarchy of deference. We had the Queen, whom everybody adored and whose family life was never questioned as being of other than of the utmost probity. And judges were high up in that hierarchy as people who . . . somehow could do no wrong.

So, judges, just like royalty, and just like politicians, now have to earn their respect, and that respect will no longer come just because they are wearing the right school tie. Peter Nygh goes on to say:

Back in the 50s, and later, judges were appointed at 50 or even later—in other words, when they felt their prowess as barristers ebbing and when they looked forward to a more sedate life. They worked less than they do today, in more relaxed hours.

Clearly that is no longer the case and we need to be more rigorous in the process of selecting appropriate people to the bench. Times have changed, and appointing people to the bench in the way it has always has been done is no longer appropriate. Peter Nygh says that he would:

. . . have candidates vetted by a selection committee, much like university appointments. It would be a confidential process but the committee would report annually to Parliament as to which of its recommendations were accepted or rejected by the Government. Indeed, if the committee were truly independent of Government, it might be possible to have appointments for a term of years with option for renewal without endangering judicial independence.

That is something I would really like to see, but I have refrained from going that far because I wanted a Bill that would be acceptable, which did not challenge too many preconceptions at the same time, so that it would be passed by Parliament.

I am certainly not operating in a vacuum in introducing this Bill. As well as those comments from Peter Nygh, in May this year the Senate Standing Committee on Legal and Constitutional Affairs released its report entitled 'Gender Bias and the Judiciary'. This was not a radical committee. It was composed of eight members—six men and two women; four Parties were represented—Labor, Liberal, National and the Democrats. They came from four different States, including South Australia. That would appear to be a balanced and representative committee, which came out with a unanimous report, and I cannot imagine National Party Senator Bill O'Chee putting his name to anything radical. In coming to its conclusions, the Standing Committee observed that a huge majority of judges are:

. . . overwhelmingly male, former leaders of the Bar, appointed in their early 50s and products of the non-government education system.

They further refer to a discussion paper issued by the Federal Attorney-General, Michael Lavarch, in which he indicates that, in Federal judicial positions, 90 per cent are males of Anglo-Saxon origin. Recommendation No. 2 from that committee was:

. . . that criteria should be established and made publicly available to assist in evaluating the suitability of candidates for judicial appointment.

That is exactly what this Bill does. Recommendation No. 3 was:

. . . that the Attorney-General for the Commonwealth should establish a committee which would advise him or her on prospective appointees to the Commonwealth judiciary. That committee should include representatives of the judiciary, the legal profession and the non-legal community.

This Bill does just that, except that it is at a State level. Bear in mind that the second part of recommendation No. 3 was:

. . . that the Attorney-General for the Commonwealth should urge the Attorneys-General of the States and Territories to establish a similar advisory committee in their respective jurisdictions.

So, what this Bill is doing is largely in line with the recommendations of the Senate Standing Committee on Legal and Constitutional Affairs, except that I suspect I have preempted the Federal Attorney-General in urging the South Australian Attorney-General to take these recommendations on board. I hope that the Attorney-General will see that what is proposed is not much different to what is involved in getting the best person for any high-flying job, and, if he still believes it to be unworkable, now that he has seen the Bill, I really look forward to hearing from him about what would make it workable.

I believe it is a timely Bill, one that is in touch with community attitudes. I have attempted to make it non-controversial, deliberately avoiding other aspects I would dearly like to deal with, such as the accountability of judges, but knowing they would complicate discussion and lead to the Bill's sure defeat. I am excited and proud to be introducing this Bill. South Australia would be leading the way if the members of both the Government and Opposition were to pass this Bill. We have led the way so often in the past, why not this time? I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART I

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This is a standard clause for Bills in this form.

PART 2

AMENDMENT OF THE SUPREME COURT ACT 1935

Clause 4: Repeal of s. 8

This clause repeals section 8 of the Supreme Court Act 1935, which prescribes certain periods of practice as the minimum qualifications for appointment to judicial office in the Supreme Court.

Clause 5: Variation of s.9—Appointments to the court

Clause 5 amends section 9 of the Act by adding a requirement that the Governor may only appoint as a judge or master of the court a person who is admitted as a practitioner, or is qualified for admission as a practitioner, and who has been selected from a panel of three candidates selected in accordance with schedule 2.

Clause 6: Variation of s. 11—Acting judges and acting masters

This clause amends section 11 of the Act by removing the current qualification requirements for acting judges and masters and substituting a provision in the same terms as the one added to section 9.

Clause 7: Insertion of schedule

This clause inserts into the Act schedule 2, which prescribes a procedure for the selection of judges and masters of the Supreme Court. The schedule establishes the Judges Selection Committee and charges the committee with the responsibility for maintaining a register of persons who wish to be considered for appointment as a judge or master. The committee is required to advertise on an annual basis for applicants for the register and, when it is necessary for a judge or master to be appointed, the committee is required to apply the selection criteria listed in clause 6 of the schedule to select three candidates for appointment from those people named in the register.

PART 3

AMENDMENT OF DISTRICT COURT ACT 1991

Clause 8: Amendment of s. 12—Appointment to judicial office

Clause 8 removes the current qualification requirements for judges and masters of the District Court from section 12 of the District Court Act 1991 and substitutes a requirement that the Governor may only appoint, as a judge or master of the court, a person who is admitted as a practitioner, or is qualified for admission as a practitioner, and who has been selected from a panel of three candidates selected in accordance with the schedule.

Clause 9: Insertion of schedule
This clause inserts a schedule into the District Court Act 1991 which prescribes a procedure for the selection of judges and masters of the District Court which is the same as the procedure prescribed in the schedule inserted in the Supreme Court Act 1935.

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

YANKALILLA SIGNS

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

That the District Council of Yankalilla by-law No. 34 concerning moveable signs, made on 23 June 1994 and laid on the table of this Council on 2 August, be disallowed.

(Continued from 10 August. Page 86.)

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

That this Order of the Day be discharged.

Order of the Day discharged.

GAMING MACHINES

Adjourned debate on motion of Hon. Anne Levy:

That this Council—

1. Notes that the then shadow Minister of Transport moved to amend the Gaming Machines Bill on 7 May 1992 to require that at least 1.5 per cent of gaming machines turnover be set aside in a fund to assist welfare agencies dealing with gambling addiction and to make payments to other community organisations disadvantaged by gambling in their fundraising.
2. Notes that members on both sides of Parliament, and in both Houses, said that their support for the Gaming Machines Bill was subject to promises of additional Government support for agencies dealing with gambling addiction.
3. Calls on the Government to honour the commitment given by the previous Government, at the time gaming machines legislation was introduced, to make up to $2 million in the first instance available from the Government's gaming machines revenue to welfare agencies to deal with the social problems associated with gambling.

(Continued from 10 August. Page 92.)

The Hon. M.S. FELEPPA: I support this motion because of its sentiment towards an issue about which I have a personal obligation. As you would recall, Mr President, I was responsible for the Gaming Machines Bill which passed through this Council in May 1992 and which was assented to on 17 September 1992.

This motion, as you, Mr President, would recall, is concerning gambling addiction and funding for charities adversely affected by the introduction of gaming machines. As I have said already, I consider that I have an obligation; therefore, it is my duty to support it, because as I have said already, I am the one who voted for the original Bill. However, had I not voted for the original Bill, I would consider that I should now support the motion, as gaming machines have become a fact of life in South Australia. Of course, not everyone wanted the gaming machines, just as not everybody follows horseracing or goes to the Casino. Some people frown on gambling altogether. But sufficient people have wanted gaming machines in this State, which saves them the trouble of arranging a bus party to travel interstate, to play the pokies. They can now ply them in South Australia and, more importantly, the revenue from the industry stays within our State. The pokies can be seen as entertainment, sport, a challenge or a game. The reasons for their being here are social, employment, revenue and the economy, ultimately. All these reasons together make a good reason for having them. They are not here for just one or other of these reasons. They fulfil several roles at the same time.

