LEGISLATIVE COUNCIL

Thursday 3 July 1997

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

NURSES BILL

A petition, signed by 4680 residents of South Australia, concerning certain issues raised in the Nurses Bill 1997, and praying that this Council will ensure that the legislation takes into account the issues raised in the interests of the public and nurses of South Australia, was presented by the Hon. Sandra Kanck.

RECREATION AND SPORT DEPARTMENT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Recreation and Sport in another place this day on the subject of the appointment of the Chief Executive.

Leave granted.

TELEPHONE TOWER, COBBLERS CREEK

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Minister for Housing and Urban Development in another place today on the subject of the Commonwealth Telecommunications Act.

Leave granted.

QUESTION TIME

SCHOOLS, SEXUAL HARASSMENT

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question on the subject of sexual harassment.

Leave granted.

The Hon. CAROLYN PICKLES: A report entitled 'Gender in School Education', based on research by the Australian Council for Educational Research, says that nearly half the State's secondary schools claim that verbal sexual harassment is common in their schools. While South Australian results were generally favourable compared with other States, which I am pleased to see, results showed that 45 per cent of boys and 44 per cent of girls reported that verbal sexual harassment occurred often, and touching or pinching was reported by almost 10 per cent of primary school girls. My questions are:

1. Does the Minister believe that these levels of harassment are still too high?

2. Does he think that they warrant new programs to encourage and require appropriate behaviour?

3. If so, what action is the Minister taking?

The Hon. R.I. LUCAS: I am sure most members would take the view that any example of harassment within our school system is unacceptable. The objective for all of us would be to allow young people, whether they be in primary or secondary school and whether they be male or female, to go about their schooling free of any taunting, teasing or harassment from anyone else within the school system. The reality is that our schools are a reflection of young people who come from families who live in the real world outside our school communities, and they bring with them behaviours that they have learnt from their home and family environment and perhaps also from watching television, cinema and a variety of other media forms. So, we do have continuing levels of problems within our school system.

This is the same report on which I issued a public statement earlier this year. I highlighted a very positive aspect of the report which indicated—and I will paraphrase, although I am happy to get the press statement I made at the time and the copy of the sections of the report—South Australia as having the best programs and policies of all the States and Territories in the area of combating sexual harassment. I am delighted on behalf of the department, teachers and officers within the department to have that acknowledgment from the Australian Council for Educational Research about the quality of the programs that we have within our Government schools.

Of course, more needs to be done. I do not think that, by saying more needs to be done, we need to go off and completely redraft policies and programs. By and large, as the report acknowledges, the programs in South Australia are very effective. We just need to ensure as best we can that all our schools, teachers and staff, and then importantly our students, have a commitment towards those programs.

I am happy to obtain a copy of the particular sections of the report which acknowledge South Australia's lead in this area and share that information with the honourable member. I conclude by agreeing that more needs to be done and that the department will do all it can in collaboration with its teachers and staff to try to make our schools as harassment free as they possibly can be.

CUTTLEFISH

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the cuttlefish industry.

Leave granted.

The Hon. R.R. ROBERTS: In the past few years much discussion has occurred about the fisheries situation in South Australia. On numerous occasions we have raised questions of fisheries management and research in this place.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: It seems that every time we mention prawns the Hon. Legh Davis has to expose himself and show how good he is at being a prawn. It is encouraging to see an opening fishery. Early in June this year I was approached by a number of fishermen, recreational and commercial, from the Spencer Gulf region who expressed concern at the amounts of cuttlefish being caught. Mr President, I know from your interest in the fisheries subject that you would be aware of this fact, as would the Hon. Caroline Schaefer, who has been having discussions with fishermen in Whyalla, the Whyalla Dive Club, the Whyalla City Council and commercial and recreational fishermen, as I have. We are all happy to see an emerging industry, which, at least on the figures now available, is potentially worth some $500 000 a year.

On behalf of concerned constituents, I had questions asked during the Estimates Committee, and I was shocked to find that no research is being conducted into this fishery, which

has such enormous potential. What is known is that cuttlefish are migratory and that they congregate in the Whyalla area in a very limited rocky outcrop in order, it is suspected (and we have to use that word because no research is being done), to spawn.

Three years ago this industry would take some couple of hundred kilos of cuttlefish; it now looks as though it will take something like 70 tonnes of fish this year. Whilst that is very encouraging, a great deal of concern is being expressed by major constituents and representative groups in the Iron Triangle, including the Whyalla Dive Club, in particular, the Whyalla council and the recreational fishing bodies—and, indeed, the tourism people in the Whyalla area—at the amount of fish that are being caught and the sustainability of the fishery in future. I am advised that the only research that has been done is on catch and effort. Given the unhappy history of the management of some of our major fisheries in South Australia, expressions of concern about the sustainability of the fishery are widespread.

Given those circumstances and the widespread concern expressed by fishermen, local government and development boards and the recognised potential of this emergent fishery, will the Minister exercise his responsibility to the fishery and stop the fishing of this resource in the Spencer Gulf immediately? Will he immediately exercise his rights under section 31 of the Fisheries Act, that is, his option to carry out research on this high export potential fishery, to ensure its sustainability, including harvesting quotas, as has been requested by fishermen and fishers in the area?

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

BEVERLEY URANIUM MINE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources and, I suspect, also the Premier, a question about the proposed uranium mine at Beverley.

Leave granted.

Members interjecting:

The Hon. T.G. ROBERTS: I am not quite sure what was in the northern Messenger, although the honourable member may be able to educate me, after I ask the question. The *Border Watch* did run a story that the honourable member was no longer interested in running for the seat of Mount Gambier.

Members interjecting:

The Hon. T.G. ROBERTS: Gordon, yes; the seat around Mount Gambier. In 1982, prior to the three mines policy, the company that was interested in developing the Beverley project put together a draft environmental impact statement and spent, I understand, in exploration costs and draft environmental preparation costs something like $2.5 million to $3 million in preparing for the project to go ahead. The project at the time was a controversial one. The process of using leachate to pump solutions into the ground, pump the resulting solution back to a wellhead and then process the uranium by separating the uranium yellowcake from the leachate shocked environmentalists and others who had been watching the industry. The process itself is probably seen now as being less radical but still has environmentalists and pastoralists in the vicinity concerned about some of the possible scientific results.

The Hon. L.H. Davis: Your Party supported people who said that Roxby Downs would destroy the environment and climate of Adelaide.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: From the tone of the interjections, members on the other side understand exactly what the Beverley process is and they must be applauding the application that has been made. I am asking a question to try to get some information from the Government. It sounds as though some of the backbenchers have been availing themselves of debriefings from either the proposed company or the Department of Mines, to which I have not been privy. That is why I am using this process to try to get some questions answered. I have not made any comments about the—

The Hon. L.H. Davis: What is your view of uranian mining?

The Hon. T.G. ROBERTS: I am not presenting that in the question—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Mr President, far be it from me to breach Standing Orders to offer an opinion.

The Hon. L.H. Davis interjecting:

The PRESIDENT: The Hon. Legh Davis will come to order.

The Hon. T.G. ROBERTS: Unlike members on the opposite side who breach Standing Orders by interjecting constantly and repetitiously, I will not proffer an opinion on the project.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: Through my question I am trying to educate myself and my constituents who have contacted my office expressing concerns. In relation to the proposal, the company has made some public statements which—

The Hon. L.H. Davis: Have you ever been down the mine at Roxby?

The Hon. T.G. ROBERTS: Yes, I have.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: The interjection from the honourable member shows that he knows nothing about the dangers of exposure to low-level radiation.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: The concerns of the community are genuine, as are the possible concerns of even the Roxby Downs venturers in relation to market forces and oversupply in the market.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: The Beverley project sits on the edge of the Flinders Ranges, for those people who do not know where it is. The honourable member who has been interjecting, the Hon. Legh Davis, loves the Flinders Ranges as a destination for his holidays and recreational leave. He has been visiting the Flinders for years, and I am sure that he would not like to see it compromised by any mining project that did not meet the requirements of a full EIS. The company—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —has made statements that it is prepared to meet the commitments of both State and Commonwealth environmental impact statements, and I am sure that would be welcomed by the honourable member. My questions and those of my constituents relate to the confusion that surrounds the environmental impact statements, factors and conditions with which the company will be involved, given that the original exploration occurred in the 1960s, the draft environmental impact statement was prepared in 1982—

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: No, on a previous occasion the honourable member said that, with my pink tie, I was stuck in the Beatles era. I have moved out of the 1960s and into the 1980s—who knows, in another six months I might have moved into the 1990s. There is some confusion as to what environmental factors and assessments must be dealt with because of the length of time between exploration to consideration for exploitation. This Government has a mandate to mine uranium, and I do not deny that. The Federal Government will issue more licences, and I do not deny that. The move away from the three-mines policy by the previous Government will be opened up to market forces, and perhaps open slather might prevail in the uranium industry, who knows. My constituents want to know and my questions to the Minister are:

1. What State and Commonwealth environmental assessments and conditions does the new application have to follow?

2. What are the conditions that will apply now to satisfy native title right assessments?

3. What are the current market trends for uranium supply, demand and price internationally?

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

HUDSON AVENUE RESERVE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Hudson Avenue Reserve at Croydon Park?

Leave granted.

The Hon. M.J. ELLIOTT: The Minister for Education and Children's Services has decided to close the Croydon Park Primary School at the end of 1997. I have been approached by members of that school council who are most concerned about the implications of that, but I will not pursue the actual closure in this question. Following the closure decision, the local community has been concerned about the future of the adjacent Hudson Avenue Reserve. I have received correspondence from community members who say there is very little open space in the suburbs of Croydon Park, Kilkenny, West Croydon and Croydon. The Hudson Avenue Reserve therefore serves a large built up area. An existing 25 year agreement between the Education Department and the then Enfield council covers the use and maintenance of the reserve. The agreement, which commenced on 1 November 1982, includes clause 8, which bans the sale of the reserve without the approval of the council. I understand that the local council believes that this agreement is legally binding.

The Port Adelaide Enfield council has approached the Minister for clarification about the future use of the land, and I understand it has been told that no decision has been made regarding the future use of the Hudson Avenue Reserve. The council has asked to be involved in any discussions which relate to the future of the reserve before decisions are made. The local community remains concerned over the Government's delay in confirming the existing agreement. As one might expect, rumours are circulating, and through these questions I seek to have those concerns allayed. My questions are:

1. Does the Government intend to honour the agreement between the council and the State Government?

2. If not, will the Minister justify the removal of the only available open playing space in the suburb?

3. What are the department's intentions at the end of the period under agreement?

4. Will the Minister involve the council in any discussions which relate to the future of the reserve before decisions are made?

The Hon. R.I. LUCAS: In relation to this reserve I have indicated that the school does not close until the end of the year. No decision has been taken in relation to the future use of the existing facilities, and that would include the future of any related reserve such as the Hudson Reserve. Clearly, any Minister in any Government would need to take legal advice on what legal obligations might rest with the Minister and the department, and clearly as Minister I would not endorse anything that was illegal. So, the simple answer to one of the questions that the honourable member has asked is that we will need to take legal advice on what are our obligations and, having taken that legal advice, consider what we are required or able to do, subject to the very best legal advice that I am sure the Attorney-General and his capable officers will be able to provide to our officers in the Education Department.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I do not think so, because the school does not close until the end of the year, and there is no pressing urgency. Clearly, nothing can be done one way or another before the end of the year. I understand the concerns of the local community down there in relation to their desire for the long term conservation or protection of their access to the site. The existing lease agreement or arrangement would appear to have some time to run, and we will need to take legal advice in relation to that. As with many other areas, one of the ways that some communities have been able to protect open space in their area in the long term has been through the community making a decision through its local government representatives to purchase that piece of open space from a Government department or agency.

A number of councils, such as the Mitcham and Burnside councils, have made a conscious decision that they want to protect the open space in their area for local residents, have accepted that it is their responsibility and have decided to purchase surplus land from the department. In certain circumstances that is an option. I am not suggesting that it is an option in relation to this in the short term, because it will all be subject to legal advice that the department will need to take at the appropriate time. At that time we will certainly follow that through and, as soon after that as possible, we will provide information to the appropriate local council and to the other community residents who have an interest in this issue on the Government's considered response to the future of both the school facilities and any adjacent reserves.

ELECTRICITY SUPPLIES

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Energy, a question about electricity supplies.

Leave granted.

The Hon. P. HOLLOWAY: Recent press reports from Victoria have indicated concerns about that State's capacity to meet peak electricity demand next summer. This morning's *Age* reported the Chief Executive of the Victorian Power Exchange, Mr Graeme Dillon, as saying that it was considering several options to ensure the State was able to meet the expected peak demand for electricity next summer. The exchange is likely to call on the reserve Newport D Power Station to boost supply after its own projections showed that unless it was used the likelihood of blackouts in hot weather was 95 per cent. Even with Newport D available, the exchange's recent report predicted that the probability of interruptions would be 65 per cent. It also made the gloomy forecast that by the year 2000 there would not be enough power generated in Victoria to meet peak summer demand. The report also referred to a leaked survey by the accountants Coopers & Lybrand which said that many companies believed the market needed to experience some interruptions for the market to appropriately value supply and thus to determine the supply/demand balance. My questions are:

1. Given that South Australia depends on the electricity link with Victoria for about 30 per cent of its power needs, is the Government concerned about the possibility of power shortages during peak periods this summer or in future years?

2. Has the Government contacted Victorian authorities to clarify potential electricity supply shortfalls to South Australia?

3. Given that we are now part of the national electricity market, is the Government concerned that shortages of power within Victoria and the attitude allegedly expressed by Victorian power companies in the Coopers & Lybrand report will drive up electricity prices for South Australian consumers?

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

ASPERGER SYNDROME

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the psychiatric condition of Asperger syndrome.

Leave granted.

The Hon. BERNICE PFITZNER: There are three main child psychoses or severe mental disorders: autism, schizophrenia and Asperger syndrome. Asperger syndrome is a relatively new mental disorder and is placed in the category of what are called 'pervasive developmental disorders', the criteria for which are:

1. That the onset is before 30 months of age;

2. That a particular form of deviant social development is present;

3. That a particular form of deviant language development is present;

4. There are stereotype behaviours and routines; and

5. There is absence of delusions, hallucinations and schizophrenic-type thought disorders.

Of the various disorders included in this PDD class, the validity of Asperger syndrome as separate from autism has been most controversial. However, it differs from autism in that it is associated with high levels of intellectual and communication skills. The person has a lack of empathy and feeling for others, there is unusual preoccupation, for example, with train schedules; there is idiosyncratic attachment to objects; and there is a peculiar way of walking and standing. Some have described them as being intensely selfish. Speech is relatively good with a full vocabulary, but it tends to have a repetitive pattern. As mentioned, in most cases intellectual ability is not significantly delayed.

Despite the fact that this syndrome as a separate entity is rather controversial, it has recently been accorded official diagnostic status in the American Psychiatric Association Diagnostic and Statistical Manual, known as DSM4. The Asperger syndrome disorder has been attributed to Martin Bryant, responsible for the massacre at Port Arthur, and perhaps to Paul Streeton, who poured petrol over a six year old, setting him alight as he played in a Cairns schoolyard. So, we have here children with Asperger syndrome who are mentally disabled but not substantially intellectually disabled. Language skills, although at times unusual, are adequate.

Our health and welfare services, although very competent, find that the characteristics of a person with Asperger syndrome do not fit into their specific admission criteria. For example, Family and Community Services do not consider this type of child able to fit within its services. The Intellectually Disabled Services Council (IDSC) provides some of the services that are needed, although Asperger syndrome children are not essentially intellectually disabled. The Child and Adolescent Mental Health Service is not able to handle these children as they are not florid psychotic cases. Later, the South Australian Mental Health Service is not able to cope with these people as adults.

The parents and their specialist psychiatrists are finding that this particular syndrome, although relatively rare, if not controlled and treated, will potentially lead sufferers to cause harm to their immediate environment, to the community at large and to themselves. It is therefore a most grave problem. I ask the Minister for Health the following questions:

1. Where should children with Asperger syndrome go for help and treatment?

2. In the adolescent period, what services are available to teach these people living skills and skills for socialising?

3. What facilities are available for voluntary respite care?

4. What facilities are available should a person have a crisis and need to be formally detained?

5. Will the Minister investigate this syndrome as to its incidence and its final outcome for parents and disabled children?

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

GAMBLING

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question on the subject of gambling.

Leave granted.

The Hon. G. WEATHERILL: This morning's *Advertiser* reports the Premier (Mr Olsen) calling a halt to the spread of poker machine venues, declaring that enough is

enough. The cartoon which accompanies the article carries the caption, 'Do you reckon the Government will cut down on the pokies?' The Premier has made what I think is a very good statement, because there is enough gambling in South Australia in pubs, clubs and the Casino, as well as with racing, etc.

The Hon. A.J. Redford interjecting:

The Hon. G. WEATHERILL: I am congratulating him: I think it is a very good stand. The *Advertiser* cartoon suggests that it might not happen, but, if the Premier says it will happen, it will happen. However, I noticed from reading *Hansard* that, in the other House, the Premier has let through a Bill that opens up all country racetracks to the TAB. Is it not inconsistent for the Premier to say that enough is enough with respect to gambling but then open up all country meetings to the TAB? Does the Minister see an inconsistency in that?

The Hon. R.I. LUCAS: Mr President, I seek your guidance on the Standing Orders of this place. I understand that the Racing (Miscellaneous) Amendment Bill is currently before this Chamber. Is it within Standing Orders for a member to ask questions about a Bill that the Chamber will debate?

