LEGISLATIVE COUNCIL

Thursday 23 March 1995

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Consumer Credit (Credit Providers) Amendment,

Second-hand Vehicle Dealers.

RETAIL SHOP LEASES BILL

At 2.18 p.m. the following recommendations of the conference were reported to the Council:

As to Amendment No. 1

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

As to Amendment No. 2

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendments Nos 3 to 5

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

As to Amendment No. 6

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 7

That the House of Assembly amend its amendments by striking out '$200 000' and substituting '$250 000', and that the Legislative Council agree thereto.

As to Amendments Nos 8 to 11

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 12

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 13, page 6, line 27—Leave out 'Tribunal' and insert 'Magistrates Court' and that the Legislative Council agree thereto.

As to Amendment No. 13

That the House of Assembly do further insist on its amendment but make the following amendment in lieu thereof:

Clause 25, page 14, line 34—After 'rent' insert, 'a component of rent or outgoings', and that the Legislative Council agree thereto.

As to Amendments Nos 14 and 15

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 16

That the Legislative Council do not further insist on its disagreement thereto and that the House of Assembly make the following consequential amendment:

New clause, page 35, after line 21—Insert new clause as follows:

Vexatious acts

79A. A party to a retail shop lease must not, in connection with the exercise of a right or power under this Act or the lease, engage in conduct that is, in all the circumstances, vexatious.

Maximum penalty: $5 000.

and that the Legislative Council agree thereto.

As to Amendments Nos 17 to 19

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendments Nos 20 to 33

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

As to Amendment No. 34

That the House of Assembly do not further insist on its amendment but make the following amendments in lieu thereof:

Clause 75, page 34, line 4—Leave out 'Industry' and insert 'Retail Shop Leases'.

Clause 75, page 34, lines 5 to 12—Leave out subclauses (2) and (3) and insert—

(2) The Committee will be constituted in the manner prescribed by the regulations.

(3) The regulations may also provide for—

(a) the procedures of the Committee; and

(b) other matters relevant to the functions or operation of the Committee.

and that the Legislative Council agree thereto.

As to Amendment No. 35

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 36

That the House of Assembly do not further insist on its amendment but make the following amendments in lieu thereof:

Clause 77, page 34, line 20—Leave out 'continuous'.

Clause 77, page 34, line 21—Leave out paragraph (b).

Clause 77, page 34, line 22—Leave out 'special'.

Clause 77, page 34, line 23—Leave out 'special' twice occurring.

Clause 77, page 34, lines 24 to 27—Leave out subclauses (2) and (3).

and that the Legislative Council agree thereto.

As to Amendments Nos 37 and 38

That the Legislative Council do not further insist on its disagreement thereto and that the House of Assembly make the following consequential amendment:

Clause 66, page 31, line 9—After 'mediation of' insert—

(a) [include remainder of line 9]; or

(b) a dispute related to any other matter relevant to the occupation of the premises or to a business conducted at the premises.

and that the Legislative Council agree thereto.

As to Amendments Nos 39 and 40

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

As to Amendments Nos 41 to 43

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 44

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

As to Amendment No. 45

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 46

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

STATE PRINT

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made today by the Deputy Premier and Treasurer on the subject of public sector printing.

Leave granted.

WORKCOVER

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Industrial Affairs in another place on the subject of WorkCover.

Leave granted.

QUESTION TIME

VISY BOARD

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a question about Visy Board.

Leave granted.

The Hon. R.R. ROBERTS: Last Thursday the Riverland was rocked by the announcement that Visy Board would be sacking 47 of its employees from its Berri plant with effect from 13 April 1995. Visy Board gave the union representing these workers 15 minutes notice prior to the announcement, ensuring that there was no effective opportunity to discuss alternatives or the effect that such a decision would have on its work force and the community. I expect that some people would say that that is a management prerogative.

I am also advised that no contact was made by Visy Board or Pratt Industries in Melbourne with the South Australian Government, despite the fact that this company, I am advised, has received assistance and incentives in the past to locate in Berri. I was pleased to read that Minister Olsen has assured the local Mayor, Mrs Evans, that the South Australian Government would do everything it could to help those retrenched workers, and I thank him for that.

However, I note that the company will relocate to its $22 million upgraded facilities at Gepps Cross, which raises several questions in the minds of my constituents who believe that, if the Government provides incentives to industry, especially financial regional development incentives, those companies in receipt of incentives have a responsibility to both the Government and the local community to giver proper notice before closing their businesses. My questions are:

1. Did the South Australian Government provide any incentives to Visy Board to establish and operate at Berri; in what form were those incentives given and what was the value of those incentives?

2. Have any Government incentives or concessions been given to Pratt Industries or its associated companies to establish or upgrade its Gepps Cross facilities?

3. Will the Minister review the procedures, practices, obligations and commitments of companies receiving Government incentives to locate in regional areas to ensure that proper practices are established before recipient companies abandon projects and communities?

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

SOUTHERN EXPRESSWAY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Environment and Natural Resources, a question about the Southern Expressway.

Leave granted.

The Hon. T.G. ROBERTS: My question is not directed to the Minister for Transport. Rather, I ask her to pass on to the Minister for Environment and Natural Resources in the other place my concerns about yesterday's announcement in relation to the Southern Expressway. The *Advertiser* carries a report that there is applause for the expressway. I did not hear too much of it, but I am sure that many people have been looking for a change to the traffic patterns in the south, and of course some people will be applauding if the bottlenecks that occur are overcome by the proposal. But there are other concerns—

The Hon. Diana Laidlaw: Murray Nicoll said it was fantastic!

The Hon. T.G. ROBERTS: Yes, but there are other people with concerns about the growth patterns that may develop out of it. I notice that Mr Barry Burroughs—

The Hon. R.I. Lucas: I trust you are not being negative.

The Hon. T.G. ROBERTS: I am not being negative. If the honourable Leader will allow me to continue, he will see that inherent in my question there is applause but there may be some brickbats in relation to some of the expectations that are being built up with respect to the expressway. I understand the concerns of those people living in the south and the problems they experience travelling into the city. I also understand there are infrastructure problems in the south that need to be taken into account before perhaps the boom that some people are expecting in relation to housing and population growth occurs. It is a problem that all Governments face in being able to match the growth patterns for any particular region with providing infrastructure support for those people to enable them to live a comfortable life and not put pressure on the environment. The difficulties to which I allude relate to sewerage infrastructure and in being able to provide adequate water services and other services. My questions are:

1. In view of the Government's decision to build the Southern Expressway, will the Government release details of the guidelines set for an EIS, if indeed an EIS is proposed?

2. What limits to growth in tourism and development does the Government see in the southern region? If there are limits, what policy development does the Government have to overcome these limits?

The Hon. DIANA LAIDLAW: I am pleased that the honourable member—and I believe the Opposition as a whole—has applauded this initiative. Certainly the shadow Minister for Transport has indicated to me that the initiative of the Southern Expressway has Opposition support. In respect of the guidelines for the EIS, the honourable member may not be aware, but the former Minister for Environment, Don Hopgood, exempted the section from Darlington to Reynella from a full EIS back in 1988 and that exemption has been endorsed by the current Minister for—

The Hon. A.J. Redford: Was it his electorate?

The Hon. DIANA LAIDLAW: No, it was not directly his electorate. It led to Mr Hopgood's old electorate, but it certainly was not in his electorate. The Minister for Housing, Urban Development and Local Government Relations has endorsed that exemption. There is, however, an environmental assessment report to be prepared and that will be prepared. In respect of the section from Reynella to Old Noarlunga, the Premier and I have given an undertaking that the Department of Transport will be doing an environmental study. The precise requirements for this environmental study are under discussion and will be defined soon, but certainly the assessment report prepared by the department would include provision for public comment, and some of the issues that the honourable member has explored this afternoon would be matters that I would envisage would be addressed during that assessment process. But for more specific answers to the honourable member's question, I will refer that question to the Minister 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: The Opposition has been informed that the Kangaroo Island Road Transport Association and others on Kangaroo Island are seeking an extension of the operation of the *Island Seaway* beyond

1 April, which is the Minister's proposed cut-off date. The reason for their request is to ensure the supply of this season's superphosphate and grain. Kangaroo Island bulk carrier, R.A. Smith, currently carries 80 per cent of the island's super and grain. His operations are geared for use on the *Island Seaway* or similar vessel. He is not geared to transfer his operations to the KI Sealink without huge expenditure and therefore seeks an extension of the *Seaway* operations for two months until the proposed *El Baraq* vessel commences. This is critical for Kangaroo Island farmers since by 1 April, when the *Seaway* is terminated—

The Hon. Diana Laidlaw: What's critical for the farmers—the *Island Seaway* or the superphosphate?

The Hon. BARBARA WIESE: Well, just let me finish my sentence.

The Hon. Diana Laidlaw: About what you said was critical—

The Hon. BARBARA WIESE: Well, let me finish my sentence and you will know what I mean.

The PRESIDENT: Order! I do not think the Minister should interfere.

The Hon. BARBARA WIESE: This is critical for Kangaroo Island farmers since by 1 April, when the *Seaway* is terminated, only 25 per cent of the island's supplies will have been delivered. They cannot wait for the *El Baraq* because the season will be too far advanced to spread super or sow crops. My question to the Minister is: since this operator, R.A. Smith, is responsible for carrying the vast bulk of superphosphate and grain for island farmers, will she agree to the request that has been raised by the Kangaroo Island Road Transport Association, and others on Kangaroo Island, that the *Island Seaway* continue its operations until the commencement of services by the *El Baraq* vessel?

The Hon. DIANA LAIDLAW: The immediate answer is 'No.'

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Outrageous, is it? It is not and I will explain why. I have been dealing personally and intently with this question for some days and earlier. It is important to put some of these matters accurately on the record. The honourable member seems to be confusing two issues. As I tried to interject, what is critical for farmers? Is it critical for farmers that the *Island Seaway* continues or is it critical that the superphosphate gets there? I argue that it is the latter, and that is what I have been working on from a personal level, with many phone calls in recent days. In fact, I just got off the phone again before Question Time today.

I have been asked on several occasions in the past few weeks to see whether, first, I would be prepared to extend the service of the *Island Seaway* by three weeks because it was believed that the *El Baraq* would be ready then. The latest request this week has come to extend the life of the *Island Seaway* by eight weeks because apparently the *El Baraq* would be ready at that time. It is not certain when the *El Baraq* will be ready and it is most inappropriate, considering the doubts about the starting time for this vessel, that one can continue to extend in such a uncertain environment the life of the *Island Seaway*. I made the announcement back in September last year that the *Island Seaway* would cease services from 1 April. In the meantime, considerable work has been undertaken to reach a service agreement with Kangaroo Island Sealink, and that has been negotiated.

In addition, through a shipping broker, expressions of interest have been sought for the lease or sale of the *Island Seaway*. The closing date for those expressions of interest is 24 March—this month. In terms of our status in the international shipping industry, it would be most inappropriate to indicate to those people who have expressed interest that we are uncertain about when the *Island Seaway* will cease operating. In addition, a lot of work has been undertaken with Howard Smith—the operators of the vessel—in relation to redundancy negotiations, which will all be included with staff and the rest for 31 March.

In addition (and I am loathe to put this on the record, but it is important), Mr Smith has considerable vested interest in the arguments he is presenting (or has got others to present on his behalf). It is true that he has 80 per cent of the superphosphate freight carriage business to the island, but he also has a one third interest or share in the *El Baraq*. It is certainly in his interest to suggest that no other operator such as Kangaroo Island Sealink attract any business in superphosphate because people may well receive a good or better service than they have received to date and be attracted to doing business that way in the future. That matter is important to take into account when considering the representations that have been made on this subject.

As I indicated earlier, I have spoken to the Manager of Pivot here—the main supplier of superphosphate to the island. I have also spoken to the General Manager of Hi-Fert—another major supplier—and have left messages for the two other suppliers of fertiliser—Crop Mate and Ag-Fert. I understand that other imported fertilisers are used in that area. The representations to which the honourable member refers suggest that 15 000 tonnes will be required this year. I have received confirmation from the major suppliers that the current fertiliser market on Kangaroo Island is 7 000 to 8 000 tonnes or just over half the amount suggested in representations to me. Cooper's Transport has written to me on this subject, and Mr Cooper has disputed the fax and letter sent to me by his wife, the Secretary of the Kangaroo Island Transport Association—another interesting reflection on this issue.

The two major suppliers to whom I have spoken inform me that they do not see any problem with maintaining deliveries, that other operators may wish to use another means of transport to the island. Certainly, Mr Rawlings and his transport company (which moves superphosphate in both bags and some bulk) and Mr Harley Betts (who moves superphosphate in bulk) have made arrangements to use Sealink. While, in time, they may prefer to use the *El Baraq* if it commences service, I understand that the operators who have made arrangements with Sealink have found that they are getting a better deal than they have had in the past. We should also remember that a generous freight subsidy to a maximum of $600 000 this year has been provided for transport companies which would have used the *Island Seaway* in the past but which, because of the Government's decision to cease the operation of the *Island Seaway*, have transferred their operations to Sealink. The rates of that freight subsidy have been settled with the transport operators on the island, and they have expressed satisfaction with them.

The Hon. T.G. Roberts: When is the mv Chapman coming on line?

The Hon. DIANA LAIDLAW: Ted has a view on this matter, but that is only one view and he may not be aware of all the facts.

The Hon. T.G. Roberts: I wasn't being provocative.

The Hon. DIANA LAIDLAW: I know that you are not being provocative; I am just stating what I assess the situation to be. In summing up, it is important not to confuse the issue

of the future of the *Island Seaway* with the delivery of superphosphate because I am confident from the discussions I have had over the past few days, as are the superphosphate companies themselves, that there will be no problem with maintaining deliveries when the *Island Seaway* is retired. Regarding the retirement of the *Island Seaway*, all members should be aware that it will save taxpayers $250 000 a month. We will still have to continue the lease payments, but we will save that sum of money, and we will look at putting it into roads on Kangaroo Island. Farmers, carriers, tourists, the council, indeed everyone, appreciate the urgent need for the upgrading of roads on the island.

The Hon. BARBARA WIESE: By way of a supplementary question, I ask the Minister: does she disagree with the comments made by the Kangaroo Island Road Transport Association that the super trailers used by R.A. Smith would be dangerous and unsuited to the route that it would be necessary to follow using Sealink? Further, that it would be uneconomic for local carriers such as Mr Smith to buy suitable equipment for the remaining period until the *El Baraq* comes into operation.

The Hon. DIANA LAIDLAW: I suspect that Mr Smith is very pleased to find the Hon. Ms Wiese as his champion in this matter. The fact is that Mr Smith and all operators have been well aware of the Government's decision in this matter since September last year. They have been well aware of the subsidy arrangement that would apply, which would take account of any upgrading or re-equipping that any operators would choose to undertake if they had previously used the *Island Seaway* and now reached some agreement with Kangaroo Island Sealink. To come to me at the last minute and tell me that it is uneconomical or difficult for him to upgrade when, as a business person, he was aware of the conditions from last September, is a pretty tall order and certainly not something that impresses me in terms of the manager of any business.

Other operators are finding alternative ways of delivering superphosphate and meeting their commitments to farmers and to the fertiliser companies. Also, there are other ways of bulk delivery of superphosphate. I noted earlier that Rawlings Transport takes both bulk and bunker bags of fertiliser. I know from Hifert, for instance, that it is increasingly using the one tonne bulk bags of fertiliser, and many farmers have found that a convenient way to handle this product. Other bulk carriers are keen to do business if Mr Smith cannot deliver as he would like to because he has not chosen to take up the challenge and the offer to upgrade his equipment. Mr Smith's business practices are a matter for him to determine and not matters in which I should be involved.

MENTAL HEALTH

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about the impending closure of the Davenport program at Grainger House.

Leave granted.

The Hon. SANDRA KANCK: The Davenport program and its associated semi-independent living accommodation at Grainger House, Brahma Lodge are services provided to families with children (some of whom are actually young adults) with marginal mental disabilities and brain damage. I have been informed that the program and accommodation facility have an outstanding reputation of preventive behavioural management and independence training. The Davenport program also provides a much needed respite service for families with members who suffer from a mental disability. I have been informed that the closure of the Davenport program and Grainger House is set for June, and families currently using these services are not aware of a replacement service to fulfil their needs. When told of the closure one mother wrote:

> I wonder if you can imagine how I feel today. I have just been informed that the only link I ever had to assist in the care and support of my son has been cut off. My 'security blanket' has been dragged out from under me.

My questions are as follows:

1. Does the Minister believe that the services provided by the Davenport Program and Grainger House have outstanding records of success in preventive behavioural management and independence training? If so, can the Minister guarantee that this service will not close?

2. Can the Minister assure the families that are currently using these much needed services that other practical options will be available to them if the closures go ahead? If so, will these new services be available before the closure of the Davenport Program and Grainger House?

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

PUBLIC SERVICE ASSOCIATION FEES

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister for Consumer Affairs a question about unpaid Public Service Association union fees.

Leave granted.

The Hon. L.H. DAVIS: On 24 November 1994—

Members interjecting:

The Hon. L.H. DAVIS: And I know many members on the other side have sympathy with the comments that I am about to make. On 24 November 1994 I asked a question about the Public Service Association's attempt to collect unpaid union fees. When the Liberal Government was elected it implemented Party policy, which required public sector unions to pay a 3 per cent fee to Government agencies for processing automatic payroll deductions for union fees. This 3 per cent was already being paid for other payroll deductions, such as insurance or health fund contributions. It was merely bringing union membership into line with those other payroll deductions. In addition, the Liberal Government required that union members sign an annual authorisation approving the deduction of union fees from their pay.

The Hon. A.J. Redford: I suppose they want to stay because they love their union.

The Hon. L.H. DAVIS: That is right. They voted with their feet. When this change in the collection of PSA fees took place on 30 May 1994, the General Secretary of the PSA, Jan McMahon, estimated that the union had lost over 7 000 of its 24 500 members. We have not heard the figure since then; it may well be more. The *Public Sector Review*—

The Hon. Anne Levy: They've all been sacked.

The Hon. L.H. DAVIS: No, the union members have not been sacked: they resigned. They voted voluntarily with their feet and their cheque books to resign. They have not been sacked: they have walked away. Read the May edition of the *Public Sector Review*, the official publication. I am better informed than the honourable member on this subject, which surprises me. It is obviously a subject very dear to their heart,

Mr President. They are obviously pleased that I have raised the subject.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: I certainly am and I will continue. On the front page of the March 1994 edition of the *Public Sector Review*, the official publication of the Public Service Association of South Australia, the association urged its membership to sign the authorisation for the deduction of union fees from their pay. Under the headline 'Government rips up your payroll deduction' and 'No service for financial members', the article states—

The Hon. G. Weatherill: How did you get a copy?

The Hon. L.H. DAVIS: It's free in the Library, George; you can go in and read it at any time. The article states:

> It is important the current members understand they will effectively become non-financial members unless they transfer to a new payment system. Non-financial members will not be able to make use of the services such as personal assistance with individual grievance appeals, unfair dismissal and workers' compensation. Non-financial members will have to return their PSA/SPSF Presidential Cards.

The same issue of that *Public Sector Review* carried a full-page advertisement inviting PSA members to fill in the form for union membership and either pay by direct debit or by cheque, credit card or cash.

The PSA publication continued to hammer the renewal of membership in subsequent issues of this journal. As I pointed out to the Council last November, in no issue of the *Public Sector Review* did that magazine explain that a PSA member did not cease to be a member until notice in writing had been given to the PSA General Secretary, as required by the PSA constitution. Failure to advise the General Secretary would mean that a member would have to pay all arrears of subscriptions, fines and levies. In other words, people remain members of the PSA even though they quite reasonably believe that by not continuing to have their union fees taken out of their payroll as from 30 May 1994 they cease to be members of the PSA.

I have been contacted by several former—or it is current—PSA members who have not been at all gruntled by what they describe as the 'PSA's immoral behaviour'. Nowhere in any communication received from the PSA or in any monthly publication of the *Public Sector Review* was mention made about the need to resign in writing.