The Premier (Hon. Mr Brown), when he was the Leader of the Opposition, at no time favoured gaming machines, and while the Bill was in limbo during the 1992 mid-year recess he was adamant that he would have the Bill defeated if he could. The Bill went through Parliament on a conscience vote as you, Mr President, would recall, and he would have voted against it, but he did not happen to be in Parliament at that time. However, it would have made no difference. The vote in the House of Assembly was 19 to 10 in favour of the Bill and his vote could not have defeated the Bill at that stage. The gaming machine industry came into being, and in my opinion it was inevitable. Being a conscience vote, all those who voted against the Bill freely exercised their vote without qualms. They are free to exercise their vote on this motion, but we will come to that in a few moments.

During the debate on the Bill in 1992, some of the members, including me, were open to persuasion by the debate in Parliament. They had to be convinced that the gaming machine industry would not be a hidden trap for those who enjoyed gambling, but who now risk falling into the trap of becoming an addict to the fascination of the gaming machines, without being helped with their problem. Throughout the whole of the debate on the Bill, church leaders, the Salvation Army, social workers, doctors and charitable organisations were warning that there were pitfalls in gambling on the pokies, which could trap the unwary. Parents were depicted as raiding their children's money boxes to feed a gambling habit; others were at risk of losing their life savings on machines that return only about 85 per cent of what is fed into them on the slim chance of winning a high return. There were grave prospects of families breaking up. Gambling machines could, as it were, shred a social service cheque, and many other things were said at that time.

Mr President, while you and I may not be addicted to gambling, some people out there are or could become addicted very simply. One estimate places the number of addicts at about 10 000. I would put a large query sign alongside the figure, as it is easy to exaggerate for emphasis. However, it must be admitted that, for some, gambling, like smoking and drinking, will be addictive. This is all true and cannot be denied. But what is more important is that it cannot be ignored in the hope that it will go away by itself. It was true all through the debate, and we have all been made well aware of the problems that must be faced by this Parliament. In 1992, the Government of the day gave an undertaking that the problems would be addressed and, if that assurance had not been given, then the Bill would have certainly failed to pass. The assurances were given, and the Bill did pass through all readings. During the debate on the Bill in 1992, an attempt was made to introduce an amendment that would have guaranteed funding to solve the anticipated problem. I voted for the amendment then, because of the principle of justice involved. The voting was 10 and 10 and the motion was lost on the negative vote of the Chairman. That amendment, proposed to the Bill by the Hon. Ms Laidlaw, was defeated because it was not seen, I suspect, as addressing the provision of funding in the best possible way.

In the debate, what told in the long term run against the amendment was that the anticipated problems were not clearly defined and the amount of funding, and where the funding should go, could not yet be clearly spelt out. To assist with the problem, a select committee was promised and

enough of those members who had been doubtful about the Bill on that score were persuaded to vote in favour of the Bill. The motion of 7 May 1992 for a select committee, moved by the then Leader of the Opposition (Hon. Mr Lucas), was passed during the dying hours of a very long sitting of the Council, and the composition of the committee was agreed to.

On 8 November 1992, that committee advertised that it was taking evidence on the extent of gambling addiction and the effects of gaming machines. The motion we now have before the Council brings this matter back to Parliament for something positive to be done about the problem. The undertaking given in 1992 by the former Government to attend to this problem, on a motion by the now Leader of the Government in the Council (Hon. Mr Lucas), becomes an undertaking for the present Brown Government simply to honour for the people of South Australia. Had the Labor Party been returned it would have been bound to honour its undertaking. The question is not whether we will have gaming machines. That has already been settled and the machines are fully operating. The question is whether or not we will provide for those who fall victim to gambling addiction and for those families, above all, that as a consequence suffer because of the addiction and not the gambling.

As much as those members who voted against the Bill may still feel opposed to gaming machines, it is not for them to deny those who have become addicted to gaming machine gambling the necessary help that can be provided by funding that is derived form those same gaming machines.

It is expected that, although they are opposed to gaming machines, they must support the motion. If they do not, they will be punishing the victims of gaming addiction because of their own prejudice against gambling whereas those members should be providing the help that is needed. I believe that the new members in both Houses of this Parliament have a duty to support this motion as, while the passage of the Bill was not their direct responsibility, they have inherited the responsibility, which was not of their making, of course. For example, it is like new directors taking their seat on the company board. They cannot repudiate the company's debts simply because they did not contribute to the incurring of those debts. The same responsibility applies to new members of Parliament in respect of this matter.

The full terms of the motion have already been canvassed sufficiently in detail by other speakers. There are two areas of concern: gambling addiction and loss of funding by charitable institutions and services through the introduction of poker machines. How these areas are to be addressed and the degree to which they should be addressed are in the motion. However, one point is unclear in the content of the motion—and this, of course, is not a criticism. The Hon. Ms Levy expressed her concern when moving this motion about reviewing the amount of funding that would be made available from the gaming tax, as the provision of funding is ongoing.

In terms of the motion, funding would initially be set at the rate of 1.5 per cent of the gaming machine turnover. While it is set at that rate, there is no provision, either overtly or by implication, for a review of the level of funding. In my opinion, a review is necessary and should be included in the motion. The motion should state who will be responsible for the review but, having simply made that observation, I will leave it at that.

That is how the debate on the motion stood at the close of business two weeks ago and at the beginning of this week. However, I suspect that the Premier's recent ministerial statement, which, as I said, falls short of the terms of the motion before the Council, endeavoured to frustrate this motion. Now that his ministerial statement has been delivered, of course the debate on the motion need not be taken as concluded. The debate should continue and the motion put to a vote simply to test the sincerity and concern of members for those individuals and organisations that have or may be affected adversely by the introduction of gaming machines. I support the motion moved by my colleague the Hon. Ms Levy.

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

AUSTRALIAN BROADCASTING CORPORATION PROGRAMS

Adjourned debate on motion of Hon. A.J. Redford:

That this Parliament deplores the reported proposals concerning the changes to the production of local current affairs and news programs of the Australian Broadcasting Corporation and further calls on the ABC not to reduce local production of current affairs and news programs in any way.

(Continued from 10 August. Page 89.)

The Hon. ANNE LEVY: I move:

Leave out all words after 'Parliament' and insert the following: 'congratulates the board of the Australian Broadcasting Corporation for not accepting the changes proposed by management for altering production of local current affairs and news programs, and calls on the ABC not to reduce local production of current affairs and news programs.

I support many of the sentiments which the Hon. Mr Redford has expressed in his motion, and certainly the broad principle of what he proposes. The sentiments expressed in my amendment parallel those expressed in the Hon. Mr Redford's motion, but my amendment takes account of the fact that events have moved on since he moved his motion on 10 August. In fact, just a few days after he moved his motion, the board of the ABC met and did not accept the changes proposed by management, which had been widely circulated and commented on beforehand.

Under my amendment, instead of calling on the board to reject them, we will congratulate the board for having rejected them at this stage. As I understand it, at the meeting which occurred a few days after Mr Redford moved his motion the board unanimously decided to reject the proposals put to it by the management of the ABC and requested information on a whole range of possible options which the ABC could adopt. The management is preparing these options, and the members of the board expect to receive and consider them at its next meeting which will take place in a few days' time. As I understand it, the board discussed the matter fully, and many of the points raised by the Hon. Mr Redford were raised at the meeting.

It certainly seems to me that the proposals which management put forward would have a very deleterious effect on the news programs of the ABC. Its suggestion of a local news program at 6.30 each evening followed by a national bulletin at 7 o'clock raises many problems as to just what is considered national and what is considered local. If an important event occurs during the day in, say, Brisbane, will it be reported on the Brisbane 6.30 news or will it be held until the 7 p.m. news and broadcast nationally or will Brisbane viewers see it twice: once on the local news and again half an hour later on the national news?

I am sure people would not appreciate seeing the same item twice within half an hour, and yet not to put it into the local news program at 6.30 would devalue the local news considerably. It would be implying that something major may have happened in Brisbane that day, but it could not go into the local news content because the local news consisted only of things which were not worthy of national viewing.

I am sure many people felt that the proposal, as put forward by the management, would trivialise the local news bulletin and that the local news content would be denigrated and not be regarded as being important, and would probably lose a very large number of viewers, particularly coming just a few minutes after the commercial news bulletins had finished, as those bulletins are predominantly local news, anyway, and give much less attention to national and international matters.