The PRESIDENT: Order! Because the honourable member's question referred to gambling in general rather than specifically to the Bill which is now in our Chamber, to which he can refer but which he cannot debate, the Minister can answer that question.

The Hon. R.I. LUCAS: Thank you, Mr President. In accordance with Standing Orders, I will not refer specifically to the Bill, because we will debate that next week and in the last week of the session. As I read this morning's *Advertiser*, the Premier did not indicate an intention to cut back the number of gaming machines in South Australia. He was expressing a view, to quote the Hon. Mr Weatherill's reference, that enough is enough. It seems to be his personal view that he does not want to see any further increase. It did not indicate that his personal view was that there should be a reduction.

Because these are conscience issues for Labor and Liberal members of Parliament, I will need to refer the honourable member's question in so far as it relates to poker machines or gaming machines to the individual member, in this case the Premier—

The Hon. T.G. Roberts: Does that mean that the article was misleading?

The Hon. R.I. LUCAS: No, I don't know.

The Hon. T.G. Roberts: It misled the honourable member.

The Hon. R.I. LUCAS: A lot of things mislead the Hon. Mr Weatherill, but that might not necessarily be the fault of the *Advertiser*. I will refer the question to the Premier to see whether he might like to add anything more to the general comments that I have made on his behalf. I have not discussed the issue with the Premier, only having read the same *Advertiser* report to which the honourable member has referred.

The Hon. G. WEATHERILL: I have a supplementary question. When the Minister passes my questions on to the Premier, will he mention gambling in general, not just poker machines?

The Hon. R.I. LUCAS: I will refer each and every word that the honourable member has uttered on the *Hansard* record to the Premier. I will not refer only an extract of the honourable member's question to the Premier. I will ask him to respond in full to each and every word.

BUDGET PAMPHLET

The Hon. T. CROTHERS: I seek leave to make a precied statement before asking the Leader of the Government in this Chamber a question on recent Government budget pamphlets.

Leave granted.

The Hon. T. CROTHERS: In a recently released pamphlet issued by this State's Liberal Government dealing solely with the contents of this year's State budget, two statements appeared: one on the environment and the other on the State's police. The statement on the environment referred to 'continued funding to clean up the Torrens, Patawalonga and other waterways'. Because I live in the Torrens valley, and if my memory serves me correctly—

The Hon. R.I. Lucas: Does that make you a wet?

The Hon. T. CROTHERS: Well, you tell me what you are. You show me yours and I will show you mine. Because I live in the Torrens valley and, if my memory serves me correctly, the clean-up of the Torrens River valley is being funded at least in part by a levy which is collected by the local councils from all householders who live in the declared area of that valley. On the other hand, the statement in part in relation to our Police Force refers to 'an extra 165 police on the beat'. With the verbatim extracts from this pamphlet in mind, I direct the following questions to the Minister.

1. How much money was collected from residents in the Torrens valley by way of contributions to the Torrens River clean-up levy in the past financial year?

2. How much did the State Government contribute additional to the levy in the past financial year for the clean-up of the Torrens valley?

3. How many of the extra 165 police officers will be new recruits to the Police Force—

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: One can say that the Hon. Mr Redford must have been a difficult pupil at school: he is not one bit interested in learning. One only has to listen to his interjections to see that.

Members interjecting:

The PRESIDENT: Order!

The Hon. T. CROTHERS: Thank you, Mr President, for your protection. I continue:

3. How many of the 165 extra police on the beat will be drawn from the existing police officers who will be relocated from other areas of the Police Force?

Finally, but by no means exhaustively, I ask:

4. How much did this pamphlet headed 'Looking forward to the future' cost the State Government to produce, print and distribute?

The Hon. R.I. Lucas: Whatever it cost it was worth it, wasn't it TC?

The Hon. T. Crothers: I await with bated breath the Minister's answer.

The Hon. R.I. LUCAS: Whatever it cost it was worth it, because the Hon. Trevor Crothers clearly read it from cover to cover. Each page is headed 'Essential information' for the budget. Certainly we know that many thousands of other South Australians eagerly raced, as did the Hon. Trevor Crothers, to their letter box, sifted through all the Target and K-Mart material, found this essential information and read it assiduously, as did the honourable member. I am not sure

whether the honourable member has to declare a conflict of interest in relation to this question in relation to whether or not he is a ratepayer who is affected. He is; he nods.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: Good, the honourable member declared it. Some parts of the honourable member's by no means exhaustive list of questions will need to be referred to the appropriate Minister, but certainly in relation to the police numbers my recollection is that the Minister for Police has indicated that, of the 165 extra officers on the beat, about 100 or 120 are new police, and the remaining number are people who have been moved out of administrative tasks and are now fighting crime on the beat, helping good constituents such as the Hon. Mr Crothers.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: No; I would never concede that anything was wrong in relation to that pamphlet. However, I am indicating on behalf of the Minister for Police that there are two separate components: first, an additional new element in terms of numbers; and, secondly, a component, which was announced at budget time, of moving from administrative tasks to on-the-beat tasks, if we can use that colloquial phrase. In relation to the honourable member's other questions, I will refer them to the appropriate Ministers and bring back a reply.

ARTS FUNDING

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for the Arts a question about arts funding.

Leave granted.

The Hon. CAROLINE SCHAEFER: Yesterday in her matters of interest address the Hon. Anne Levy spoke on the new arrangements for project grants throughout South Australia as announced by the Minister in the past fortnight. The Hon. Ms Levy claimed that members of the arts community do not know to whom they will be applying for recurrent grants on which so many of those organisations depend; that the new three committee arrangement abandons the principle of peer assessment because membership may include a person in business or someone involved in cultural tourism; that the new arrangement is similar to that adopted in Victoria; and that she has heard from several sources that the arts community in Victoria is in complete uproar, mainly, she claims, because people do not know where they are, to whom they should apply for grants, what sort of money will be awarded or what are their current criteria. My question to the Minister is: do the Hon. Ms Levy's claims have any basis in fact, or is this a politically biased fear campaign?

The Hon. DIANA LAIDLAW: Without question the latter. I, too, was interested to hear the Hon. Ms Levy indicate that she has heard from several sources—and I am not sure what sources—that the Victorian arts community is in uproar about changes introduced some 18 months ago to funding arrangements in that State. As I say, I do not know what the honourable member's sources are. I assure the honourable member and the arts community, however, that I have seen the results of two client surveys in Victoria, and they indicate overwhelming acceptance of the policies in that State as being beneficial to individual artists and arts companies, and that is an important consideration for that State.

However, I would say that the South Australian scheme—while we have taken note of what is happening in every State, as we should as we redesign the way in which arts funding will be allocated in future—has been designed to meet the particular circumstances and growth needs of arts in South Australia. We have taken into account the views of the Arts Industry Council, which has written to me and the Premier about this matter over the past few months. We have also taken into account the views of companies with which I have met on an individual basis and artists with whom I have met collectively. It is growth in terms of development for individuals, for the companies and for the art form that is sought in South Australia. The new form of peer assessment and new committees will ensure that that growth will be secured for the arts as we go into the next century.

The current arrangements of seven committees was designed, as I recall, when I was working with Murray Hill in 1979 to 1982. It is not before time that they were looked at and updated to meet the changes in arts.

The Hon. Caroline Schaefer: I thought the arts were a business in their own right.

The Hon. DIANA LAIDLAW: In many instances they are a business in their own right. The new funding arrangements will ensure that they perform that business better in future because there will be new funding of $150 000 for consultancies so that they can ensure they have sound financial management and administrative arrangements and also that they have openings, because of strong management and business structure, to provide more performing opportunities for artists in this State and through touring arrangements interstate and overseas.

It is important to note, too, that as part of these new arrangements the money for arts grants in South Australia has been increased this year by 15 per cent. That has certainly been welcomed by the arts community generally, as has the fact that indexation is incorporated in the budgets of arts organisations. The new changes embrace the fact that since the seven committees structure was first formed the arts have developed dramatically but the structures or the processes have not. What we are interested in is getting better outcomes to meet the expectations of the arts community.

Many artists, for instance, the Leigh Warren Dancers just the other night in the performance of *Quiver*, embracing Graham Koehne's compositions; the Australian String Quartet; and certainly Doppio Teatro, have raised with me on several occasions how they are exploring new work that does not neatly fit within the performing arts criteria, and they have been challenging me and the Arts Department to look at new arrangements. And we have done that. It is also important in terms of looking at peer assessment that I have indicated that there will always be, as there should be, majority arts practitioners assessing these art forms and applications for individual and company grants.

In addition, the arts community is part of the wider world. I am pleased to have incorporated in those arrangements, and for cultural tourism purposes, more business assessment. But the majority will always be arts practitioners, and I would have it no other way. With the majority of arts practitioners, there is no way that anyone could claim that that is not peer assessment. That assessment will simply be augmented so that companies have the benefit of broader experience.

Finally, these new funding arrangements and formulas will not come into effect until next year, so we now have six months in which to work with the arts community to ensure that all the arrangements for the newer policies meet their needs. We would not have granted so much new taxpayers' money to the arts if it were not designed for the needs of the arts, the artists, the companies and the State in general. Of

course, we will be consulting widely, and for that purpose Mr Tim O'Loughlin, the head of the department, has today forwarded a comprehensive invitation for comment on the new policy arrangements, seeking input. Depending on the number of responses, he has also indicated to the Arts Industry Council that he will look at its suggestion of having an advisory group look at those responses. The time for response is early August.

I would regret very much if the Hon. Anne Levy simply tried to score petty political points or simply sought to look for negatives when positives abound, because the arts community is looking at the positives. The Arts Department is ensuring that we are aware, through these invitations to comment, of any concerns that it may have and that those concerns will be addressed in the best interests of the arts, artists and the State as a whole.

RAPE

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

Leave granted.

The Hon. ANNE LEVY: A number of years ago this Parliament amended the Evidence Act to ensure that in a rape or sexual assault trial the prior sexual history of the victim was not to be adduced in evidence, except prior sexual history with the accused, without a specific ruling by the judge or magistrate that it was relevant to the particular case. It was certainly the intention of the Parliament to indicate to judges, magistrates and the community as a whole that prior sexual history with other than the accused was totally irrelevant and that fishing expeditions were not to be undertaken to suggest that a victim was a tart or someone who might consent to sexual intercourse with the accused because she had consented to sexual intercourse with someone else on a different occasion; such inferences should not be drawn.

It has been drawn to my attention that in a rape trial which is now completed—I am not discussing a matter that is *sub judice*—it was raised in court that the victim of the rape had been a victim of sexual abuse as a child. At the time, no-one had asked the victim if she was concerned that this might or might not be brought up. When it was raised by defence counsel, the prosecuting counsel in no way objected, nor did the magistrate object or pull up the defence counsel.

The Hon. A.J. Redford: The judge.

The Hon. ANNE LEVY: It was in the Magistrates Court; it was a committal hearing, so it was a magistrate. I am so glad the Hon. Angus Redford knows more about the case than I do, Mr President. This remark was allowed to occur and was in no way halted by any of the people in the court who could have taken objection to it. It is clearly a reference to the victim's previous sexual history.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! This is a question, not a debate.

The Hon. ANNE LEVY: Thank you, Mr President. As I say, there was no indication at all that this mention of the victim's previous sexual history should not have been made, and the victim was in no way protected from it. My questions to the Attorney are:

1. Will he agree that mention of her being a victim of sexual abuse as a child, some 20 years previously, is a reference to the victim's previous sexual history and, as such, should not have occurred?

2. Will he discuss the matter with the Crown Prosecutor so that counsel for the prosecution are made more aware of this part of the Evidence Act and will raise objections should any other defence counsel try such tactics?

3. Will the Attorney do what he can to ensure that the victim in this case is not extremely traumatised by actions and inactions on the part of those involved in the trial which clearly go against the intentions of the Parliament? I am quite happy to give the Attorney the details of the case privately.

The Hon. K.T. GRIFFIN: The answer to the first question is 'No.' As to the subsequent question, if the honourable member gives me the name of the case I will have some inquiries made and bring back a detailed report. I do not know any of the facts of the matter to which the honourable member refers, but I am happy to have it examined.

VICTIMS OF CRIME

In reply to **Hon. G. WEATHERILL** (19 March).

The Hon. K.T. GRIFFIN: Further to my response to the honourable member's question on 19 March 1997, I advise that the appeals against the decisions in question were lodged in the Supreme Court on 4 April 1997. It is proposed to argue that any person who is engaged in behaviour amounting to a criminal offence should not be entitled to receive compensation for injuries arising out of the commission by some other person of some other offence about the same time. It is the Crown's contention that the phrase 'other circumstances' is broad enough to cover such events but the availability of helpful precedents is limited.

The appeal will be determined by the Full Court of the Supreme Court and, pending the outcome and in particular the reasons given by the Full Court, it may be necessary to consider amending the Criminal Injuries Compensation Act.

SECOND-HAND VEHICLE DEALERS (COMPENSATION FUND) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Second-hand Vehicle Dealers Act 1995. Read a first time.

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

That this Bill be now read a second time.

This Bill is designed to clarify who can make a claim against the Second-hand Vehicles Compensation Fund. The Full Supreme Court has recently ruled that customers of the collapsed auction business Kearns Brothers (Auctions) Pty. Ltd., can make claims against the Second-hand Vehicles Compensation Fund. The Commissioner for Consumer Affairs was represented at the hearing of the matter and argument was presented to the effect that it was never intended that the customers of auctioneers would have the benefit of a claim against the fund. It was argued that auctioneers should not be considered to be 'dealers' for the purposes of making claims against the fund.

In the event, the Full Court of the Supreme Court held that an auctioneer is to be characterised as a 'dealer' within the meaning of schedule 3 of the Act. Auctioneers whose activities are restricted to selling the vehicles of others do not contribute to the fund (and have never been required to do so) and essentially act as agents for those private individuals and businesses which choose to sell their own vehicles in this manner. Some auctioneers, who sell more than four vehicles a year from their own stock, do hold a licence and therefore

contribute into the fund. It is not disputed that the ultimate purchasers of vehicles forming the vehicle stock of any licensed dealer (who sells that stock by way of auction or ordinary sale) should have the protection of the fund.

Contention arises in the situation where the auctioneer is acting as agent for a private individual who or business which is not a licensed dealer. The provisions in the current Act reflect those which have been in place since the enactment of the previous legislation in 1983. The issue in respect of which the court ruled had, somewhat surprisingly, not previously arisen. It has always been the view of the Government that auctions represent the classic *caveat emptor* situation in which buyers of vehicles need to assure themselves of matters such as title to the vehicle, whether finance is owing on the vehicle and take upon themselves the responsibility of ensuring the mechanical soundness of the vehicle (as no warranty applies to a vehicle auctioned on behalf of a person who is not a dealer).

This situation is also recognised by the Consumer Transactions Act which recognises that the purchaser at auction has no right to the range of implied warranties such as fitness for purpose, merchantable quality, good title, quiet enjoyment and others provided for in the Act. Where a second-hand vehicle is sold by auction on behalf of a person who is not a licensed dealer, the purchaser should in all respects be in the same position as if the vendor sold the vehicle by negotiated private sale, that is, there is no duty to repair and there should not be any claim against the Second-hand Vehicles Compensation Fund.

The purpose of this amendment is to limit claims against the fund arising from the sale of vehicles by auction in circumstances where the auctioneer sells vehicles on behalf of persons who are not licensed dealers. Where the person on whose behalf the vehicle is auctioned is a licensed dealer then the usual rules relating to claims from the fund will apply, and as at present the purchasers of such vehicles will have rights to warranty. The amendment is not retrospective and does not limit the rights of those who have legitimate claims on the fund arising from the collapse of Kearns to pursue those claims. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of Schedule, 3 clause 2—Claim against Fund

The clause amends clause 2 of Schedule 3 which deals with the *Second-hand Vehicles Compensation Fund* and the claims that may be made against that Fund. It strikes out subclauses (1) and (2) and substitutes a new subclause to set out those claims that may be made against the Fund and those claims that may not:

- Claims arising out of or in connection with the sale of a second-hand vehicle or a transaction with a dealer, whether the sale or transaction occurred before or after the commencement of the *Second-hand Vehicle Dealers Act 1995* may be made against the Fund.
- Claims arising out of or in connection with the sale of a second-hand vehicle by auction or the sale of a second-hand vehicle negotiated immediately after an auction for the sale of the vehicle was conducted may not be made against the Fund if—

(1) the sale was made after the commencement of the *Second-hand Vehicle Dealers (Compensation Fund) Amendment Act 1997*; and

(2) the auctioneer was selling the vehicle on behalf of a person who was not a licensed dealer.

In addition, the clause amends subclause (3) so that it will now deal with the matters that were dealt with by subclauses (2) and (3) together.

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

RETAIL SHOP LEASES AMENDMENT BILL

In Committee.

(Continued from 2 July. Page 1662.)

Clause 1.

The Hon. K.T. GRIFFIN: When we were discussing the various issues earlier today, but on the previous day's sitting, I undertook to provide some answers to questions which were raised and which I had not adequately dealt with earlier. I sent copies of the answers to the Hons Anne Levy and Michael Elliott just prior to lunch by facsimile.

The Hon. Anne Levy: I received it five minutes ago.

The Hon. K.T. GRIFFIN: I am sorry, I did fax it down.

The Hon. Anne Levy: I can see that it was faxed at 12.23, but it reached me five minutes ago.