Only this morning I spoke with yet another woman who had resigned in writing from the PSA. In December, she had received a final notice from Bishop Collections Pty Ltd, a collection agency employed by the PSA, for outstanding unions fees of about $150. Apparently because there have been thousands of these notices, the PSA has sent them out on behalf of the collection agency—a sort of role reversal. As a matter of principle, my informant ignored this final notice to pay and in the past few weeks in fact received a summons for the amount of unpaid union fees plus court fees and solicitor's fees. Although it was tempting to have her day in court, the financial costs and the general unpleasantness associated with it meant that she did not proceed. She gave up the fight, paid the money and also finally advised the union in writing that she did not wish to continue her membership of the PSA, as if it did not already know.

It is rumoured, in fact, that the PSA has sent out hundreds of summonses for non-payment of union fees. This woman had received two accounts from the PSA in the middle months of 1994, but at no stage had she been advised that she was required to resign in writing. Curiously, although she was still deemed to be a member of the PSA, the PSA computer did not recognise her as financial and she had been receiving no information from the PSA over recent months. It is the membership you are having when you are not having a membership!

Does the Minister for Consumers Affairs have any comment on the failure of the Public Service Association to explain properly that PSA membership continues until notice of termination is given in writing, while clearly implying and warning in its monthly publication that financial membership will cease if fees are not paid?

The PRESIDENT: I listened to that question at length—and it is a very lengthy question—

The Hon. L.H. Davis: It was a very good question.

The PRESIDENT: Order! I indicated the other day that we introduced a system whereby members could raise matters of importance. In my opinion, the question was too long.

The Hon. L.H. Davis: But it was very important.

Members interjecting:

The PRESIDENT: Order! Furthermore, it contained opinion.

The Hon. L.H. Davis: Oh, no!

The PRESIDENT: I call on the Attorney-General.

The Hon. Anne Levy: Why didn't you stop him?

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Notwithstanding the observations on the statement, it is beyond doubt that it is a matter of public importance. It is an issue that the honourable member has raised previously.

Members interjecting:

The Hon. K.T. GRIFFIN: And quite reasonably, because it does involve the use of the legal system to recover unpaid union fees, I suppose much in the same context as the Federal and State Governments have to use the legal system, regrettably, to recover unpaid fines imposed on people who fail to vote or who decide not to vote at State or Federal elections. I have previously made the observation that it is not uncommon in the rules of trade unions, in particular, to provide that the membership fee continues to run or that a liability continues to be incurred if there is not an appropriate form of resignation, even though in the circumstances referred to by the Hon. Mr Davis the PSA itself was seeking to have its members pay by some other means than deduction from their pay or, in fact, by formal deduction from their pay, monthly, or other interval, union fees.

As Minister for Consumer Affairs, I am not sure whether there have been any complaints to the Office of Consumer and Business Affairs about it. I would not be surprised if there were. If I were in the shoes of any particular union in these circumstances, I would probably be making a few concessions to ensure that there was some goodwill remaining after the membership tie had been severed and before one embarked upon the confrontationist course of litigation to recover what are, in effect, small amounts of money.

The Hon. G. WEATHERILL: As a supplementary question, is it not true that the union's rules are registered through the Industrial Court and when a person joins the union he gets a copy of those rules and should understand them?

The Hon. K.T. GRIFFIN: I presume there are women members of the trade union movement as well, and I presume that they also might be privy to the rules of the organisation which they may join. Certainly, unions are registered, and by virtue of that registration they become incorporated under legislation. It has been my view, which I have expressed in

debate, and that of the Government in relation to enterprise bargaining that you should not have to be a registered association to be able to represent those employees who may wish to participate in the bargaining process. I suppose in this day and age registration of employer-employee associations under special legislation is something of an anachronism.

The fact is that I am not aware whether or not members do receive a copy of the rules. My recollection was that they were entitled to read the rules but were not necessarily given a copy when they joined. Notwithstanding that position, whichever may be correct, the fact is that from my experience members do not read all the fine print and, particularly if they have been a member for several years or more, they do not go back and look at what their technical obligations may be under the rules and believe that they can sever the relationship as they so wish.

MBf

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about Wirrina Cove and casino licences.

Leave granted.

The Hon. R.R. ROBERTS: The Opposition has been supplied with a file note from a Sydney based consultant to the Malaysian multinational MBf. It quotes Ms Ann Thompson, an adviser to MBf, and Mr Tan Sri Loy. This is the same Ms Ann Thomspon who wrote the fax to the Premier's Press Secretary which formed the basis of a statement by the Minister for Tourism in another place on MBf on 4 August last year. I quote from the file note that was handed to the Opposition. Headed, 'Wirrina Cove and Ferry Link (Kangaroo Island to Mainland) South Australia', it states:

> Wirrina Cove was purchased by MBfI Resorts Pty. Ltd., a subsidiary of MBf Holdings, not MBfI Australia as announced in the latter's annual report. It was launched approximately two months ago. As stated in my memo of 30/6, although Tan Sri has promised publicly to pour some $200 million into developing the resort, he will not proceed unless the State Government can make good on a promise that he claims was made to him—that the SA Government would extend the existing SA Casino licence to Wirrina Cove.
>
> With the checks and balances now in place in this country in relation to the granting of these licences and the ensuing legislative processes involved, it is doubtful that the State Government can make good on this 'promise'. An added complication would be the foreign status of the application.
>
> Ann mentioned that Tan Sri was privately adamant that no money would be spent unless the Government came good. It was the Chinese way. Apparently he had quite grandiose plans for the resort.
>
> The ferry link operation is owned by MBf Sealink Pty Ltd, a wholly owned subsidiary of MBf Australia, and is run independently. It is not even clear whether the operation makes money.
>
> Also, as mentioned in my memo of 30/6, the South Australian Government and Opposition holds a package of reportedly damaging information on Tan Sri, believed to have been sent with an anonymous note by activist and long-term arch rival, Mr Wee, who is still not in jail. Ann said the package included Pan Electric stuff, etc.
>
> Ann gave me a copy of the attached article from the SA Law Society Bulletin which shows just how incestuous the man and his operations are.
>
> At 2 p.m. on 3/8/94, Ann phoned to advise that Randall Ashbourne, channel 7 senior correspondent, had met with the Opposition and subsequently flown to Asia to interview Mr Wee. He also contacted Ann to arrange to talk with Tan Sri, supposedly on tourism.
>
> When Ann asked how this meeting with Mr Wee went, he clammed up. The interview will go to air next week. She knows it will be covered by correspondents from other TV stations. She has briefed a legal firm to write to channel 7.

My questions to the Minister are:

1. Why did the Premier promise a casino as part of the Wirrina project when he has previously given assurances that he had not done so?

2. Have any discussions been held with MBf in relation to the sale of the Adelaide Casino and the ASER project?

The Hon. R.I. LUCAS: The Leader is away one day and the Deputy is in there making a pitch for the top job, but sadly—

The Hon. Diana Laidlaw: Wants to get rid of the feminists?

The Hon. R.I. LUCAS: Yes, wanting to get rid of the feminists, and now he is turning his gun barrels on Asian investors in South Australia. The Port Pirie *Recorder* may well have the front page being held for this particular expose by the Deputy Leader.

Members interjecting:

The Hon. R.I. LUCAS: Yes, exactly. First the state of the transportable buildings in one of the local schools and then this particular press release—I can understand the pitch of the Deputy Leader of the Opposition. I am advised that these particular documents were made known or received as part of a discovery action in court, and the actions of the Deputy Leader of the Opposition may well be a contempt of that particular court. I am not a lawyer and I just take quick legal advice on these matters, but it will be for the Deputy Leader of the Opposition to answer those questions should they be put to him. If that is the source of the documents, then it may well be that his actions in using them publicly are a contempt of that particular court, but that is for another day.

The Hon. K.T. Griffin interjecting:

The Hon. R.I. LUCAS: Well, all of them, perhaps. I hope the Hon. Mr Roberts has deep pockets. I will obviously have to refer the honourable member's question to the Premier for the detail of the response, but I do recall the Premier's responding some months ago when this was first suggested. My clear recollection of the Premier's response—and it is certainly my understanding as well—is that he indicated that he gave no commitment, and indeed was not in a position to give a commitment in relation to casino licences in South Australia.

The Hon. Mr Roberts might not realise it, but the gambling issues in this Parliament are matters of conscience, and when the decision was taken for the first casino licence in South Australia, before the Hon. Mr Roberts became a member here, it was not a Party decision in relation to a Liberal Party view and a Labor Party view: it was a decision taken by the collective conscience of members of Parliament. No member of Parliament, whether he or she be the Premier, a Minister or, indeed, a humble Deputy Leader of the Opposition in the Legislative Council, can give a commitment on behalf of the combined conscience of 69 members of Parliament.

It is foolishness in the extreme for anybody to be suggesting that any member—the Premier included—can give a commitment in relation to a casino licence. So, it is just foolishness in the extreme for anybody to suggest that such a commitment could be given. As I said, my clear recollection of the Premier's response when this was first raised many months ago was, in fact, for him to deny outright the claim or allegation that has been made again by the Deputy Leader of the Opposition. The other aspect—again I will refer this to the Premier for a more detailed response—is that the Deputy Leader of the Opposition suggests that Mr Tan Sri Loy and MBf would not commence their investment of

moneys at Wirrina until they had got this commitment on the casino. Again I will check the detail, but I seem to recall some weeks ago that the first money has already been invested at Wirrina, when, of course, there has been no commitment in relation to a casino licence.

If my recollection is correct—but I said I will check my recollection—then, of course, the claims being made by the Deputy Leader of the Opposition that this multi-million dollar investment would not proceed unless there had been this commitment for a casino licence are again revealed for the scurrilous, malicious gossip and nonsense that is sometimes pedalled by the Labor Party again seeking to be critical of and negative to any sort of development in South Australia, where there is investment of any sort in South Australia. For the first time there is a major tourism development going ahead and what we have again are the Democrats and the Labor Party seeking to undermine, seeking to be negative, seeking to be critical—the carping, knocking Opposition and Democrats that we see all the time from the Leader of the Opposition down through the rest of the Labor Party, from the Leader of the Democrats down through the two levels of the Democrats, the Leader and the Deputy Leader of the Democrats. Now even radiant Ron, the Deputy Leader of the Opposition—

The PRESIDENT: Order! I do not think you need to use such descriptions.

The Hon. R.I. LUCAS: Exactly, I withdraw and apologise for referring to the Deputy Leader of the Opposition as 'radiant Ron'. On this occasion he is certainly not radiant in relation to this issue. He has descended to the gutter in relation to this particular series of claims and allegations and it ill-behoves the Deputy Leader of the Opposition in his shameless sort of thrust for the position of leadership of the Labor Party in the Legislative Council to stoop to this level in this question. I am obviously operating on the basis of recollection of some of these matters. I will refer the honourable member's questions to the Premier and bring back a more detailed response when I have had the advantage of talking to the Premier.

NATIVE VEGETATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about native vegetation clearance.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the purchase of a 2 100 acre property by the Department of Primary Industries' forestry division near Greenways in the South-East in September last year. The land, more than half of which is covered by stringy barks and which contains several hundred acres of manna gums and parcels of grazed land, was purchased without approval to clear. More than 3 000 trees are reportedly on the land, with some of the stringy barks, according to some locals, as big as houses. Local residents say that there is an application to clear the land before the Native Vegetation Council in the next week or so.

The South-East has very little native vegetation left and it is most unlikely that clearance of this land for the purpose of agricultural purposes would be allowed. Residents say that the department plans to plant pines on the land. They have raised concerns about the purchase, saying that the department does not normally buy uncleared country. A petition against the clearance has been sent to the council. Before the department's purchase of the land a nearby landholder was told that the land was unlikely to get approval for clearance. Locals say the Minister for Primary Industries is keen for the clearance application to be accepted and for the development to go ahead.

There is concern that pressure may be brought to bear on proper processes in relation to the land clearance application. It is worth noting that under the Forestry Act the Minister can declare land to be a native forest reserve. My questions to the Minister are:

1. Does the Minister plan to declare the land to be a native forest reserve?
2. If not, how much of the land does the department plan to clear?
3. How many trees will be involved in that clearance?
4. How can the Minister justify clearance of native vegetation?
5. If there are plans to clear the land, why did the department buy it without having approval to clear it?
6. What is the Minister's involvement in the matter?
7. Will the Minister release details of correspondence dealing with the land purchase which relates to the possibilities of clearing the land?
8. Will the Minister report to the Native Vegetation Council on the outcome of the clearance application?

The Hon. K.T. GRIFFIN: I will refer those questions to the Minister for Primary Industries in another place, and I will bring back a reply. It is important to recognise that there is not any action by any Minister which is going to put what the honourable member described as improper pressure on any agency to ensure that a particular course of action is pursued and a result achieved. I resent the imputation that there is likely to be any improper pressure placed on any agency with respect to this or any other issue.

INTRODUCTION AGENCIES

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about introduction agencies.

Leave granted.

The Hon. A.J. REDFORD: In an article appearing in the City *Messenger* this week it was reported that Adelaide introduction agencies are being swamped with complaints after a key player in the local business closed her doors and fled the State. The article reported that dozens of men, who have paid to meet partners for casual liaisons, were left thousands of dollars out of pocket. I understand she allegedly left a stream of angry customers who paid out hundreds of dollars each to be registered as seeking casual connections—many were married men. On making further inquiries, I understand that the advertisements have been appearing regularly in the *Advertiser* and they effectively include statements such as: 'Casual hotline'; 'Half price membership last week'; 'Married Jenny wishes to meet days only'; and 'Beautiful brunette beautician seeking casual day or evening'.

I have made further inquiries into the matter and I understand that the woman concerned is a Dianna Claire Phillips. She also goes under four other names, including Claire Freeman, Claire Mason, Diana Mills and Diane Phillips-Smith. She has been advertising on a daily basis and I understand the advertisement appeared in the final week of her business. I also have been informed that she is connected to a James Darby who was recently named in the New South Wales Parliament as a manipulative exploiter of the lonely.

She was a former employee of his. I understand he continues to operate out of Victoria.

I understand that the way these things operate is that women do not pay for the service and the men are the only ones who are required to pay. That may reflect something of the nature of supply and demand in this particular market. In any event, I have been told that men can pay up to $1 500. I also understand that men may not report breaches of improper practices because of marriage or because of embarrassment. I understand there are elements within the industry which could only be described as corrupt. I also have contacted a former employee of this Diane Phillips, who told me that, despite the advertisement, there were only 25 women on the file who were all genuine women, who were all unmarried and all looking for permanent relationships.

Most of the inquires received from the agency were from married men who wanted married women. There were no married women on file. I have looked at various statutes in this State and it would appear that there may be a potential breach involving the Criminal Law Consolidation Act and, in particular, the offence of false pretences. In the light of this, I ask the Attorney-General the following questions:

1. Will he refer the matter to the Director of Public Prosecutions?

2. Is the Department of Consumer Affairs investigating the matter and, if so, at what stage are those investigations?

3. What can he do to ensure that the anonymity and the comfort of anyone who complains about the conduct of this sort of agency is retained?

4. Is there any potential for the publisher of such advertisements to be held liable, given that they ran those advertisements?

5. Will the Attorney give some indication of the privacy protection given to men in relation to information given to these agencies and the dispersal of that information?

The Hon. K.T. GRIFFIN: Rather than taking the time of the Council to provide immediate answers, I will ensure that they are properly researched and will bring back replies.

RESIDENTIAL TENANCIES BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 1632.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions on this Bill. I will endeavour to deal with the major issues raised. There may be some remaining matters that we will need to address in Committee and undoubtedly there will be some amendments to debate, when we can raise other matters. By way of preliminary comment, I thank the Hon. Anne Levy for her support for the Government's decision to regulate the relationship between rooming house proprietors and residents. I also note the honourable member's acknowledgment of the importance of having a balance between the rights of landlords and of tenants. The Government believes that the provisions of the new Bill strike a good balance between the rights of landlords and of tenants.

I now want to deal with a number of issues which have been raised during the course of this debate. The first major issue is that the current Residential Tenancies Tribunal should continue to be the forum for resolution of disputes and issues between landlords and tenants. Both the Opposition and the Australian Democrats have placed a great deal of emphasis on the existing Residential Tenancies Tribunal and its record in dealing with landlord-tenant disputes. They both seem to have lost sight of the fact that it is proposed for the tribunal to continue as the forum for ultimate resolution between landlords and tenants as outlined under the Magistrates Court (Tenancies Division) Amendment Bill. The most important aspects of the new Bill aimed at streamlining the tribunal have been completely glossed over by the Opposition. It is as though the Residential Tenancies Tribunal is some community icon or sacred cow which must not be changed in any way.

I am not interested in making change for change's sake, nor is the Government. It is as a result of the consultative process during the review of the existing Act that the legislative review team came to the conclusion that changes were required, and made these recommendations to me accordingly. Both I and the Government accepted that there was a need for change, based on substantive evidence.

The Opposition states that the current tribunal has received considerable acclaim for providing a quick and efficient remedy for both landlords and tenants. However, I would argue that this is based more on the rhetoric espoused by the supporters of the current system than on any objective analysis of the true situation. Indeed, the Opposition has cited quotes from the Australian Capital Territory Community Law Reform Committee on private residential tenancy law, suggesting that that body recommends setting up a specialist tribunal to deal with disputes such as we have in South Australia with the Residential Tenancies Tribunal. I have also consulted this report and my analysis of its findings do not match those of the Opposition. Certainly the report praises the South Australian concept, but I am very concerned about the use of selective quotes on the part of the Opposition, obviously designed to support its argument. The report should, however, be put in its proper context and I intend to do that.

The ACT Law Reform Committee in fact considered six options for the establishment of a specialist tenancy tribunal. After analysing all the options, the committee recommended—and I refer particularly to recommendation 128—that the ACT Government give detailed consideration to two models for administration of the tribunal—not one, but two. The first is the establishment of a tenancy office, which combines the Residential Tenancies Tribunal with the function of bonds administration and possibly enforcement of the new proposed Residential Tenancies Act and tenancy education services. The second was the establishment of a specialist Residential Tenancies Tribunal within the administration of the ACT Magistrates Court. It is important to recognise that what we have been proposing in the Magistrates Court (Tenancies Division) Amendment Bill, namely, to make the Tenancies Division a division of the Magistrates Court, was the second of the alternatives proposed by the ACT Law Reform Committee for the ACT.

The Opposition has painted a picture which claims the South Australian model as being the preferred option when in fact the committee could not differentiate between the two main options and hence recommended that the Government consider both models. Where does that leave us? It leaves us in a situation where it would appear that the Opposition will

go to any lengths to support its argument and to support the tribunal, which was created by a former Labor Government.

The Opposition has also put the view that the *status quo* must be retained at all costs and yet at least three other reviews of the Act since its inception recommended a number of changes, of which none were acted upon by the Opposition when in Government. Change must occur if we are to continue to have an appropriate balance between the respective rights of landlords and tenants and to ensure that disputes are dealt with equitably, expeditiously and in a most efficient and productive manner. There is no such thing as the perfect system, which operates without an assessment of its effectiveness and efficiency. We do operate in an environment today where change has to some extent become the norm and there is a need to continuously and continually improve systems to ensure that the community and taxpayers of South Australia can be assured that they are receiving value for their money, which ultimately taxpayers make available to Government, sometimes under duress, to provide these wider facilities.

To demonstrate how concerned the Opposition is about the efficiency and effectiveness of this area, I think I should point to one particular example. I wonder whether members know that the important residential tenancy records are still maintained on cards, despite the Opposition's being in Government for 10 years and having had ample opportunity to introduce much needed new technology and improved systems. I am pleased to report that under my administration urgent plans are in place to introduce new technology, in order to automate procedures and increase customer service, and also improved financial and audit systems and controls to prevent, among other things, fraud. Under the previous administration, an instance of fraud did occur. That was made public and was the subject of investigations by the police and the Auditor-General. I am disappointed to report that it has taken such a long time for appropriate action to be taken for these systems to be upgraded.