The Hon. Mr Redford did make comments in his speech regarding Mr Bannon, whom he called the South Australian representative on the board of the ABC. I should perhaps point out that Mr Bannon is not a representative of South Australia: he is a South Australian who is a member of the board. But, the ABC always stresses very strongly that its members are not representative of anyone, although I am sure they do attempt to get a geographical spread and, hopefully, a gender balance (less successfully) in their appointments to the board.

I certainly can indicate that from what I have heard that the South Australian member of the board, Mr Bannon, played a very important part in the discussions of the board which reached the decisions which we all know of. I stress that I got this information not from Mr Bannon—he is far too modest a person to blow his own trumpet in this way—but from other sources. I have been informed that the contribution and approach taken by Mr Bannon was extremely influential in the board's reaching the decision that it did. He was, of course, supported particularly strongly by members of the board who are not from Sydney, but the final decision of the board was a unanimous one.

So, it was board members from all over the country who reached the decision that they were not enamoured of the proposal put forward by management and certainly wanted to look at other options. The various options have been floated. I do not know, of course, which options will be put forward by management for the next board meeting. Some of the proposals include a suggestion that the 7 o'clock bulletin should certainly stay as it is, being widely regarded throughout the community as an authoritative version of a news bulletin which is respected and watched by many people. However, if the ABC wishes to have a more national news bulletin, considering news at greater depth than is now done in the five minute late night news bulletin, perhaps consideration could be given to expanding that later news bulletin, which occurs somewhere between 9.30 and 10 o'clock, and making that a truly national and indeed international news bulletin for people who wish to view a more global news bulletin.

That is a suggestion that appeals to me. and I am sure that it would appeal to many others in the community. However, this is doubtless just one of many options with which the ABC board will be presented and which it will be discussing at its forthcoming meeting.

I reiterate that the criticisms made by the Hon. Mr Redford to the plans put forward by ABC management are supported by many in our community and throughout this Parliament, and not only by us but also by the ABC board itself. As I said initially, my amendment is to take account of the fact that the board has made this decision since the motion was originally moved and that we should congratulate the board and encourage it to continue the approach of not reducing local production of current affairs and news programs.

I hope members will agree that the amendment recognises the facts of what has happened and gives credit where credit is due. It is important that, in moving motions in this Parliament, we not only criticise where criticism is justified but also that we also recognise and applaud actions that we see as having merit. We should not view the moving of motions as purely being negative in their approach but should give credit where it is due, and I am sure we all agree that it is due in this case to the board of the ABC for its reaction to the plan put forward by the ABC management.

I hope that this episode will have a good outcome and that the taxpayers of Australia will receive an even better news and current affairs service from the ABC than they receive at the moment. I repeat: the news programs of the ABC are widely respected, and it would be a great pity if changes were made that in any way reduced their acceptability in the community or reduced the respect with which ABC news programs are held.

In supporting the principles of the motion and moving the amendment, I am not suggesting that there is not necessarily room for improvement. I am not the only person who has found the *7.30 Report* having less relevance now than it had in previous times and having a tendency to degenerate to soap opera-type stories, which are perfectly adequately covered by the commercial stations for people who want to watch such presentations. So, in defending local production, I am not suggesting that there is not room for improvement in what is presented to us, and I hope that the ABC management and the ABC board will give attention to this matter along with the other proposals that management will be putting to it at the next board meeting. We can rest assured that the ABC board has taken note of the concerns expressed by many in the community and hope for a successful outcome following the next board meeting.

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

LEGISLATIVE PROGRAM

Adjourned debate on motion of Hon. Sandra Kanck:

That for this session Standing Orders be so far suspended as to provide—

That unless otherwise ordered, where a Bill is introduced by a Minister, or is received from the House of Assembly, after 3 November 1994 and before the Christmas adjournment, and a motion is moved for the second reading of the Bill, debate on that motion shall be taken to be adjourned and the Bill shall not be further proceeded with until Parliament resumes in February 1995.

(Continued from 3 August. Page 32.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): First, can I say that I understand the sentiments behind this motion being moved by the Hon. Sandra Kanck. All members who have been in this Chamber for some time have been there ourselves already; we have experienced the frustrations, sometimes the anger, of late night sittings, early morning sittings, extended sessions, sometimes at short notice and inevitably towards the end of any particular session.

So, I understand the frustrations and the sentiments behind the motion. However, the opening session was a particular problem, and even the Hon. Sandra Kanck will concede, as will her Leader (Hon. Mike Elliott), that when I sat down with them prior to the commencement of our opening session I asked them for some forbearance in relation to what was to be a frantic first session of a new Government, elected after some 12 years with a reformist agenda and with significant pieces of legislation that needed to be drafted, needed to have consultation and then needed to be considered by the Parliament.

We had that frank discussion and the two Australian Democrats, I think, understood the view I was putting to them and at that stage were prepared to accept the fact that it was going to be a difficult session. We were having difficulty in getting through the preparation of all our legislation, particularly difficult pieces such as the rewrite of the industrial relations legislation, WorkCover and one or two other Bills.

The Hon. M.J. Elliott: You should have sat extra weeks.

The Hon. R.I. LUCAS: We did sit extra weeks. The Hon. Mr Elliott says that we should have sat extra weeks. I think we sat either two—

The Hon. M.J. Elliott: Not beyond the extra ones already scheduled.

The Hon. R.I. LUCAS: No, we sat another week after that. We sat two extra weeks, from recollection, although it is some time ago now. We sat extra weeks, extra days, extra mornings, to try to get the legislation through, and it was consistent with what I had said to the two members of the Australian Democrats: we had some significant pieces of legislation that needed to be passed through the Parliament during the opening session, and we extended the session for as long as we could, for at least a couple of extra weeks, as I said. As it turned out, it involved probably a third extra week, because we also sat on the Wednesday of that week after the long weekend that we worked through.

It was a big program: we had a very short time line in relation to preparation; there was a lot of pressure on Parliamentary Counsel; and that was outlined to the two members of the Australian Democrats at the outset.

The other thing is that, consistent with what has been past practice, the Government was prepared to be very flexible in relation to the passage of the program in the early or middle part of the session. The Hon. Barbara Wiese took ill for an extended period and we were prepared to go with the flow in relation to that and a number of weeks were lost, while the Hon. Barbara Wiese was ill, in relation to the important passenger transport legislation. I indicated to the Australian Labor Party that, on a similar occasion last year or the year before, when the Hon. Jamie Irwin was away from the Chamber for quite some time, being a shadow Minister at the time, when an important piece of legislation arose I think the Hon. Diana Laidlaw picked up the Bill at relatively short notice and did not delay it is passage through the Parliament.

There were a variety of reasons, not all due to the Government in relation to it is legislative program, but some due to the flexibility that we were prepared to allow to the Chamber in relation to either members being sick or not able to discuss a particular issue. I also indicated at the outset of the opening session in the early part of this year, and again at the end of the session, that we were only asking forbearance in relation to that first session. I indicated that the Government would do all in it is power to try to ensure that we introduced as much legislation as we could earlier in the session rather than leaving it all for the end of the session, as inevitably seems to have occurred. To that end all of our departments, all Ministers, have been placed on notice by the Premier that we need to ensure that our legislative program is front-end loaded as much as we can and that we do not have that unnecessary pile-up at the end of the session.

We all accept—and I think the Hon. Sandra Kanck will grow to realise and accept this—that the end of the session will always be a busy period for the Legislative Council, because it is easy to get Bills through the House of Assembly because Governments, inevitably, have their numbers and, if need be, can guillotine the passage of the Bill in one or two days or an hour if it wants to. That is not our position in the Legislative Council and, inevitably, with the balance of power, our consideration time for Bills takes much longer than for our colleagues in the House of Assembly, together with the fact that there are 10 Ministers in the House of Assembly and only three in this Chamber. Even though in recent years we have had Attorneys-General in this Chamber, there is necessarily a greater weight of legislation starting in the other place and ending up in this Chamber.