The Hon. K.T. GRIFFIN: I am sorry; I will read my fax into the *Hansard*:

In relation to the matters raised by the Hon. Anne Levy, re the interrelationship of division 3 and division 4, where a right or option to renew or extend a lease exists, there is no need for the Retail Shop Leases Act to have any application at all. The matter of exercising the right for options is covered in the lease itself.

Division 3 deals with the renewal of shopping centre leases which have come to the end of their term. Division 4 applies to other leases which come to the end of their term. It is the existing section 47, relocated into this new Part. Proposed section 20J requires, as did section 47, the lessor to provide written notice as to whether the lease will be renewed and, if it is to be renewed, what the terms of the renewal will be.

The working group focused on the end of lease situation in retail shopping centres as the primary area of concern and complaint. The honourable member also asked how many retail shop leases are not in shopping centres. As I indicated, there is no register of retail shop leases and it is impossible to say how many there are in South Australia. The Act is cast in very broad terms, and many sites that would not in ordinary parlance be considered to be retail shops are caught within the ambit. For example, industrial manufacturing sites at which goods are sold or services are supplied or negotiated come within the ambit of the Act, so too do the rooms of medical and other health providers and any other premises where people purchase goods or services or negotiate for the supply of services. That is very broad and I do not think it is possible to make even a guesstimate of the comparative numbers.

Several matters were raised by the Hon. Michael Elliott. He asked when the amendments would apply, and I answered that earlier in the Committee. The answer is that amendments related to renewal of leases in retail shopping centres apply to a retail shop lease of premises in a retail shopping centre entered into after the commencement of the new Division 3 of the Act. That is referred to in new section 20C(1).

In relation to exclusionary clauses, the exclusionary clause is significantly tightened from the existing provision in section 17(3)(c), which simply provides for a lawyer to certify that he or she has explained the effect of the exclusion clause to the prospective lessee. The new clause not only requires the lawyer to explain the effect of the provision but also the lawyer can only sign the certificate, which must now be endorsed on the actual lease, if the lawyer is given apparently credible assurances that the prospective lessee was not acting under coercion or undue influence. If the prospec-

tive tenant cannot give assurances to the lawyer about the appearance of the exclusionary clause in the lease, the lawyer will not be able to give the certificate.

It is the Government's view that this should prevent abuses of exclusionary clauses. It must also be pointed out that the existing clause, which relates to the exclusion of the mandatory five year term, has not as far as the Government is aware been the subject of abuse. The Government will certainly monitor the situation, as I indicated earlier in the Committee, and the Retail Shop Leases Advisory Committee is the ideal forum in which industry concerns about such matters can be raised. That is a broadly representative forum where I would expect issues affecting the interests of lessees and lessors to be raised quite frankly, particularly after the previous six or seven months negotiations on this Bill. The Government is committed to the legislation not being undermined by the use of exclusionary clauses.

The Hon. Mr Lawson asked a question about the manner of implementation of the preference. It is not possible to cover all possibilities but, in broad terms, if a landlord has made a written offer to renew or extend a lease on terms and conditions no less favourable to the existing tenant than the terms and conditions of a proposed new lease with another prospective tenant and that offer is rejected by the existing tenant, the landlord can sign up the new tenant. There is no second chance for the existing tenant. However, if the prospective tenant does not sign up to the terms put to the existing tenant and a different set of terms and conditions is then agreed between the landlord and the prospective tenant, the existing tenant must be offered a lease on terms and conditions no less favourable than those then offered to the other prospective tenant. Similarly, if a landlord has no prospective tenant in the wings and negotiates with the existing tenant but no agreement results and at a later time another prospective tenant emerges, an offer no less favourable to the existing lessee than the proposed new lease must be made to the existing tenant.

As I said earlier in the Committee, a lot of time was spent on the practical application of this preference provision. The process that is presently in the Bill has been substantially modified. Those who represented the interests of landlords and those who represented the interests of tenants were of the view that this was a workable process, and those who represented the interests of landlords felt that it could be done more easily now than under the provisions presently in the Bill. That will be monitored to determine how it actually works in practice. If other questions were raised but I have not adequately addressed them, I invite members to raise those issues and I will endeavour to deal with them in Committee.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. K.T. GRIFFIN: This clause is not required due to the insertion of new section 13, which deals with capital obligations.

Clause negatived.

New clause 4.

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

Page 1, lines 21 to 25—Insert new clause as follows:

Amendment of s.3—Interpretation

Section 3 of the principal Act is amended—

(a) by inserting in subsection (1) after the definition of 'accounting period' the following definition:

'certified exclusionary clause'—*see section 20K*;;

(b) by inserting in subsection (1) after the definition of 'retail shopping centre' the following definition:

'statutory rights of security of tenure' means the rights conferred on a lessee by Part 4A Division 2 and, if the retail shop lease relates to premises in a retail shopping centre, by Part 4A Division 3.

This deals with certain issues of definition, the certified exclusionary clause and the statutory rights of security of tenure.

The Hon. M.J. ELLIOTT: I want to ask a question related to a later clause but it concerns certified exclusionary clauses, so we might as well handle them together. Earlier in Committee I asked whether a tenant or prospective tenant being told by the landlord that they would not get a lease unless they agreed to an exclusionary clause would in itself be deemed in any way to be coercive. I do not think that question has been answered. I see a possibility that a major landlord may decide that they do not want exclusionary clauses at all in the lease, and effectively they could bypass the Act. If that is what the landlord wants, will that be coercion?

The Hon. K.T. GRIFFIN: If you do not get a choice, I would have thought it was coercive.

The Hon. M.J. ELLIOTT: There is also the question as to how one goes about actually proving that that was being required.

The Hon. K.T. GRIFFIN: We do have a provision for a tenant to be represented by a tenants' association and not, as applied previously, merely to be accompanied by a representative of a tenants' association. So, that is a check.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I would have thought that that makes good sense. If the clause is included in a lease which the prospective tenant takes to a lawyer, the lawyer has to be satisfied. I suppose a lawyer could ask, 'Do you know what this means; do you realise the significance of it; has there been any pressure put on you?' and the tenant could say, 'Well, there has not really been any pressure, but I have been told I cannot get the lease if I do not sign it.' I would have thought that in those circumstances the lawyer would not be able to give the certificate. That is the essence of what we have tried to do. In a sense, it is onerous for the legal practitioner but, nevertheless, in the discussions that occurred we did try to ensure that the lawyer was in some respects protected by reference to apparently credible assurance, but on the other hand there was sufficient measure of obligation upon the legal practitioner to ensure that the questions were asked.

New clause inserted.

Clause 5 passed.

Clause 6.

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

Page 2, lines 13 to 15—Leave out paragraph (e).

Paragraph (e) is no longer required due to the insertion of the new section 13 dealing with capital obligations.

Amendment carried.

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

Page 2, after line 27—Insert:

(ka) the nature of any other monetary obligations imposed on the lessee under the lease and, if possible, an estimate of the annual cost of complying with those obligations; and

This amendment inserts a new catch-all obligation into the disclosure statement to ensure that all monetary obligations

not appearing under any other heading are identified and, where possible, quantified.

The Hon. R.D. LAWSON: I apologise for raising this matter fairly late, but I notice that the amendment refers to 'if possible'. These words are not often found in statutes, nor do they have any precise legal connotation of which I am aware. The usual expression in statutes is 'if practicable' because practicability does have some sort of standard against which it might be judged. Is there any reason why 'if possible' was inserted? Is there any possibility of using 'practicable' rather than 'possible', because in a sense everything is possible in this area, namely, assessing the annual cost of complying. It is really a question of practicability, not possibility. Given the consequences of not appropriately completing the disclosure statement, would the Attorney consider an amendment to include 'practicable' rather than 'possible'?

The Hon. K.T. GRIFFIN: I am prepared to consider but I am not prepared to agree with an amendment. I would feel obliged to go back to all the participants in the discussions. I think there is a distinction to be drawn between something which is practicable and something which is possible. In the discussions which occurred, the focus was on possible rather than practicable. The issue of practicability does raise some other questions which would certainly give more latitude for avoiding the estimate. My preference is to stay with the words 'if possible'. Certainly, I am not aware that the draftsperson had any difficulty with it, and what it really reflects is that, although the honourable member says that anything is possible, it depends on the extent to which you want to go to that trouble. Nevertheless, I think it encapsulates the intention, that is, that there really should be some effort put into trying to make an estimate of the annual cost of complying with the obligations and not just, 'Well, it is not practicable because we do not have all the rate notices and everything else for the ensuing year.' I know I was a bit blunt in saying that I was not prepared to change it, but the fact is that the spirit of what was proposed is better reflected by 'possible' than by the word 'practicable'.

The Hon. R.D. LAWSON: I understand the problem and I also understand that these amendments represent a compromise agreed between stakeholders. Could it be left on the basis that if other amendments are made during the course of the Committee stage of the Bill in this place, and, if it is necessary ultimately to refer the matter back again to the stakeholders, that might be a matter which could be referred to them.

Amendment carried; clause as amended passed.

Clause 7.

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

Page 3, lines 29 to 35—Leave out proposed new section 13 and insert:

Certain obligations to be void

13.(1) An obligation to make or reimburse capital expenditure may only be imposed by or under a retail shop lease or a collateral agreement in the following cases:

(a) a lessee may be required to pay or reimburse the cost of making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises; and

(b) a lessee may be required to fit or refit the shop, or to provide fixtures, plant or equipment, if the disclosure statement discloses the obligation and contains sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation; and

(c) a lessee may be required to contribute to a sinking fund to cover major items of repair or maintenance if reasonable details of the lessee's obligation is disclosed in the disclosure statement.

[An obligation that may be imposed under this subsection is called a permissible obligation.]

(2) A provision of a retail shop lease or a collateral agreement under which a lessee is required or may be required to make or reimburse capital expenditure is void unless the obligation imposed by or under the provision is a permissible obligation.

(3) A provision of a retail shop lease or a collateral agreement under which the lessee is required to compensate the lessor for depreciation of the premises attributable to ordinary wear and tear is void; but this subsection is not intended to prevent such depreciation being taken into account in this calculation, or assessment, of base rent.

This deals with the issue of capital obligations. The new provision clearly sets up what a lessee can be required to make or reimburse by way of capital expenditure. The new section 13(1)(b) is of a particular importance as it will require a lessor to disclose not only the nature of a proposed refit but also sufficient detail of what will be required to permit the lessee to assess the likely costs of the refit obligations. This will enable a prospective lessee to take his or her own advice as to what a refit will cost.

The Hon. ANNE LEVY: The select committee recommendation was that the lessor had to indicate whether the lessee would be required to refit the shop or what capital would have to be made in the disclosure statement, and it was up to the lessor to indicate the approximate cost of the fitout. What we have here is a reversal from the select committee recommendation in that it is up to the lessee to obtain an estimate of the cost. I understand that in some cases with some shop fitouts the lessee is not able to choose the contractors who will undertake the work but is forced to use contractors who are accustomed to working for the owner or who do things or have things done a certain way. In the light of that I wonder whether it is better to have the lessee work out what it is likely to cost as opposed to being told by the lessor what it is likely to cost.

The Hon. K.T. GRIFFIN: I am conscious of the change, but I point out that this change came about because the representatives of landlords and tenants themselves said that what was in the Bill would not work, on the basis that the landlord sets the standards, the tenant actually pays for the fitout, and the tenant is better able to identify whether one should have particle board or solid timber, imported tiles or local tiles on the floor, and so on. The parties said that they felt that this was a better way of handling it. I accepted that on the basis of what they believed was the normal practice, anyway, and that was expressed in a way which identified the respective responsibilities more clearly than it did previously.

Amendment carried; clause as amended passed.

Clauses 8 and 9 passed.

Clause 10.

The Hon. ANNE LEVY: I will not be moving the amendments that are on file in my name. They were prepared and put on file before the working party compromise was reached and the detailed amendments which the Attorney has on file were placed before us. While the Attorney's amendments incorporate some but not all the points in my amendments, as this compromise has been reached, I will not move my amendments, although I will comment on some of the measures in this clause as the Committee goes through it.

The Hon. K.T. GRIFFIN: The existing clause will be opposed with a view to inserting a new clause, which inserts a new Part 4A—'The term of lease and renewal'. Therefore I move:

Insert new clause as follows:

Insertion of Part 4A

10. The following Part is inserted after section 20 of the principal Act:

PART 4A
TERM OF LEASE AND RENEWAL
Division 1—Preliminary

Objects

20A. (1) The Parliament recognises that conflicts sometimes arise between a lessor's expectation to be able to deal with leased premises subject only to the terms of the lease and a lessee's expectation of reasonable security of tenure.

(2) The objects of this Part are to achieve an appropriate balance between reasonable but conflicting expectations and to ensure as far as practicable fair dealing between lessor and lessee in relation to the renewal or extension of a retail shop lease.

Division 2—Initial term of lease

Minimum 5 year term

20B. (1) The term for which a retail shop lease is entered into must be at least five years.

The term of a retail shop lease is worked out under this section on the assumption that any right or option of renewal or extension under the lease or a collateral agreement will in fact be exercised. However, a right or option of renewal or extension will not be taken into account if it is given after the lease is entered into.

(2) A lease is not invalidated by contravention of this section but the term of the lease is extended to bring the term (or aggregate term) to five years.

If (for example) a lease is entered into for a term of three years, its term is extended by two years to five years. If a lease is entered into for a term of two years with an option for a further one year after that initial two years, the term of the lease is extended to four years (with the option for a further one year after that initial four years).

(3) This section does not apply to a lease if—

(a) the lease is a short-term lease (i.e., a lease entered into for a fixed term of six months or less): or

(b) the lease arises when the lessee holds over after the termination of an earlier lease with the consent of the lessor and the period of holding over does not exceed six months; or

(c) the lease contains a certified exclusionary clause; or

(d) the lessee has been in possession of the retail shop premises for at least 5 years; or

(e) in the case of a retail shop lease that is a sublease—the term of the retail shop lease is as long as the term of the head lease allows; or

(f) the lease is of a class excluded by regulation from the ambit of this Division.

Division 3—Renewal of shopping centre leases

Subdivision 1—Application of this Division

Application of Division

20C.(1) This Division applies in relation to a retail shop lease of premises in a retail shopping centre entered into after the commencement of this Division.

(2) However, this Division does not apply if—

(a) the lease is a short term lease (i.e., a lease entered into for a fixed term of 6 months or less); or

(b) the lease contains a certified exclusionary clause; or

(c) in the case of a retail shop lease that is a sublease—the term of the retail shop lease is as long as the term of the head lease allows; or

(d) the lease is of a class excluded by regulation from the ambit of this Division.

Subdivision 2—Rules of conduct at end of term

Preference to be accorded to existing lessee

20D.(1) If a lessor of premises in a retail shopping centre proposes to re-let the premises, and an existing lessee wants a renewal or extension of the term, the lessor must give preference to the existing lessee over other possible lessees of the premises.

(2) The lessor is to presume that the existing lessee wants a renewal or extension of the term unless the lessee has notified the lessor in writing within 12 months before the end of the term that the lessee does not want a renewal or extension.

(3) However, the lessor is not obliged to prefer an existing lessee if—

(a) the lessor reasonably wants to change the tenancy mix in the retail shopping centre; or

(b) the existing lessee has been guilty of a substantial breach or persistent breaches of the lease; or

(c) the lessor requires vacant possession of the premises for the purposes of demolition or substantial repairs or renovation; or

(d) the lessor—

(i) does not propose to re-let the premises within a period (the relevant period) of at least 6 months from the end of the term; and

(ii) requires vacant possession of the premises for the lessor's own purposes during the relevant period (but not for the purpose of carrying on a business of the same kind as the business carried on by the lessee); or

(e) the renewal or extension of the lease would substantially disadvantage the lessor; or

(f) the lessee's right of preference is, in the circumstances of the case, excluded by regulation.

Implementation of preferential right

20E.(1) If an existing lessee of premises in a retail shopping centre has a right of preference, the lessor must, at least 6 months (but not more than 12 months) before the end of the term, begin negotiations with the existing lessee for a renewal or extension of the lease.

(2) In particular, before agreeing to enter into a lease with another person, the lessor must—

(a) make a written offer to renew or extend the existing lease on terms and conditions no less favourable to the lessee than those of the proposed new lease; and

(b) provide the existing lessee with a copy of the lease or proposed lease (as renewed or extended) and the disclosure statement required in relation to it.

(3) When a lessor offers to renew or extend a retail shop lease under this section—

(a) the offer remains open for a reasonable period (at least 10 days not including any Saturday, Sunday or other public holiday) after it is given or until its earlier acceptance; and

(b) the lessee must notify the lessor in writing within the time stated in the offer whether the lessee accepts the offer; and

(c) if notice is not given within that period, the offer lapses.

(4) The negotiations are to continue until—

(a) the lessee rejects an offer under this section (or the offer lapses); or

(b) the lessee indicates in writing that the lessee does not want to continue negotiations for a renewal or extension of the lease.

(5) The negotiations are to be conducted in good faith.

Notice of absence of right of preference

20F.(1) If a lessee of a retail shop in a retail shopping centre does not have a right of preference, the lessor must, at least 6 months (but not more than 12 months) before the end of the term of a lease, by written notice—

(a) notify the lessee of that fact; and

(b) state why there is in the circumstances of the case no right of preference[1].

(2) If the term of the lease is for 12 months or less, the periods referred to in subsection (1) are to be reduced by one-half.

[1] See section 20D(3).