The Opposition also states that there is no evidence at all of imbalance in the way in which the Residential Tenancies Tribunal handles disputes. During the period 1990 to 1993 there were a total of 36 separate letters of complaint to the Minister for Consumer Affairs concerning 14 complaints against a decision of the tribunal, 15 complaints against the administration and seven against the chair and/or members of the tribunal. While that may not appear to be a large number, it averages out to one complaint every month over three years in comparison with the Commercial Tribunal, which received a total of 10 complaints during the same period.

The Opposition states that the Residential Tenancies Tribunal is not only quick and efficient but also informal. I do not know how many members have attended the Residential Tenancies Tribunal, but if they have they will know that it is not informal in the sense that parties sit around a table with a member and seek resolution of a matter. The hearings are conducted in hearing rooms akin to courtrooms. The member sits behind a large covered table with a raised front that is placed on a dais about 350 millimetres above the floor level. The clerk sits to one side after swearing in or taking an affirmation from the parties with the parties arranged along a table on the lower level. I would defy anyone to convince me that this arrangement is informal.

One of the other features of the current system is that attendance is usually required, however brief. This is often at great inconvenience to landlords and tenants who ultimately may attend a hearing where the other party is not represented. For example, a landlord and tenant of premises at Murray Bridge are called to a hearing at 50 Grenfell Street Adelaide. Handling these matters at an earlier stage and minimising the number that require a formal hearing is the intent of the new legislation plus having a wider range of opportunities presented by magistrates presiding over these hearings in a wide range of country areas of the State.

I now turn specifically to country hearings. There were 4 000 matters listed for hearing in 1994; of these, only 263 matters were heard in the country, while the rest were heard at 50 Grenfell Street Adelaide—not even in the suburbs. It could not be suggested for one moment that this arrangement meets the needs of landlords or tenants in country regions or even in the wider metropolitan area of Adelaide. Under the proposed new arrangements, it will be possible to list hearings on a regular and needs basis in the major country regional centres where magistrates currently operate. In addition, the suburban network of the Magistrates Courts, which includes Christies Beach, Elizabeth, Holden Hill, Mount Barker and Port Adelaide, could effectively be utilised to reduce the inconvenience to landlords and tenants.

Many of the improvements in administration which have been highlighted by the Opposition have, in fact, occurred since I became Minister, and the extensive organisational changes instigated by the new Commissioner for Consumer Affairs and his management team have taken effect. For example, the time for preparation of written determinations has been significantly reduced to the extent that there is now no backlog, whereas under the previous administration there was considerable delay of days sometimes extending into weeks, which meant a delay in the outcome of a hearing being known as this was dependent on the availability of a determination.

The introduction of teleconference hearings is a new initiative designed to save time and costs and increase customer satisfaction, although this facility has not been fully utilised by tribunal members. In addition, it is proposed to improve customer service to enable security bonds to be paid more quickly through the Residential Tenancies Branch. This will be achieved by entering into an agency agreement with an organisation such as Australia Post, which has an excellent network of offices, to enable bond lodgments and uncontested refunds to be made. Obviously, this measure will increase customer service, and it is one which I fully commend.

In terms of access to the Residential Tenancies Tribunal, I provide the following overview for the year ended 30 June 1994. A total of 11 216 applications were received, of which 5 098 were in relation to disbursement of bonds, which were handled administratively by way of sending a letter to the other party, and only 247 of these claims were disputed, thus requiring a hearing. With the proposed administration of funds moving from the Residential Tenancies Tribunal to the Commissioner for Consumer Affairs, these applications will not need to be made to the tribunal. Of the 6 118 remaining applications, 852 (14 per cent) were conciliated by the Commissioner's staff; 323 (5 per cent) were withdrawn by the applicant; and 990 orders (16 per cent) were made without requiring a hearing. The balance of 3 953 (65 per cent) were listed for hearing. The conciliation rate of 14 per cent achieved by the tenancy officers in the Office of Consumer and Business Affairs is a commendable rate but one which is expected to increase substantially under the proposed arrangements.

Specialist conciliation and alternative dispute resolution training will have been completed by all tenancy officers

prior to the proclamation of this legislation. This will complement the introduction of the legislation and improve the conciliation rate further. The new Bill outlines a process whereby the staff of the Commissioner for Consumer Affairs will give information and advice and provide a conciliation service in respect of residential tenancy disputes. This is expected to provide a much higher rate of conciliation generally at an earlier stage in the dispute. Disputes which are of a more serious nature or which may require a more judicial approach than tenancy offices can provide, can be deferred to the proposed Tenancy Division of the Magistrates Court. There they will be dealt with by the Registrar who will convene a pre-trial conference and explore with the parties the possibilities of resolving the matters at issue, or they may go to a hearing. This will enable a quick sorting out of the issues to ensure that the dispute is handled at the earliest and most appropriate time and in the most appropriate way while still providing a mechanism for hearing for the most difficult and complex cases, particularly those involving a dispute. This will ensure that matters are handled speedily and appropriately, and the tribunal will be used only as the last resort, hence increasing response times and streamlining operations.

The Opposition also cites the example of New Zealand comparing the situation in that country with South Australia. It should be pointed out that the New Zealand scheme is a national scheme, not a State one. It is like comparing apples with oranges, and in the final analysis it is very misleading. Any objective analysis would need to factor in the relative size of the appropriate rental markets in each location and other factors which may include demographic, cultural and procedural differences. In my view, the comparison with New Zealand does not add any value to the debate on what is proposed in South Australia. However, I assure the Council that the mechanisms which will be put in place by the office will be totally cost effective and will increase customer satisfaction.

I now deal with some other specific issues raised by members. The first relates to the existing monetary jurisdictional limit's being raised from $25 000 to $30 000. I note the Hon. Anne Levy's comments in relation to the monetary jurisdictional limit under section 21(2) of the existing Act, that is, a $25 000 jurisdiction, and her intention to increase the jurisdictional limit to $30 000. I advise that under the Government proposal the jurisdictional limit for applications before the proposed tenancies division of the Magistrates Court is proposed to be $30 000 in any event.

The Opposition wants to reinstate the current termination procedure set out in section 63 of the present Act. The honourable member remains to be convinced that the termination procedures outlined in the Bill represent any streamlining of the current provisions, and is not convinced that landlords will be happy with the new procedure. The Government considers the amendments to be a considerable improvement on the current system, and ones that will be welcomed and embraced by landlords. One of the most common and prevalent complaints received by this Government from landlords has been in connection with the procedure and delay involved in the termination of residential tenancy agreements. Under the current Act, termination does not occur until either the landlord or tenant gives notice of termination, and either the tenant delivers up vacant possession or the tribunal makes an order terminating the agreement.

Under the Bill, a residential tenancy agreement can terminate or be terminated upon the service of a prescribed notice of termination upon the tenant, without the necessity for the tenant to deliver up vacant possession or for an order of the tribunal to terminate the agreement. The new system, in so far as it relates to termination by a landlord, involves the following steps. The first is that, where there is a breach by a tenant of a residential tenancy agreement, the landlord can serve on the tenant a notice in the prescribed form which specifics the breach and which requires the tenant to remedy the breach within a specified period, which must be at least seven days from the date the notice is given. The second is that, if the tenant fails to remedy the breach within the specified period, the landlord may serve on the tenant a notice of termination, which requires the tenant to give up possession of the premises at the end of a specified period, and that must be a period of at least seven days from the date the notice is given.

This new procedure results in a reduction of the existing number of days notice required for termination, and the notice structure empowers the landlord to serve notice on the tenant without the tribunal's involvement until the point is reached where the tenant fails to give vacant possession of the property. It should be pointed out that the rights of tenants have not been overlooked in this new procedure, and they will have the opportunity, at any time after receiving a notice and before giving vacant possession to the landlord, to apply to the tribunal. In summary, therefore, the new termination procedure reduces the time necessarily involved in obtaining vacant possession and results in the tribunal's not being involved at an early stage in the termination procedure.

Next, the Opposition believes that a time frame should be set in relation to clause 25, which covers receipt of the security bond and the transmission of that bond to the Commissioner for Consumer Affairs. Under the current Act there is a requirement for the payment of the security bond to the tribunal within seven days of receipt of the payment. What is proposed under the new Bill is that the period be prescribed by regulation. This has been drafted in this way to facilitate the discussions currently under way in relation to the facilities to which security bonds may be paid. For example, negotiations are currently under way, as I have already indicated, with Australia Post, with the intention of implementing a system that will significantly reduce the time to produce receipts as well as payments.

The next issue is clause 82, which permits regulations to be made that would provide for a matter or thing to be determined, dispensed with or regulated by the Minister. In the view of the Opposition, that is an extraordinarily wide power to give to the Minister. The drafting of clause 82 evidences the change of drafting style by Parliamentary Counsel during the term of this and the previous Government in relation to regulation making provisions. For a number of years it has been the practice of Parliamentary Counsel to move away from drafting a definitive list of the matters in relation to which regulations can be made and to move to a more generic provision that allows the Governor to make regulations for the purposes of the Act.

As to the Hon. Anne Levy's comment about the breadth of power given to the Minister under subclause (2), I advise that her comment is without foundation. I advise that it has been established practice of Parliamentary Counsel to include a provision such as subclause (2) along with the more generic provision in relation to the Governor's making regulations to overcome any potential problems with the subdelegation of

powers. These provisions appear regularly in regulations for many different pieces of legislation. For example, during the term of the former Government a similar provision was incorporated into the Supported Residential Facilities Act 1992, although 'the Minister' was not referred to in this provision; rather, it was 'a prescribed person'.

Another example in respect of which the honourable member had a direct involvement was the Retirement Villages Act. This has a similar provision to that which appears in clause 82, except that in the case of the Retirement Villages Act reference is made to the Registrar-General or the Commissioner for Consumer Affairs as opposed to the Minister. Of course, they are accountable only through the Minister, whereas the Minister is at least accountable directly to the Parliament. A more recent example of a similar provision can be found in the Passenger Transport Act 1994 and, of course, no objection to that was raised by the Opposition. There is considerable precedent for a provision of this type. I suggest to members that there is nothing suspicious or sinister about the provision and it was certainly not intended to give the Minister additional powers.

Clause 80 has been raised by the Opposition as an area of concern. The Hon. Anne Levy has expressed the view that, by virtue of this clause, the Minister is seeking to have the power to exempt agreements or premises from the provisions of the Act simply by publishing an order in the *Gazette*. This provision, like clause 82, has been drafted in a manner that has established precedent in other pieces of legislation. There is no particular magic in this provision. An example of the context in which a similar provision was applied during the term of the previous Government was in the Supported Residential Facilities Act, to which I have already referred. Under section 91 of the current Act the Residential Tenancies Tribunal has the power to exempt the tenancy agreement or premises from the provisions of the Act. Clause 80 was drafted in such a way as to deal with these matters more administratively and without recourse to the tribunal.

In respect of clause 26, the Opposition wants landlords to have up to 10 days rather than seven in which to object to the payment of bond money, for some reason (presumably to give more notice), but the Government is of the view that seven days is a more than adequate period for a party to lodge a notice of dispute with the Commissioner. The honourable member may have made a mistake in relation to her reference to clause 26 as being the provision under which reference is made to the notice to quit period: it is actually contained in clause 46, which relates to termination by the landlord without specifying the ground of termination. The number of days notice, whether it be 120 or 90, is only an arbitrary figure. The Government has considered the social policy issues and the need to find alternative premises and has concluded that the period of 90 days is not an unreasonable period of notice for tenants.

Clause 33 deals with alterations to the premises by the tenant, and the Hon. Anne Levy believes that there is no justification for this being omitted from the Bill. This issue is currently in section 50 of the Act under the heading of 'Right of tenant to affix and remove fittings.' In that section provision is made that the landlord shall not unreasonably withhold consent. This is an issue on which I have not finally reached a concluded view, but I will give some further consideration to that in the Committee stage.

Clause 61 is the next area of concern for the Opposition, which has foreshadowed its intention to move an amendment to reinstate into clause 61 the provision that allowed income from the fund to be applied on research into rental housing needs and rental housing problems. That is currently section 86(ca) of the Act. The Government looked at this. We were of the view that this use was not an appropriate application of fund money, but it is something that we will give some further consideration to during the Committee stage.

I note that the honourable member comments in relation to clause 46, and I inform the Council that this was a matter that had already been detected and was going to be addressed as a drafting amendment. I foreshadow another housekeeping amendment, which relates to line 18 in clause 42. The reference on this line to 'section 59' will be amended to 'section 58'.

Clause 59 deals with the situation where the tenant has left and apparently abandoned goods at the premises from which he has departed. The Opposition is of the view that the Bill omits a provision that allows the landlord, after the sale of goods by public auction, to retain from the proceeds of the sale any reasonable costs of placing the required notices in the newspaper. Clause 59 has been drafted in similar terms to the existing Act, both in relation to procedure and the deduction of costs. The landlord is permitted to retain out of the proceeds of sale the reasonable costs of removing, storing and selling the goods, and may also retain any amounts owed to the landlord under the residential tenancy agreement. It is my view that the provision already allows for the landlord to retain the reasonable costs of placing the required notices in the newspaper.

I turn now to the matters raised by the Hon. Robert Lawson. He deals first with the issue of locks. He has addressed in some detail the issues arising from the provision contained in clause 29 relating to the security of rental premises. He and I have discussed the matter informally and, of course, the issue will be given some further consideration. I should say that the Government's preference was to preserve the *status quo* on this provision and leave it in a format similar to the existing provision. Currently the provision only provides a statutory obligation upon the landlord to provide and maintain locks and other devices that are necessary to ensure that premises are reasonably secure. The provision does not provide a positive duty on the part of the landlord to change the locks with each new tenancy.

As the honourable member has pointed out by way of his reference to a number of decisions of the tribunal relating to the existing provision, any argument of liability on the part of the landlord is a matter that the tribunal must assess on a case-by-case basis. The results of such cases will depend very much on the individual facts of the case; for example, did the landlord re-let the premises without recovering each of the keys that he or she issued to the former tenant? The Government does not see any need at this point to amend the provision. However, as I have indicated, I am looking further at the honourable member's suggestion with respect to limitation of liability before the issue is debated in the Committee stage.

I note the honourable member's comments about the use of notes, examples and illustrations in the Bill. This technique of drafting has been applied more frequently by Parliamentary Counsel in more recent years as a means of assisting the interpretation of provisions of the Act where necessary. Given the application and use of the Residential Tenancies Act by the public it was thought appropriate to maintain this developing practice, although I should say in passing that whilst we have used this in the context of the native title package of legislation because of the complexity of that

legislation I have some concern about the interpretation of (but more appropriately) the user-friendly nature of this method of drafting, and I am giving some further consideration to it generally and not just in the context of this Bill.

No liability attaches to the Commissioner for Consumer Affairs. I note what the honourable member has had to say about this and I am having the drafting of the provision looked at more closely. He does make reference to harsh and unreasonable terms of residential tenancy agreements. He wanted to hear from me as to whether there have been any claims under that provision in the current Act. A number of cases have been heard by the tribunal in which the tribunal has considered whether the terms of a residential tenancy agreement are harsh or unconscionable. Most of these cases, I understand, did not relate to specific applications brought under this section, but involved proceedings on other sections of the Act, such as termination, whereby the tribunal found that certain terms and conditions of the agreement were harsh and unreasonable.

I am happy to provide some details of these decisions, but I can give two in particular, the first of which is *Swanson vs Craig*, where the order was made on 19 September 1989. There was an application by a landlord for a tenant to pay a contribution to electricity costs owing to him under the agreement. A term of the agreement was that the tenants pay five-sixths of electricity consumption on the premises. The tenants believed that this proportion was based on the expected proportion of consumption from use by the landlord of the granny flat on the premises. The tribunal found this provision to be harsh and unconscionable on the basis that the evidence revealed that the landlord's use of electricity was much greater than one-sixth of accounts. The tribunal varied the term to substitute it with a 50-50 sharing of electricity costs.

The other matter is *Viewfair Pty Ltd (by Delphin Realty) vs Quinn and Barrett*. Orders were made on 11 March 1992. This case involved an application for termination of a residential tenancy agreement and for possession of premises by the landlord. The ground of the breach was the keeping by the tenants of two dogs on the premises. The tribunal found this provision to be harsh and unconscionable under the circumstances as the tenants were females and there had been previous evidence of an intruder and prowlers around the premises. The tribunal found *inter alia* that the tenancy should continue and that the tenants be permitted to keep the two dogs provided that they increased the amount of the bond.

There are a few other decisions in which section 92 arises in the context of proceedings. Records are not kept of all decisions but only the more interesting ones. I can probably provide the honourable member with names of several other cases, if required.

I reiterate my thanks to members for their contributions and for their support of the second reading of this Bill. I hope that in the Committee consideration of the Bill the matters to which I have referred might persuade members to have a change of heart in relation to issues such as the Residential Tenancies Tribunal.

Bill read a second time.

PETROLEUM PRODUCTS REGULATION BILL

In Committee.

The Hon. T. CROTHERS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

Clauses 1 to 14 passed.

Clause 15—'Criteria for decisions relating to licences, etc.'

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

Page 10, after line 1—Insert subclause as follows:

(3) The Minister—

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

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

I suggest that our amendment addresses a situation where there is no objection to an application before the board. We are concerned about a situation where there is a controversy and, where there are objectors to a particular application before the board, the Minister should distance himself or herself from that process. I am advised that this amendment achieves that aim.

The Hon. K.T. GRIFFIN: This amendment is opposed quite vigorously. It is not in the public interest to fetter the Minister's discretion in this fashion. If one looks at it carefully, one sees that the Minister is to be bound by a recommendation made by a person or body to which the matter has been referred under this part that the application should be refused and the Minister may not decide that an application should be refused unless in receipt of a recommendation to that effect from a person or body to which the matter has been so referred. The Minister becomes a mere cipher and not the person who makes the decision.

A Minister is accountable to the Parliament. Questions can be asked about it. Of course, if there is any judicial review, if the amendment went through, that will be judicial review not of the Minister but of the bureaucrats. This amendment puts the bureaucrats above the Minister in terms of making decisions. It is not unusual for Ministers to be entrusted with power to make decisions. In fact, we have to do it every day of the week. Sometimes we do not like making the tough decisions, but we have to, and we will be held to account if it is not raised publicly directly by the Minister. If unsavoury decisions are made, there will be a leak. I have always taken the view that you are always up front with difficult decisions and you tell people why you have done it. Most people, if they do not agree with it, nevertheless will still respect the fact that you have had to make a decision, even if it has been a decision which has not accorded with their view.

In most instances, Ministers act in accordance with the recommendations of advisory bodies, but Ministers do exercise an independent discretion. They are Ministers because of that responsibility which is placed upon them. I do not think there is any reason, however, why we should anticipate that Ministers will not have appropriate regard to the recommendations of advisory bodies. In most instances, I would expect that the recommendations would be complied with, but I do not set that as a hard and fast rule. If they did accept them without question, they would not be doing their job but, as I say, they do have a public responsibility to make a decision for which they ultimately are accountable, either through public questioning in the media, the Parliament, or in some other way.

I suggest that the amendment does create inflexibility. It does prevent the Minister from acting in accordance with any considerations which might have come to light after receiving the recommendations of various bodies. If that happens, and

this amendment is here, what does the Minister do? I suppose the Minister can send it back, but it is even doubtful as to whether the Minister can send it back for further consideration, because it says, 'The Minister. . . is bound by a recommendation, made by a person or body to which the matter has been referred under this Part, that the application should be refused.' I just think it is unwise, with the sort of legislation we are talking about relating to petroleum products regulation that the Minister should be fettered in the making of that decision.

Clause 47(1) does give some appeal rights. There is an appeal to the Administrative and Disciplinary Division of the District Court, as follows:

(a) by an applicant for the issue, renewal or variation of a licence against a decision by a Minister to refuse to issue, renew or vary the licence; or
(b) by an applicant for the issue of a permit against a decision by the Minister to refuse to issue the permit; or
(c) by a licensee. . .
(d) by a permit holder. . .
(e) by a person against an assessment by the Commissioner of a monthly licence fee or other amount under Division 2 of Part 2; or
(f) by a person to whom an improvement notice or prohibition notice has been issued under Part 4 against the decision to issue the notice.