With the inevitable urgent pieces of legislation that always eventuate, irrespective of how well anyone might plan—a court case brings down a finding that is about to strike down a tax provision or a court case which brings down a finding that affects some other piece of legislation—some legislation always has to be done quickly because we might not be sitting for another two or three months prior to the next session of the Parliament.

I understand the sentiments of the motion and there is agreement that we as a Chamber have a responsibility (certainly the Government has the prime responsibility but the Chamber also has a role) to try to ensure that we front-end load the debate as much as we can in the Legislative Council and try to reduce the pressures on the last days and weeks of the Parliamentary session. Secondly, this is not a new occurrence and it strikes me a little strange that, after 12 years of the Australian Democrats allowing Labor Governments to—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: That is not correct. I can give examples—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Of course he will agree because he is a colleague. I can remember at least a dozen occasions when this Chamber has been forced to sit all through the evening into the early hours of the next morning and sometimes gone off for breakfast and come back again later that day—

The Hon. C.J. Sumner: That is not true.

The Hon. R.I. LUCAS: It is true. In my first year the Government tried to ram through the financial institutions—

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I have been here longer than the Hon. Mr. Elliott and I can assure him that in my very first year I can remember sitting here all night and until six o'clock in the morning looking at the Government ramming through the Financial Institutions Duty Bill. In the early hours of the morning long bartering was going on with the Australian Democrats representative at the time.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: It may have been Lance. At six or seven o'clock in the morning that occurred. I can remember debates where—

Members interjecting:

The Hon. R.I. LUCAS: We had the gaming machine debate only last Parliament. I do not know where the Hon. Mr. Elliott was.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: These were the last days also. They were meant to be the last days.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The gaming machines debate was only the last Parliament and we went into the early hours of the morning also. It seems unusual that, after allowing the Labor Government that flexibility for 12 years, in the first six months of a Liberal Government, even though we had sat down at the start of the session and explained the problems we had in trying to get through the program, all of a sudden this provision is to be introduced by the Australian Democrats.

The Hon. Sandra Kanck: If I had been in Parliament 10 years ago I would have introduced it then.

The Hon. R.I. LUCAS: All I can say is that it is unusual for such flexibility to be allowed for the Labor Government but, after six months of a Liberal Government, even when it had been outlined to the Australian Democrats in a reasonable fashion prior to that particular session that we were likely to have these sorts of pressures, the guillotine or axe is to be brought down in relation to the introduction of legislation.

The third point I make (and I put this not only to the Australian Democrat members but also to the Australian Labor Party members) is that, should this resolution be agreed to, it would be a full frontal assault on one of the longest standing traditions and conventions about practice in this Chamber in which the Labor Party and the Australian Democrats have engaged themselves. The Hon. Mr Sumner knows that the one thing about the Legislative Council has always been that we have had a tradition or a convention of practice in this Chamber that, if we are to change the Standing Orders or the Sessional Orders of this Chamber, there is consensus, that there is agreement between the Parties.

We can go back decades and there has never be a breach of this fundamental tradition or convention of the Legislative Council. I have not had the opportunity to go back through the whole history of the Legislative Council, but some tell me that there has never been, in the 100-plus years of the Legislative Council, a breach of this convention which the Australian Democrats are seeking through this motion and which is being considered by the Australian Labor Party. There has always been consensus on the way we operate as a Chamber, our rules and our practices, that there is agreement between the Labor Party, the Liberal Party and, in the past 15 years, the Australian Democrats. What is being sought here, if the Australian Labor Party chooses to support this particular provision, is to—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I am not forcing you anywhere. What is being considered here and what the Australian Democrats are seeking at the moment is a full-frontal assault on a century-old tradition and convention of this Chamber.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, you have made comments publicly in the *Advertiser*.

The Hon. C.J. Sumner: What?

The Hon. R.I. LUCAS: Have a look.

The Hon. C.J. Sumner: I didn't support it.

The Hon. R.I. LUCAS: I didn't say that: I said you had made some comments. What I am saying here is that we have always managed ourselves in a fashion where there is agreement between the Parties before we change our rules and practices. If this were to be forced through by weight of numbers of two Parties against the wishes of the third Party in this Chamber what would be established would be a new precedent for the future should any Party gain a majority in this Chamber. That would lead to a situation such as that which occurs in the House of Assembly at the moment. Anyone who has the numbers crunches them and changes the Standing Orders, and at one stage they shortened Question Time by half because they had the numbers to do so even though the Opposition screamed and railed against it.

In the Legislative Council we have not done that: we have operated as gentle persons as members in this Legislative Council and there has been agreement between the three Parties as to whether or not we change our rules, practices and procedures in this place. If this were to be voted through by two Parties against the wishes of the third Party to force a Sessional Order, then the precedent would be established. Should after next election the Liberal Party wins six seats out of 12—and we could absorb a six to eight per cent swing State-wide and still get six seats on the last election result for the Legislative Council—then the Liberal Party would be in a position—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: No, it is not a threat. The Liberal Party would be in a position, with 12 votes in this Chamber, if it were to choose to go down a particular path to decide that the Standing Orders be changed even though Australian Democrats and the Labor Party were not happy. In the future, even if there were not—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: You can speak in a minute. Even if there were a position, for example, where there was a Liberal Opposition and the Australian Democrats were the third Party with a majority over a Labor Government, the position could again be that the Opposition and the Democrats could change the Standing Orders against the wishes of the Labor Government. If in the future the Labor Party—although I cannot imagine it for some time—were to win six seats in a row, or seven seats and five seats in a subsequent election, and it had a majority and there was a Liberal Opposition and a Democrat third Party then the Labor Government could crunch the numbers in relation to this matter. I am just urging all members—

The Hon. C.J. Sumner: Threatening.

The Hon. R.I. LUCAS: I am not threatening: I am urging all members to look at those three scenarios—I am not just talking about one—for the future, that if we choose to break this convention of the Legislative Council on this occasion where two Parties crunch the numbers against the wishes of a third Party, then in any of those three scenarios that I have outlined for the future then a Labor Government, a Liberal Government or any version of Opposition Parties that has the numbers, has the precedent established to crunch the numbers against the wishes of a third Party and to change the Standing Orders to reduce Question Time, or to reduce or change any provision of our Standing Orders or Sessional Orders against the wishes of the third Party in the Chamber.

Whilst my voice is failing, I feel very strongly about this convention and tradition of the Legislative Council. I believe it has served us well as a Chamber and I believe our Chamber is the better for having had this convention and for continuing with this convention. We are looking at a provision, as the Leader of the Opposition knows, in relation to potentially

some form of grievance procedure. As the Leader of the Government in the Council, it is my view that we would not proceed with something like that unless the Opposition and the Australian Democrats agreed.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I explained it to you before the last session, when I met with you. I have spoken in the Chamber about it. All I am saying is that we would not proceed with something like that. Let us say that the Labor Party and the Liberal Government agreed to a grievance procedure but the Democrats, for whatever reason, said they did not, then it is my view we would not proceed with it.

An honourable member interjecting:

The Hon. R.I. LUCAS: I do not know why they would; I am just saying if that was the case. That is the way this Chamber—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The Leader of the Opposition is not as much of a statesman as I am. I really feel very strongly about this particular issue. All I am saying is that I would urge the Australian Democrat members of this Chamber to think long and hard before they proceed down a path of tearing up this convention. I accept the fact that the Hon. Mr Sumner says he hasn't—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I have not attacked you. I said 'If'. I would urge the Hon. Mr Sumner to think very seriously before he or his colleagues were to support the Democrats in attempting to tear up a century-old tradition and convention of this Chamber which has served this Chamber so very well over the years.

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

REPUBLIC

Adjourned debate on motion of Hon. M.J. Elliott:

That, in the opinion of this Council, it is inevitable that Australia will become a republic, and that this Council therefore:

1. Endorses statements by the Premier (Hon. D.C. Brown) that a republic is inevitable;
2. As a consequence, calls for a wide ranging community debate on the options for constitutional change; and
3. Respectfully requests the concurrence of the House of Assembly thereto.

(Continued from 3 August. Page 28.)