Consequences of failing to begin negotiations or give notice

20G.(1) If the lessor fails to negotiate or give a notification to the lessee as required by this Subdivision and the lessee by notice in writing to the lessor given before the end of the term of the lease requests an extension of the lease under this section, the term of the lease is extended until the end of six months after the lessor begins the required negotiations or gives the required notice.

(2) During an extension of the lease under subsection (1), the lessee may terminate the lease by giving not less than one month's notice of the termination in writing to the lessor.

(3) If the term of the lease is for 12 months or less, the period referred to in subsection (1) is to be reduced by one-half.

Subdivision 3—Remedies for non-compliance with rules

Fair dealing between lessor and lessee in regard to renewal of lease

20H.(1) If a lessor fails, in any respect, to comply with the rules prescribed in Subdivision 2 and the lessee has, in the circumstances of the case, been prejudiced by the failure, the lessee—

(a) may lodge a notice of dispute with the Commissioner setting out the lessee's grounds of complaint and applying for mediation of the dispute; or

(b) may apply to the Magistrates Court for orders resolving the dispute.

(2) If a notice of dispute is lodged with the Commissioner under subsection (1)(a)—

(a) the Commissioner (or a mediator appointed by the Commissioner) will attempt to resolve the dispute by conciliation; and

(b) if the dispute is not resolved by conciliation, the Commissioner must, on application by either party, refer the dispute to the Magistrates Court.

(3) On an application or reference under this section, the Court may make any order it considers appropriate to resolve the dispute.

(4) In particular, the Court may—

(a) order the lessor to renew or extend the lease, or to enter into a new lease with the lessee, on terms and conditions approved by the Court (but not to the prejudice of the rights of a third party who has in good faith acquired an interest in the premises); or

(b) order the lessor to pay compensation (not exceeding 6 months' rent under the lease) to the lessee.

(5) A fee prescribed by regulation is payable on lodging of a notice or an application under this section.

Division 4—Other cases

Application of this Division

20I. This Division applies to a retail shop lease other than one—

(a) to which Division 3 applies; or

(b) in relation to which a right or option to renew or extend the lease exists.

Notice to lessee of lessor's intentions at end of lease

20J.(1) Not less than 6 months, and not more than 12 months, before the end of the term of a lease, the lessor must by written notice to the lessee either—

(a) offer the lessee a renewal or extension of the lease on terms and conditions specified in the notice; or

(b) inform the lessee that the lessor does not propose to offer a renewal or extension of the lease.

(2) A notice under subsection (l)(b) may include other information about the lessor's intentions (for example, that the lessor intends to allow the lessee to remain in possession of the shop as a periodic tenant under a provision of the lease for holding over, or as a tenant at will).

(3) An offer under subsection (1) is not capable of revocation for one month after it is made.

(4) If the lessor fails to give a notification to the lessee as required by this section and the lessee by notice in writing to the lessor given before the end of the term of the lease requests an extension of the lease under this section, the term of the lease is extended until the end of six months after the lessor gives the required notice.

(5) During an extension of the lease under subsection (4), the lessee may terminate the lease by giving not less than one month's notice of the termination in writing to the lessor.

(6) If the term of a retail shop lease is 12 months or less, this section applies to the lease as if the periods of 12 months and 6 months referred to in the above provisions were reduced by one-half.

Division 5—General provisions

Certified exclusionary clause

20K.(1) Subject to this section, the rights conferred by this Part cannot be excluded or modified by contract.

(2) However, the statutory rights of security of tenure may be excluded by a certified exclusionary clause.

(3) A certified exclusionary clause is a provision of a retail shop lease in respect of which a certificate signed by a lawyer who is not acting for the lessor is endorsed on the lease to the effect that—

(a) the lawyer has, at the request of the prospective lessee, explained the effect of the provision and how this Part would apply in relation to the lease if the lease did not include that provision; and

(b) the prospective lessee gave the lawyer apparently credible assurances that the prospective lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of the provision in the lease.

Premium for renewal or extension prohibited

20L.(1) A lessee cannot be required to pay a premium for the renewal or extension of a retail shop lease.

(2) If a lessor or a person acting on behalf of a lessor seeks or accepts a premium for the renewal or extension of a retail shop lease—

(a) the lessor is guilty of an offence and liable to a penalty not exceeding $10 000; and

(b) the lessee may recover the amount of the payment as a debt (whether or not the lessor is convicted of the offence).

(3) This section does not prevent a lessor from—

(a) requiring payment from the lessee of a reasonable sum for legal or other expenses incurred in connection with the renewal or extension of a retail shop lease; or

(b) receiving payment of rent in advance; or

(c) requiring reasonable security from the lessee or another person to secure performance of the lessee's obligations under the renewed or extended lease; or

(d) seeking or accepting payment for the grant of a franchise in connection with the renewal or extension of the lease.

Unlawful threats

20M. A lessor or an agent acting for a lessor must not make threats to dissuade a lessee from—

(a) exercising a right or option to renew or extend a retail shop lease; or

(b) exercising rights under this Part.

Maximum penalty: $10 000.

Exclusion of legal consequences for which express provision is not made

20N. Except as expressly provided in this Part, there is no civil remedy for non-compliance with this Part.

In the early hours of this morning on the previous day of sitting, I explained at some length what this clause seeks to do. I am happy to repeat that, but I think members would be sufficiently aware of the structure and the process to be able to comprehend adequately what is proposed. If there are questions on the amendment, I am happy to deal with those, particularly where I have not answered members' questions adequately.

The Hon. M.J. ELLIOTT: As the Attorney noted, it was pretty late last night when we got to this Bill. The first question I asked was to whom this Bill applies. To paraphrase my comments last night, I sought to clarify whether these clauses will have retrospective action. In other words, will people already in leases be protected, or does this right of renewal apply only to people who enter into new leases after the passage of this legislation? If it applies only to new people, it will take a decade before it applies to more than 10 to 15 per cent of tenants and it will be too late for many people. I said that I hope and expect that it applies to existing leases, but I have not been able to discern that.

In his response, the Attorney-General pointed out that proposed new section 20C(1) provides:

> This division applies in relation to a retail shop lease of premises in a retail shopping centre entered into after the commencement of this division.

I have taken the opportunity to talk to a number of people about the implication of this measure. Clearly, the interpretation is that, if a person is in a lease, no protection is offered. This means that the lessee has no right of first refusal and that this measure will apply only to people who sign a lease after this Bill becomes an Act. It will be five years at the earliest before anybody gets a chance to exercise a right of first refusal.

As I understand it, the vast bulk of people end up staying in the same place, albeit having extortionate rental demands made on them, and that is why this clause came about. They will have the choice of paying the extortionate amount, which they have been doing for years, or getting out. The best they can hope for is taking out a new lease, and being extorted again to get that, but five years later, if we have got this right, the extortion will have stopped. Other people who are in five-plus-five year leases will wait up to 15 years before they get their chance to exercise the right of first refusal.

The Hon. K.T. Griffin: It is only a five year lease.

The Hon. M.J. ELLIOTT: What about a person who has signed a five-plus-five year lease? If they have signed such a lease relatively recently, at the end of the 10 years they will face an extortionate rent demand, they sign a new lease and five years after that they get their right of first refusal. So, 15 years down the track this Bill will protect them.

It is a bit like banning domestic violence and saying it applies only to new marriages after this date. By introducing this legislation, this Parliament has recognised that some very unsavoury practices have been going on. Otherwise, why are we having this debate? We are saying that we are going to fix it. But for whom are we going to fix it? It will not be for anyone who is currently in the mess; rather, it will be for the very small percentage of people who over the next couple of years enter into new leases for the first time. It will take a long time before that domestic violence stops because we are saying that we are not prepared to protect people who are currently in that situation. That analogy is fair and accurate.

We have said this is wrong, it should stop and in 15 years we will do it. Either it is wrong or it is not wrong. A lot of retailers will be in for a bit of a shock. When they read the *Advertiser*, they probably thought 'You beauty!' Perhaps they should read the Attorney-General's press release, too, which states in the third paragraph:

> The key amendments now proposed by the Government and agreed to by all industry representatives are as follows:
> · existing retail tenants will in general have a right of preference over other prospective tenants for the same site in a retail shopping centre.

The *Advertiser* has published a story suggesting that retailers have now been protected. No existing retailer has now been protected. It should have said that any retailer who goes into a new lease after this date will be protected in five years time, or perhaps 10 years or even 15 years. This is the one part of the whole Bill and its amendments that causes me real strife and grief because, as I have said right throughout this debate, the central issue in the whole retail tenancy area is lease renewal, and at last we come to grips with it—in five to 15 years! It is bad luck for all the people who know right now what is happening to them and they know what will happen to them when they go for their next renewal. It is bad luck for them because we will not protect them. We are saying that, if you happen to survive the extortion and you get a new lease, five years later we will protect you. That is very poor and very devious, whether or not it is with intent. I know that this was signed off by all parties, but I do think—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Yes, I have spoken with several parties involved in the discussion after I received the facsimile, which was not long before we came into this place. I did not get it into my own hands until just before 2 p.m. It was sent earlier but I was engaged on another appointment. I have been able to confirm that it was discussed. I spoke to Mr Shetliffe from the RTA. He said that he had certainly raised the issue. His recollection was that Mr Baldock was not present at that point of the discussion, but he had a very clear understanding that that would happen. He disagreed with it very strongly, but he said that that was all that could be agreed with. It is really similar to the situation we were in with the original Government legislation: that at the end of the day certain things will be given and others will not.

To say that this Bill reflects the agreement is absolutely spot on: it does reflect the agreement. Whether or not it is right is another question. Clearly, the landlords could see the writing on the wall. They were going to have to give something, and they have given something. However, they do not have to worry about it too much for another five to 15 years. By then, I guess, they would have worked out a few other things as well. They have bought themselves a fair bit of time, really. Mr Shetliffe has said, 'It is not good, but we would rather have this than nothing'—and that was his line. When I spoke to the Small Retailers Association it said, 'We should have picked this up, but we did not.' I am not sure whether they are the right words, but they are feeling a little put out that they had not picked it up but should have done so.

I note that the Attorney-General in response to a question asked by the Hon. Mr Lawson earlier in relation to questions of possible and practicable intimated that he would have to go away and consult and come back on that issue. In respect of proposed new section 20C(1)—and realising that the Bill could quite possibly come back to us, anyway—I move to amend the Hon. Mr Griffin's amendment as follows:

> Delete the words 'entered into after the commencement of this Division'.

At the end of the day, I may be forced to concede that that must remain, but I feel very strongly about it and my conscience dictates that I should make every reasonable effort in relation to those words because I know what retailers are going through right now, and I do not want to wear the responsibility for that going on any longer.

Questions always arise about retrospectivity, and I guess that is something that will be raised by the Minister. Retrospectivity is an interesting thing. I cannot help but note that the Attorney-General immediately before the debate on this Bill began introduced a Bill to amend the Second-hand Vehicle Dealers (Compensation Fund) Amendment Bill 1997, which, retrospectively, will change the law. Admittedly, it will change it to the way we always thought it was read, but basically the argument is that there are—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I think it is. You are seeking to clarify it, aren't you?

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: I thought you were trying to stop anyone from making claims against Kearns.

The Hon. K.T. Griffin: If you listened to the second reading speech you would realise that it says, 'It is not retrospective,' and I clearly and expressly said—

The Hon. M.J. ELLIOTT: In relation to any other case?

The Hon. K.T. Griffin: Yes, any other case.

The Hon. M.J. ELLIOTT: What you are saying is that any claim against Kearns will not—

The Hon. K.T. Griffin: It is still allowable.

The Hon. M.J. ELLIOTT: Okay. Clearly then, I have not picked the best example, and I apologise. On other occasions in this place we have voted on things that are retrospective. I have always argued that whether or not one supports retrospective legislation is not saying, 'I do or I do not support retrospectivity.' The argument should be 'What is the practical effect of the retrospectivity; what are the consequences; what are the negatives; and what are the positives.' I know what the positives are. The positives are that all the people who have been desperate for protection for ages and who will be denied it will be given it. Will the Attorney explain to this Chamber in what way there are negative consequences by an application of the right of first refusal to existing leases? I ask the Attorney-General to address that issue because it is central to whether or not the application should be available.

I cannot think of any real negative consequences other than that landlords would hate it and say, 'We did not agree to it.' However, other than I cannot think of a genuine negative consequence in terms of an injustice being done to anyone.

The Hon. K.T. GRIFFIN: In relation to the amendment to the Second-hand Vehicle Dealers (Compensation)—

The Hon. M.J. Elliott: I have already acknowledged that.

The Hon. K.T. GRIFFIN: No, I want to put it on the record because it is not a retrospective piece of legislation. The second reading speech clearly says:

> The amendment is not retrospective and does not limit the rights of those who have legitimate claims on the fund arising from the collapse of concerns to pursue those claims.

The Hon. Anne Levy: The MTA doesn't like that.

The Hon. K.T. GRIFFIN: Well, that's too bad. It has been clear all along. I have said that it will not be made retrospective. In relation to the amendment which has been moved, the Government does not accept it. It is a fact that at the discussions on the draft amendments the issue of the application of the amendments was considered. It was clearly identified and there has been no secret about the drafting: it has been there all the time. The division applies in relation to a retail shop lease of premises in a retail shopping centre entered into after the commencement of this division. That, I would suggest, has been the way in which all amendments have been genuinely made which affect the substantive rights of landlords and tenants in relation to retail shop leases.

There have been a few procedural-type matters which have, in effect, been applied to existing tenancies, but those which have substantive effect are those which have only applied from the date upon which a particular Act or amendment came into operation under this regime.

That acknowledges that commercial arrangements are in place negotiated under existing law and that it is not an appropriate principle for Parliaments to seek to substantively alter commercial arrangements. That is the principle upon which this has been addressed.

In terms of those who already have an option to renew or a right to renew, the fact is that the Act does not cover them, in any event. The principal Act does not cover them in terms of the exercise of the right of renewal because it is there—it has been agreed to—and all the rights that are exercisable at the point of the end of a particular term are dealt with by an established agreement.

No-one has ever suggested that we should be seeking to step in and change the expressly agreed terms of a lease that says 'You can have a right of renewal if you exercise it, and not less than three months and not more than six months before the end of the term, on the same terms and conditions as apply in this lease, except only in respect of rent that may be varied in accordance with market rent or whatever the arrangement might be.' That cuts both ways. It binds the landlord and binds the tenant, and it has never been suggested that in those circumstances the substantive law should override it.

The Hon. M.J. Elliott: Not by me, either.

The Hon. K.T. GRIFFIN: That's what you're doing here.

The Hon. M.J. Elliott: No.

The Hon. K.T. GRIFFIN: The honourable member is changing substantive rights. In relation to new developments at, say, Westfield Marion, there are tenants who will be signing new leases and this will provide them with protection at the end of the term. That is what is important. It does not matter whether it is Westfield or any other shopping centre: when a new lease is entered into, they will be protected.

The Hon. ANNE LEVY: At this point I am going to support the Democrat amendment. I was very concerned when I saw this part of the amendment coming from the working party, as I felt that the small business representatives had been sold a pup. I think that I would like some evidence that there was not coercion. The Attorney earlier was quite convinced that a lawyer would be able to determine whether coercion had been applied, and I would like to be convinced a bit more that the Small Business Association representatives and the Retail Traders Association representatives realised and were not coerced into this agreement whereby, as the Hon. Mike Elliott has said, it can be 15 years before any relief is found for people who are currently suffering.

I realise its implications in other areas, but I think that it is a matter that should be looked at again, or at least we need further convincing that there was not any coercion involved in reaching agreement on this. The way to keep the matter open is to support the Hon. Mike Elliott's amendment, which I realise will not be palatable to the Attorney. I feel it desirable at this stage to support that amendment. It is the responsibility of this Parliament to protect people who need protection, and ever since I saw these amendments I have been concerned that proper protection is not being provided, or not for a long time. The year 2012 is rather a long time to wait for relief that the Parliament should have been able to apply in 1997. To keep the matter open and discussion going, I support the amendment.

The Hon. M.J. ELLIOTT: While on this subject of retrospectivity, there is a need to draw a distinction between what we did in 1995 when we passed the principal Act—section 5(1) of which provides that this Act operates despite the provisions of a lease, so it applied to existing leases and we were prepared to do that in 1995—and what we are seeking to do here, which is not to do anything to the lease but to address the question of what happens when the lease is finished. We have given all sorts of reasons why a lease will not be renewed: the landlord has another tenant who will pay more money, basically, because that is what first right of refusal is all about; or the landlord wants to put the shop to another purpose, or whatever else. The landlord has all those exemptions, so none of the rights of the landlord are being taken away.

No rights are being taken from the landlord: nothing is being done to the existing lease; what is being done is that we are saying that, when the lease is completed, a person who is currently in the lease should have first right of refusal. I cannot see in what way that is interfering with a landlord except in one regard: it interferes with the landlord's capacity to extort a higher rent by saying 'I will not renew it unless you pay this rent level.' Because that is what is going on now. And the argument that the Attorney-General wants to run is that it is reasonable for landlords to keep doing that if a person is in a lease now, which expires, but it is not reasonable if they take out a new lease and, when that lease expires, they try it on again.

Perhaps the Attorney-General can explain: why is it unreasonable for a person whose current lease expires not to be protected but in five years' time a person whose new lease expires should be protected? There has to be some logic to this and I would like to hear what it is.

The Hon. K.T. GRIFFIN: I deeply resent the imputation that there has been coercion of the members of the Retail Shop Leases Advisory Committee, and I deeply resent also the suggestion by the Hon. Mr Elliott—

The Hon. M.J. Elliott: I didn't say that.