There are quite extensive rights which are embodied in that clause 47. As I indicate, there are mechanisms for appeal if the Minister decides not to issue a licence, for example, when that might be contrary to the recommendation of the Retail Outlets Board, the Director of Dangerous Substances or the EPA. It is not considered by the Government to be appropriate for the Minister to be bound by a recommendation of the Retail Outlets Board, the Director of Dangerous Substances or by the EPA. They are specialist bodies. They will have to make their recommendations in the context of their own expertise and the factors relevant to their areas of expertise.

I come back to the point I made initially: the Minister has to take into account a wide range of factors upon which the decision is then taken. Those factors are set out in clause 15 of the Bill, which applies to a decision by the Minister in respect of an application for the issue or variation of a licence and other matters. What does the Minister have to take into consideration—a whole range of matters which are specified in subclause (2). It seems to me that it would be both unwise and unnecessary to seek to bind the Minister in the exercise of the discretion for the reasons that I have indicated and therefore I vigorously oppose the amendment.

The Hon. SANDRA KANCK: The Democrats will be supporting this amendment. In all sorts of legislation over the past 14 months I have been putting up my own amendments to rein in some ministerial powers and I have no hesitation in doing that in this particular case. If an advisory body has been carefully chosen so that there is a well-balanced representation of people on it, it is not likely that they will give the Minister bad advice in the first place, so we will be accepting this amendment.

The Hon. K.T. GRIFFIN: What the honourable member is saying is, 'Let us abdicate responsibility to unelected bureaucrats and just bind the Minister in the exercise of discretion.' I can assure you this will go to a conference.

The Hon. T.G. ROBERTS: I understand the point the Minister makes in relation to appeals after the decision is made and I take note of that, but I would have thought that the process would allow for the Minister's input to be part of the assessment and that exclusion is not something that is being advocated, nor is it the intention of the amendment to exclude the final determination being made by the Minister. I am sure that, in the case of a lot of advice coming from boards or advisory bodies, there are mechanisms by which you can informally have positions recommitted so that there is an information flow. Ultimately, in some areas, the Opposition and the Democrats will be looking for some safeguards in relation to some positions, in this case licensing, and in other cases they will be—

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: Yes, I understand that but that is after the decision has been made.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: You have indicated you will go to a conference on it. I am just indicating that the Minister has a range of options in being able to determine a position and those informal processes, you would think, would operate so that the Minister's view is at least indicated by those mechanisms. It is not trying to exclude ultimately any role or responsibility the Minister will play in the final decision-making process, but it does, as you say, put a lot more power in the board in ultimate terms in relation to how the final outcome is made, but it does not exclude the Minister totally.

The Hon. K.T. GRIFFIN: I ask that the honourable member, notwithstanding his moving this motion, might ponder the matters that I have raised for perhaps some reconsideration at another stage only because, as I interjected, there are appeal rights. I do not think one ought to rely upon a proper decision being made by informal discussions between Ministers, boards, officers and a whole range of other people. The whole process has to be transparent, and it seems to me that there needs to be accountability and there is not. The only accountability is if the Minister says, 'Well, I made the decision. The recommendation was X, but I made decision Y' or 'I made decision X, but if I made decision Y,' and then giving the reasons for making the change from the recommendation. That is subject to review under the appeal processes set out in the Act. So there are adequate safeguards there. I would urge the honourable member to consider those issues as we go through this process. The amendment is not acceptable to the Government, but I hope that we can give the assurance from what is in the Bill that there are more than adequate safeguards, both through the public process of accountability but also the appeal process determined by the administrative and disciplinary division of the District Court.

Amendment carried; clause as amended passed.

Clauses 16 to 37 passed.

Clause 38—'Publication of desirable principles for conserving petroleum.'

The Hon. SANDRA KANCK: I move:

Page 24, line 11—Leave out 'or' and insert 'and'.

This is a fairly simple amendment. In the Bill as it is the notice can be published in the *Gazette* or in a newspaper circulating throughout the State, and I consider that if we are in that period of time which might be described by the Government as an emergency situation at least we are likely to be having rationing of petrol and having it as even an either or case is probably not adequate. For the best interests of public knowledge it should be in both the *Gazette* and the newspaper.

The Hon. K.T. GRIFFIN: The amendment is not accepted and I doubt whether putting the notices in the *Gazette* will increase the circulation of the *Government Gazette*, much to the disappointment of the State Government

Printer. The fact is that we have taken the view that there are two major purposes for prevailing as we have. The education of the public with regard to the adoption of principles and practices that will minimise the use of fuel—share riding, walking to work, riding bicycles—can be best achieved through brochures and the electronic media and I suggest that the *Government Gazette* is not suited to that purpose.

In the event that supplies of fuel for the State become critical, it is essential that the communication of any restrictions to the public be made as promptly as possible so as to achieve the widest coverage. The *Government Gazette* is not sufficiently widely read to achieve this purpose and is not as timely as the daily newspaper. The daily newspaper provides the most immediate written communication with the widest possible coverage. We wanted to ensure that there was a right to choose the most appropriate medium in the circumstances of a particular issue that arose.

The Hon. T.G. ROBERTS: It is not a major point—and I cannot see that the Government will go to the wall over it—but in relation to a question on clause 39, 'Special consideration to be given to those living in country areas,' what special considerations would be made under that clause in relation to clause 38?

The Hon. K.T. GRIFFIN: We have been through a few petrol strikes and shortage of supplies. It may be that one zones the areas so that those in outlying areas may have a greater level of access to fuel. That is always the main issue. At what point should there be uniformity across the State and at what point should there be greater level of availability of fuel in the country than in the city. Should there be a different quantity? If you have perhaps the odd number plate scheme by which you regulate the availability of fuel, should there be a greater amount of fuel per day available to those in the country with an odd number or an even number, or whatever? There are all sorts of variations which one could call up to indicate that there will be some preferential treatment given to country people at a particular time. It may be, for example, that the vintage is on at McLaren Vale and the Barossa Valley and the Coonawarra and there has to be a special exemption made for both those involved in the vintage (those that can demonstrate that they are) and the trucks that service the wineries. It may be that there needs to be a special provision made during the grain season for the cartage of grain and the fruit season in the Adelaide Hills. All sorts of issues need to be addressed in relation to rural South Australia where special accommodation may have to be provided.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Yes. This is a factor the Minister must take into account and it is a statutory focus for the Minister in relation to perhaps a State-wide problem of shortage of petroleum supplies.

Amendment carried; clause as amended passed.

Clauses 39 to 47 passed.

Clause 48—'Application of fees revenue.'

The Hon. SANDRA KANCK: I move:

Page 32, after line 13—Insert paragraphs as follows:
(f) towards scientific research into and commercialisation of renewable energy technologies for transport purposes; and
(g) towards the promotion and development of public transport services; and
(h) towards the promotion and development of bicycle transport.

This amendment relates to how the fees collected will be distributed. I remind the Attorney that when I gave my second reading speech I asked in regard to subclause (2), where it refers to amounts and proportions determined from time to time by the Treasurer, for an indication of how much of the money would go towards the areas mentioned in paragraphs (a), (b), (c), (d), and (e) listed. I would appreciate an answer to that. My amendment extends the number of areas to which the fees can be allocated.

It is rather timely and appropriate, given the announcement a couple of days ago of the $112 million being spent on the third arterial road. I would like to know from someone who is assisting in this form of revenue collection how much of that will go to the Highways Fund. I would be most appalled if I found that most of the fees I pay through this tax were to go towards the construction of that freeway.

The Hon. K.T. Griffin: You may not use much fuel, so there may not be much of your money in it, anyway.

The Hon. SANDRA KANCK: I do my best not to. Again that adds weight to what I am moving here because, as much as I can wherever I can (when we do not have late night sittings), I attempt to use public transport. So, in my proposed paragraph (g) I am suggesting that some of this money should go towards the promotion and development of public transport services. Petroleum is a fuel which, within 20 years, will become a reasonably rare commodity, so money collected—

The Hon. A.J. Redford: They have been saying that for 50 years.

The Hon. SANDRA KANCK: I do not know whether they have been saying that for 50 years; probably for 10 years it has been said. Because extra money has been put into fuel exploration, they have been able to find more. No matter from where you come, in the end—

The Hon. T. Crothers interjecting:

The Hon. SANDRA KANCK: Exactly, it is a finite resource. It was made from material deposited millions of years ago, and you cannot come back and get another deposit.

The Hon. T. Crothers interjecting:

The Hon. SANDRA KANCK: Without doubt, yes, including such things as ethanol and all sorts of things on which money should be spent. My proposed paragraph (h) relates to the promotion and development of bicycle transport. This Government has given some commitment towards the development of bicycle transport throughout Adelaide. Adelaide is an ideal city for bicycles and we should do all that we can to promote it, which would mean such things as the construction of cycle ways. I would like to hear the answer to the question about what the proportions are likely to be as determined from time to time by the Treasurer and look forward to support for my additions of paragraphs (f), (g) and (h) as they are very important uses, probably much more futuristic uses, of this funding than are most of the others listed.

The Hon. K.T. GRIFFIN: It is difficult to give percentages because no decisions have been taken for the future, but I can indicate that total funds received from the petroleum franchise fee are about $209 million. It is not a large amount of money when you consider that the Health Commission, for example, has recurrent expenditure of about $624 million.

The Hon. Sandra Kanck: That could provide a few cycle ways.

The Hon. K.T. GRIFFIN: It could do a lot of things. It is a question, in the overall application of funds within Government, of whether there ought to be specified proportions of particular moneys or hypothecated funds going to particular purposes. The Health Commission has $624 million recurrent expenditure and $45 million capital expenditure and the petroleum levy in the context of that is

about one third of what is spent on health, including administration, promotion and provision of services. You can raise other questions and we will deal with them when you do.

In relation to the particular amendment, expenditure on the proposed areas of application under the Bill as it is will substantially exceed the moneys raised from the levy in any event. As I indicated in relation to the honourable member's specific question, but now more generally, if we add further areas it will constrain or influence budgetary expenditure priorities and decisions which Governments have to make about application of funds for immediate purposes from these sort of areas. World developments in research regarding alternative fuels are being closely monitored through the EPA. We are currently separating funding expenditure on the support of public transport and on support for the use of bicycles so that that will become more clearly identified in future for budget purposes.

Already there is a reasonable amount of money (one may not assess it as being reasonable by one's own standards) spent on such things as bicycle ways and development of alternative energy sources. The Government has taken the view that it is not appropriate in the context of this Bill therefore to insert those new provisions.

The Hon. T.G. ROBERTS: As admirable as are the sentiments expressed by the Democrats, I take the view that with proposed paragraphs (a), (b), (c), (d) and (e), there will not be much change left after the administration costs and proposals in those clauses are taken into account. The amounts become important, and it may be that we could write in new paragraphs (f), (g) and (h), right through to (z), but not have any funds in significant amounts allocated to those areas in which the honourable member has an interest.

I would like to add a few special interests of my own, but I understand the problem the Government would have in terms of allocation from a fund like that. I would certainly like to see the Government take up some of the signals being sent by the Democrats for allocation of funds out of consolidated revenue for those extra areas.

The Hon. K.T. GRIFFIN: I point out that the Government is not insensitive to the need to spend money on the development of renewable energy sources or on cycle ways and other alternatives. I think that is fairly clear from the initiatives that the Hon. Diana Laidlaw as Minister for Transport has been taking in relation to cycling and making bus and other public transport travel much more user friendly. An emphasis is being placed on finding ways in which more people can be encouraged to share transport, use public transport and adopt what some might regard as a healthier lifestyle in the way in which they travel. So, funding is available—the Government is sensitive to that—and initiatives are being taken to facilitate that, but it is not something that can be done overnight, and at present it is being supported by Consolidated Revenue.

Amendment negatived; clause passed.

Remaining clauses (49 to 64), schedules and title passed.

Bill read a third time and passed.

PHYLLOXERA AND GRAPE INDUSTRY BILL

(Second reading debate adjourned on 21 March. Page 1604.)

Bill read a second time.

In Committee.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

Clauses 1 to 9 passed.

Clause 10—'Establishment and membership of selection committee.'

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

Page 6, after line 21—Insert new subclause as follows:

(4a) The Minister must appoint at least one member of the selection committee from the persons nominated by the Wine and Brandy Producers Association of South Australia Incorporated.

As I stated in my second reading contribution, we have been lobbied to a large extent by the Farmers Federation and the Wine and Brandy Producers Association of South Australia in an effort to ensure that they are represented within the confines of the selection committee or on the board itself. After a great deal of discussion, it was decided that their needs can be met under clause 10, which provides:

(2) The Minister must invite—

(a) the South Australian Farmers Federation Incorporated; and

(b) the Wine and Brandy Producers Association of South Australia incorporated; and

(c) any other organisations or bodies that, in the opinion of the Minister, have significant involvement in grape growing or winemaking,

to each nominate a specified number of persons to the panel from which the Minister will choose members of the selection commmittee and to provide reasons in writing in support of each nomination.

With new subclause (4a) we propose that the Minister must appoint at least one member of the selection committee from the persons nominated to the panel by the Australian Farmers Federation Incorporated and at least one member from those persons nominated by the Wine and Brandy Producers Association of South Australia Incorporated. I have had some experience with this type of arrangement in respect of the WorkCover board, in particular, where consultation was to take place between the Minister and the UTLC and the UTLC was to be invited to make some nominations. Whilst those nominations were made, the Minister chose not to accept them but to have an alternative person of his choice. In respect of this provision, it is possible to have a list of 15 people nominate and, although the Farmers Federation could nominate two and the Wine and Brandy Producers could nominate two, it is quite possible that a Minister could elect a selection committee of five and not include any of those representatives.

Our first inclination was to include a direct representative on the board, which would have ensured that the representation sought by both those organisations would have been in place and we would not have had a problem. However, although the Farmers Federation indicated to me that it would have accepted that, it has been decided on balance that we ought to do it in the selection committee. I believe it is necessary to have them either on the selection committee or on the board because, when the department negotiates, the principal negotiation always takes place between the Farmers Federation and the Wine and Brandy Producers. That has been the history of this Bill. It was constructed in that form, although I am advised that other people did make valuable contributions. I ask the Committee for its support in this amendment, to ensure that those two constituents are directly represented at the level of the selection committee.

It has been pointed out to me that we have omitted from the legislation what has become the Levy amendment: that there ought to be at least one woman and one man. I wonder whether we can move that with the help of the table staff: to

include that the composition would be at least one woman and one man.

The Hon. K.T. GRIFFIN: The Government does not accept the amendment, either the one that has been on the file or the one that is being done on the run. I point out to members that the Dried Fruits Act of 1993 provides almost identical provision for the appointment of its selection committee as does this Bill. It provides that the selection committee, which is to appoint members of the Dried Fruits board, must consist of five members appointed by the Minister. The selection committee's membership must include persons who have in the opinion of the Minister appropriate expertise in the various aspects of the dried fruits industry, including the production, packing and marketing of dried fruits. The Minister must seek nominations for appointment to the selection committee from such associations or other bodies as are in the opinion of the Minister substantially involved in the dried fruits industry.

The Citrus Industry Act of 1991, another piece of legislation of this decade in almost identical terms, provides that the Citrus Board Selection Committee consists of five members appointed by the Minister. The Minister must appoint the members of the selection committee from a panel of 10 persons nominated in accordance with this section. The Minister must invite such organisations or other bodies as are in the opinion of the Minister substantially involved in the citrus industry. There is a common theme running through these Acts, and when the Government proposed the Phylloxera and Grape Industry Board Selection Committee it followed that precedent.

The selection committee consists of five members appointed by the Minister. The Minister must appoint the members of the selection committee from a panel of 10 persons nominated in accordance with this section. Curiously, notwithstanding the board precedent in the other two Acts, in this one the South Australian Farmers Federation and the Wine and Brandy Producers Association are specifically referred to, along with 'any other organisations or bodies that in the opinion of the Minister have significant involvement in grape growing or wine making.' That covers a wide range of persons and bodies that may be involved in this industry. I suggest that it is important to maintain some flexibility.

I understand that there have been some discussions with the Wine and Brandy Producers Association and that it does not want to have specific reference made as in the honourable member's amendment, and I understand that there were some discussions with the South Australian Farmers Federation this morning to the effect that it also did not want anything more than is now in the Bill. I understood that it was going to write to the honourable member today to apprise him of that position. The fact of the matter is that we as a Government want the most expert Phylloxera and Grape Industry board. We want to ensure that the most capable people are involved in that, whether they be men or women. I do not know whether there is a significant number of women with that expertise, or men, and I think that the selection committee will be sensitive to that issue without—

The Hon. M.J. Elliott: Half the grape growers are women.

The Hon. K.T. GRIFFIN: Yes. Marienberg Wines comes immediately to mind.

The Hon. M.J. Elliott: Most are husband and wife partnerships.

The Hon. K.T. GRIFFIN: Yes, they are. So, whatever the selection committee does, I have no doubt that in this day and age, rather than putting in this token provision in relation to one being a man and one being a woman, it will be sensitive to the needs to ensure that a range of experienced men and women comes to this board through the selection committee. It may be that, when all the nominees are identified, the Wine and Brandy Producers Association or the Farmers Federation will say, 'That person is a better person to go on this selection committee than any of the five we have nominated.' I do not know. But you are building a level of inflexibility which I think is unnecessary and which would detract from the objects of establishing both the selection committee and the board. We do not support the amendment.

The Hon. T. CROTHERS: I rise to support the amendment moved by the Hon. Mr Roberts in respect of the specification of at least two of the five representatives, that is to say, one from the South Australian Farmers Federation and one nominated by the Wine and Brandy Producers Association. In so doing, I will be comparing apples with apples and not apples with oranges. On the contrary, I believe it is the Minister who is endeavouring to rigidify or to enforce his argument, if one wants, by comparing apples with oranges or even pears, or perhaps (because he referred to the dried fruits industry) plums with sultana grapes or apricots. However, whatever he is doing I do not think it is correct to hold them up as examples which have been set and which should be followed in the instance before the Council for decision making.

As a person with some knowledge of the totality of the industry, let me explain why that is. The grape growing industry in this State is made up of very large vineyards which are owned by proprietary companies but which stand alone. In the second stage of the growing of grapes there are wine companies that have large grape plantings and holdings of their own. Many that are in that position spring to mind, such as the Yalumba-Smiths, Seppelts, Orlandos, Wynns and Mildara. Certainly, there is the third group, referred to I think by the Hon. Mr Elliott, that is, the small blocker, of whom there are many. Some of those blockers, of course, are not members of any organisation—some are but some are not. In the main—although perhaps this year is an exception—the income they get from the labour they put into growing as viticulturists on their own block is small enough remuneration bearing in mind the toil that they put in.

We have had the position, I think, in times past where large wine companies have in fact bought out the rights of small blockers, not because they specifically want to grow any additional tonnage of grapes but rather because they wanted the water rights that came with the properties, small as they were, of those blockers.

So, it is very important in this industry, which is one of the white hopes, if one likes, or shining lights, of South Australia's future in the manner in which it has been able to expand its exports. Some figures show that those exports will increase from something like $40 million, which they were some 10 or 12 years ago. Currently they stand at about $350 million of enhanced grape product going overseas. I understand that the prediction is, although I think it is a bit high, that it could well be $1 billion of exports from Australia by the year 2000.

I do not think that any member of this Council would need to be reminded by me that some 63 per cent or 64 per cent of all wine production in Australia emanates out of South Australia. That can be kept up only if we can maintain the quantum and quality of grape juice that is so necessary to manufacture wines—there is no substitute for wine if you

cannot get fruit juice. That can be lost. In fact, it was lost once before, because after the Second World War almost 50 per cent of South Australia's production of wines was exported to the United Kingdom. Over the years, because of lack of push by some of the wine companies and Britain's membership of the EEC, those exports have dropped to about 4 per cent of total production. If it had not been for an enhanced change in the societal habits of Australians, the wine industry certainly would not have increased the quantity of its vintages, as it did.