The Hon. C.J. SUMNER (Leader of the Opposition): I am not prepared, and neither is the Opposition, to support this motion in its current form and I have circulated some amendments to it. My main complaint about the motion is that it is essentially a weak motion relying on some concept of inevitability of there being a republic in Australia, and trying to engage the Premier, Mr Brown, in the debate through this motion. While a lot of people have said that a republic is inevitable, and I think it probably is, I believe that it would be more useful for the Council to pass a strong motion supporting the concept of a republic for Australia, and that is what my amendment does.

The second complaint I have with the motion moved by the Hon. Mr Elliott is that it does not acknowledge another motion, which is on the Notice Paper and which I moved, to establish a select committee to consider and report on the structure of Government in South Australia and its accountability to the people. One of the terms of reference deals with the implications for South Australia's constitutional structure of proposals for Australia to become a republic. I moved that at the end of the last session, in May of this year, and moved it again on the recommencement of this session, on 3 August.

I think that we should amend the motion in the manner I have indicated, to make a clear statement that, in the view of this Council, Australia should become a republic, there should be wide-ranging community debate on the options for constitutional change and the South Australian Parliament should examine the implications for South Australia's constitutional structure of Australia becoming a republic (the latter part, in effect, taking up an aspect of the motion which I have already moved and which is on the Notice Paper). Therefore, I move:

Leave out all words after 'Council' and insert the following:

1. Australia should become a republic and there should be wide-ranging community debate on the options for constitutional change;
2. The South Australian Parliament should examine the implications for South Australia's constitutional structure of Australia becoming a republic; and
3. The concurrence of the House of Assembly to this motion be requested.

On the substance of the matter, dealing with whether or not Australia should be a republic, the argument is sometimes used that this is a political ploy by the Australian Labor Party, by the Prime Minister, Mr Keating, in particular, to attempt to divide the Liberal Party over the issue. It might in fact have that effect, because the Liberal Party does seem to be at sixes and sevens about whether Australia should be a republic.

This view, which emanates from some sections of the Liberal Party, was expressed on Monday night in the *Four Corners* forum, which was organised with a number of people from the Liberal Party. The suggestion comes forward from groups like that and others in the Liberal Party that it is just a political ploy put forward by the Prime Minister in particular to divide the Liberal Party. As I said, it might have that effect but the important point I think to realise is that this is an issue of principle which has been accepted by the Labor Party now for some time: it has been in our Federal platform for a good number of years. At the State level it is worthwhile noting that, at the June 1978 State convention of the Labor Party, a motion was passed in the following terms:

That this convention supports a republican form of Government for Australia and directs SA delegates to support this policy at the Federal conference.

As it turned out, that motion was moved by me and seconded by Mr Andrew Dunstan. I bring that to the attention of the Council to indicate that support for a republican Australia has been on the agenda of the Labor Party for a considerable time, certainly in this State at least, going back to 1978. Whether or not there was a previous motion to this effect in South Australia I cannot say, but certainly it was not, at that time, a part of the Federal or State platforms.

I believe that that 1978 motion was one of the first times that the question of a republic had been endorsed by the Labor Party. The point I make in the context of this debate is that it is not something that has just been drummed up by the Prime Minister or other members of the Labor Party as a recent political ploy to cause difficulty for the Liberal Party, but it is an issue about which Labor has had a policy for some considerable time, and it is an issue which is genuinely believed in by many members of the Labor Party—a great majority of members of the Labor Party I would suggest—and which is now a fundamental part of Labor's platform.

The argument is sometimes put that there are more important issues, that we should not be debating the question of a republic, that there are other issues such as the state of the economy, unemployment, jobs, etc. Of course, they are very important issues. In my view you cannot divorce the debate about a republican Australia from those other issues. In other words, there is a link, in my view, between the form of Government that we have and the attitude that we bring to national issues as reflected through the notion of a republic and issues such as the state of the economy, unemployment and the like.

To express it in another way, I believe that symbols for a country, for a nation, are important, and also that the psychology of a nation is important, that the approach which people bring to nationhood is important and can be important in the role that that nation plays in the world in the international arena and can be important in the way that that nation develops its economy and cultural attributes and deals with the rest of the world.

I think it is fair to say that in the past Australians have been accused of being too parochial, of being too self-centred, if you like, of not being open enough to the world in trading and other ways. I suppose in the economic area, the high tariffs that we had to support the manufacturing industry in the past could be indicative of that sort of parochial attitude. That has all changed or is changing in the economic area.

The other attitude that I think has been expressed is that we have not only been parochial but we have been too concerned to think that the Anglo-Saxon way of doing things is always the best, and we have repudiated other strains of thought from Europe or other countries in the world. So, Australia is being accused of having those sorts of attitudes. Indeed, South Australia is accused of having them, with some justification in my view, to an even greater extent, and I know the Hon. Dr Pfitzner has spoken about these issues in the past in the context of our dealings with Asia. It seems to me that the debate about a republic is not an irrelevancy, that it is an important issue, and that it does deal with the way this nation of Australia sees itself. Accordingly, I would dismiss the idea that this is not a front-line issue, that it is not an important issue. In my view, it is an important issue; symbols are important. The attitude of a nation to its economy and its culture are important, and the form of Government can be relevant to this.

To deal with the question of symbols, it seems to me that the symbols of the constitutional monarchy are all wrong for the future. The fact is that we have a foreign person as a head of State in this country. The Queen is not an Australian citizen, she is a British citizen. So, she is clearly a foreigner. A person of that category could not stand for Parliament in Australia; she cannot participate in the affairs of Australia, yet she is qualified to be our head of State. Some say, 'Well, the Governor-General is in effect the head of state,' and for a lot of purposes that is true. But examples have been given where our Governor-General goes overseas but is not recognised as a head of state in some other countries, because constitutionally the Queen of the United Kingdom is the formal head of state in Australia. A couple of examples were given in an article of 5 October 1993 by Laurie Oakes, where he said:

> There was the case a few years ago, for example, when then Governor-General Sir Ninian Stephen planned a visit to Indonesia. He cancelled it when Indonesia's President Suhato declined to welcome him in person on the grounds that the Queen not the Governor-General was Australia's head of state. But only a few weeks ago, current Governor-General Bill Hayden visited France to mark the seventy-fifth anniversary of World War I battles in which tens of thousands of Australians died. His program shows that the highest French official with whom he came in contact was the Veterans Affairs Minister, and when he left he was farewelled only by a ministerial staffer. No-one regarded as a genuine head of state would be treated so dismissively.

The point is that the Queen of the United Kingdom is a foreign monarch in the Australian context. Our Governor-General is not the head of state of Australia in the formal sense although, of course, as is pointed out, the Governor-General does conduct most of the functions of a head of state. But it is clear from those examples from Laurie Oakes that in some international contexts the Governor-General is not treated as the head of state and he is not treated as the head of state because in fact he is not formally the head of state of Australia. So, it is the wrong symbol to have a foreigner as the head of state of Australia.

Where else are the symbols wrong? As we know in the early 1970s, the United Kingdom became part of Europe: the European Community, now the European Union. They totally did away with the preferential trading arrangements that existed between themselves and parts of the old empire and the Commonwealth, and we were left to get on in the world without those preferential trading arrangements which had existed with the United Kingdom. In other words, in the early 1970s, the United Kingdom became part of a more integrated Europe. That process of the integration of Europe is continuing, and it will continue, in my view, despite hiccups along the way. Europe will become more and more integrated economically and I suspect politically as time goes by. That happened in the early 1970s when the UK joined the European Community, yet we still hear, some 20 years later, our suggesting that the Queen of the United Kingdom should remain the Queen of Australia. To my way of thinking, that is a wrong symbol.

We turn now to the composition of the Australian population. Some 25 per cent of Australians now are of non-English speaking background. If you take the migrants and their children, the first generation born in Australia, then some 25 per cent of the population is of non-English speaking background. If you added those of Irish descent as well you would get an even larger proportion. Again the symbol is wrong, the symbol of a foreign monarch from the United Kingdom is wrong as far as probably 25 or 30 per cent of the Australian population is concerned.