The Hon. K.T. GRIFFIN: —that this is devious. You said it was devious. You said earlier that this was devious. You said it was devious and the Hon. Anne Levy says that

she has to be convinced that there was no coercion. We have adult men and women sitting around the table with all of this clearly expressed; on the face of it they can see for themselves and it was discussed at the meetings what the application of this legislation would be. And to come in here and to then begin to rattle around with all these sorts of comments about coercion and deviousness is disreputable in the extreme.

The fact is that everyone who signed off on this knew what was in the document, they have agreed to sign it and to be bound by it, and they put it to the Parliament in that context. I know the Parliament can change its mind. But if you do that, then all bets are off and we go back to the drawing board. And I do not want to see that happen in South Australia where we have the prospect of setting this right. Certainly, it will apply to new leases and it will still create some difficulty potentially in relation to existing leases. But if you look back to the 1995 Bill that was passed in this Parliament and is now the Act, certainly section 5(1) provides:

> This Act operates despite the provisions of a lease.

And certainly it says:

> (2) A provision of a lease or a collateral agreement is void to the extent that the provision is inconsistent with this Act.

That applies to leases. But if you go further and have a look at section 81 of that Act, you will see:

> (1) Part 4 of the Landlord and Tenant Act 1936 (the 'former legislation') is repealed.
>
> (2) However—
>
> (a) the former legislation continues to apply (subject to modifications prescribed by regulation) to a retail shop lease entered into before the commencement of this Act; but
>
> (b) if the retail shop lease creates a periodic tenancy, this Act applies to the lease as from the beginning of the first period after the first anniversary of the commencement of this Act as if there were a novation of the lease on that date.

So, leases in existence at the date of this 1995 Act coming into operation were not affected by the operation of the new Act unless the regulations made a modification. And they were made in only a very limited respect.

The Hon. M.J. ELLIOTT: I repeat the very last question that I asked: what is the logic, at the end of an existing lease, to deny a right of first refusal as distinct from a person entering a new lease after the passage of this Act and then, five years down the track, giving that person the right of first refusal at the end of a lease? We are not in any way interfering with the lease itself: it is a question of what happens after the lease.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No, the lease is completed.

The Hon. K.T. Griffin: Then you do not have any rights, in your argument. The honourable member cannot have it both ways.

The Hon. M.J. ELLIOTT: This legislation seeks to give a right—

The Hon. K.T. Griffin: Before the end of a lease.

The Hon. M.J. ELLIOTT: It seeks to give a right to people with respect to what happens with a new lease. Certainly the negotiations start before the end of the current lease, but the fact is that you are talking about a new commercial agreement. You are not talking about the old agreement: you are talking about a new agreement. Why should a new agreement in relation to an existing lease be treated any differently in relation to a new agreement from any new lease that is signed after this date? What is the logical consistency between those two?

The Hon. K.T. GRIFFIN: The logical consistency is that, at the present time, there is no new lease imposed on the parties—landlord or tenant—whereas the new leases that are entered into are entered into with the full knowledge that this law will apply to them. Nothing of the sort applies at the present time, so what you are doing is changing the commercial and substantive relationship between landlords and tenants.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: It does, for the future, for new leases.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: No, it changes it for new leases. It does not change it for those who presently have a lease. When you enter into a new lease you know that, at the end of that lease, you have a right of preference as a tenant, and that can keep rolling on but, at the moment, you do not know that you have got that right when you have an existing lease.

The Hon. M.J. ELLIOTT: Of course this Bill currently relates only to new leases; the question, though, is why it should relate only to new leases. What is it about the relationship between landlord and tenant that is any different at the end of a current lease to new leases? The only difference will be the difference that is created by this Bill when it becomes an Act, and that difference will be that in one case you will have a right of refusal and the landlord will not be able to say to you, 'Pay this increased rent or you are gone', which is what they have been doing. That is what they will not be able to do, but we will allow landlords to continue to do that to tenants who are currently in leases when their lease expires.

The Hon. K.T. GRIFFIN: I will take the honourable member through this simply. The fact is that there is no law at present applying to any lease in a retail shopping centre that says, 'At the end of this lease the law imposes upon you, the landlord, a requirement to grant this preference.' There is no law at the moment that says to a tenant, 'You can require preference at the end of this lease.' At the moment there is no law that applies to those leases entered into for those purposes. When the law is enacted, a new lease which is entered into is entered into with the knowledge that the law will require the landlord to give preference. The law will be clearly identified to the tenant as giving the tenant a right to a preference, and that is what is so logically different between an existing lease when there is no such law and a new lease when there is a law.

The Hon. Anne Levy: Will that affect the rent?

The Hon. K.T. GRIFFIN: It will affect everything.

The Hon. Anne Levy interjecting:

The ACTING CHAIRMAN (Hon. J.C. Irwin): A proper procedure is in place for asking questions. I propose not to put the amendment of the Hon. Elliott's until we reach the end of the discussion on new clause 10. Can members now logically take this through to other questions?

The Hon. ANNE LEVY: I have one query with respect to new section 20C(2)(d). What sort of class of leases would the Attorney expect to be excluded by regulation from the renewal of shopping centre leases, division 3?

The Hon. K.T. GRIFFIN: It may be—and again this was discussed by representatives of landlords and tenants in their presence—that several shopping centres are located in the lower levels of a high-rise office tower, and it is proposed

that where there is such an office tower the rights of preference will not be granted to those who occupy offices in the higher levels. So that if you have shops, a medical suite, a chemist and a dentist on the ground floor and the first and second levels, this will apply to them; but in relation to those offices above that, because they are not part, effectively, of the retail shopping scene, it is proposed to give consideration to excluding those specifically from the benefits that are provided by this new part 4A.

The Hon. ANNE LEVY: Would the example which the Minister quoted be classed as being in a retail shopping centre?

The Hon. K.T. GRIFFIN: Yes, because they are all part of the one building, such as the DaCosta Arcade. The DaCosta Arcade has shops located on the ground and first floors, but the remainder of the building is occupied by offices. That is a retail shopping centre. We wanted to ensure that, for the purposes of this preference, those that are quite clearly office accommodation should not be covered within the description of 'retail shopping centre', for that purpose.

The Hon. ANNE LEVY: I presume the same sort of response applies to new section 20D(3)(f) where, by regulation, a lessee's right of preference is to be excluded.

The Hon. K.T. GRIFFIN: We do not have anything in mind in relation to that. It is there as a safeguard. It does not apply in those circumstances.

The Hon. ANNE LEVY: I note, too, that in new section 20E(3)(a) the offer made to the existing tenant has to remain open for at least 10 days, not including any Saturday, Sunday or public holiday—in other words, a clear two weeks. But previously, I think, the select committee's recommendations indicated that it should be one month, and I wondered why there had been this change?

The Hon. K.T. GRIFFIN: The simple answer is that the working group looked first at 28 days and then seven and 14 days. The issue of Easter arose, and it was finally agreed that 10 days, not including any Saturday, Sunday or other public holiday, would give really the two clear weeks within which to get advice and to make a decision. From the landlord's point of view, the longer this is left open the less manageable it becomes in terms of other offers that might be hanging on the end of that decision. From a tenant's perspective, if it is seven days it is unnecessarily short and a tenant may well need to get some specific advice which might take longer than merely five working days.

The agreement was that as it is described in this paragraph would be the most appropriate way of dealing with it, and would satisfy the competing interests of landlords and tenants.

The Hon. ANNE LEVY: I suppose it relates to my earlier comments in that it has to be the lessee who determines what he or she might be up for in terms of capital cost for a refit, instead of being presented with the figure by the lessor. Is two weeks or 10 working days adequate to actually cost the capital obligation which the lessee is being asked to undertake? In my experience, it can take a long time—much more than 10 working days—to get building quotes.

The Hon. K.T. GRIFFIN: All I can do is defer to the views of those who have experience in retail leasing. The landlords' and the tenants' groups have said this was fine; I cannot do any more than that. They are the ones who have to work with it in a practical sense, and they do it all the time. They have said that that is an appropriate compromise.

The Hon. M.J. ELLIOTT: I want to ask a question in relation to 20E(4). This issue was raised previously, and I have not come to grips with it yet. It provides that the negotiations are to continue until the lessee rejects an offer under this section. It appears to me that the rejection of a single offer would be enough to fulfil the obligation, yet the way things work means that an initial offer would be made to the existing tenant whose lease was about to expire and they might say, no, they think it is too high. That is already a rejection of an offer, although that is clearly contradicted by 20E(2), which requires written offers to renew or extend the existing lease on terms and conditions no less favourable to the lessee than those of the proposed new lease. Before that happens, an offer has to be made back to the existing lessee again, so potentially that is another offer. But it also seems possible that that could break down for one reason for another, and there is the potential for other offers to be made. I am uncertain as to whether subclause (4) will cope with the real way this would work in practice.

The Hon. K.T. GRIFFIN: My interpretation is that it will work quite satisfactorily if it is all taken together. If you look at it in isolation you might argue that it is one offer and you are out, but you must qualify that by reference to the process. The process (and the landlord has to get into this frame of mind) is that if you offer it to someone else on more favourable terms you have not satisfied the provisions of the section. You then have to ensure that your existing tenant is offered terms that are no less favourable than those which you have offered to another prospective lessee. The offers have to be in writing, and a period is provided within which to make the offer. If it is just one offer: 'I am prepared to offer you a new lease on these terms,' some negotiations may be involved in that before, after or both. In those circumstances I would categorise the discussions as not necessarily compromising the offer but as being part of working it out and, if the offer is finally rejected or it lapses, the landlord still has the other issues to be concerned about, such as prospective tenants and the terms and conditions upon which a prospective tenant is offered the lease.

The Hon. M.J. ELLIOTT: The Attorney might like to think about this, but it appears to me that offers will be made under 20E(1) and 20E(2) and it seems to me that in 20E(4) we are talking about an offer that is made under 20E(2); I may be wrong. It is when they are making no further progress under 20E(2) that the process is finished, I think; where an offer is not accepted.

The Hon. K.T. GRIFFIN: It seems straightforward to me. Subsection (1) of 20E provides when negotiations should begin and a minimum and maximum period. Then, subsection (2) makes it quite clear that before agreeing to enter into a lease with another person you must do certain things. It is all part of the process—it is all related. Subsection (1) deals with the negotiations indicating that there is a right of preference, subsection (2) deals with the actual written offer, and subsection (4) relates to the written offer.

The Hon. M.J. ELLIOTT: We are not having a philosophical debate here, just whether or not it will work in the way that is intended. In practice, what I would expect to happen is that most often the landlord will make an offer only to the existing tenant. The tenant may or may not think that is a reasonable offer. If the tenant feels it is, I imagine they will sign off and that will be the end of it. However, if the tenant feels it is not a reasonable offer, it is only at that point that most often the landlord will go looking for another potential tenant. That will not always be the case, but I am not sure whether the way this is structured will enable it to work in that way. There is no argument about how we want it to

work, but whether it actually deals with it working in that way. This almost assumes that you have a process going under 20E(1) and while that process is going on the landlord could want to make an offer to someone else and then go back to the original tenant, but that may not always be the case. An offer may be made to the tenant, the tenant may reject it and the landlord may then go to someone else to make an offer and at that point another offer is supposed to be made to the original tenant. I do not believe that this actually achieves that.

The Hon. K.T. Griffin: I think it does.

The Hon. M.J. ELLIOTT: I ask for more advice to be taken. I am not having a debate about what should happen, but I am not convinced that this actually does achieve it.

The Hon. K.T. GRIFFIN: I will think about it, but in my view it is adequate and serves the purposes that we have all been talking about.

The Hon. ANNE LEVY: I refer to section 20J in Division 4. I have sorted out what section 20I refers to; it means that, in effect, a vast number of existing leases which have rights of renewal or option in them, and all existing leases in shopping centres (as it was originally placed to us) will not be covered by these changes, and the changes will only apply to a very small number. In Division 4, it applies to retail shops other than those to which Division 3 applies, and other than those which have a right or option to renew.

In section 20J, these people have far fewer rights. They do not get an automatic preference. They will be written to and told that they will get a renewal or extension, or that they will not, so at least they will not be kept dangling until the last minute; but they will not be told why it will not be renewed if it is not, and they do not have any rights for mediation or court proceedings as applies to those who are in the shopping centres. It may well be that it is the squeaky wheel that gets the oil, but the fact that there have not been vast problems up until now in retail shopping leases which are not part of shopping centres does not seem to me a reason why these people should not have equal protection.

We do not usually take the view that people who are good and do not complain therefore get absolutely nothing, while those who do complain get special rights imposed on them. I will not move any amendments on this, but I express my disappointment that the tenants of retail shop leases outside of shopping centres will have far fewer rights than those who are tenants in shopping centres. I cannot see the logic of that, and I am extremely disappointed by it.

The Committee divided on the amendment:

AYES (9)

Crothers, T.	Elliott, M. J. (teller)
Holloway, P.	Kanck, S. M.
Levy, J. A. W.	Nocella, P.
Pickles, C. A.	Roberts, T. G.
Weatherill, G.	

NOES (8)

Davis, L. H.	Griffin, K. T. (teller)
Irwin, J. C.	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Pfitzner, B. S. L.	Stefani, J. F.

PAIRS

Cameron, T. G.	Redford, A. J.
Roberts, R. R.	Schaefer, C. V.

Majority of 1 for the Ayes.

The Hon. M.J. Elliott's amendment thus carried; new clause as amended inserted.

Clauses 11 to 15 passed.

New clause 15A.

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

Page 7, after line 33 insert new clause as follows:

Amendment of s. 60—Associations representing lessees

15A. Section 60 of the principal Act is amended by inserting after 'accompanied' in subsection (2) 'and represented'.

The amendment to section 60 reflects the need to ensure that associations representing the interests of lessees can actually represent a lessee in negotiations with the lessor. The current provision refers only to such persons accompanying the lessee.

The Hon. M.J. ELLIOTT: This is similar to an amendment I had in a private member's Bill I introduced. It is probably the one item that is not covered in any way by the select committee recommendations. Unfortunately, there has been a real abuse of the interpretation of the current Act where, while the right to accompany was there, in some cases the landlord refused to talk with a person who was there; yet the intention of the Act always was that a person would have a right to be represented. Unfortunately, certain landlords—including a particular big landlord in this State—were abusing that. I am glad that the Government is addressing it.

New clause inserted.

Remaining clauses (16 and 17) and title passed.

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

That this Bill be now read a third time.

The Hon. M.J. ELLIOTT: I spoke at the beginning of the Committee stage in response to a number of amendments which were tabled and which came about after quite a long consultation period. I want to make sure that the record is quite clear that there are some enormous improvements in the amendments that were moved in Committee. The Bill is a much better Bill. In 10 years' time, everyone will speak even more loudly about it because, by then, just about everybody will be protected.

The Bill has one major weakness, and that is that all existing tenants will not be offered first right of refusal and, when they realise that what they read the other day in the *Advertiser* does not apply to them, they will go into deep shock, because there had been healthy anticipation that at last there would be some relief. I understand that the Bill may come back to us next week and that I will have to make a decision at that point.

I do not want to put at risk the gains that are being made. By the same token, my conscience says that all existing tenants should be offered protection, which they will not get under the Bill as the Attorney-General wished to amend it. I hope that he will give that further consideration. At the end of the day he will say that this is what was agreed but, even with the first Bill that came before us in 1995, I said that it is not what is agreed that is always important: if someone has an advantage over someone else, they can reach an agreement but not give away all the advantage, and basically that is what has happened here. Just because it is an agreement does not make it right, and that must be recognised.

Bill read a third time and passed.

JURIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 May. Page 1433.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading.

This Bill appropriately updates certain provisions in the present Juries Act. For example, in these days of computers there is not really any need for little cards to be plucked out of the ballot box to decide on the composition of jury panels. There are many interesting issues arising from our jury system but at this stage we will be simply concentrating on the amendments before us in this Bill.

One issue that is raised in this Bill is the ability of citizens to evade jury service. Both in the current legislation and with the updated language proposal in clause 4 of the Bill, one of the reasons for citizens being able to avoid jury service is if they present 'any reasonable cause'. Is there any record kept of the number of people who are called up for jury service but then make an excuse for not going on with it? Do we know how many people have claimed a reasonable cause for not going on with jury service, and what kind of reasons have been given? The question is potentially of great significance because even if, for example, a very high proportion of professional workers and managers are declining jury service because of work commitments being cited as a reasonable cause, or if a very high proportion of single parents with child-care obligations exclude themselves from jury service on that basis, then obviously the composition of our juries will be skewed towards a range of people who are not necessarily representative of the community at large.

The Opposition would be interested to have the Attorney report on that issue, and I look forward to the Attorney's response. We support the second reading.

The Hon. R.D. LAWSON secured the adjournment of the debate.

COOPERATIVES BILL

Adjourned debate on second reading.
(Continued from 28 May. Page 1446.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. This Bill is lengthy and complex but the Opposition accepts that it is consistent with legislation which has been, or will be, passed around the nation. So, there is a uniformity argument in favour of the legislation. In addition, it seems that just about every aspect of the operations of a cooperative has been reconsidered, and in some cases there is increased regulation. In relation to voting rights and accountability generally, the reforms would appear to advantage cooperative members. The Attorney may wish to inform members as to the number of cooperatives or the kind of cooperatives which might seek to operate both in South Australia and beyond State boundaries, since the legislation clearly envisages that sort of widespread field of separation. For example, are these provisions particularly of significance to farming or grain cooperatives near the South Australian-Victorian border?