However, the industry was farsighted enough to comprehend that it needed to do something if it wanted to keep on moving. It is a valuable employer of rural labour. For example, my own union has something like 3 000 people employed in the industry in rural areas of South Australia. So, it is absolutely essential that, whatever the Parliament does, it gives every encouragement and every protection that it can to those major components of the industry.

As I said, we had an export market of some size some 50 years ago and we lost it. We lost it until such time as James Hardy and Company got up and running and started a drive to export Australian wines and, in particular, South Australian wines, to areas outside Australia. They have been very successful; it is perhaps the most successful export drive in Australian industry, and they are to be commended for it.

As I said, this issue is about phylloxera, and one should understand a little about that. The burgeoning viticultural industry that was based in the Yarra Valley in Victoria in about the 1880s was wiped out by the introduction of phylloxera into this country from overseas imported root stock that carried the disease. It is a very telling and deadly disease, and the decimation which that would leave in its wake would be absolutely disastrous for our rural communities, and even our metropolitan community, in South Australia—a State that produces in excess of 60 per cent of Australian wine. In addition, many major Australian wineries have shifted their operations holus-bolus into South Australia over the past decade.

When the Minister started talking about the Citrus Board and the Dried Fruits Board, I suggested that it was he who was comparing the apple with the orange and not the Opposition through the amendment that my colleague the Hon. Ron Roberts has moved. The industry and its constituent parts in the growing and production of grape juice and the manufacturing of wine is a much more widespread, wide-flung industry than either of the two that the Minister named. Whilst it is true that they also have constituent parts, it is not essential in my view that there be unity of purpose in those industries so as to affect the maximum benefit to the community as it is in the wine industry.

Currently, in respect of root stock, people in the Adelaide Hills and other areas are growing viticultural root stock, and that is their sole occupation. Root stock is imported from places such as California, where a lot of research and development is being done, and that root stock is fairly disease resistant, and, what is more, is suited to the drier areas of South Australia that can be irrigated. Then again, some of the wine companies such as Yalumba-Smith, are growing root stock of their own. In order for us to keep pace with the export demands with which this industry is confronted it will be essential that the two major component parts—and I understand what they are saying—as mooted by my colleague, the South Australian Farmers Federation, on the one hand, and the Wine and Brandy Producers Association on the other, are represented specifically on this five-person board.

It is essential, in my view, that they have a voice. They do not, as the Attorney-General implies, have to nominate someone directly from the industry. They may nominate a technical expert who is not a member of the Farmers Federation or the Wine and Brandy Producers Association. The Government's constituency, much more than that of the Labor Party, is a rural constituency, even though the National Party in this State was started by four dissident members of the Labor Party in 1912. Nonetheless, as a representative of all electors in South Australia, I am constrained to say that it is my humble view it is absolutely essential for those two major component parts of that industry to be together.

I will conclude by reminding the Committee of this fact: as the demand for the export of wine grows and grows in this State, along with other new areas that are opening up in Western Australia, Tasmania, and again in the Yarra Valley after 100 years absence due to phylloxera, it is absolutely essential that this State has a board which is familiar in all aspects with the disease phylloxera. More than that, it is essential that those two major constituent parts of the industry be more aware of the deliberations of the board as it acts to protect the industry from that deadly fungus phylloxera. The drift here is for more and more plantings being called for relative to meeting the demands for Australian wines by other nations.

I call on all thinking members of this Chamber—and I realise many arguments will be put up—to accept the dint of logic that I have endeavoured to inject into the debate. I hope I have not been too long, but the issue is important. We cannot say that, since we have a five person board, constitute it in this manner relative to some agricultural industry because the way in which the constitution of that board is handled is just as effective for some other rural pursuit. I would appeal to members here to see this matter in terms of what we believe is best for the people of South Australia, mainly in our rural hinterland, and not as some ideological tete-a-tete that can occur on both sides of this Chamber from time to time with some devastating effect. I support the amendment.

The Hon. M.J. ELLIOTT: I support the amendment and, in so doing, will make some very brief comments in relation to the constitution of the board itself. It appears that the flavour of the last couple of years has been to compose boards from people who have been nominated by selection committees. We have even got to the point now where, to get on a selection committee, you have to be nominated and then chosen as well. This is a—

The Hon. K.T. Griffin: Double whammy.

The Hon. M.J. ELLIOTT: It is. Not only is there no direct representation on the board at the end of the day, but also there is no guaranteed direct representation of major interest groups even on the selection panel, and I find that absolutely bizarre. In my view, even if one made a decision that boards were to have more experts—and people have many different views on experts—there is some value in having at least some members of this sort of board who have direct accountability and direct lines of communication back to the major interest groups.

The most important single interest group is the growers, and the major representative of the growers is the South Australian Farmers Federation. Not to have a person who can go back and speak directly with the organisation and the growers, and also having spoken with them to come back to the board directly, I believe is a major shortcoming in a board of this type. In fact, the composition of this board is even less

prescriptive than that of the other boards referred to by the Hon. Mr Griffin. With respect to the Dried Fruits Board, it makes it quite clear that one person will be a specialist in dried fruits, one a specialist in the production of vine fruits, a person who specialises in the grading of dried fruits, and another person who specialises in the marketing of dried fruits. At least you have very clearly specified the mix of expertise likely to be on the board.

This legislation merely provides for seven persons all with proven experience, knowledge and commitment to the grape growing and wine industries. It is, by comparison, very vague, and I do not think gives any guarantee of balance. What I sniff in this current trend—and I am sure this trend will not last for more than a couple of years—is that we are setting up a structure which gives all the power to bureaucrats within government—and I am not talking just about the existing Government, but governments generally—and the bureaucrats in organisations.

As it is now structured, the board has no accountability back to organisations. If they are going to consult, the chances that they will consult in any meaningful way with the people who have the greatest interests, the growers, is much reduced. They will do a lot more of the consultation with the bureaucrats in the DPI, the Farmers Federation and the Wine and Brandy Producers Association. It is a sad truth—and I am not knocking bureaucrats and their commitment—that sometimes what the bureaucrats want and believe is not representative of the people whom they theoretically represent. I say that not just in relation to the Farmers Federation or the Wine and Brandy Producers Association. Some of the people in both those organisations are excellent; others I am a bit more doubtful about. But I could say the same about the Employers Chamber, the UTLC or any other representative group.

I am gravely disappointed that this Government, and it appears the Opposition, have now abandoned the notion of direct representation on boards. At least to the credit of the Opposition, it is trying to ensure that there is some sort of guaranteed representation on the selection committee. Of course, it is the Minister who will finally appoint the selection committee. Even though the Farmers Federation may put up a couple of nominees, the Minister will put on the committee the person he ultimately wants and not perhaps the person the Farmers Federation wants. It is layer upon layer of undemocratic process, and how that can ultimately represent the best interests of the people it purports to represent has me beaten. What the Opposition is asking for is very little and, for the Government to oppose that, should surprise me, but somehow it does not.

Amendment carried; clause as amended passed.

Remaining clauses (11 to 30), schedule and title passed.

Bill read a third time and passed.

MFP DEVELOPMENT (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The purpose of the Bill is to amend the *MFP Development Act 1992* to increase membership of the MFP Development Corporation; strengthen SA Government inputs into the Corporation; amend the functions of the Corporation to better reflect objects; update reporting arrangements to reflect the *Parliamentary Committees Act* and to help address some errors which have emerged in the definition of the core site.

The *MFP Development Act* provides for the development and promotion of the MFP Development project, establishes the MFP Development Corporation and defines its functions and powers. It was assented to in May 1992. The first board under the Chairmanship of Mr Alex Morokoff AO was appointed in October 1992.

In light of the relatively recent establishment of the Corporation following detailed debates in both Houses, it is considered premature to undertake a complete and comprehensive review of the Act.

The following amendments are technical and limited and represent a desire to address pressing issues that have come to light during more than two years of operation.

The proposed amendment will increase the membership of the Development Corporation.

There are presently twelve members of the Corporation one of whom is a senior federal public servant. The Act requires the State Minister to consult with the Commonwealth Minister on proposed appointments.

It is considered beneficial to provide for a senior State Government official to be placed on the Board to bring to the Board a better knowledge and exposition of State Government economic development strategies and to contribute local experience and knowledge to Board discussion.

The proposed amendment specifies one position to represent the Commonwealth Government and one position to represent the South Australian Government. The amendment has been framed to allow an increase in membership of two.

Next, the proposed Amendment Bill varies the reporting relationships with Parliamentary Committees.

Section 33 of the Act presently requires the Corporation to report directly to the Economic and Finance Committee and the Environment, Resources and Development Committee twice yearly and for each of these Committees to report back to Parliament on the MFP annually.

In practice, these conditions have proved onerous and time consuming.

Normal Parliamentary scrutiny exists through the Estimates Committee, the Annual Report and the Auditor-General. As well, major capital works will be looked at by the Public Works Committee.

The Corporation, as a national project, is also subject to scrutiny through Senate Estimates and, indirectly, through Commonwealth Auditor-General. The Project is also reported upon under the terms of the Commonwealth/SA agreement on the MFP—up until now by the Bureau of Industry Economics. Finally, under the Agreement, Commonwealth and South Australian Ministers meet regularly to review plans and outcomes of the Project.

The Economic and Finance Committee have themselves noted that the present obligations are too extensive and duplicative and have recommended simplification.

Furthermore, recent amendments to the *Parliamentary Committees Act* with an increase of the number of Committees operating have rendered the present provisions dated.

It is proposed therefore to reduce the reporting obligation to an annual report to the Economic and Finance Committee and the Environment, Resources and Development Committee in August with a subsequent report by each Committee to the Parliament.

This proposal will recognise the particular sensitivities of the Project in a more realistic and manageable fashion but removes the onus of twice yearly reports.

Nothing in the above will limit the normal rights of the Minister and Parliament to refer matters to Committees or the Committees to initiate enquiries as they feel warranted. Indeed, it should be noted that all projects involving more than $4m must now be scrutinised by the Public Works Committee.

The proposed amendments also vary the functions of the Act to specifically introduce reference to environmental matters.

Involvement by MFP Development Corporation in the Patawalonga rehabilitation project on a consultative basis was queried by Crown Law as there was no function under the Act specifically involving "environment" despite the fact it is covered in the objects of the Act. The proposal will address this difficulty and

enable MFP expertise in environmental matters to be applied elsewhere when warranted.

Finally, a number of minor anomalies have been identified in the detailed schedule of the core site incorporated in the principal Act. The Act currently allows the core site to be altered by regulation but makes no provision for the disposal of land of the Corporation that is thereby removed from the core site. The Act is being amended to allow any land of the Corporation that is removed from the core site to be vested by regulation in an appropriate authority.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement on a day to be fixed by proclamation.

Clause 3: Amendment of s. 5—Objects of Act

This clause amends section 5 of the principal Act, which sets out the objects of the Act. Under this amendment there is added to the existing list of objects that of securing the creation or establishment of a model of productive interaction between industries and environmental organisations, and of the use of advanced information and communication systems for that purpose.

Clause 4: Amendment of s. 8—Functions of Corporation

This clause amends section 8 of the principal Act, which sets out the functions of the MFP Development Corporation. This amendment adds to the Corporation's existing functions the following functions:

(a) promoting or assisting research, investigations or development programmes in relation to the protection, restoration or enhancement of the environment;

(b) promoting and facilitating productive interaction between industries and environmental organisations in the MFP development centres, together with industries and organisations elsewhere;

(c) promoting, assisting and co-ordinating the environmental development of the MFP development centres.

Clause 5: Amendment of s. 11—Vesting land within, or excluded from, MFP core site

This clause amends section 11 of the principal Act. Section 11 provides that all land in the MFP core site that belongs to an instrumentality of the Crown or has not been granted in fee simple by the Crown is vested in the MFP Development Corporation for an estate in fee simple (subject to any subsisting interests or rights granted by or on behalf of the Crown). This amendment provides that where the MFP core site is altered so as to exclude land that is vested in the Corporation, that land can be transferred by the Governor by regulation to the Crown or an instrumentality of the Crown. The land so transferred vests in fee simple on the commencement of the regulation (subject to any subsisting interests or rights granted by or on behalf of the Crown or the Corporation). The amendment also provides that where land vests in a person or body under this section, that person or body can require the Registrar-General to register that interest (on the provision of any documents required by the Registrar-General for that purpose).

Clause 6: Amendment of s. 12—Environmental impact statement for MFP core site

This clause amends section 12 of the principal Act to remove obsolete references to the *Planning Act 1982* and replace them with equivalent references to the *Development Act 1993*.

Clause 7: Amendment of s. 15—Composition of Corporation

This clause amends section 15 of the principal Act, which sets out the composition of the Corporation. The amendment increases the maximum number of members of the Corporation from 12 to 14. In addition, while this amendment retains the existing requirement that the membership of the Corporation must include persons who will, in the opinion of the State Minister, provide expertise in various areas such as urban development, financial management, etc., it adds a requirement that the membership must include one person nominated by the State Minister to represent the Government of the State and one person nominated by the State Minister to represent the Government of the Commonwealth.

Where a person is appointed as a deputy of a member of the Corporation, that person must have expertise in the same area or must be appointed to represent the same interest as the person for whom he or she is to act as deputy.

Clause 8: Amendment of s. 33—Reference of Corporation's operations to Parliamentary Committees

This clause amends section 33 of the principal Act, which sets out various matters relating to provision of reports by the MFP Development Corporation to Parliamentary Committees. The amendment requires the Corporation to present a report on its operations to both the Economic and Finance Committee and the Environment, Resources and Development Committee once a year instead of twice a year as at present. The report to each Committee must be presented by 31 August each year in relation to the previous financial year.

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

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to build upon the success of the Construction Industry Long Service Leave Scheme first established in 1977. It proposes to further modernise the scheme by improving its operational effectiveness and introducing flexibilities in the context of the newly available enterprise agreements under the Industrial and Employee Relations Act, 1994. The success of the scheme to date has enabled a wide range of proposals to be introduced which will reduce the cost of the scheme to employers and extend the scheme to certain categories of persons not previously able to access its benefits.

A major feature of the Bill is the proposal to combine the Construction Industry Fund with the parallel fund the Electrical and Metal Trades Fund.

Since July 1990, the Construction Industry Long Service Leave Board has been responsible for the administration of both of these funds. It is now proposed to combine these funds in order to achieve efficiencies in the administrative costs associated with servicing the funds separately . This decision has been taken having regard to the total funds' surplus of approximately $5.8 million. As a consequence of this particular proposal the new Scheme's definition of electrical and metal trades work is to be confined to installation work only. This change is fully supported by the industry following detailed consultation through a tripartite industry working party.

Further initiatives proposed in the Bill to streamline the operation of the scheme include the simplification of reporting requirements by employers regarding employees who are members of the scheme, increased flexibility for the Board in the auditing of its accounts and decision making regarding investments and new provisions giving the industry parties the flexibility to make provision for the scheme in the making of enterprise agreements under the Industrial and Employee Relations Act, 1994.

The Bill provides for employers reporting requirements to be simplified to a system of days of service rather than hours worked by employees. These changes will greatly simplify the return process for employers and the operation of the national reciprocal agreement which provides for the transferability of service credits between schemes in different States.

It is proposed to enable the Board to appoint its own auditor while retaining the power for the Auditor-General to audit reports on demand. The audited accounts will continue to be presented to Parliament each year in the Board's annual report.

The current formality of the Board seeking Treasury approval prior to making investments on behalf of the Fund has resulted in a loss of investment earnings for timing reasons and is proposed to be removed. The Bill proposes to replace this requirement with a more flexible provision empowering the Treasurer to set guidelines and policy binding the Board in relation to the investment of the Fund.

The recent availability of enterprise agreements has prompted a request from the Board to acknowledge rates of remuneration set outside of awards.

The Bill reflects a proposal put by the Board to the Government to retain the existing definition of remuneration but set payments to employees under enterprise agreements on the employee's weekly remuneration averaged over the previous twelve months. This will integrate new wage rates as result of employees moving from an award to an enterprise agreement. Employer levies are to be based on the actual rate of remuneration of an employee as prescribed by either the award rate or an enterprise agreement, as the case may be.

In response to industry requests to the Board, the Bill proposes to enable self employed contractors within the industry to register with the Scheme on a voluntary basis. The Bill also proposes to allow industry employees who are temporarily seconded for employment by trade unions for periods of less than 3 years and employees transferring to supervisory positions to maintain registration with the Scheme.

While the scope of the scheme will continue to include apprentices employed in the industry it is proposed to amend the Act in order to remove the requirement to pay levies on behalf of apprentices, an initiative which should encourage employment in this industry.

The Bill proposes one final adjustment to the scope of the fund. In response to the growing trend for construction industry work to be performed off-site the Board has sought to recognise prescribed classifications of work contained awards previously proposed for off-site coverage. The Bill proposes that registration under the scheme by these employees working in the specified classifications of specified awards, be on a voluntary basis only.

Notwithstanding that employers will be paying levies with respect to a wider range of employee classifications, it has been recommended by the Board and supported by the Government that the levy rate applicable under this scheme will be reduced by 0.25 per cent. This will be achieved by amendment to regulations under the Act. The combination of these amendments will result in both a net benefit to employees and a net saving to employers.

All proposals contained in this Bill have been the subject of an extensive review by the tripartite Construction Industry Long Service Leave Board, who with the Government have consulted extensively with the broader construction industry. There is general support from all parties for the proposals contained in this Bill.

I commend this Bill to the House.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the short title of the measure.

Clause 2: Commencement

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

Clause 3: Amendment of s. 4—Interpretation

This clause relates to various definitions and concepts that apply to the principal Act. Various definitions are to be amended to provide consistency with new industrial relations legislation. The definition of "electrical or metal trades work" is to be revised. New paragraph *(a)* of that definition will now apply to electrical or metal work associated with the construction or erection of particular buildings or structures, or the alteration or demolition of a building or structure. It will replace a paragraph that presently includes maintenance, repair and servicing work on plant or equipment. Other adjustments are also proposed to the definition. Another amendment relates to the calculation of periods of effective service. The Act currently operates on the basis of hours worked, and the accumulation of effective service entitlements is expressed in months. It is proposed to change this method of calculation to days worked, on the basis that each period of five or more hours of work will be taken to constitute a day of work. This will simplify the operation of the Act. It is also intended to adjust the way in which ordinary weekly pay is calculated in some cases for the purposes of the Act. The Act currently provides that ordinary weekly pay is (generally) determined by reference to the base rate of pay set out in a relevant award or agreement. This approach will remain for workers under awards. In other cases, ordinary weekly pay will be ascertained by averaging the person's weekly earnings over a preceding period of time (52 weeks). For a person who has not been a construction worker over that period, an average (for workers of the relevant kind) will be applied.

Clause 4: Amendment of s. 5—Application of this Act

Section 5 relates to the application of the Act. New subsection (1A) will allow employers to register, on a voluntary basis, specified classes of workers who are not "guaranteed" the coverage of the Act under subsection (1). New subsection (1B) will allow continuity of coverage for certain persons who are seconded to an association of employees in the construction industry.

Clause 5: Amendment of s. 14—Effective service entitlement

This clause provides for the crediting of effective service entitlements by days (instead of by months). However, a person will not be able to be credited with more than five days of service in a week (and therefore 260 days of service in a year).

Clause 6: Substitution of s. 15

This clause is consequential on the decision to calculate effective service entitlements according to days.

Clause 7: Amendment of s. 16—Long service leave entitlement

This clause reflects the decision to calculate effective service entitlements according to days.

Clause 8: Amendment of s. 17—Cessation of employment

These amendments are consequential on the decision to calculate effective service entitlements according to days.