I also believe the symbol of a hereditary monarch is wrong for Australia. It might be okay for the United Kingdom and for some of those countries in Europe that have always had hereditary monarchs, but it is wrong in a modern contemporary and democratic Australian community to have a hereditary monarch, a foreigner to start with, but also someone who is not elected to a position by any means, either by direct election or by the processes of democracy through a Parliament. So the symbol of a hereditary monarch is wrong.

The other thing which is very offensive—and it may again be okay for the United Kingdom—is that the monarch can only be an Anglican. As all members know, as a result of the Act of Settlement of the United Kingdom, the monarch can only be an Anglican. That again is a wrong symbol for Australia. That is offensive in an Australia that purports to be modern, democratic and to have a society based on equality. In other words, no person other than an Anglican can be the

head of State of Australia. It has to be the Queen who has to be, in turn, an Anglican.

The Hon. Sandra Kanck: The male precedence is also offensive.

The Hon. C.J. SUMNER: That is another point, too. There is the question of male precedence, as well. But again, both examples, religion and the precedence of heirs to the throne are, in my view, wrong symbols for Australia in the twenty-first century. When moving the motion in 1978, at the Labor Party Convention, I said:

> A commitment to the monarchy distorts our view of the world.

I believe that is true in terms of what I said before. It distorts what Australia's view of the world ought to be. It is not and ought not be an Anglocentric view or a view which is directed towards Europe; it has to be a view which is increasingly international and which recognises our ties with the United Kingdom, Britain and Europe but also which looks out beyond that to our immediate neighbours in the Asia-Pacific regions and other regions in the world. A commitment to the British monarchy has in the past distorted our view in the world. There is a bit of nostalgia for the British empire and the idea that all things British were the best. Not only does it distort our view of the world but it distorts the world's view of us. Again, this is another argument that is sometimes denigrated in the debate.

The former Premier of New South Wales, Nick Greiner, who has come out in support of a republican Australia, had something to say in an article in the *Sydney Morning Herald* of Saturday 9 June 1993. The article states:

> The former Premier said he had been amazed to find on a trip to six Asian countries a few months ago that local people stressed the significance of Australia's becoming a republic. 'It didn't occur to me that this would be a matter of interest in Malaysia, but it is. There is a strong view that it symbolises to the world the nature of our priorities.'

I come back to what I said before: that symbols are important, and the fact that we have a foreign monarch as Head of State, the fact that we still have the Queen of the United Kingdom as our Head of State, in my view distorts the world's view of us. That is certainly Mr Greiner's view and, indeed, it is my view from the experience I have had overseas.

For the reasons I have outlined, I think that this Council should unequivocally support a republic. I do not believe it is a second string issue. I believe that the way we see ourselves can make a difference not only in social and cultural terms but also in economic terms, and it is time that we cut that last painter which exists between the United Kingdom and ourselves by becoming a republic.

There must be a debate, of course, about the form of republican structure. I support the proposal for a wide ranging community debate which has been promoted by the Federal Government, but I also believe that in this State we should have such a debate as well, and that this Parliament, in particular, should anticipate Australia's becoming a republic and look at the implications in our Constitution of a republican form of government for Australia.

That is what my motion which I moved in the last session did. I again commend my motion to members for consideration when they get around to debating it, given that, effectively, it has been on the Notice Paper since May of this year. In the meantime, the Hon. Mr Elliott's motion is before us. As I say, I do not have any wild objections to it in its present form, but I believe it would be strengthened by the amendments I have moved, and I commend those to the Council.

The Hon. R.I. LUCAS secured the adjournment of the debate.

STATUTES AMENDMENT (CLOSURE OF SUPERANNUATION SCHEMES) (EXTENSION OF TIME) AMENDMENT BILL

The Hon. M.J. ELLIOTT having earlier obtained leave, introduced a Bill for an Act to amend the Statutes Amendment (Closure of Superannuation Schemes) (Extension of Time) Act 1994. Read a first time.

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

That this Bill be now read a second time.

The purpose of this legislation is to allow a delay on the debate on two other pieces of legislation currently before the Council: legislation to close the old superannuation scheme (Orders of the Day: Government Business, No. 6) and the Southern States Superannuation Bill (Orders of the Day: Government Business No. 14), which I will seek not to have debated this week.

The Government sought to close the legislation at the end of the last session while we were engaged in debating issues such as industrial relations and workers' compensation. I said at that stage that I was not willing to consider the issue and so moved a sunset clause which allowed the old superannuation scheme to be closed until 30 September, at which point it would have reopened when that sunset clause lapsed.

I must say that I expected that, having done that, the Government would have done the right thing and involved itself in some enterprise agreement discussions with the public sector unions. A number of issues could and should have been on the table. The Government was rather keen to decrease the number of public servants. It appeared to be keen, although it has not happened yet, to change the Government Management and Employment Act. It sought to change quite a number of conditions of employment of public sector workers, of which superannuation was one.

When we consider what the Government said during the debate on industrial relations about the need for enterprise agreements, I would have thought that a Government which was committed to what it was talking about would, straight after that session, have taken advantage of its ability to get involved in enterprise agreements and general discussions in an attempt to raise all these issues and discuss them fully with representatives of employees in the public sector.

However, the Government has not adopted that approach at all; it has adopted an approach of crunch and no negotiation—just simply changing the employment conditions of employees without any real consultation whatsoever. I find it very disappointing that members of the Government took that approach and showed themselves to be hypocrites in the process. That is my first disappointment.

My second disappointment is that I am surprised that the Government took so long to come up with the new superannuation scheme which is now before us. As I recall, the Southern State Superannuation Bill first became public perhaps three or four weeks ago—in any event, a relatively short time ago. Of course, the Government managed to get it through the Lower House pretty quickly, because it has the numbers—something to which the Leader of the Council referred to earlier.

The Lower House can work that way, and historically it has tended to do that. The Government has the numbers, and it simply crunches things through the Lower House. We in the Upper House, perhaps because of the numbers, take

things a little more seriously and attempt to debate issues and to debate them fully.

At this stage I have not had adequate time or information to make a final decision as to whether or not to support the closure of the old scheme and the introduction of the new scheme. Not having had that time, I seek to get extra time. Because the sunset clause will come into effect after we have risen this week and the Legislative Council will then not be sitting for four weeks, it would have effectively then pre-empted the debate on these two pieces of legislation. It is necessary for that sunset date to be shifted, and this Bill shifts the sunset date from 30 September to 21 October.

It is my earnest hope that that will give sufficient time for all of the information I need to be before me and for me to have a chance to digest it fully and decide whether I will support legislation and, even if I did, in what form I would support it. The Treasurer, in a conversation I had with him, seems to have a little trouble understanding that we do treat legislation seriously and that we do not just simply crunch things through, but perhaps he has not been a Minister long enough to appreciate that the Upper House does have a role to play and that it will insist that it does so. I urge members to support this Bill on the basis that extra time at this stage is necessary to consider all the issues.

The Hon. R.R. ROBERTS: The Opposition will oppose this Bill, and in doing so I do understand the logic behind the Hon. Mr Elliott's proposal. The Opposition opposes this legislation at this time. I understand the Hon. Mr Elliott's position, and I am convinced that he has not had the opportunity to do what he wants, because there is a raft of legislation going through. I do appreciate the fact that he needs the opportunity to study this legislation. We are opposing it basically because this is a matter which has left at least 800 people hanging in space at the present moment. However, there is no rope for them to hang onto, and there is no light at the end of the tunnel.

Quite clearly, we believe that the superannuation scheme that has operated in South Australia for many, many years is an industrial matter. It is a condition of employment. It is the sort of thing that people take into consideration when they are entering a profession. They look at all the terms of the contract of employment, and a goodly part of the judgment they make is what happens when they finish their working lives.

What has happened and what has been borne out by this whole sorry exercise is that the Government has proved itself to be probably the worst employer in South Australia. It has come to this House and another place with legislation where it makes more motherhood statements about consultation and employers negotiating with their employees about their working conditions. That is exactly how many of the aspects of superannuation came into being.