The Opposition has not received any objection from cooperatives or cooperative members in relation to this Bill, and we see no reason to delay its passage. We support the second reading.

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

ASER (RESTRUCTURE) BILL

Adjourned debate on second reading.
(Continued from 5 June. Page 1552.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. The Opposition will not obstruct the sale of various parts of what is known as the ASER development. A Bill of this nature will facilitate the sale of the properties involved, given the extraordinarily complex web of relationships between the various ASER entities to which the Minister referred in his second reading explanation.

One or two questions arise. The second reading explanation refers to important taxation allowances which exist in relation to the buildings included in the development. Presumably, this refers to taxation benefits which have been in place for some time. Would the Minister please detail these taxation allowances? Are they merely taxation allowances applicable under the general law, or are there allowances specific to this site? Who presently receives the benefit of these allowances? How exactly could new leases affect these allowances? No specific mention is made of them in the Bill.

One other minor point relates to drafting. Clause 31 provides that the Governor may make proclamations for the purposes of this Act. Would not the Governor have the capacity to make relevant proclamations without this clause, and what does the Government have in mind in respect of the sort of proclamations that it would be appropriate for the Governor to make for the purposes of the Act? The Minister may wish to bring back these responses when he replies or when the Bill goes into Committee. The Opposition supports the second reading.

The Hon. R.D. LAWSON secured the adjournment of the debate.

JURIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 28 May. Page 1433.)

The Hon. R.D. LAWSON: I support the second reading of this Bill. The jury system is deeply ingrained in the common law and it is an important part of the rich tradition of our justice system. Any measure which rejuvenates and improves the jury system is to be applauded. From time to time, we hear comments in these days of economic rationalism that the jury system is rather inefficient. Critics point to some continental systems where juries have never been a feature of the criminal trial process. They point also to, I think, the Japanese system and many Asian systems which do not have juries to determine criminal matters.

Critics also point to the fact that much of the summary justice system of our own country and also that of common law countries is conducted by magistrates rather than by juries. Notwithstanding the critics, I remain a strong supporter of the continuance of the jury system. However, like all systems, it requires amendment and improvement from time to time. The amendments proposed in this Bill are sensible, administrative and machinery amendments which should make this system more efficient in an administrative sense without in any way compromising or interfering with the integrity of juries and their deliberations.

The only question that I will put to the Attorney during this second reading contribution concerns the payment of jurors. There is no amendment in the current Bill relating to the payment of jurors, nor is it intended to alter the legislation in this way. However, from time to time, one hears criticisms of the current payment system for jurors. These criticisms are

not universal. The invariable response is that jury service is a community service and is not intended to be a service for which full remuneration is paid for participation. However, in the light of the criticism from time to time of the level of payment for jury service, I ask the Attorney to indicate during his second reading reply or in Committee whether there is any intention to alter the current level or method of payment for jury service. I support the second reading.

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

ASER (RESTRUCTURE) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1682.)

The Hon. L.H. DAVIS: The ASER (Restructure) Bill seeks to give the Government the ability to undertake a major restructuring of what is known as the ASER development. The ASER development, which was first mooted 14 years ago in 1982, consists of the Adelaide Casino, the Convention Centre, the Hyatt Hotel, car parks, the Riverside building and the plaza area, which is better known as a public area. This legislation is yet another public example of the financial debacle created by the Bannon Arnold Governments which were in power between 1983 and 1993. In 1983 Premier Bannon announced that there would be a convention centre development at the railway station.

As Leader of the Opposition he discovered that the Liberal Party had plans to develop the railway station and surrounding areas for a major convention centre, a hotel, a retail centre and possibly a bus station. The Tonkin Government did not use that possible development in any way during the 1982 State election campaign, but one of the developers associated with the project leaked this information to the then Leader of the Opposition, John Bannon, who made it one of the highlights of his election campaign for the 1982 poll. He highlighted the need for a convention centre. He had a sketch of the centre and the hotel, which was for the benefit of the media, and when he eventually became Premier he pursued that concept which had been initiated by what had been a very modest Liberal Government, modest in the sense that it did not try to beat up something which was not yet in place.

On 1 October 1983 Bannon signed what became known as the Tokyo agreement. It was a very big deal: a $140 million convention centre, hotel and office block jointly funded by the South Australian Superannuation Fund Investment Trust (SASFIT) and Kumagai Gumi, which was one of the largest construction groups in Japan.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: By the time I have finished, the Hon. Trevor Crothers will be thoroughly silenced, because it is not a pleasant story.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: That is right, facts always do tend to win out. The ASER development (Adelaide Station and Environs Redevelopment) was said to be the biggest construction project in the history of South Australia. With a plan to develop the first purpose built convention centre in Australia, it certainly was an exciting concept. As I said, the project was announced in October 1983 and, at the same time, legislation for the establishment of a casino had been passed through the Parliament. Premier Bannon claimed just three weeks after signing the Tokyo agreement, which led to the creation of ASER, that he had insisted that the Tokyo agreement be drawn up without regard to the possibility of a casino being located within the development.

That was later found to be palpably false. John Bannon had misled Parliament in that the ASER Property Trust, created under the complex ASER structure, had been given the first right to lease the railway station, which was the preferred site for the casino. That set the pattern for the next seven or eight years. That was the style of the Bannon Government. The ASER group proposed a $15 million casino at the railway station, with 100 gaming tables and capacity for 3 000 people. There were other submissions, but they never had a chance. It was a done deal, and so it came to pass that the ASER Property Trust was involved with the casino.

In February 1984 the Casino Supervisory Authority recommended the Adelaide Railway Station as the preferred casino site because 'the station building does possess a character and appearance that could be described as unique, an attribute extremely valuable for marketing ventures direct to interstate and overseas tourists'. At the time it was suggested that the casino would be such a profitable operation that within five years the public would be offered a chance to invest in the ASER operation through the ASER Investment Trust, which owned and operated the casino.

Close on the heels of that announcement, in March 1984, it was revealed that the Hyatt would be appointed as operator for the $50 million, 400-room international hotel to be built on the ASER site. A convention centre was planned for completion in mid-1986 and there were other elements in the project, including an office building to be finished before the end of 1986. The Government committed itself to support the ASER project through subleasing the Convention Centre and what was at first an 800-space carpark.

The Government also undertook to lease 30 per cent of the public area and the leasing of the Convention Centre and the carpark. It was all done on the basis of a rental of 6¼ per cent, linked to the capitalised completed cost of those facilities and adjusted annually for inflation. In other words, the higher the finished costs of those elements of the project the Government was subleasing, namely, the Convention Centre, the carpark and public area, the higher would be the annual rental payable by the Government. The Government also guaranteed to sublease 11 000 square metres or 50 per cent of the office building planned for that site and which we now know as the Riverside building.

The Adelaide Railway Station Redevelopment Bill was passed through the Parliament in early 1984, but not before the shadow Attorney-General, Trevor Griffin, had revealed Premier Bannon's duplicitous behaviour when it came to details about the casino and obviously the preference given to ASER with respect to its being the operator and owner of the casino. One of the early difficulties the Government faced with respect to the ASER development was the form of the architecture. The hotel was to be a high-rise hotel rather than a low level hotel, scalloped around a very pleasant view of the Torrens.

Bill Manos and John Watson, who were both aldermen of the city council, were trenchant in their criticism of the 23 storey hotel and demanded that the earlier option of a four to five storey hotel with a tiered facade facing the Torrens be re-examined. The *News*, which was the afternoon paper at the time, set a new standard in literacy when it rejected the criticism of ASER, describing it as 'a symbol of a thrustful looking South Australia', whatever that might have meant.

The Hon. R.I. Lucas: Is that meant to be good or bad?

The Hon. L.H. DAVIS: I think it was meant to be good, but of course with the *News* you never did know, and I do not think that it did, either. The University of Adelaide's Professor of Architecture (David Saunders) described the rest of the ASER development as being 'a big yawn; a massive, intrusive, boring set of buildings to be ever after regretted'. In 1984 the Australian Democrats moved to disallow the ASER regulations, which would have forced the Government to re-examine the architecture, design and other elements of the ASER project. That was a creditable initiative from the Australian Democrats. I must say that there were some Liberals who supported that move, and I was one of them.

The Hon. Diana Laidlaw: So was I.

The Hon. L.H. DAVIS: And the Hon. Diana Laidlaw interjects—which is contrary to Standing Orders but in this case is appropriate—because she also claims that she supported the Democrat move. It was narrowly defeated and that failed motion then passed into history. It was a shame that it was defeated, because I suspect that it would have forced a reappraisal of ASER plans. One of the other criticisms was not only of the scale of the hotel but also of the bulk of the proposed office block. That was modified marginally in the face of the criticism. By the end of 1984 I had developed a firm political interest in the matter, and it was fairly obvious that there were significant cost increases occurring on the site.

If one can say something that can never be argued against, it was that the Labor Government was not worldly-wise in the ways of business and finance. It allowed a complex, extraordinary structure to be established, allegedly for tax purposes, and also allowed unions to run amok on the site. I will develop those points in a minute.

In June 1985 the first element of the ASER project was completed, which was the restoration of the Adelaide Railway Station (60 years after it had been completed in 1928). I have said publicly and will say again that that is certainly the most beautiful element of the ASER project. The finished Casino at the time was highly regarded around Australia, and achieved well deserved accolades, although Premier Bannon I think was more than flowery and over the top when he said at the opening:

> Monte Carlo is getting a bit tattered around the edges; this [the Adelaide Casino] is getting ready to take over from it.

The Chairman of ASER was in fact one of the key people in the South Australian Superannuation Fund Investment Trust, Mr Ian Weiss, who also was not short on hyperbole. He claimed that the Hyatt Hotel would have the most impressive hotel entrance in Australia. Of course, that is the benefit of hindsight: we can see how far short of the mark these statements were or how accurate they might be in light of our experiences and our current perceptions.

The former Premier had always been very proud of ASER. He had made much of ASER: he used it as a backdrop for election campaigns; he had claimed it as a Government project. But by 1987, when ASER was starting to fall away and become a political stalking horse, he claimed that ASER was in fact a private development. I am quoting Mr Bannon directly:

> [ASER was] a private development and the Parliament and the community have no business to know ASER's final cost.

This was a remarkable turnaround because the Labor Party had been very happy to bask in the sunshine and reflected glory of ASER. Mike Rann, who is now the Leader of the Opposition, was in fact press secretary to Premier Bannon at the time. He was responsible for the ASER hype. The project was frequently labelled as 'world class' and, as I have said, when Bannon introduced the ASER Bill in Parliament in 1984 he said:

> The Government believes it is appropriate that the project be regarded as a Government development.

But three years is a long time in politics when in 1987, in defence of not revealing the cost of ASER, he was labelling ASER as a private development and the Parliament and the community had no business to know ASER's final cost.

The Casino was undoubtedly a triumph in terms of refurbishing the Adelaide Railway Station. It was one of the few mainland casinos as the time. There was not a casino in Melbourne or Sydney. There were two small casinos in the Northern Territory and so the Adelaide Casino had a big market, high rollers and a very profitable operation from which the Government benefited.

The Adelaide Convention Centre opened two years later in June 1987, seven months behind schedule and well over budget. I remember that Daryl Somers hosted that occasion and it was a glittering night. The Convention Centre has to be judged as being very successful, although there were some disappointing design flaws in the centre in the sense that it was originally designed as a multi-purpose venue, not only for conventions, meetings and banquets but also, initially, it was designed to host international tennis tournaments with up to 3 000 spectators, basketball matches, boxing and other sporting events. Rather curiously, they forgot to put in the shower facilities in the centre and, when the first basketball game was played, not only was it played at a gentle pace because there was a lack of run-off space—the configuration of the centre was not big enough to be used as a proper basketball court—but the players had to cross North Terrace to have a shower in the Grosvenor Hotel.

Of course, this was part of the world best practice approach of the Bannon Government. In addition, the women's toilets are so small, I am told (although I have never been in them) that effectively if you are in a ballgown you have to stand on the toilet seat to close the door. Similarly, for tennis matches, which were meant to be held in the centre, anything which resembled a cross-court drive would be returned from the lap of the spectator in the fourth row. There were certain limitations with the design of the centre. This is not hyperbole on my part—I am referring directly to the brochures published ahead of the centre's completion.

Whilst there was fault in respect of the design for sporting conventions, I have to say that the Convention Centre has worked well; it has been a great tribute to the leadership of Pieter Van der Hoeven and the management. South Australia, with about 8.3 per cent of the nation's population, has been achieving 15 per cent to 17 per cent of the nation's convention traffic. That is a very commendable effort although, of course, one must recognise that there is an enormous challenge in the marketplace given the recent opening of a very large and impressive complex in Brisbane and, more recently, in Melbourne, not to forget Darling Harbour in Sydney. I praise the energetic management that has given Adelaide a very large share of that convention market.

The Riverside building was another element of the ASER project. Again, we saw a shortfall in expectation. It finished much later than scheduled—in January 1989, well behind schedule and with the Government committed to lease 50 per cent, or 11 000 square metres, of office space. Although it

was finished in January 1989, the Government did not occupy it until October 1989, and the Housing Trust paid well over $2 million in rent for this unoccupied space—an extraordinary situation and an extraordinary waste, something which again was a hallmark of the Bannon Government.

There was again a shortfall in expectations regarding this building. The building, as it snaked skywards during 1987, turned out to be clad in grey. John Bannon grabbed a useful headline by demanding breathlessly, one Sunday morning on the front page of the *Sunday Mail*, that the project should stop immediately because he believed the colour was incongruous. He had always believed the office tower would be in the same colour as the rest of the project. And so work on the cladding stopped, with the fierce leadership of John Bannon demanding that the colour should be reviewed. But, when it was found that to change the colour would cost $4 million and delay the project by three months, of course, Premier Bannon said, 'Let's proceed.'

There was another angle to this story. By now there were so many 'deep throats' in ASER that they were hoarse from leaking. I was told that there existed, deep in the bowels of the Bannon Government, a letter of August 1986 (1½ years earlier) which had formally advised the Government that the colour of the building would be metallic grey. So, in Parliament I asked for and received a copy of this letter, which revealed that John Andrews, the project architect, had made the colour choice. The letter to the then Deputy Premier, the Hon. Don Hopgood, states:

> It will sit comfortably with the stone-like finish of the rest of the development. On the street scape it will be seen as an echo of the Parliament House and some other buildings in North Terrace.

There it was; 18 months earlier, the Deputy Premier—code for the Bannon Government—had been told that the colour would be silver. Then, 18 months later, they discover that it is not the stone colour they thought it would be and create an uproar. Absolutely extraordinary!

To compound the bizarre chain of events surrounding the whole ASER project, Baillieu Knight Frank, the highly respected national leasing and management agents acting for the ASER building, in December 1987 published a national leasing guide which included a full colour photograph of the model of the completed ASER project. That photograph included the office building not in grey but in pink. So people were being deceived—unwittingly as it turned out, of course—by Baillieu Knight Frank about the colour of the building.

With regard to models and expectations of what the ASER project would look like, there was a model of the ASER project that some people might well have seen in the foyer entrance to the Casino, or in Rundle Mall for some time. That model clearly showed not only the office building—known as the Riverside office building—in pink but the Hyatt Hotel in one colour only, that is, pink. However, if one looks at the finished hotel, one finds those ugly controversial cement finishes on the eastern and western exterior walls. And there was no sign of the ugly water towers, which are a feature of the Hyatt skyline. Indeed, it is the only building of national prominence that I have seen advertised in a national magazine—or any publication for that matter—where they have changed the building by air brushing out the ugliness—the water towers—so that the Hyatt Hotel looked a little better than it was.

The Riverside building had its problems in that it sucked in diesel fumes, particularly on windy days, and staff would get nausea and headaches in the early days. Also, diesel settled on the drawings and diagrams in the Housing Trust offices, creating a nuisance, as well as a health hazard. The air-conditioning did not work in the building. On some days it was hot and others it was cold, so in summer staff were wearing ski jackets. It would be funny if it was not true.

The last element of the ASER project was the controversial hotel. That hotel was eventually given a soft opening in June 1988—16 months behind schedule and at least double the budget. I will talk about the budget later. The Hyatt Hotel was a problem, because the unions were out of control on the site for most of the time. The design and construct program was extraordinarily difficult. Given the problems of design and of the union, within six months of starting, it was four months behind schedule. It was doomed to a costly and slow development. The design work, completed just ahead of construction, was often inappropriate and had to be unravelled and done again. The Hyatt Hotel was the second last of the ASER elements to be completed. I seek leave to have inserted in *Hansard* a table which is purely of a statistical nature and which highlights the extraordinary blow-out in the cost of the ASER project.

Leave granted.

ASER—The Cost Blow-out

Element	Completion Date	Estimated Cost* $ million	Actual Cost $ million
Adelaide Casino*	31/12/85	20.0	24.6
Hyatt Hotel	30/6/88	65.7	150.0
Riverside Office	16/1/89	32.1	66.4
Adelaide Convention Centre	30/6/87	11.1	39.4
Car Parks	30/6/87	13.9	18.7
Common Areas		17.2	44.6
Totals		160.0	343.7

The Hon. L.H. DAVIS: This table reveals that the original estimated cost of ASER was $160 million, but the final cost of ASER was $343.7 million. It more than doubled its budgeted cost, and the extraordinary feature of it was that every element, with the possible exception of the Casino where the blow-out was restricted to about 20 per cent, was very much over budget. The estimated cost of the Hyatt Hotel was $65.7 million and the actual cost, $150 million; the estimated cost of the Riverside office was $32.1 million but it blew out to $66.4 million. Not only has there been a massive increase in the cost which has immediately fed through to the annual rentals which the Government is paying for the Convention Centre, the car park and the public areas, but also, it reflected on the bottom line for one of the other parties in the ASER project, and I refer to Southern Cross Homes.