Clause 9: Substitution of s. 18

This clause provides for the enactment of a new section 18. Section 18 currently relates to workers who become self-employed contractors in the industry. New section 37A will now deal with those persons. However, section 18 is to be applied to persons who cease employment as construction workers and commence work as supervisors in the industry. The effect of the provision will be that in such a case (and subject to the provision), any effective service entitlement will be preserved, and an entitlement will be payable if the person's aggregate period of work in the industry totals 1820 working days (or more).

Clause 10: Substitution of ss. 20 to 20B

Clause 11: Amendment of s. 20C—Exemption from taxes and charges

Clause 12: Substitution of s. 21

Clause 13: Amendment of s. 22—Loans for training purposes

Clause 14: Amendment of s. 23—Borrowing by the Board

Clause 15: Amendment of s. 24—Investigation of the Fund

These clauses make various amendments to combine the Construction Industry Fund and the Electrical and Metal Trades Fund.

Clause 16: Amendment of s. 25—Accounts and audit

This amendment relates to the auditing of the accounts of the Board. It is proposed to allow the accounts to be audited by a registered company auditor, or by the Auditor-General. The Auditor-General will continue to be able to audit the accounts at any time.

Clause 17: Amendment of s. 26—Imposition of levy

New subsection (3)*(b)* is of particular note, as it will provide that a levy will not be payable by an employer in respect of an apprentice, subject to any exception prescribed by the regulations.

Clause 18: Amendment of s. 33—The Appeals Tribunal

This amendment "updates" a provision so as to refer to the Senior Judge of the Industrial Relations Court.

Clause 19: Insertion of new s. 37A

This clause provides a new facility to allow self-employed contractors to participate in the scheme.

Clause 20: Amendment of s. 45—Expiation of offences

This is a consequential amendment.

Clause 21: Insertion of schedule 1A

This schedule sets out the various awards that are relevant to workers who may, by application by the employer, obtain the coverage of the Act.

Clause 22: Substitution of schedule 3

New schedule 3 contains various transitional provisions that are appropriate on account of the enactment of this measure. In particular, any existing effective service entitlement (determined according to months) will be converted to an entitlement expressed according to days. Leave taken on the basis of that entitlement will paid out under the provisions that applied before the enactment of this measure. Clause 3 will ensure that a person who is currently within the ambit of the Act, but who would not otherwise remain under the Act after the commencement of this measure, remains under the Act while he or she remains in the same form of employment.

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

DAIRY INDUSTRY (EQUALISATION SCHEMES) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The Dairy Industry Act 1992 replaced two former State Acts, namely the Metropolitan Milk Supply Act 1946 and the Dairy

Industry Act 1928. As a result of the new Act, the Dairy Authority of South Australia replaced the Metropolitan Milk Board and, for the first time, the dairy industry across the whole of South Australia was covered in the one Act.

The introduction of this Act was in line with the direction being taken in all States to reduce legislation in the dairy industry by giving more responsibility to industry for its own pricing mechanisms and quality control. Under this Act the removal of all price controls past the farm gate has occurred to the point where the only regulated price is the farm gate price. South Australia now leads other States in deregulation of the dairy industry.

Provision was made in the Act that market milk, no matter from where sourced or sold, was paid for at the declared farm gate price. This provision was to ensure national discipline as agreed to by all the States.

The Act also allowed for the establishment of a price equalisation scheme for market milk. Under the current Act, the Minister may establish a price equalisation scheme if an industry based voluntary price equalisation scheme is currently not operating.

Currently the dairy industry in South Australia operates a voluntary milk price equalisation scheme through a representative body known as the South Australian Market Milk Equalisation Committee. This Committee consists of three milk processors and three dairy farmer representatives and employs a Secretary/Treasurer.

This voluntary scheme has been in place since January 1994 and replaced a similar scheme which operated for many years in the Adelaide metropolitan supply area of the State. The objective of the scheme is to allow the dairy industry to operate a State-wide price equalisation scheme so that all farmers in the State have an equal share of the volume of market milk processed in South Australia. This involves a notional transfer of milk rather than the physical movement of milk between regions.

This scheme in South Australia is financed and directly operated by the dairy industry, whereas schemes in other States have fully legislated market milk equalisation schemes and Government staff are employed to administer them. If South Australia did not operate a market milk equalisation scheme, national levy arrangements would be under threat. During the first year of operation of the scheme, industry has questioned the validity of the scheme in two areas.

Firstly, there is a risk that the agreement formalising the arrangements of the voluntary price equalisation scheme may contravene the Commonwealth Trade Practices Act. To avoid this risk, this Bill defines 'authorised price equalisation schemes' and permits price equalisation schemes to be approved by the Minister by notice in the *Gazette*.

The second issue relates to possible technical breaches of section 25 of the Dairy Industry Act. Payments to dairy farmers under the Agreement take into account the administration costs of the scheme and the costs associated with notional transfer of milk between regions of the State. All market milk payments received by dairy farmers are therefore not at the farm gate price even though raw milk is purchased by wholesalers at the farm gate price.

This issue has been addressed in the Bill by including amendments to the Act exempting the sale of milk under an authorised price equalisation scheme if the price paid for the raw milk by the wholesale purchasers under the scheme is at least equal to the farm gate price for milk.

I commend the Bill to members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s 3—Interpretation

This clause inserts into section 3 of the principal Act the definition of an authorised price equalisation scheme.

Clause 3: Amendment of s. 25—Guarantee of adequate farm gate price

A new subsection (6) is proposed which provides that section 25 does not apply to the sale of milk under an authorised price equalisation scheme if the price paid for raw milk by wholesale purchasers under the scheme is at least equal to the farm gate price for the milk.

Clause 4: Substitution of s. 26

Section 26 of the principal Act is repealed and a new section is substituted.

26. Authorised price equalisation schemes

The new section 26 provides that the Minister may, by notice in the *Gazette* published on the recommendation of the Authority—

- establish a price equalisation scheme or vary or revoke a price equalisation scheme established under this proposed section; or
- approve a voluntary price equalisation scheme or an amendment to a voluntary price equalisation scheme.

An authorised price equalisation scheme—

- is, subject to any provisions of the scheme providing for withdrawal, binding on dairy farmers and wholesale purchasers of dairy produce of a class stated in the scheme; and
- may impose a surcharge on licence fees, on a basis set out in the scheme, on licensees who are bound by the scheme.

The terms of a price equalisation scheme established or approved, and of amendments made or approved, under this proposed section must be published in the relevant *Gazette* notice and such a notice must be laid before both Houses of Parliament and is subject to disallowance in the same way as a regulation.

For the purposes of the Trade Practices Act 1974 (Cwth), an authorised price equalisation scheme, and all acts and things done under the scheme, are authorised by the Dairy Industry Act 1992.

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

FISHERIES (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill makes a number of amendments to the *Fisheries Act 1982*.

1. Fish processor registration

Under the current Act and regulations, any person who deals in fish is a fish processor and is required to be registered as such. Fish processors who sell directly to the consumer (retailers) are required to register their operations but are exempt from the registration fee. They are not required to submit monthly returns, as are wholesale processors, but are required to maintain written records of fish transactions on their premises. These requirements apply irrespective of where the processors obtain fish supplies, whether from licence holders or other processors.

Following discussions with the South Australian Seafood Marketers and Processors Association, it is proposed that—

- all fish processors (wholesale, distributor or retail) who obtain fish from a licence holder be registered; and
- fisheries officers be empowered to enter unregistered processor premises (other than domestic premises) without a warrant.

The intent of the proposed arrangements is to have a common system which applies to all registered processors. In particular, all registered processors will be required to pay an annual fee and submit monthly returns as well as maintain written records of fish transactions on their premises. This will assist in the monitoring of catches and sales of fish and help to reduce opportunities for illegal operators to dispose of fish taken without a licence.

Under the new arrangements processors such as fish and chip shops, restaurants and hotels will not be required to be registered if they obtain their supplies from sources other than direct from licence holders, ie from wholesalers and distributors. However, they will continue to be required to maintain written records of fish transactions. It is understood that as very few retailers obtain fish direct from licence holders, there will be a minimal impact on this industry in general.

The proposed arrangements are consistent with the report of the Government Adviser on Deregulation who conducted a review of statutory licences in South Australia, with the objective of reducing unnecessary government impact on business operations.

With regard to compliance by the fish processing sector, fisheries officers have the power to enter registered premises without a warrant where it is suspected that the premises are being used for, or in connection with, an activity regulated by or under the Fisheries Act. The proposal to remove the requirement for retailers to be registered would mean that officers would no longer have the power to enter such premises when urgent action is deemed necessary. In order to restore flexibility it is proposed that the Act be amended to

allow fisheries officers to enter unregistered fish processor premises (other than domestic premises) without a warrant. Industry has indicated that it supports the proposal.

It is proposed that the Fisheries Act be amended to empower fisheries officers to enter unregistered fish processor premises (other than domestic premises) without a warrant.

2. Production of identification

Where a fisheries officer reasonably suspects that a person is engaged in an activity regulated by or under the Fisheries Act, the officer is empowered to request the person to state his or her name and address.

If action is to be taken in respect of an offence, whether by way of a warning letter, expiation notice or prosecution, the outcome is dependent on having the person's correct name and address. A number of offenders deliberately provide false names and addresses to fisheries officers when apprehended, in the hope of avoiding prosecution. This results in considerable non productive time as officers attempt to resolve the matter.

Unfortunately more and more persons are becoming involved in illegal activity and are prepared to provide false names and addresses.

It is proposed that the Fisheries Act be amended so that a fisheries officer may require a person to produce evidence of the correctness of his or her stated name or address. In most cases this should not cause any difficulty as individuals would have ready access to documents such as a driver's licence, credit card, Medicare card, passport etc.

It is proposed that the Fisheries Act be amended to empower fisheries officers to request evidence of the correctness of the name or address of persons engaged in activities regulated by or under the Act.

3. Unlawful possession of abalone

Following the House of Assembly Select Committee inquiry into the abalone industry in 1991, penalties were substantially increased for the unlawful taking, possession, purchase and sale of abalone. These penalties are intended to combat the organised criminal groups which strip the State's abalone resources without regard to the management controls aimed at ensuring long term sustainability of the fishery.

Section 44 of the Act provides that where a person sells, purchases or has possession or control of abalone taken without a licence, that person is guilty of an offence. However, the same section also provides that where a person sells or purchases, or has possession or control of abalone *for the purposes of sale*, the person is liable to higher penalties than for simple possession or control.

As a result of prosecution action since the penalties were increased, the Crown Solicitor has advised that in order to secure the higher penalties, it must be proven that the person in possession of unlawfully taken abalone was intending to sell it. In a number of cases it has proven difficult, if not impossible, to prove that the offender was intending to sell the abalone even though the circumstances of the cases led to such a conclusion.

If the increased penalties are to be used effectively to counter criminal elements, the problem should be addressed. It could be done by specifying that possession of more than a quantity of abalone prescribed by regulation is presumed to be for the purposes of sale unless the alleged offender proves to the contrary.

It is proposed that the Fisheries Act be amended so that the possession of more than the prescribed quantity of abalone is presumed to be for the purposes of sale unless the alleged offender proves to the contrary.

4. Aquaculture management

In 1992, agreement was reached between the government and the fishing industry that integrated fisheries management committees be established to manage the State's fisheries resources. Committee membership could include representatives of commercial and recreational fishing interests, the South Australian Research and Development Institute (SARDI) Aquatic Sciences (or any other research agency) and the Department of Primary Industries—Fisheries. It was also agreed that the role of the committees be acknowledged in the fisheries legislation.

In 1993, amendments were made to the Fisheries Act whereby the Act recognised the existence of integrated fisheries management committees, and provision was made for the committee structures, functions, powers and procedures to be formalised by regulation.

Since then, representations have been made by the aquaculture industry to have similar arrangements in respect of marine and freshwater fish farming. Operating as an integrated management committee would bring together, on a formal basis, all relevant interest groups to consider management arrangements that would be beneficial to the industry. At the same time, such a forum would assist in resolving any conflicts that may occur between user groups. The net result would be coordinated management of the aquaculture industry.

It is proposed that the Fisheries Act be amended to provide for management of the aquaculture industry by way of integrated aquaculture management committees.

5. Additional penalty for any offence

Where a person is convicted of an offence that involves the unlawful taking of fish, the court, in addition to imposing any other penalty under the Fisheries Act, is required to impose an additional penalty equal to five times the wholesale value of the fish or $30 000, whichever is the lesser amount.

This provision applies specifically where the offence involves the taking of fish. However, there are a number of conditions imposed on fishery licences which limit the operations of licence holders. For example, licence holders are prohibited from taking snapper by net. Where a licence holder takes snapper by net, the offence is a breach of licence condition. In such a case the court would be unable to apply the additional penalty provision.

In 1993, the Fisheries Act was amended to, amongst other things, increase the penalty provisions relating to the unlawful taking of abalone. This followed the recommendations of the Select Committee referred to earlier.

The Crown Solicitor's Office has advised that there is an anomaly insofar as the taker of abalone is liable to both the increased penalty and an additional penalty, whereas a receiver of the same abalone is liable to an increased penalty but not to the additional penalty. Indeed, this anomaly pertains to all fish species.

The additional penalty provision has long been recognised as a strong deterrent to offenders who breach the legislation. However, as the provision currently stands it applies only where an essential element of the offence is the taking of fish. The receiving of unlawfully taken fish is outside the scope of the existing provision, as is the purchase or sale of unlawfully taken fish, or any other offence involving fish unlawfully taken.

By way of comparison, under the criminal law the maximum penalty for housebreaking and larceny is exactly the same as for someone who receives stolen goods knowing them to have been stolen. The identical penalties are in place to act as a deterrent to someone who would act as a receiver of stolen goods.

It is proposed that the Fisheries Act be amended so that the additional penalty provisions apply to all offences against the Act involving fish taken unlawfully.

6. Evidentiary provisions

The evidentiary provisions of the Fisheries Act specify particular matters that may be the subject of a certificate signed by the Director of Fisheries for the purposes of proceedings for offences against the Act.

In particular prosecutions undertaken by the Crown Solicitor, the evidentiary provisions in relation to the preparation of a certificate were not specific enough to cover two instances. The Crown Solicitor has identified the need for a certificate to—

- state whether the Director gave consent to any fishing activity that may have been undertaken outside the scope of the licence; and
- state the wholesale value of fish (which would be used by the court in imposing the mandatory additional penalty based on wholesale value of the fish).

Clarification of these two items in the evidentiary provisions would facilitate the production of relevant documentation to the courts and would help in the presentation of the facts of each case.

It is proposed that the Fisheries Act be amended so that the evidentiary provisions allow for Director's certificates to specify whether the Director's consent was given for any fishing activity, and to specify the wholesale value of fish in proceedings for an offence against the Act.

7. Offences committed by agents

In some fisheries, licence holders may engage agents to conduct fishing operations pursuant to the licence. Where an agent is convicted of an offence, the Fisheries Act provides for the licence holder to be liable to the same penalty as is prescribed for the offence committed by the agent. This provision ensures that licence holders are responsible for the actions of their agents, and that the licence is subject to suspension or cancellation in the event of multiple convictions within a three year period.

At present there is an anomaly insofar as the offence must be committed by the agent while on board the boat for the licence holder to be liable to the same penalty. Where the offence is

committed on shore, there is no scope for the licence holder to be liable.

There are some operations that are part of a fishery which are conducted on shore, e.g. weighing of catch, shucking of abalone and completion of catch and disposal record documentation. This anomaly should be rectified in order to ensure licence holders engage fit and proper persons to act as their agents.

It is proposed that the Fisheries Act be amended so that a licence holder is liable to the same penalty for an offence committed by an agent, regardless of whether the agent was on board a boat or on shore.

8. Proceedings in respect of offences

Offences against the Fisheries Act are summary offences and proceedings must be commenced within twelve months of the day on which the offence is alleged to have been committed.

The current Fisheries Act was promulgated in 1984. Since then, major changes have occurred in the way fisheries are managed. In particular, quota systems have been implemented in the Abalone and Southern Zone Rock Lobster Fisheries. In the Marine Scalefish Fishery, limited quota arrangements have been implemented, and it is likely that such arrangements may be phased in to a greater degree than at present.

In order to ensure the success of any quota system, there must be comprehensive monitoring of catches landed by licence holders. This is done by way of a catch and disposal record which is completed by the licence holder and validated by the fish processor receiving the fish. Then the documentation has to be submitted to the Department for reconciliation. This critical process is essential not only to secure compliance by licence holders, but also to secure compliance by fish processors who obtain the fish.

An important factor in the prosecution of those operating outside quota arrangements is the need to properly audit catch documentation and compare it against sales dockets. This process can often take considerable time because the fish may be sold within the State, interstate and overseas.

Experience has shown that obtaining sufficient evidence can, in some cases, take more than twelve months because of the ability of offenders to tamper with documentation. Also, it has become evident from licence holders and/or fish processors attempting to avoid compliance with the quota system that they seek to delay proceedings by not being able to locate documentation and present it for examination within a reasonable period of time.

It is proposed that the Fisheries Act be amended so that the twelve month time period for commencement of prosecution action in relation to an offence against the Act be extended to three years.

9. Cost recovery—issue of permits

At the present time, numerous permits or authorities are issued by the Minister or Director each year for fishing activities that are not covered by existing licensing arrangements. For example, authorities have been granted to licence holders and non-licence holders for the taking of pilchards under a developmental fishing plan. The preparation of such authorities may require considerable input by departmental staff, for which there is no provision to recover any of the costs incurred by the Department.

Under existing arrangements, licence holders are contributing towards the costs of managing their particular fishery. This follows an agreement between industry and the government after developing general cost recovery principles. However, the principles only address activities conducted pursuant to a licence, not activities conducted pursuant to a permit or special authority—for which no fee can be charged.

Making provision for the Minister or Director to charge a fee in such circumstances would be consistent with the agreed principles of cost recovery, and would be based on a user pays system. Furthermore, a number of duplicate authorities or licences are issued when the original has been lost or mislaid by the holder of the authority. In such cases it would be appropriate for a nominal charge to apply to cover administrative costs.

It is recognised that some permits or authorities should not be subject to a fee, eg a permit to collect a limited number of specimens for scientific research, or for a school as part of a marine science education program. In circumstances such as these the fee would be waived.

It is proposed that the Fisheries Act be amended so that the issue of exemption notices or permits, or duplicate authorities, by the Minister or Director be subject to a fee to recover the administrative costs of processing such transactions.

In providing the above explanation of the proposed amendments, I advise that the South Australian Fishing Industry Council (SAFIC) which represents the interests of commercial fishers, and the South Australian Recreational Fishing Advisory Council (SARFAC) which represents the interests of recreational fishers, have been consulted and have indicated support for the proposed amendments.

I commend the measures to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s.5—Interpretation

This clause generalises the definition of 'fishery management committee' to 'management committee' to cover fish farming management committees as well as committees established in respect of wild fisheries.

Clause 3: Amendment of s. 20—Objectives

This clause simply replaces the reference to 'fishery management committees' with 'management committees'.

Clause 4: Amendment of s. 23—Delegation

This clause also replaces the references to 'fishery management committee' with 'management committee'.

Clause 5: Amendment of s. 28—Powers of fisheries officers

This clause amends section 28 of the principal Act to expand the powers of fisheries officers. It amends the section to empower a fisheries officer to require a person to produce evidence of their identity as well as stating their name and address.

The clause also amends the section to make it an offence for a person to state a false name or address or produce false evidence of their identity and to allow a fisheries officer to arrest without warrant a person who fails to state truthfully their name or address or to produce true evidence of their identity.

A new provision is included to make it an offence for a fisheries officer or a person accompanying or assisting a fisheries officer exercising powers under the section to address offensive language to any other person or, without lawful authority or a reasonable belief as to lawful authority, to hinder or obstruct, or use or threaten to use force in relation to, any other person. The maximum penalty is a division 6 fine ($4 000).

The clause further amends the section to make it clear that a warrant is required to allow fisheries officers to enter residential premises and to allow officers to enter non-residential premises without warrant if the premises are used by a fish processor for fish processing activities (whether or not the premises are registered).