When an industrial organisation makes a bargain on behalf of its membership it looks at a whole range of things. There are trade-offs that take place in conditions for benefits in a number of areas, and superannuation has been traded off. As far as this Government is concerned, there was no negotiated agreement, no productivity bargaining discussions, no moving of the parameters of what we can do, whether there is more flexibility. In fact, before this legislation came into being we saw a situation in which every departmental head was advised that enterprise bargaining negotiations would stop until 1 August, until such time as the legislation in respect of industrial relations in South Australia was put through the Parliament. We had the disgraceful situation where I believe the Supreme Court had to intervene and instruct the Government to go back and negotiate with its employees; in fact, it was breaching their award conditions. What has occurred here is that the State public servants are not being treated like servants; they are being treated like slaves. Their negotiated conditions have been taken away.

The effect of stopping enterprise bargaining was that any increases that may have been negotiated by representatives of employees on behalf of the membership were cut off, and this Government has unilaterally said, without any attention to the merit of the type of work or the worth of the work being undertaken by these employees, 'We are going to freeze your wages for the next couple of years.' It has also suggested that it will introduce a new scheme, which basically is only a reflection of the requirements of Federal legislation for superannuation guarantees. Representatives of employees have expressed concern to me and others of my colleagues about some of the attitudes expressed by the Federal colleagues of the Liberal Party and their attitude to the superannuation guarantees. That only adds to the concern of employees.

I thought the Hon. Mr Elliott was very generous in his approach to this matter when he allowed the sunsetting of this legislation to take place. I would have expected the Government to have seized the opportunity to exercise its responsibilities as an employer; to go back to its employees and negotiate in a proper way a system that would either reinstate the present system or make sensible arrangements based on flexibility and on equity, good conscience and substantial merit. The Government might have sat down with its employees, as it advocates in its speeches in respect of industrial relations; it says that there should be cooperation and consultations between employer and employee. But the sorry reality is that, when asked to abide by its own proposition, the Government has failed miserably.

A number of things are outstanding, and representatives of employees have put to me that they want this thing settled once and for all. The proposition which they favour most and which I favour myself is that those people who have fallen under the purview of this legislation and this extension of the sunset clause ought to be admitted forthwith into the existing scheme and proper negotiations should commence forthwith with the employees of the Government, and they should negotiate an appropriate and sensible superannuation scheme. They should exercise all the options that are available in respect of flexibility and the enterprise bargaining system to ensure that they come to a negotiated settlement of this matter, which is beneficial to the employees and fair to the Treasury.

I am conscious of the time and the need to get this legislation back to the other House, but I do oppose this extension. I know the reasons why the Hon. Mr Elliott has brought it in. On any equity grounds, what should occur is that the closure should be lifted and those employees who have not been able to negotiate a position ought to be entitled to the *status quo*. There is no change in the legislation, and I believe that they ought to be admitted forthwith into the present scheme. I am aware of an application by a public servant in February that was incorrectly filled out. That employee was not notified that it was incorrect until the day before the legislation came into effect, was unable to be contacted and subsequently has been denied access to the scheme. For those reasons, I indicate that the Opposition will not be supporting this legislation and I urge members to do

the right thing by our Public Service employees and admit them into the present scheme.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): Because of the hour, I do not intend to respond at length; I am sure the Treasurer will in another place, in relation to some aspects of the legislation. The Government is not very happy with the prospect of the support of this Bill, but I am a realist: it is a prospect of being mugged by a mugger with a little bat or a mugger with a big bat, and we will choose the little bat any time. The preferable course will be to support this piece of legislation, at least to allow three further weeks for debate of the substantive pieces of legislation. The only concluding point I would make is that, when we debated this matter in May, it was my view that the deadline of 1 October was too tight and we wanted to see a deadline of either 30 October or 30 November, to allow the Hon. Mr Elliott and others time to consider the legislation. As I said, that was a view we expressed at that time: it is just sad that the Hon. Mr Elliott was not prepared to agree with us then. Nevertheless, as I said, reluctantly, we will support the legislation.

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

REAL PROPERTY (VARIATION AND EXTINGUISHMENT OF EASEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 September. Page 251.)

The Hon. C.J. SUMNER (Leader of the Opposition): The Opposition is prepared to support this Bill in principle. I will not take up too much time, because of the lateness of the hour, but just make the points very simply. The problem that this Bill is designed to correct occurred because of some representations made by the Law Society when there were extensive amendments to the Real Property Act introduced and passed in the last session earlier this year. My first question is whether the Law Society has been consulted about these new proposals which loosen up the procedures for extinguishing easements and which seem to reproduce the problems that it had with the procedures to repeal easements put forward earlier this year.

The second issue of concern I have is about the notice provisions that will have to be given to someone potentially affected by a proposal to extinguish an easement. As I understand it, there will be 28 days notice, which is fair enough, but the form of notice is not specified in this piece of legislation. If that is the case, then section 276 of the Real Property Act operates and that provides that it will be in the Registrar-General's discretion as to form of notice, that is, whether it is notice given personally by certified mail or by general publication.

I am a little worried about how that discretion might be exercised because, if you are extinguishing easements, it is important that notice be given. Indeed, that was the rationale for the concerns that the Law Society had earlier this year, namely, that too much discretion was given in the Bill introduced by the Attorney-General and insufficient provision for notice to be given. I assume that the provisions of section 276 would operate, but that means that the Registrar-General might decide to give notice by publication in a newspaper or even in the *Government Gazette* which, to my way of thinking, would be quite inadequate.

To test this out one could ask what would be the Registrar-General's intention with notice with the case that has provoked this Bill, namely, the Radio Rentals issue in Prospect. I would have expected that the notice that should be given was an attempt at personal notice at least by personal service to the proprietor of the dominant land or by certified mail, but a general advertisement would probably not be adequate notice. That is one of my concerns about this area, namely, the discretion which the Registrar-General has to give notice which, in my view, should be given in the best possible way, particularly when people's rights are being affected. But that is another question.

Finally, I make the point that the Bill seems to be drafted in a peculiar manner, and in particular it seems to have clauses in it which are unnecessary. I refer to subclauses (3b) and (3c), which merely repeats what can be done under subclause (3a). Subclause (3c) seems to cover the specific circumstances of the Radio Rentals matter, but I would have thought that the procedure set out in (3a) was adequate to deal with the situation, so why is the Government putting in legislation matters which are unnecessary and which in fact relate to a specific case before us, when surely we should be dealing with this issue in general principle and not be seen to be legislating to deal with the particular case before us. In other words, subclauses (3b) and (3c) seem to be unnecessary. Subclause (3a) will do the job so why are you bothering with (3b) and (3c), which seem to be tailored to particular circumstances?

My only other question is what court action would be available to someone where an easement had been extinguished unfairly as a result of the Registrar-General's exercise of discretion. What would happen if the Registrar-General had miscued in the form of notice that he decided was necessary in this case and someone had their rights adversely affected because they were not given proper notice and the easement was extinguished? What procedures would exist to correct any error made?

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Leader of the Opposition for being prepared to deal with this matter at short notice and I thank other members also for their consideration of it. As I indicated in my second reading speech yesterday, there is a real sense of urgency about this because of a particular set of circumstances relating to Radio Rental's property at Prospect, but rather than addressing that issue as a one-off, we took the opportunity, having examined the particular problem, to address the problem in a general sense, because there are other subdivisions around Adelaide, particularly where the same problem will occur. I was told that it was common in the late 1920s and early 1930s.

In fact, in some subdivisions subdividers still create subdivisions with rights of way and easements attaching to properties that do not abut them, but it was particularly common in the late 1920s and early 1930s. I am told that there is at least one particular problem which the Lands Titles Office has discovered, namely, that there are three suburbs the blocks in which have rights of way over the whole of the other suburbs' rights of way. In this one you have 100 blocks in this subdivision with blocks at one end of the subdivision having no real relationship to a nightcart lane at the other end of the subdivision and the rights are not generally being exercised, yet in the instance to which I have referred there are three suburbs of subdivisions with the blocks in each

suburb having rights of way over all the lanes and roads in the other subdivisions and suburbs, which makes it very messy indeed. It would be an impossible task to get rid of the private rights of way, even when they should have been extinguished. In the case of the Radio Rentals property, the right of way is a private right of way. There was a Roads (Opening and Closing) Act notice and procedure followed about 22 years ago.