When the original ASER Property Trust was established, another investment unit trust called the ASER Investment Unit Trust was established which leased the property of the hotel and the Casino from the ASER Property Trust. Two-thirds of the equity in this ASER Investment Unit Trust was held by Kumagai Gumi and the South Australian Superannuation Fund, with the remaining third held by interests associated with the Pak Poy family, which had initiated the whole development. When Mr Patrick Pak Poy died, the estate sold on its one-third interest in the ASER Investment Unit Trust to Southern Cross Homes, which believed, not surprisingly, that the Casino would be a good money spinner for it. It is alleged that it paid about $12 million for this interest.

What it clearly did not understand was that, before the bottom line was reached for the ASER Investment Trust, there was a formula which creamed off money to the benefit

of the South Australian Superannuation Fund and Kumagai Gumi, and that was based on the final cost of the Hyatt Hotel and the Casino. That meant that ASER received an annual rental based on 8.5 per cent of the total cost and 10 per cent of the Casino development cost. It was a ludicrous proposition that it would get an annual rental based on 8.5 per cent of the hotel cost, which was $150 million, being $12 million or $13 million in the first year and this adjusted annually for inflation. But it meant in reality that Southern Cross Homes never got anything, so the borrowings it had undertaken from the State Bank escalated until eventually in recent times the Liberal Government was forced to buy out its interest for a figure that was generally believed to be about $22 to $24 million.

The Liberal Party in Opposition in the late 1980s and early 1990s had continually attacked the concept, financing, management, cost and structure of the ASER project. In fact, we established a select committee to examine the ASER saga, and the Hon. Robert Lucas and I were Opposition members on that committee. We took evidence which blistered the Government. We took evidence from Mr Ross Woods from the accounting firm Howarth and Howarth, an expert in hotels, who said it was a total fiction that the South Australian Superannuation Fund and its Chairman, Ian Weiss, were able to write the hotel into their books at $150 million—capital costs had appreciated by inflation each year—when in fact its real value would be no more than $60 million at the time.

He found it extraordinary that the hotel was in the ASER books at $160 million—$100 million more than he believed it would be. Ian Weiss, who was the controversial leader of the South Australian Superannuation Fund and architect of this extraordinary complex ASER structure, which we are now seeking to unravel in this legislation, had persistently claimed to the select committee that the hotel and Casino were inextricably linked, that they were a business unit. In the view of the Hon. Robert Lucas and myself that was a total fiction.

The Casino did not rely on the hotel guests for its profitability. There may have been a loose nexus between them, but no more than that. Again, Mr Woods pointed out that the hotel and Casino could not be regarded as a business unit. He made the point—which has come true in a dramatic fashion in recent years—that the Adelaide Casino suffered from being the only non-purpose casino in Australia. In other words, it had not been specifically designed as a casino. Unlike the casinos in Sydney, Melbourne or Brisbane there was not the space for entertainment or restaurants; there were not public bar-rooms and entertainment areas available in the purpose-built casinos in other States. He argued that that would increasingly disadvantage Adelaide and, of course, that has come to pass. It had major drawbacks, in other words, in terms of its operational efficiency.

In a nutshell, the ASER development has fallen far short of the dreams and hopes for it when it was first launched nearly 14 years ago. In its annual awards in 1988, the Civic Trust, which recognises architecture that makes a contribution to the environment, specifically singled out the ASER building for criticism, describing it as patchy uncoordinated buildings. I have argued publicly that when you go to a city, one of the important things that you do is to take in the environment, take in the atmosphere and the developments, and they may be the subject of postcards sent back home. I would suggest that when people come to Adelaide they do not send back a postcard of the ASER development and say, 'You must go there when you go to Adelaide.' That was the sadness of the project. It was a once-in-a-generation, mega project for Adelaide, a project with an initial cost of $160 million that blew out to $343 million yet is not regarded as a top rate project. Certainly, elements of it, such as the Convention Centre and the hotel, work well although their architecture can be dismissed. The Casino has had its moments of glory but it is now for sale.

This Bill seeks to advance the sale of certain parts of the ASER development. The Government has had difficulty unravelling this complex series of trusts which makes up the ASER group. It is a structure which has led to major financial losses for the South Australian Superannuation Fund and the taxpayers of South Australia. Premier John Bannon claimed that it was no business of the Liberal Party to know the final cost and claimed that it was a private development. That was not true because the South Australian Superannuation Fund, with its 50 per cent interest, has directly suffered through an underperformance because of the losses and write-downs of over $100 million on this development.

This restructuring will be made possible by this Bill. It is obvious, reading the legislation, that it has been cast in the widest possible terms to enable the Government to prepare the interested parties—the Casino, Hyatt Hotel and Riverside Building—for sale, to unravel this complex structure, to simplify the structure and to allow for the sale of elements of ASER.

One hopes that there is a lesson in all this, not only for this Government but also for future Governments. Certainly there is a lesson in it for the taxpayers of South Australia and the members of the South Australian Superannuation Fund.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 4 June. Page 1538.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): On behalf of the Attorney-General, I thank members for their contributions and for their indication of support for the Bill.

Bill read a second time.

In Committee.

Clause 1.

Progress reported; Committee to sit again.

MOTOR VEHICLES (FARM IMPLEMENTS AND MACHINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 June. Page 1546.)

The Hon. SANDRA KANCK: I indicate my support for the second reading of this Bill, although I do have a few concerns about it. I am not familiar with this sort of vehicle. Obviously I do not live in the country and do not have to deal with it, but it seems to me that, despite the fact they are slow moving, given the sort of extension that they would need both vertically and horizontally, they would need a fairly weighty base in order to keep them balanced. If one were accidentally to connect with one of those, whether as a pedestrian, cyclist

or in a car, even if it was only at a low speed, it would pack a wallop.

Although the Hon. Carolyn Schaefer has suggested that the chance would be about one in 2 million, I think it will be a case of 'when' it happens rather than 'if' it happens. It is because of that small chance of this sort of accident occurring that I do have some concerns with the legislation. I cite as an example of particular farm equipment an accident of which I was aware many years ago when I was at high school. Four teachers who shared a car were travelling from Broken Hill to Sydney. When they were near Dubbo at around sunset—it may have been sunrise; I am not sure—the light was low. As they were driving along, one of those large agricultural sprays was being towed, and the driver had slowed down to turn into a property so that the car in fact had moved off the road but that what was there was the large boom of the agricultural spray. The driver did not see it and, quite literally, the boom of that spray came through the window of the car and instantly beheaded one of those teachers. That might be a two million to one chance, but the fact is that these accidents do happen—and occasionally with tragic consequences.

I understand why the Government has gone through this process and, clearly, it has talked to the rural producers, who are very keen to see this go through. I have also spoken with the Hon. Terry Cameron about this and, while I am happy for the Bill to go through, I am certainly willing to consider amendments that the honourable member has shown to me but not yet put on file. With that, I indicate my support for the second reading but with some reservations about the Bill as a whole.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

COOPERATIVES BILL

Adjourned debate on second reading.
(Continued from 28 May. Page 1446.)

The Hon. R.D. LAWSON: I support the second reading of this Bill. Cooperatives have played an important part in the economic life of this State in the past—and they continue to do so. However, having said that, I must say that the case can be made for an amalgamation of the various types of corporate entity that now conduct business in South Australia. The overarching legislation is, of course, the Corporations Law, which is controlled by a national scheme. That is an extremely complex form of legislation, and hitherto the cooperatives legislation of South Australia has been relatively modest in the bureaucratic requirements that it places upon cooperatives. The existing legislation is a model of drafting economy and occupies some 47 pages.

The Bill which we are now debating and which deals with the same subject matter occupies over 200 pages of regulation. We have before us in this place at the moment friendly societies legislation that deals with another form of economic entity in our commercial and financial system.

The time is fast approaching when it might be appropriate to have one form of regulation with appropriate modifications and exemptions applying for various specialist forms of activity such as cooperatives. What was once the simple legislation that might easily be thought to be administered in a relatively non-technical way by small enterprises, many of which are in regional parts of South Australia, is now a highly complex system of regulation which in a sense is confusing because it has much of the technicality of the Corporations Act, but not all of it. It seems to me that cooperatives are neither fish nor fowl under the current regime.

The legislative model used on this occasion is a form of consistent legislation which has been developed nationally. There was a Victorian Bill, based on the New South Wales legislation, and as the Attorney mentioned in his second reading explanation, all States have agreed to use the Victorian Cooperatives Act as a model. So we now have this South Australian legislation which is consistent to the point of almost being identical to the Victorian legislation, and each State Parliament will pass similar legislation which is consistent with, and in many cases I anticipate precisely the same as, the Victorian model.

This is an advance over the template model which was adopted in relation to the competition legislation in this State. I must say that I regard the competition legislation as being a singularly unfortunate form of legislation. It comprises a short application of laws Act in this State and it is impossible from the text of the South Australian legislation to understand precisely that which is applying in South Australia. One has to go to Commonwealth legislation to see what is described as portions of the Trade Practices Act, namely, the schedule text version of that Act, to see what applies in South Australia. Some of the models of uniform national legislation which are being adopted are most unsatisfactory from the point of view of the smaller States.

However, I am glad to see that the Cooperatives Bill will at least be a discrete piece of legislation, notwithstanding its length, that will be capable of being consulted by South Australian business people and professional advisers. As I said at the outset, the cooperative movement in this State and the cooperatives have done very well over the years, and any measure which will improve their efficiency and also improve their capacity to trade outside the State is to be applauded. I support the second reading.

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

ELECTORAL (COMPUTER VOTE COUNTING) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 4 June. Page 1529.)

The Hon. P. HOLLOWAY: The Opposition supports this Bill. At the end of the twentieth century, it is appropriate, when computers are so much a part of our lives, that they should be employed to assist the electoral process. I understand that the Senate will trial a similar system at the next election, and I believe, from the Minister's second reading explanation of this Bill, that a similar system has already been successfully used in the Upper House in Western Australia. So, we support the use of computers to assist in the counting of votes for the Legislative Council, which is the essential purpose of this Bill.

The intrusion of computers into the election process is somewhat restricted. It concerns only the count of the vote: it does not concern the voting process itself—unlike the United States, where electronic voting is part and parcel of the system. The impact of this change will be to reduce the time taken to count votes for the Legislative Council from an estimated 23 to 16 days. It will involve the double entry of

information, so that the incidence of any data entry errors is minimised, and it will not apply to voting below the line—in other words, it will apply only to the votes above the line for the various Parties. As I say, its application is somewhat restricted: basically, it is just a scanning system that will assist the count and reduce the time involved by a week. One of the other safeguards in the Bill is that before this program can be used it must satisfy representatives of registered political Parties. There will be a demonstration, so they will have the opportunity to satisfy themselves that the program is a satisfactory one.

This use of the computer in our voting system is certainly somewhat restricted, as I said, compared to the United States of America, where electronic voting has been used for many years—and the advantage of that system is that it gives instantaneous results. That raises the question: will this Bill be the thin end of the wedge? Will it lead to greater use of computers and, ultimately, a fully computerised system of voting? I will not be particularly worried if that does happen. There is a huge expense involved in elections, and I believe that the greater use of computers could reduce the costs. It could provide a much quicker outcome, and it could even marginally improve the accuracy of votes, because one of the advantages of this system is that through the scanning process it can detect informal votes that might have passed the manual scrutiny. So, on the whole, I believe that this Bill should be supported. It will reduce the count and provide some benefits and, ultimately—

The Hon. T. Crothers: I was hoping it would increase our Party's vote.

The Hon. P. HOLLOWAY: Unfortunately, that probably will not be one of the outcomes—at least, not due to the system. Anyway, one would hope that the vote will increase for other reasons.

The Bill also corrects an error that was discovered, I understand, in one of the clauses of the Bill that relates to the last position of the Legislative Council, and so we would certainly support that error being corrected. It has not affected any of the candidates who were elected in eleventh position; nevertheless, it ought to be corrected.

Now that we are bringing the greater use of information technology into the election process, we look forward to the day when greater use of information technology will come into this Parliament. I cannot let this opportunity go by without making that point. We hope that it will not be too long before this Parliament, like other Parliaments of Australia—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: That took many years, so I guess we must be patient. Nonetheless, we hope that we will soon join those other Parliaments of Australia and incorporate the greater use of computers within our own Parliament, but I certainly am happy to embrace their use in the electoral process.

Finally, I wish to put on record a couple of questions to which the Minister may respond later—they need not impede the passage of this Bill. My first question is: will this computer system be contained on a stand-alone machine or will it be part of a network? If it is to be part of a network, will EDS be responsible for that network? I ask that question because if a private company is to be responsible for a network will this raise any issues regarding access to the system, etc?

My second question is as follows: as one of the amendments to the Bill is to remove a regulation referring to electronic voting machines, does this mean that the Government does not envisage any extension of computer voting in the future? I understand that part of the reason for the removal of that reference in the regulations is to allow this change to take place. However, through that removal it also removes reference to the possibility of using electronic voting machines along the lines of those used in the US. I would like a response from the Minister at some stage in the future on those matters. As I have said, they need not impede the passage of this Bill. The sooner we get this legislation up and running to assist in a speedy count of the Legislative Council, the better—even 16 days is arguably too long.

The Hon. T. Crothers: One day is a long time in politics.

The Hon. P. HOLLOWAY: Yes, a day is a long time in politics, but 16 days is a lot better than 23. We are happy to give this Bill a speedy passage and we hope that the system works well at the next election.

The Hon. R.D. LAWSON: I support the second reading of this measure. In his admirable report on the election of 11 December 1993, the Electoral Commissioner set out some of the features of the Legislative Council count and scrutiny during that election. The commissioner said that, in comparing the 1993 election with the 1989 election, in the latter election there had been 34 candidates for the 11 seats and the period of scrutiny was 19 days during which 767 counts occurred. However, in 1993 there were 44 candidates (an increase of 10), and the scrutiny took 23 days and covered 1 734 counts to elect the 11 members.

The cost of the 1993 process of scrutiny was $167 000 compared with $94 000 incurred during the 1989 elections. As the commissioner notes, the rates of remuneration paid during those elections was identical. So, the substantial increase in costs in 1993 indicates the obvious, that time is money in this field. The commissioner went on to say while dealing with the subject of computerisation that it would certainly produce an early election result and possibly result in worthwhile financial savings. I place on the record a question that I would like answered, if possible: has any estimate of the cost savings been made in relation to the proposed system which will be authorised by the Bill before us and, if so, what are the possible financial savings which will follow from these amendments?

The commissioner noted that the Australian Electoral Commission had already developed some computer programs to handle senate voting counting procedures. It was noted that, subject to the necessary changes to the Commonwealth Electoral Act, it was proposed to use those programs during the then forthcoming Federal election. The second question I place on notice is: will the Minister provide a brief report, if possible, on the success or otherwise of the Commonwealth computerised systems, if they were used in the 1996 Federal election? The commissioner also noted that, in collaboration with the New South Wales Electoral Office, the South Australian office had encouraged a company, Keno Computer Systems in New South Wales, to develop optical character recognition equipment capable of reading preferences on Upper House ballot papers.

It was noted that some State funds had been provided to assist in that developmental work and the Commissioner noted that, although the results were encouraging, the size of the South Australian ballot paper continued to present particular problems. Will the Minister give a brief report on progress in relation to that system of optical recognition

because I do not read the current amendments as incorporating anything of that kind.

Finally, I note—as the Hon. Paul Holloway just mentioned—that the amendments to section 95(15) of the existing legislation will correct an error in that subsection. The Attorney said in the second reading explanation that the existing provision is based upon the assumption that there will be only two continuing candidates for the last vacancy, but that assumption should not be made because there might be more than two candidates for the last vacancy.

I seek some further information from the Attorney on the practical effect of that error, especially in relation to the 1993 count because it is not immediately obvious from the explanation, nor from any material which I have read, how, in a practical sense, that difficulty was previously resolved, if it was encountered. I support the second reading of the Bill.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): On behalf of the Attorney-General I thank honourable members for their indication of support for the second reading of the Bill. I note that both the Hon. Mr Holloway and the Hon. Mr Lawson have directed a series of questions to the Attorney-General. On his behalf, I indicate that I will have the Attorney-General correspond with both members and provide appropriate responses to their questions. With that, I thank members for their indication of support.

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

INDUSTRIAL AND EMPLOYEE RELATIONS (HARMONISATION) 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.

This Bill is the first stage of measures to be taken by the South Australian Government to harmonise the State's industrial relation system with the recently enacted Commonwealth laws. The Bill also deals with a number of measures required for the efficient operation of the State's industrial relations system.

With this Bill, South Australia confirms the important role which the State industrial relations system plays in regulating the working relationships of employers and employees in the State. The Government regards the State industrial relations system, and the good relationships which it encourages, as an important driver of South Australia's traditionally lower pattern of industrial disputation than nationally or in most other States.

However, the Bill recognises that the legislative reforms introduced by the Commonwealth Government in the *Workplace Relations Act 1996* are an important step in furthering the State's objective of employers and employees at individual workplaces taking responsibility for the future of their wages, working conditions. The *Workplace Relations Act* recognises that job security, improved wages and working conditions will increasingly be the product of improved productivity and relationships at the workplace level. This recognition was an important feature of the State's *Industrial and Employee Relations Act* when it commenced in August 1994.