Clause 6: Amendment of s. 44—Offences with respect to sale, purchase or possession of fish

This clause amends section 44 of the principal Act which makes it an offence for a person to sell or purchase, or have possession or control of, fish taken in contravention of the Act, protected fish and fish of prescribed classes. Offences involving abalone attract higher maximum penalties.

The amendment inserts an evidentiary provision for cases where an offence of possession or control of abalone for the purposes of sale is alleged. If it is proved that a person had more than the prescribed quantity of abalone in his possession or control, it will be presumed, unless there is evidence to the contrary, that the person had possession or control of the abalone for the purposes of sale.

Clause 7: Amendment of s. 48C—Non-application of Development Act 1993

This clause amends section 48C of the principal Act to update the reference to planning legislation.

Clause 8: Insertion of s. 50A—Regulations relating to fish farming management committees

This clause inserts new section 50A to enable the making of regulations establishing management committees for prescribed classes of fish farming.

Clause 9: Amendment of s. 53—Leases or licences to farm or take fish

This clause amends section 53 of the principal Act to remove a reference to repealed legislation.

Clause 10: Amendment of s. 58—Review of decisions relating to authorities

This clause amends section 58 of the principal Act to rectify an error in the wording of the section.

Clause 11: Amendment of s. 66—Additional penalty based on value of fish unlawfully taken

This clause amends section 66 of the principal Act so that an additional penalty must be imposed for all offences involving fish taken in contravention of the Act, not just taking offences.

Clause 12: Amendment of s. 67—Evidentiary provisions

This clause amends section 67 of the principal Act to allow the use of certificates given by the Director as evidence of the wholesale

value of fish, or whether a consent was given by the Director under section 34 to the use of a boat other than the registered boat, or for a person other than the registered master to be in charge of a boat.

Clause 13: Amendment of s. 69—Offences committed by bodies corporate or agents or involving registered boats

This clause amends section 69 of the principal Act to ensure that registered owners are liable for acts and omissions of a registered master while the master is not on a boat, in relation to fishing activities conducted by use of the boat. It also ensures that registered masters and registered owners are liable for act and omissions of their agents while the agents are not on a boat, in relation to fishing activities conducted by use of the boat.

Clause 14: Amendment of s. 70—Summary offences

This clause amends section 70 of the principal Act to increase the time within which a prosecution for an offence against the Act can be commenced from 12 months to three years.

Clause 15: Amendment of s. 72—Regulations

This clause amends section 72 of the principal Act to enable the making of regulations prescribing fees payable on application for a permit or exemption under the Act or for the issue of a duplicate authority and providing for the payment and recovery of such fees.

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

NATURAL GAS PIPELINES ACCESS BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

It is essential that before the Government proceeds with its planned sale of the assets of the Pipelines Authority of South Australia (PASA) that a third party access regime covering the PASA pipelines be put in place. This Bill is a vital part of the Government's asset sales programme and a significant element in the process of achieving the Council of Australian Government's target of free and fair trade in gas in Australia by mid 1996.

The Bill is 'light handed' and places emphasis on commercial arrangements between parties but provides a safety valve for dealing with anti-competitive behaviour by the pipeline owner or existing users of the pipelines.

The purpose of the Bill is to provide a legislative framework for third party access to natural gas pipelines in South Australia consistent with nationally agreed principles. Those principles were agreed at the Council of Australian Government meeting in Hobart on 25 February and are reflected in the draft intergovernmental agreement on Competition Principles and the Commonwealth's draft Competition Policy Reform Bill.

The key principles are:

- Access is to be made available on agreed terms if possible;
- An access proponent has a right to negotiate access;
- Regulation to be 'light handed' (allowing commercial forces to determine pricing);
- The Owner of the facility is to attempt to accommodate third party access;
- Access is to be on a non-discriminatory basis but not necessarily on the same terms and conditions;
- Enforcement through arbitration in the event of failure of negotiations;
- Arbitrator to be independent, appointed by the Regulator after consultation with the parties;
- Arbitrator's decision on access terms and conditions to take into account a range of factors, including:
  - owner's legitimate business interest in facility;
  - cost to owner to provide access;
  - value of investment by third party;
  - interests of existing users;
  - existing contractual obligations;
  - safe and reliable operation;
  - economic efficiency of facility; and
  - benefit to the public;
- There will be an appeals process;
- The Owner of the facility will be required to extend or permit extension of the facility subject to:
  - technical and economic feasibility;
  - owner's interests protected;
  - third party pays appropriate share of costs; and
  - owner not necessarily required to bear additional costs
- Indicative terms and conditions for access, including charges to be available on request;
- Separate accounting arrangements required for declared service elements of business;
- There are some limitations on the business of the operator, including the limitation to only purchase gas for its own use and not for resale.

The Bill requires existing pipeline users to be notified of a proposal which may affect existing services thereby giving them an opportunity to air any concerns they might have.

Further, to ensure that public interest issues are considered, the Arbitrator must also take into account the public interest in market competition. The Minister also has the right to make representation to the Arbitrator and to comment upon the Arbitrator's draft award. So that there can not be concerns in relation to Government intervention, the Minister does not have the right of direction.

While this Bill places the emphasis on commercially agreed gas haulage prices and terms, any attempt by the pipeline operator to exploit the users of the pipeline could give rise to a dispute with recourse to the Regulator and ultimate arbitration.

A possibly contentious section (Section 36(2)) allows an Arbitrator in very limited circumstances to adjust the existing contractual rights of a pipeline user. While it is recognised that this section might cause concern, it is a necessary element in order to ensure that an exiting pipeline user can not inhibit competition by vexatiously retaining capacity in the pipeline which it is unlikely to use.

The legislation is intended to apply only to natural gas pipelines within South Australia transporting sales quality gas. Currently this means the Moomba to Adelaide pipeline system, and the Katnook pipeline system and their associated lateral pipelines and loops. These and future such pipelines will, as required, be prescribed under the Act through regulation.

The Bill is a result of a wide consultative process with the industry, Governments and the Trade Practices Commission and is the first general access regime in Australia. The Commonwealth's Moomba to Sydney Pipeline System Sale Act 1994, the Western Australian Goldfields Gas Pipeline Agreement Act 1994 and the Western Australian Gas Corporation Act 1994, are the only other examples of access legislation in Australia at this time and these are all pipeline specific.

Under the Commonwealth's proposed Competition Policy Reform legislation, the National Competition Council may declare a service to be subject to Commonwealth jurisdiction for access to essential facilities unless a State already has in place an effective regime. The Commonwealth has advised that it considers that the Bill fulfils the necessary requirements to be an effective regime.

The pipelines in South Australia, like those in the rest of Australia, are natural monopolies and are likely to remain so because of the high cost of providing pipelines over the long distances between sources and markets. It is the Government's view that the proposed access legislation, while being light handed, contains sufficient controls to ensure that gas will continue to be delivered in South Australia at competitive prices.

A Regulator will be required to administer the Act, the role of the Regulator is the subject of other proposed legislation.

The Act is made up of eight parts essentially reflecting:

(a) How the pipeline operator may conduct its business;
(b) Requirements for information;
(c) The negotiation procedure; and
(d) The arbitration process should negotiations fail.

Another part addresses the Regulators functions in relation to the monitoring of haulage charges.

In seeking to be 'light handed' the Bill has deliberately not been prescriptive, with the result that the majority of the Bill focuses on the details of the arbitration process. However, arbitration is a very costly last resort and it is considered that the Bill succinctly sets out the rights of the parties in as fair and equitable way as possible, providing every opportunity for the parties to reach agreement.

This legislation represents the beginning of a new and exciting era in the gas industry in Australia.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the measure to come into operation on a day to be fixed by proclamation.

Clause 3: Objects

This clause sets out the objects of the measure which are to provide for competitive markets, to promote efficient allocation of resources and to provide for access to pipelines.

Clause 4: Definitions

This clause contains definitions of terms used in the measure.

'Access' is the right to have a haulage service provided by means of the pipeline, including incidental rights.

'Access contract' means a contract giving access to a pipeline or a significant contractual variation of it.

'Access proposal' is a proposal made under the Act to initiate the procedure whereby a person can have access to a pipeline.

'Controlling associate' means a body corporate that has a substantial degree of power in a market for natural gas in South Australia served by a pipeline and that is related to the operator or a related body corporate.

'Firm contract' means an access contract that is not an interruptible contract.

'Haulage service' means the service of hauling or backhauling natural gas through a pipeline.

'Interruptible contract' is one liable to be interrupted or curtailed on short notice and where rights of access are liable to be displaced by rights of access under firm contracts.

'Operator' of a pipeline is a body corporate licensed to operate the pipeline under the *Petroleum Act 1940*.

'Pipeline' means a natural gas pipeline licensed under the *Petroleum Act 1940* and declared by regulation as one to which the Act applies. A pipeline is not subject to the Act unless declared to be by regulation. The Act only applies to natural gas pipelines.

'Proponent' means a person who makes an access proposal.

'Regulator' means a person to which the functions of the regulator under the Act are assigned.

'Respondent' means a person required under the Act to be given an access proposal.

Clause 5: The regulator

This clause permits the Governor to assign the functions of the regulator under the Act to a nominated authority, officer or person.

Clause 6: Segregation of business

An operator may only provide haulage services for others. It must not haul natural gas on its own account.

The operator's business must be limited to operating pipelines and related activities.

Clause 7: Segregation of accounts and records

Accounts and records of the operator's pipeline business must be kept separate from the accounts and records of any other businesses. Separate accounts and records must be kept for each pipeline.

Clause 8: Segregation of officers

Officers of and consultants to the operator must not be involved in the business activities of any controlling associate relating to the haulage or supply of natural gas. In the case of consultants, the regulator can authorise a dispensation.

Confidential information relating to the operator's haulage business must not be made available to a controlling associate. There is an exception in relation to technical information required for a pipeline user for the safe and efficient supply of haulage services.

Clause 9: Unfair discrimination

An operator must not unfairly discriminate in relation to access to a pipeline.

An operator must not unfairly discriminate between pipeline users by waiving rights on a non-uniform basis or by making kick-back arrangements.

Clause 10: Preventing or hindering pipeline access

An operator or pipeline user or related body corporate is prohibited from engaging in conduct for the purpose of preventing or hindering access.

Clause 11: Information brochure

An operator is required to have available an information brochure giving general terms and conditions upon which access may be provided, including pricing principles and a general indication of tariffs.

The brochure is to be made available to anyone appearing to have a legitimate interest.

Clause 12: Operator's obligation to provide information about access

An operator is required to give a person with a proper interest in making an access proposal detailed information about the pipeline, the extent to which its capacity is reserved, whether its capacity could be increased and generally the terms and conditions upon which access might be provided.

A charge may be made for the information provided under this clause.

Clause 13: Information to be provided on non-discriminatory basis

Information is to be provided to persons interested in making access proposals on a non-discriminatory basis.

Clause 14: Proposal for provision of haulage service

A person who wants access to a pipeline or to vary an existing access contract may put an access proposal to the operator.

Notice of the nature and extent of the proposal is required to be given to other proponents and pipeline users who, together with the operator, become respondents to the proposal.

If the access proposal is for an interruptible contract, other proponents and pipeline users are not required to be notified.

Clause 15: Duty to negotiate in good faith

The respondents to an access proposal are required to negotiate in good faith.

Clause 16: Limitation on operator's right to contract to provide access

An operator is prevented from entering into an access contract (other than an interruptible contract) unless all other proponents and pipeline users required to be given notice agree or unless the operator gives written notice of the proposed access contract and either there is not formal objection to the notice or all objections made are withdrawn.

A contract entered into in contravention of the section is void.

Clause 17: Interruptible contracts

This clause defines an interruptible contract. It is a contract which is liable to be interrupted or curtailed on short notice.

In the case of an interruptible contract, other proponents and pipeline users do not have to be notified.

Clause 18: Limitation on assignment

A right of access under an access contract or award may only be assigned by the operator's acceptance of an access proposal made by the proposed assignee.

Clause 19: Access dispute

This clause sets out the circumstances in which an access dispute exists.

Essentially, a dispute exists after negotiations have broken down.

Where there is an access dispute, a proponent may request the regulator to refer it to arbitration.

Clause 20: Presumptive dispute in case of competing access proposals

An access dispute exists if there are two or more proposals and there is not enough capacity in the pipeline to meet them both or all.

A proponent may request that all proposals be dealt with as one dispute.

Clause 21: Reference of dispute to arbitration

On receipt of a request, the regulator must refer an access dispute to an arbitrator.

The arbitrator must be properly qualified to deal with the dispute.

The regulator must consult on the suitability of the arbitrator before making the appointment.

The regulator is not obliged to refer a dispute to arbitration if it is trivial, misconceived or lacking in substance or there are other good reasons why the dispute should not be referred to arbitration.

Reference of a dispute to arbitration can be deferred pending conciliation under the Industry Code of Practice or on some other basis.

The regulator is not to refer a dispute to arbitration if the proponent notifies the regulator that the proponent does not wish to proceed.

Clause 22: Principles to be taken into account

This clause sets out principles which an arbitrator must take into account

Clause 23: Parties to arbitration

This clause defines the parties to an arbitration. The are the proponent, the operator, other proponents, pipeline users and any other person the arbitrator considers it appropriate to join.

A party can see leave of the arbitrator to withdraw if its interests are not materially affected.

Clause 24: Representation

A party may be represented by a lawyer or, by leave, another representative.

Clause 25: Minister's right to participate

The Minister has the right to call evidence and make representations in arbitration proceedings.

Clause 26: Arbitrator's duty to act expeditiously

The arbitrator must proceed with the arbitration as quickly as possible.

Clause 27: Hearing to be in private

The proceedings are to be in private unless all parties agree.

The arbitrator may give directions about who may be present.

Clause 28: Procedure on arbitration

An arbitrator is not bound by technicalities or rules of evidence.

The arbitrator may inform himself or herself in such manner as he or she thinks fit.

Clause 29: Procedural powers of arbitrator

The arbitrator has power to direct procedure including delivery of documents and discovery and inspection of documents.

The arbitrator may obtain a report of an expert on any question.

The arbitrator may proceed in the absence of a party provided that party has been given notice of the proceedings.

The arbitrator may engage a lawyer to provide advice on the conduct of the arbitration and to assist in the drafting of the award.

Clause 30: Giving of relevant documents to the arbitrator

A party to an arbitration may give the arbitrator a copy of all documents (including confidential documents) relevant to the dispute.

Clause 31: Power to obtain information and documents

The arbitrator may require information and documents to be produced and may require a person to attend to give evidence.

Information need not be given or documents need not be produced where the information or contents are subject to legal professional privilege or tend to incriminate the person concerned of an offence.

The person concerned is required to give grounds of objection to providing information or producing documents.

Clause 32: Confidentiality of information

The arbitrator is given power to impose conditions limiting access to or disclosure of information or documents.

Clause 33: Termination of arbitration in cases of triviality

Where the dispute is trivial, misconceived or lacking in substance, or where the person on whose application the dispute is referred to arbitration has not engaged in negotiations in good faith, the arbitrator may terminate the arbitration.

The arbitrator may also terminate the arbitration by consent of all parties.

Clause 34: Proponent's right to terminate arbitration

A proponent has the right to terminate an arbitration on notice to the other parties, the arbitrator and the regulator.

Clause 35: Awards

Before an award is made a draft must be circulated to the parties and the Minister to enable representations to be made.

An award must be in writing and must set out the reasons for it.

If access is to be granted, the award must set out the conditions.

A copy of the award must be given to the regulator and the parties.

Clause 36: Restrictions on awards

An arbitrator cannot make an award that would require the operator to bear the capital cost of increasing the capacity of the pipeline unless the operator otherwise agrees.

An arbitrator cannot make an award that would prejudice the rights of an existing pipeline user unless the pipeline user agrees or unless the pipeline user's entitlement to haulage services exceeds the entitlement that the pipeline user actually needs and there is no reasonable likelihood that the pipeline user will need to use the excess entitlement and the proponent's requirement cannot otherwise be met satisfactorily.

Clause 37: Consent awards

An award can be made by consent if the arbitrator is satisfied that the award is appropriate in the circumstances.

Clause 38: Proponent's option to withdraw from award

After an award is made, the proponent has 7 days within which to withdraw from it. In that event the award is rescinded and the proponent is precluded from making an access proposal within 12 months unless the regulator agrees. The regulator may impose terms.

Clause 39: Variation of award

The regulator can vary an award if all parties affected by the variation agree.

If the parties to the proposed variation do not agree, the regulator may refer the dispute to arbitration.

The regulator need not refer the dispute to arbitration if there is no sufficient reason for doing so.

The arbitration provisions of the Bill apply to a proposal for a variation referred to arbitration.

Clause 40: Appeal from award on question of law

An appeal to the Supreme Court is allowed only on a question of law. An award or decision of an arbitrator cannot be challenged or called in question except by appeal under this clause.

Clause 41: Costs

The costs of the arbitration are the fees, costs and expenses of the arbitrator, including the fees costs and expenses of any expert or lawyer engaged to assist the arbitrator.

In an arbitration, costs are at the discretion of the arbitrator except where the proponent terminates an arbitration or elects not to be bound. In that case the proponent bears the costs in their entirety.

The regulator may recover the costs of an arbitration as a debt.

Clause 42: Removal and replacement of arbitrator

An arbitrator may be removed from office if he becomes incapable of performing his duties, is convicted of an indictable offence or becomes bankrupt.

If an arbitrator is removed from office, the regulator is empowered to appoint another in his or her place.

Clause 43: Non-application of Commercial Arbitration Act 1986

This clause provides that the *Commercial Arbitration Act 1986* does not apply.

Clause 44: Regulator's duty to monitor haulage charge

This clause requires the regulator to keep haulage charges under review.

Clause 45: Copies of access contracts to be supplied to regulator

This clause requires copies of haulage contracts to be provided to the regulator on a confidential basis.

Clause 46: Operator's duty to supply information and documents

This clause requires the operator to give to the regulator specified information and copies of documents relating to the provision of haulage services.

Clause 47: Confidentiality

This clause requires the operator to maintain confidential information as confidential.

The regulator may, however, give confidential information to the Minister if in the public interest to do so.

Clause 48: Duty to report to Minister

This clause requires the regulator to report annually to the Minister on haulage charges.

The regulator may at any time and must at the request of the Minister report on haulage charges or any other aspect of the operation of the Act.

Clause 49: Injunctive remedies

This clause empowers the Supreme Court to grant injunctive remedies if required to enforce the Act or the terms of an award.

Clause 50: Compensation

This clause enables the Supreme Court to order compensation to any person where there has been a breach of the Act or an award made under the Act.

An order may be made against all persons involved in the contravention.

Clause 51: Enforcement of arbitrator's requirements

If a person fails to comply with an order or direction of an arbitrator, the failure to comply can be certified to the Supreme Court which can then inquire into the matter and make appropriate orders.

Clause 52: Application of Act to joint ventures

This clause makes provision for the joint and several liability of participants in a joint venture. The clause also facilitates the giving and receiving of notice from participants in a joint venture by requiring an agent to be nominated to represent the group.

Clause 53: Regulations

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

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

LOTTERY AND GAMING (TWO UP ON ANZAC DAY) AMENDMENT BILL

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

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

Consideration in Committee:

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

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

Motion negatived.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons M.S. Feleppa, Sandra Kanck, Diana Laidlaw, R.D. Lawson and Barbara Wiese.

RETAIL SHOP LEASES BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

A number of issues went to the conference. The Government, in bringing the Bill to the Parliament, did so as part of the review of all legislation under the responsibility of the Minister for Consumer Affairs, and the Landlord and Tenant Act, in so far as it related to commercial tenancies, was one of those. We recognise that this had the potential to be controversial, so I invited all representative industry bodies—those who represent landlords and those who represent retailers, tenants and small business—to meet with me to work through some of the issues. They had a draft Bill in October last year which drew largely upon the New South Wales legislation relating to retail shop leases and from there, both with my officers and separately, they worked through important issues and about 95 per cent of the Bill was agreed. About eight matters were unresolved, but industry groups which attended the discussions and undertook the negotiations signed an agreement which indicated those matters with which they agreed and identified the eight matters that were not agreed.