I will deal quickly with the issues that the Leader of the Opposition has raised. The Law Society was forwarded a copy of the draft Bill and second reading speech at the same time as it was forwarded to the Leader of the Opposition, hand delivered and faxed, and also to the member of the Law Society Property Committee who raised the issue in the last session. There has been no response from the Law Society. It is something that I omitted to have followed up in the haste to deal with this and other matters. However, I can undertake that, if the Bill is passed tonight and the Law Society raises some issues and issues which cannot be resolved, then I will not finalise the Bill in the other House tomorrow.

In relation to the notice in writing by the Registrar-General, it is intended that in these particular cases he will promulgate some practice directions that will be publicly available formally. It may be that the Government will even consider setting out some guidelines in the general regulations attaching to the Real Property Act. In this particular case, I am told that, because there is no abutting land to the rights of way which is not owned by Radio Rentals, the Registrar-General is presently proposing to require advertisement in the *Advertiser* and in a local newspaper circulating within the area and that that advertisement will contain details of the proposal and also a plan of the subdivision so that it can be located visually by anyone who has an interest—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No. This is the problem that Radio Rentals has had. The present legislation requires written consent from the proprietors but—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The difficulty is that even though you might write to the proprietor at his or her address on the register book they have found that, at least with the 40 allotments so far, that a number of those people—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Yes.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: He is not proposing to require that in this particular instance, but if the Leader of the Opposition has a strong view on it then I would be happy to communicate that to him.

The Hon. C.J. Sumner: I do.

The Hon. K.T. GRIFFIN: All right. I conclude my remarks by thanking members for their interest.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: The Leader of the Opposition raised some further questions which time did not allow me to respond to. They related to the drafting of the proposed subsections (3), (3a), (3b) and (3c). I draw attention to the fact that subsection (3) is a general provision relating to all easements, and so is subsection (3a), because section 90b relates to the variation and extinguishment of easements, not just rights of way but all easements. Therefore, subsections (3) and (3a) relate to all easements.

The Hon. C.J. Sumner: That is enough; you don't need any more.

The Hon. K.T. GRIFFIN: If the honourable member reads subsection (3a), he will see that it provides:

> The Registrar-General may dispense with the consent of a person required by subsection (2) (other than the proprietor of the dominant or servient land).

That relates to all easements. The special problem which the Lands Titles Office most regularly has to confront is the question of rights of way. Subsections (3b) and (3c) deal with situations relating to rights of way, because we felt that we ought to deal specially with that so that with other easements there is not the same capacity to dispense with consent as there is proposed with rights of way, because the rights of way are the most significant issue and difficulty which arises. So, subsection (3b) provides:

> The Registrar-General may extinguish a right of way without the consent of a person required by subsection (2) if he or she is satisfied that there is no reason to believe or suspect that the proprietor of the land, or a successor. . . has any reasonable prospect of using the right of way for access to that land in the future.

Members will notice that the conditions are set out in paragraphs (a) and (b). Then (3c) deals with a slightly different set of circumstances where the dominant land is separated from the right of way appurtenant to the land by intervening land and the Registrar-General is satisfied that the continued existence of the right of way would not enhance the use or enjoyment of the dominant land. In those circumstances it may be extinguished.

We have tried to set down a general provision which relates to all easements and more specific provisions which allow the dispensing with consent, including consent of the proprietor of the dominant and servient tenements, in respect of rights of way in the special circumstances identified in proposed subsections (3b) and (3c). So, I think there is a certain logic to that. Certainly that was as far, in the circumstances of the haste with which we had to put all this together, as I was prepared to go in dealing with the issue of dispensation of consent.

After taking advice I realise I was right in what I have said in the sense that proposed subsection (3) does deal with all easements including rights of way. It does allow the dispensation of consent of the proprietor of the dominant or servient land. The Registrar-General has to be satisfied the proprietor's estate or interest will not be detrimentally affected.

Proposed subsection (3a) is in relation to the consent of mortgagees, lessees and others who might have an interest. However, subsections (3b) and (3c) (I am correct in that respect) deal only with rights of way and with specific circumstances which I have already explained.

The Hon. C.J. Sumner: Proposed subsections (3) and (3a) are basically the existing law, is that right?

The Hon. K.T. GRIFFIN: I think that subsection (3a) is basically the current law. There is no provision in the principal Act to allow for the dispensation with the requirement that consent of the proprietor of the dominant or servient land be provided for. Subsection (5) of the principal Act is the same as the proposed subsection (3a). So there is a variation in the current law which enables the dispensation with the requirement for consent to be given. That is the whole emphasis of this.

The Hon. C.J. Sumner: The point was that with subsections (3) and (3a), why do you need subsections (3b) and (3c)? It does not do anything else. Proposed subsection (3)

enables you to do whatever you want to do, as does subsection (3a). Why have you put in subsections (3b) and (3c)?

The Hon. K.T. GRIFFIN: I suppose it is really out of an abundance of caution, and it is to indicate to the Registrar-General that, because rights of way are the most significant and regularly recurring issue that he has to address, the Legislature has taken into account that there are these special circumstances which might affect the form of notice which is required to be given. It really was out of an abundance of caution.

To try to put it all on the table, sure, we can dispense with consent in relation to all easements, but one would expect that a much tighter regime of notice would be applied by the Registrar-General; and in relation to these other rights of way in particular, that the Registrar-General would need to recognise that maybe some different provisions relating to notice might be applicable if the consent cannot be given and if the proprietor cannot be easily identified.

I would expect that, where there are a small number of allotments, personal consent would be required. But as I said earlier, there are these big subdivisions. The Leader of the Opposition I hope has seen the plan of this particular subdivision. There are 100 allotments and there are old night cart lanes in respect of which this particular problem has arisen and which, in relation to the Radio Rentals property, have been built over for the past 22 years. At the time the Roads (Opening and Closing) Act was used. The Roads (Opening and Closing) Act at that time, when the processes were followed, did not extinguish private rights of way as it does now. If you go through the Roads (Opening and Closing) Act procedure now, under the present legislation, it extinguishes all rights of way over a particular road, lane or whatever.

The Hon. C.J. Sumner: You can do it under subsection (3a). You don't need the others.

The Hon. K.T. GRIFFIN: You can't do it under subsection (3a), which provides:

> . . . may dispense with the consent. . . (other than the proprietor of the dominant or servient land). . .

The Hon. C.J. Sumner: Under (3).

The Hon. K.T. GRIFFIN: You may well be right. As I said, we were taking no chances, and we were also looking to ensure that a variety of circumstances in relation to rights of way were identified by way of specific provisions for the purpose of notice and the Registrar's application to a particular problem.

In terms of court proceedings, if there is notice given and the Registrar-General decides to exercise his discretion, then the discretion is subject to judicial review. He has a discretion, he exercises it, and he is subject to judicial review in the ordinary course, as the exercise of discretion by other public officials is subject to judicial review.

Clause passed.

Remaining clauses (2 and 3) and title passed.

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

That this Bill be now read a third time.

I have appreciated the preparedness of the Leader of the Opposition and the Australian Democrats to deal with this matter at short notice. It is not an issue from the Government's point of view upon which we think there is a political point to be made, but we were endeavouring to facilitate the resolution of a particular problem. I again indicate my thanks to those who were prepared to facilitate its consideration.

Bill read a third time and passed.

ESTIMATES COMMITTEES

A message was received from the House of Assembly requesting that the Legislative Council give permission to the Minister for Education and Children's Services (Hon. R.I. Lucas), the Attorney-General (Hon. K.T. Griffin) and the Minister for Transport (Hon. Diana Laidlaw), members of the Legislative Council, to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill.

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

That the Minister for Education and Children's Services, the Attorney-General and the Minister for Transport have leave to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill, if they think fit.

Motion carried.

ADJOURNMENT

At 6.45 p.m. the Council adjourned until Thursday 8 September at 2.15 p.m.