Some matters arose during the course of the debate in this place in particular which had previously been agreed but which subsequently the tenants' groups in particular sought to develop further. Notwithstanding that, I continued to have discussions with both landlord and tenant groups during the consideration of this Bill. I am pleased to say that the Bill represents a significant advance on the law as it is presently, regulating the relationships between landlords and tenants. It does not go as far as some tenants would want, but goes further than landlords would want in some respects. However, it is undoubtedly a much improved piece of legislation over what was previously the law relating to commercial tenancies. The coverage of the legislation is much the same as under the present Act, except that the amount of the annual rent, which is the cut-off point for coverage, has been amended and I will deal with that specifically.

I turn now to the major areas of disagreement that have now been resolved. The first relates to what forum should deal with disputes. In other legislation that has been before the Parliament in relation to consumer affairs, the forum for resolution of consumer disputes has been established as the consumer and business division of the Magistrates Court. I and the Government were prepared to concede that, in relation to commercial tenancies and retail leases, that jurisdiction should deal with matters of dispute under the legislation. That was agreed fairly quickly, although that is not to be taken as any indication that we will withdraw from the Magistrates Court (Tenancies Division) Amendment Bill those provisions which relate to retail tenancies. That issue is to be addressed when we next sit.

The coverage issue was an important one. The present basis is $200 000 per annum rent, which has not been reviewed for about three or four years. The Government had intended that that be reviewed periodically, but the Council by majority decided that not only should $250 000 rent be the cut off point but also 1 000 square metres coverage. That was a view that we as a Government were not prepared to accept. It was finally agreed that the coverage should be by way of annual rental, the amount should be lifted to $250 000 immediately, and such other amount may be prescribed upwards but not downwards by regulation.

The advisory committee, which was agreed to be established with less formality than the amendment passed by the Council, in conjunction with me will review the $250 000 rent limit per annum every two years. There was an argument about whether or not a public company or a subsidiary of a public company should be excluded from coverage of the legislation. That is the present position. The Government took the view that we should maintain the *status quo* and that was the final outcome of the conference.

The issue of short term leases was an issue where the Council had moved to require reasons to be given for a lease shorter than two years and that the reason should be filed in the court or tribunal—whichever jurisdiction finally was agreed as the appropriate jurisdiction for resolving disputes. The Government could see no value in requiring reasons. The significance of the legal practitioner's advising the tenant is required. We saw no reason either for reasons to be stated or for those reasons to be filed in some public repository.

In relation to turnover, which was a particularly contentious issue, an amendment was included in the Bill in the Council that the landlord should not be able to require information as to turnover, except when the turnover was the basis for at least part of the determination of rent. The Government finally conceded that point but persuaded the conference that there should be an amendment so that rent in accordance with turnover will still be permitted either as total rent or as a component of rent; but in addition to that information may be required where some part of the outgoings may be dependent upon turnover. It may require publicity and market information to determine the publicity component of any budget for a shopping centre. I think that will create some difficulties for landlords although I would suspect, as one of the members of conference intimated, that there will be means established by which probably all rent will now comprise a part related to turnover so that the information is available for the determination of such matters as the location of a shop within a retail shopping complex. That matter has been conceded. The Hon. Michael Elliott in debating this issue was particularly forceful in putting the position which the Council majority finally agreed and which has been modified but still accepted in principle by the conference.

One provision which was the subject of consideration by the conference was a provision which sought to enable the court to review what might be regarded as harsh and unreasonable terms for rent in existing leases. This was largely

related to ratchet clauses in existing leases. The Government took the view that anything which sought to apply this Bill retrospectively to commercial arrangements was not part of the agreement and was contrary to the agreement between the various representative bodies from the retail industry and that that could not be supported. As it turned out, the conference finally agreed that there should not be an application of the provisions relating to ratchet clauses in existing leases.

In relation to demolition there is no change from the Bill which the Government originally introduced. There was a concern that the provisions in the original Bill did not deal adequately with the desirable position of a landlord acting *bona fide* in requiring a tenant to leave premises because they were required for the purposes of demolition, that term now being defined in the Bill.

It was defined, but it has been shifted to the definition clause. We believe that there are mechanisms for redress for a tenant who has moved out of his or her premises for the purpose of enabling the landlord to demolish or substantially reconstruct or renovate the premises where that does not occur within a reasonable time. Relocation of a tenant to other premises within a shopping centre complex remains as it was in the original Bill in relation to retail shopping centres. It was proposed by the Council that that should relate to all tenancies. The Government did not believe that was appropriate in relation to small strip shopping facilities.

The most contentious issue concerned what should be the position of a tenant and a landlord at the expiration of a lease. The Government was not prepared to modify the existing law, which provides that at the end of a lease which is for a fixed term some additional rights should be given to the tenants. At the commencement of a lease, it is recognised that the landlord and tenant know that the lease will be for a fixed term, that at the end of the term there is no guarantee of renewal unless the renewal provisions are included specifically in the lease, and in those circumstances renewal will occur according to a formula in the lease. We recognise that this has caused concern to some tenants, but we took the view as a Government that such a radical change in the law relating to tenancies was not justified and would be most inappropriate.

As I indicated earlier, there is to be an advisory committee, and that has been agreed, but it will not be established with the same attention to formality and bureaucracy as proposed in the original amendments. My experience of the negotiations on this lease that resulted from my invitation to representative industry bodies to meet with me suggests that an advisory committee with not a great focus upon formality would be of benefit in dealing with both this legislation and relationships between landlords and tenants.

Subleases was another issue. In this respect, the Bill remains as it was introduced into the Legislative Council. There are protections to some extent for sublessees who, for the purposes of the definition, are regarded as lessees, but we were not persuaded as a Government that there should be a change in the contractual relationship between landlord and tenant to one between landlord and subtenant. The issue of franchises has caused some concern to the Hon. Mr Elliott, but it did not seem to the Government to be appropriate to deal specifically with franchises in this Bill. If there is a franchise agreement, it will, either separately or as part of the franchise agreement, deal with the occupation of premises in a retail shopping area, and to the extent that it deals with a retail lease it will be governed by the provisions of the Bill.

I indicated at the conference that I am prepared to identify the issues that may be of concern in relation to franchises. I will consult with both my Federal and other State colleagues regarding issues relating to franchises to determine whether this issue ought to be addressed at the Federal-State level or just at State level. I recognise that concerns have developed regarding franchises. They are not only popular but complex, so I can do no more than indicate that this issue will be examined conscientiously.

In that context I should also say that clause 66 of the Bill was amended to ensure that mediation provisions which involved sublessees, lessees or franchisees would be open for use, that mediation being by the Commissioner for Consumer Affairs. The issue of retrospectivity was particularly contentious. When the Bill was introduced, it was the Government's view that when it came into effect we would apply the provisions in a way which was determined following consultation with the industry. Certainly, procedural matters were more likely to be applied retrospectively than substantive measures. In fact, it was the agreement of the industry groups that retrospectivity should not be applied in respect of commercial arrangements, so we revert to the original provisions of the Bill. In relation to this amendment and the earlier amendment relating to harsh and unreasonable terms for rent (amendment No. 15), the Government is giving serious consideration to bringing into operation that part of the Bill which relates to ratchet clauses being outlawed at an earlier stage than the rest of the Bill. It is not something on which I have been able to obtain positive advice in the short time that has been available since considering this matter in conference, but it may be possible to implement it at an earlier stage.

The final matter arises following discussions with tenant organisations and relates to an offer I made that there should be some provision in the Bill which tries to protect against vexatious conduct, whether it be by landlords or by tenants. I have made the proposal, which the conference accepted, that it should be an offence for any person exercising any power under a lease to act vexatiously and that, if they do, they could be subject to prosecution and a maximum fine of $5 000. Some people may question the appropriateness of that. All I say is that it sets up a statutory duty and sends signals to all parties to leases that they have to act in good faith with each other and resolve matters of dispute or other matters of difference.

I thank those members of the Legislative Council who participated in the conference, which was productive. Not everyone got everything they wanted, but I say again that it is my very strong view that this Bill provides substantial benefits for tenants, which makes this a significant area of reform. After the work and effort that has been put into this Bill, it would have been most disappointing for it to have been laid aside, but the conference considered that issue too and finally was prepared to look at a compromise. The Government participated in the compromise; we are pleased to accept it.

The Hon. ANNE LEVY: I accept the Attorney-General's motion and urge the Committee to adopt the agreement reached at the conference on the Bill. The Attorney said there were eight matters of dispute.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: Yes; we dealt with far more than eight matters in the conference. The Attorney has mentioned a total of 14 and has accurately indicated the results of the conference. I, for one, am very glad that the House of Assembly was prepared to accept the Legislative Council amendments relating to the court where the disputes

relating to this matter will be resolved. As the Commercial Tribunal is about to be abolished, a home had to be found for such disputes where adjudication is required and recourse to the legal system takes place, and this Council had suggested that it could be considered by the Consumer and Business Division of the Magistrates Court, which was set up as a result of the conference relating to the Secondhand Motor Vehicles Act. As was indicated at that time, the setting up of that new division of the Magistrates Court would provide a logical home for quite a number of matters which are likely to come before this Council in the near future, and I was certainly glad that the Government agreed that this new Consumer and Business Division of the Magistrates Court was an appropriate court in which matters involving landlords and tenants in retail shop leases should be considered.

The Attorney has mentioned many of the other matters which were agreed, such as the extended coverage of the legislation to any retail lease up to the value of $250 000 or beyond, as determined by regulation, and the establishment of an advisory committee, although its name was changed and its strict formality was felt by the majority of the conference not to be necessary in the legislation as it was believed that it could be dealt with quite adequately by regulation as well as a sound dose of commonsense on the part of the members. Another matter on which the conference agreed was in relation to the use of turnover figures, and the conference came to a compromise position, which differed markedly from that initially taken by the Government. Those turnover figures will remain confidential unless they are part of the formula for rent or associated outgoings under the terms of the lease.

As the Attorney indicated, there may well be landlords who abuse this and who, from now on, incorporate some formula in rental, including a proportion of turnover, so that they do have access to these figures. One would hope that this abuse would not occur, and it may well be that, in the future, we can see whether such abuse occurs by comparing the number of leases where turnover is included as part of a rent formula after the proclamation of this legislation with leases drawn up before the Bill before us becomes law. If there seems to be abuse occurring, the Parliament may well need to have another look at this matter, but figures on what happens in the next two or three years should give an indication whether or not this is necessary.

The Opposition was certainly very glad to see the clause relating to vexatious behaviour inserted in the Bill. While it will not solve all the problems which many tenants feel they are currently experiencing, it will, for some of them at least, provide an avenue of redress and can serve as a warning to both landlords and tenants that action can be taken for vexatious behaviour and perhaps act as a brake on people who are less scrupulous and who have been adopting what can only be regarded as sharp practices.

I was glad to hear the commitment from the Attorney-General to look at the question of franchises and franchisees. I appreciate that he wishes to do this at a national level without any commitment to undertake further action. However, it may well be that, when looked at at a national level, there is indeed a major problem that should be tackled at a national level. I hope that, in that case, it will not be too long before legislation to correct this comes before us.

I will not mention all the other matters that were dealt with in the conference. There were very detailed discussions on a wide range of matters. However, the discussion was always courteous, constructive and in the best traditions of conferences of this Parliament.

Members interjecting:

The Hon. ANNE LEVY: Indeed, with good humour. There were even a few laughs on several occasions. I would certainly like to thank all members of the conference from both Houses. I think everyone contributed most constructively and, while the resulting compromises that are now before us will not please everyone—it may well be that there is no-one who is fully pleased by what we now have before us—I think in the spirit of achieving an improvement on the existing situation it can be recognised that this is an advance and that this Parliament should certainly adopt this at this time. I support the motion.

The Hon. M.J. ELLIOTT: I support the motion. However, in so doing I express grave concern about the form of the Bill that is about to be passed. The reason I support the motion is that the Government has made quite plain that, if certain amendments were put in, it would allow the Bill to fail. Retail tenants have told me that, whilst there was a number of serious matters that they were concerned had not been addressed, they did not want to lose at least some of the things that were there. They thought it was better to have something than nothing. So it is on that basis, realising that the Bill would fail if the amendments were insisted upon and whilst some of the most important amendments were wanted—and the retail tenants wanted something rather than nothing at that stage—that the conference finally reached agreement.

After what are, at the end of the day, some pretty trivial amendments, the Bill is really based upon an agreement reached between landlords and tenants. When I say 'an agreement', I mean the things agreed on whilst there are still matters of substantial disagreement. If I might draw an analogy, it is a bit like the chicken and the fox getting together to design the poultry yard fence; they will agree on a lot—they will say that the fence should be this high and the wire mesh should be such and such a size—and when they are finished the fence looks pretty good. However, at the end, the chicken says, 'Wait a second, he can go straight underneath.' The person who has been adjudicating says, 'But you agreed on all this. It is a good looking fence. Don't complain.' That is how I really see this legislation. The chicken wire is of a good mesh size, the height is nice and nothing will go through it, but a lot of things will go underneath it or over the top: it is a question of how high it is as well. Perhaps by way of amendment we have managed to make the fence a bit higher, but we have done nothing about stopping the fox from going underneath.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No. It is fair to say that I was involved in and made some contribution to the design of the chicken wire, but I wanted that wire to go underground as well and be designed in such a way that the fox could not go underneath. In so saying, I am not insinuating that all landlords are like the fox, but I am saying that an agreement between two parties is not a true agreement if there are major points of disagreement. At the end of the day, this was a piece of legislation that was designed to protect not the landlords—it was not designed to attack them, either—but some tenants in a power relationship where they were being done in.

Over the past 14 months I have consulted, by way of correspondence, with literally thousands and had direct discussions with perhaps a couple of hundred tenants. The abuses out there are incredible. This legislation will not stop

most of the abuses about which people were complaining. That is not to say that they are not pleased to see ratchet clauses banned; it is not to say that they are not pleased that there will be this six month consultation period in advance. They are pleased to see some of those things in the Bill, but, as I said, like the chicken wire, it looks pretty good, but it is what is not there that is the real worry. I know that abuses will continue under this legislation and, unless there is a preparedness to come back and amend it, at the end of the day the chickens will still not be safe.

I now touch on some of the major issues involved. The biggest single issue was the question of lease renewal. The Government persists in suggesting that the amendments I was trying to move in relation to lease renewal were perpetual lease. That is not the case. The landlord quite clearly had the right to remove a tenant for any good reason, including the fact that someone would pay more rent; that the tenants were not complying with the conditions of their lease; or that the landlord wanted to change the tenant mix. Any good reason could have been sufficient. How that could have been presented to be a perpetual lease has me beaten.

The Government persisted in trying to use that sort of terminology. The fact is that, because the landlord controls lease renewal, no-one goes into a business thinking to themselves, 'I will run the shop for five years and, at the end of that, having made my profits, I will leave.' People go into those sorts of businesses with a plan to continue or to actually have a business that, having built up goodwill, they can sell. The landlord is in a position to totally remove or take over that goodwill, or totally to destroy the asset or investment that has been built up.

People who go into these businesses quite frequently have their home mortgaged totally. They have everything they own committed to that business. The landlord, by the threat of non-lease renewal, can do almost anything to these people. There is a very high rate of lease renewal in South Australia—about 96 per cent. Most tenants would find that, once they start their business, they are, in many ways, trapped. They have an investment in the business and they cannot afford to lose it. The landlords, in some cases, screw them down so tightly that, once they are in it, they cannot afford to get out. By the same token, they do not really make a whole lot if they stay there, either. It is a choice of losing everything or hanging on in hope. Sadly, a very large number of retail tenants have gone in with lots of hope and built a good business, and then have slowly been screwed down by a landlord.

I move to another issue that touched on the question of turnover. The fact that landlords have been able to demand, by way of a lease agreement, to know what turnover a tenant has meant that the landlord had a very good idea of the profitability of a particular business. With that knowledge, the landlord could make the determination, 'I think this person can afford a little bit more rent.' That is precisely what they will do. They will screw the rent up a little tighter. The person has the choice: do they keep the business and keep going, although the profitability has been fairly well destroyed, or lose everything? That knowledge of turnover is a powerful instrument in the hands of an unscrupulous landlord.

The Government amended my amendment so that it was even easier for landlords to get around it. It had been suggested that they could already contrive to get around it by having a small portion of rent attributable to turnover, but the contrivance is made even easier by the Government's amendment which also provides for any outgoings that are linked to turnover. So the contrivance will be there, and it is guaranteed that any unscrupulous landlord who wants to know turnover will turn straight to that contrivance, and it has been made remarkably easy.

The question of the value of the shop is one of the areas where we made some small progress, where the rent value has gone from $200 000 to $250 000. As I suggested, a number of retailers are paying more than $200 000, but that extra $50 000 will pick up a remarkable number of those. It is unfortunate that it was not indexed as I originally proposed in my amendments, rather than having to rely upon regulation which may or may not occur. So, the figure is $250 000, and we only hope that that value is retained in real terms later.

Whilst I had not sought in general terms to have this acting retrospectively, I did seek to try to get some application in relation to harsh and unreasonable rents. One of the reasons why we have this legislation before us is that ratchet clauses were in some cases producing harsh and unreasonable rents. It was my proposal that, where harsh and unreasonable rents had occurred, it should be possible for intervention simply to bring them down closer to a true market rent. There was absolute resistance to that idea. As I said, it would apply to a relatively small number of tenants, but it seems quite bizarre that, if you see something happen that is an unacceptable practice, we will stop people from ever doing it again, but allow people who are already suffering it to continue to suffer it.

People who have signed leases in the past couple of months—and I can assure members that quite a number of them may have signed for five years plus five years—may be locked in for another 10 years to ratchet clauses which we are now banning for future leases. In fact, it will take perhaps until the end of this decade before a substantial number of tenants are being protected by this legislation in relation to ratchet clauses. A large number of tenants will be caught. Ratchet clauses will not always produce problems, but in some cases they will. Basically, this Parliament is saying, 'That is bad luck. You have been caught; you are gone.' That saddens me very much.

It is all very well to talk about having made legal agreements, etc., but how anybody could say that they are justified in receiving a rent which is well above market rent and still rising rapidly, and they want the protection of the law to continue to do that, with the rate racing faster than CPI, has me beaten. It may be legal, but it is not moral. I am prepared to draw a distinction between what is moral and what is legal. I should have hoped that the Parliament would be prepared to do the same, but it has chosen not to.

In relation to franchises, I was receiving significant complaint about franchise operations and their impact on some franchisees. There has already been at least one major franchisor in South Australia who has gone broke and left their franchisees in limbo. Fortunately, they managed collectively to negotiate their way out of it, but there is a real chance that people in good faith will buy a franchise, believe that they have an operation running and, if the franchisor goes broke, they will be turfed out of a shopping centre and lose everything, although they have done nothing wrong and may have been running an excellent operation.

What little we have offered them, having removed all the amendments in relation to franchises, is that they could have some mediation. That is a little better than nothing, but it certainly gives them no protection. Mediation is also being offered to sub-lessees more generally. As to relocation and

demolition, this Chamber has not insisted on amendments there. Perhaps in this case the amendment offered about vexatious acts may be a fairly good palliative. It is one of the amendments about which I have some hope that it has partially, at least, offset what is lost. That is another of the small gains we made.

This legislation has produced some positive things for tenants, but I can assure the Committee that the loopholes left are so big that at the end of the day the vast majority of tenants who are currently complaining will continue to complain, and for good cause: we have failed them in this place.

Motion carried.

INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the second floor Legislative Council conference room at 3.30 p.m. on Monday 3 April, at which it would be represented by the Hons T.G. Cameron, M.J. Elliott, K.T. Griffin, A.J. Redford and R.R. Roberts.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

A message was received from the House of Assembly agreeing to a conference, to be held in the second floor Legislative Council conference room at 8.30 a.m. on Monday 27 March.

ADJOURNMENT

At 6.15 p.m. the Council adjourned until Tuesday 4 April at 2.15 p.m.