This Bill also recognises the need for the two industrial relations systems, the State and Commonwealth, to work increasingly closer together.

The Government is motivated in its harmonisation strategy by the need to ensure that all of South Australia's workplaces have access to the same types of industrial coverage as those who work under the Commonwealth industrial relations system.

Australia's industrial relations system is no longer comprised of truly separate federal and state industrial relations systems. We now have a hybrid industrial relations system, where it is common for workplaces to be covered by both laws. It is also now the norm for the one industry—and by inference the competitors in the industry—to be covered by both federal and state legislation. Further, the reality is that even an individual employee might be covered by both pieces of legislation, such as in the case when an employee has part of their employment covered by a federal award and part by a State enterprise agreement, or vice versa.

As a result of this, it is more important than ever for the South Australian industrial relations system to be compatible with, and reflect, the key features of the federal industrial relations system. However, this is no longer an issue of simply following the federal legislation. The State industrial relations system still has an important role to play for the many employers and employees, particularly those in very small businesses, who work exclusively in the State industrial relations system. For these people, harmonisation of the industrial relations systems is about ensuring that the State system is contemporary, offers choice, but above all is low cost and readily accessible.

The Bill deals with two main subject matters; firstly matters flowing from the objective of harmonisation; and secondly the additional amendments stemming from discussions with the South Australian industrial parties.

HARMONISATION AMENDMENTS

To the extent it deals with harmonisation, this Bill deals with four key subject matters;

1. firstly access to the Commonwealth Australian Workplace Agreement's system for employees and employers in workplaces which are not 'constitutional corporations' within the meaning of the Workplace Relations Act;
2. secondly an amendment which ensures that State enterprise agreements may be made over a federal award;
3. thirdly a series of amendments to South Australia's unfair dismissal system, for the purpose of ensuring that the State unfair dismissal system can be accessed by the same broad groups as may access the Commonwealth unfair dismissal system; and
4. fourthly amendments to the State's provisions dealing with freedom of association.

SMALL BUSINESS ACCESS TO AWAS

In relation to providing access for small businesses to the Australian Workplace Agreements (AWA) system, the Government's objective is to ensure that, as Australia's most significant industrial relations reform this century, AWAs are able to be accessed by workplaces which are not 'constitutional corporations' within the meaning of the Commonwealth *Workplace Relations Act 1996*. Because AWAs have been founded on the Commonwealth's corporations power, their application is necessarily limited and not applicable to workplaces which are not a financial corporation or a trading corporation. This means that unincorporated businesses such as partnerships or sole traders, or entities such as incorporated associations, clubs, statutory authorities or government departments are not able to access the AWA system. By accident of the workplace's corporate status, these workplaces have no current capacity to negotiate and have approved individual agreements. The Government is of the view that it is inappropriate for these workplaces to be incapable of accessing the very significant reform which the introduction of AWAs represents.

The Government's intention with the amendment to the Act, as set out in Clause 10 of the Bill, is to ensure that, pursuant to section 170WKA and related sections of the Commonwealth *Workplace Relations Act 1996*, the Commonwealth AWA provisions may be applied as a matter of State law for those workplaces which are not 'constitutional corporations' and therefore not able to access the Commonwealth AWA provisions as a matter of right because of their corporate status. Section 170WKA and related sections provide that a complementary State law may confer functions and powers on the Australian Industrial Relations Commission, the Employment Advocate established under Commonwealth law or an authorised officer within the meaning of the *Workplace Relations Act 1996*. The section further states that a 'complementary state law' means a law of a State that applies the AWA provisions as a law of the State with the modifications required by the regulations and any other modifications permitted by the regulations.

It is therefore the Government's intention to adopt the AWA provisions as a law of the State and not to refer any State power to the Commonwealth to make laws on the subject.

This adoption of the Commonwealth AWA system for those workplaces not presently able to access the system is an important development in the history of the State's industrial relations system. Although recognising that there is a definite need to reduce the complexity of accessing the industrial relations system for actual employers and employees, the amendment reasserts the role of the State industrial relations system. The granting of access to the AWA system is through a State law and at any stage the State may terminate the arrangement either by creating a separate workplace agreements stream with State approval mechanisms or by removing access to workplace agreements altogether.

STATE ENTERPRISE AGREEMENTS TO BE MADE FOR EMPLOYERS WHO ARE SUBJECT TO FEDERAL AWARDS

Amendments to sections 79 and 81 of the principal Act ensure that enterprise agreements may be approved under the SA enterprise agreement system even though the employer may be subject to a federal award.

The amendments utilise the provision contained within section 152 of the Commonwealth *Workplace Relations Act 1996* which states that an award of the Australian Industrial Relations Commission does not prevent a state employment agreement made after the commencement of the Commonwealth section from coming into force and that for the duration of the state employment agreement, the award is not binding on the parties to the agreement.

The Commonwealth Act further requires that the state employment agreement is one which meets certain tests, including the requirement that it be approved by a state industrial authority; that the employees concerned are not disadvantaged in comparison to entitlements they may have under the award; and that the agreement was freely made.

In considering such an agreement for approval, the amendments made to section 79 require the State Industrial Relations Commission to consider the agreement against the applicable Commonwealth award.

UNFAIR DISMISSAL SYSTEM

The Bill amends the unfair dismissal system established by the *Industrial and Employee Relations Act 1994* in several respects. The objective of these amendments is to ensure that (in general terms) the same sorts of employees who may have access to the Commonwealth system established by the *Workplace Relations Act 1996* are the same sorts of employees who are able to access the State unfair dismissal system, but without State system having the restriction that they must be employed by a constitutional corporation. The Bill has a similar objective with respect to the outcomes likely to occur with cases taken before the Industrial Relations Commission, either in conference or in arbitration.

In determining these objectives, it is the Government's intention to ensure that there is no incentive for applicant employees or their former employers to engage in expensive and time consuming litigation about which jurisdiction may receive the application. The Government is committed to ensuring that the SA jurisdiction will become the preferred jurisdiction for South Australian applicants only by reason of the speed of hearing and accessibility of the South Australian jurisdiction.

The Bill recognises that applications for review of dismissals may be filed by employees whose employment is otherwise regulated by either the South Australian or the Commonwealth industrial relations jurisdictions. Any employee may make an application to the South Australian jurisdiction, with the exception of non-award employees earning greater than a prescribed amount and employees who fall into one of the groups excluded by regulation from making applications.

Clause 13 inserts new definitions of 'remuneration' and 'non-award employee' into section 105, for the purposes of determining who may or may not make applications under the Act. 'Non-award employees' earning greater than the prescribed amount of remuneration may not make applications under the Act. A 'non-award employee' is defined as an employee whose employment is not covered by an industrial instrument, which is to be defined by Section 4 of the Act as an award, enterprise agreement or Australian Workplace Agreement made under this (State) Act, or an award, certified agreement or Australian Workplace Agreement made under the Commonwealth Act. The definition of 'remuneration' is relevant to non-award employees, since it establishes the limit above which applications may not be made by non-award employees. The definition of 'remuneration' to be inserted into section 105 has application only to Part 6—Unfair Dismissal and is required to ensure consistency with the Commonwealth system in application of entry tests for employees making applications under the State Act. The definition provides a broad definition of 'remuneration', which is consistent with the interpretation taken by the Australian Industrial Relations Commission in a recent case (*A. Condon and G. James Extrusion Company*, Watson DP, 4 April 1997, Print No. N9963).

The new section 105A prescribes that the Part does not apply to a non-award employee earning greater than an amount fixed by the regulations and that it does not apply to certain groups of persons excluded from the operation of the Part by regulation.

Section 106 prescribes rules for the making of applications, including time limits, limitations if other remedies have been or can be pursued and provides for fees for filing of applications. Subsection 106(1) provides that applications to the Industrial Relations Commission for relief must be made prior to the end of 21 days for the date the dismissal takes effect. This time limit is in substitution for the existing time limit of 14 days and will make the time limits under the State and Commonwealth Acts the same. Subsection 106(5) allows the regulations to prescribe a filing fee for making applications to the Industrial Relations Commission, which will also make the South Australian system consistent with the Commonwealth.

Section 107 is in the same terms as the existing section 106, and provides for conciliation conferences to be convened by the Industrial Relations Commission.

Section 108 establishes the tests to be applied by the Industrial Relations Commission at the time of hearing and retains the existing test to the effect that the IRC must determine whether, on the balance of probabilities, the dismissal is harsh, unjust or unreasonable. The section continues to require that in making this determination the IRC must have regard to the rules and procedures for termination of employment prescribed by or under Schedule 8 of the Act, which is unchanged.

Section 109 prescribes the remedies which the Commission may award in the event that it determines an employee's dismissal is harsh, unjust or unreasonable and is intended to provide for remedies which are consistent with those provided by the Commonwealth termination of employment system provided in the *Workplace Relations Act 1996*. In determining whether to make an order for re-employment or compensation (the alternatives for which remain unchanged) the Commission will be required by virtue of subsection 109(2) to have regard to certain factors prior to making an order for re-employment or compensation. The factors are identical to those prescribed by section 170CH(2) of the Commonwealth Act and include consideration of the effect of the remedy on the viability of the employer's undertaking; the length of the employee's service with the employer; the remuneration that the employee would have received had the employee not been dismissed and any efforts the employee may have taken to mitigate the financial effects of the dismissal. This provision is intended to ensure that before orders are made, the Commission considers the effect of orders on employers, who may have a limited capacity to pay large amounts, or to reinstate employees.

Subsection 109(4) prescribes the maximum compensation which may be ordered by the Commission in the event that compensation is to be paid to an employee. The provision, which will be consistent with the compensation which can be awarded under the Commonwealth Act, will (except in the case of a non-award employee) be limited to the remuneration earned by the employee in the 6 months immediately prior to the termination. If the employee was on unpaid or partly paid leave at some stage during the 6 months immediately prior to termination, a notional amount of 6 months remuneration will be established, to be calculated in accordance with the regulations. In the case of a non-award employee, compensation will be limited to $32 000 (indexed) or 6 months remuneration, whichever is the lesser.

This amendment remedies the current inconsistency between the State and Commonwealth unfair dismissal systems, wherein the current maximum compensation under the State Act is 6 months remuneration or $30 000 (indexed), whichever is the greater.

FREEDOM OF ASSOCIATION

Clause 14 contains a series of important amendments to be made to the State's freedom of association laws.

The Liberal Government enshrined in the *Industrial and Employee Relations Act 1994* the right to absolute freedom of association. These amendments ensure that the intention of the original Act is fully articulated and that South Australia gives full effect within its jurisdiction to the freedom of association rights now enshrined in the Commonwealth *Workplace Relations Act 1996*. These amendments make clear that it is not acceptable for any person to discriminate against another for reason of the person's member-

ship or lack of membership of an association. The amendments put beyond doubt that discriminatory practices cannot hide behind the artificial guise of 'contractor' instead of employment arrangements. Employers, employees or associations who require contractors, or the employees of contractors, to be members of associations will be committing an offence just as much as if the discrimination is committed directly between an employer and an employee.

The amendments also give effect to the Government's intention to ensure that freedom of association actions which are prohibited by the Commonwealth Act are also prohibited by the State Act.

The Commonwealth Act establishes a series of prohibited reasons for which it is an offence to discriminate. Section 115 of the amended Act incorporates these same prohibited reasons in the State Act.

Section 116A is in similar terms to the existing subsection 115(3) and prescribes the general offences against the principle of freedom of association. Section 116B establishes the conduct which is prohibited by employers. Section 116C establishes that an employee may not cease work because of the industrial activity of the employer. Section 117 requires that a person may not discriminate for prohibited reasons against an employer by refusing to supply or purchase goods or services. The offence which is created extends to actions directed at inducing an employer to engage in such discriminatory action. In particular, the offences created will mean that a person (in a business involving the supply or purchase of goods) who refuses to supply or purchase goods because the other person's employees are not members of an association, will be acting unlawfully.

ADDITIONAL AMENDMENTS

WORK AND FAMILY OBJECT

The Objects of the Act will now contain in section 3(m) the objective of encouraging and assisting employees to balance their work and family responsibilities through the development of mutually beneficial work practices with their employers. When the *Industrial and Employee Relations Act* was passed in 1994 it led the country in the way that it encouraged the parties to enterprise agreements to positively deal with work and family matters in their agreement. The provision contained in section 77(1)(e) requires that an enterprise agreement provide (unless the parties decide otherwise) that sick leave is available, subject to limitations and conditions prescribed in the agreement, to an employee if the leave becomes necessary because of the sickness of a child, spouse, parent or grandparent. Some 73% of the agreements approved since the commencement of the provision on 8 August 1994 now contain provisions positively providing such leave.

The insertion of the general work and family object to the Act recognises this progress and that the community and the industrial parties are now significantly more aware of the need for working arrangements to be balanced with the family needs of all concerned. The amendment also reflects the similar object inserted into the Commonwealth Act.

ENTERPRISE AGREEMENT AMENDMENTS

Enterprise Agreement Disputes

As a result of representations to the Government from employer and employee associations, an amendment is to be made to sections 40 and 198 to enable industrial disputes involving employees and employers subject to an enterprise agreement to be heard, in limited circumstances, by any member of the Industrial Relations Commission. Currently the Act requires that a Commissioner cannot be assigned to deal with the prevention and resolution of disputes arising under enterprise agreements unless the Commissioner is an Enterprise Agreement Commissioner. With the large number of enterprise agreements now in existence, this provision has led to problems in early scheduling of conferences between the Commission and the parties to the dispute. The amendments will overcome the difficulties created by the current provision by giving greater flexibility to the President of the Industrial Relations Commission in assigning members of the Commission to deal with industrial disputes. The amendments enables the President to assign any Commissioner to deal with an industrial dispute, even where it involves employees and employers who are subject to an enterprise agreement. The exception is where the dispute relates to the negotiation, making, approval, variation or rescission of an enterprise agreement, in which case the dispute may only be dealt with by an Enterprise Agreement Commissioner.

Enterprise Agreement Ballots

A new section 89A clarifies the intent of the provisions dealing with the approval of enterprise agreements in circumstances where a ballot of employees is held. The new section only has operation if a ballot is held and it is the Government's intention that mechanisms other than ballots also may be used as evidence to the Enterprise Agreement Commissioner that the agreement meets the requirement in section 79(b) (namely that the agreement has been negotiated without coercion and that a majority of employees have genuinely agreed to be bound by it.)

However, in circumstances where a ballot is used, the new section provides that the required majority will be achieved if a majority of the members casting valid votes at the ballot vote in favour of the proposed agreement or amendment.

The amendment will further provide that any ballot which is conducted must be in accordance with the rules laid down by regulation (if any).

CONSTITUTION AND PROCEDURE OF COMMISSION

An amendment to section 39 will ensure that Full Benches of the Industrial Relations Commission may be comprised of either or both an Industrial Relations Commissioner or an Enterprise Agreement Commissioner. The exception will be where the Full Commission is to determine an enterprise agreement matter, in which case at least one member of the Full Commission must be an Enterprise Agreement Commissioner.

In addition, an amendment to section 213 will clarify the powers of the Full Commission to ask a member of the Commission to provide a report on a specified matter. The amendment will ensure that the Full Commission may delegate the report preparation to a Deputy President or a Commissioner.

REGISTRATION AND CONDUCT OF ASSOCIATIONS

Eligibility for Registration

In relation to the eligibility for registration of new associations, an amendment to section 119 will require that to be eligible for registration, associations of employees must have not less than 50 employees as members and that associations of employers have as members at least 2 employers who employ not less than 50 employees. The threshold limit of 50 employees is the same as that now in operation under the Commonwealth *Workplace Relations Act*.

The minimum of 50 reduces the eligibility requirement from 100 employees in each case.

Enterprise Associations

Section 119 will also be amended to enable the approval of enterprise associations so as to reflect the changes to the Commonwealth Act.

'Conveniently Belong'

At the point the Industrial Registrar is required to consider an application by an eligible association's for registration, an amendment to section 122 adopts a similar 'conveniently belong' test to the Commonwealth system. The amendment will require the Industrial Registrar to establish that either the association is an enterprise association, or that there is no other registered association to which the members of the applicant association could more conveniently belong and which would more effectively represent the members of the applicant association. Alternatively, if the association is not an enterprise association and there is an already registered association which could more conveniently enrol and represent the members, the applicant association may still be registered if the applicant association has given an undertaking which satisfies the Commission about the prevention or minimisation of demarcation disputes between the associations.

This amendment also stems from changes made to the Commonwealth legislation.

Recovery of Arrears

A new section 147A is to inserted which will require that legal proceedings by associations to recover amounts payable to them from members must be commenced within 12 months of the liability falling due. This amendment stems from section 264A of the Commonwealth Act and is intended to ensure that members of state associations are not subject to a different recovery of arrears test to members of federally registered organisations.

The provision does not apply to liabilities incurred prior to the commencement of the section.

CONTRACT OF EMPLOYMENT

After consultation with the taxi industry, an amendment is proposed to the definition of 'contract of employment' contained within section 4.

The definition of 'contract of employment' and the definition of 'employee' used in former legislation establish that in addition to common law contracts of employment, certain categories of person are deemed to also be subject to a contract of employment. The current definition deems 'contract of employment' to include persons engaged to provide a public passenger service; persons engaged to personally clean premises; and persons engaged as outworkers. The

deemed inclusion of persons engaged to drive a vehicle that is not registered in their name to provide a public passenger service has caused uncertainty in the taxi industry. The proposed amendment is to the effect that contracts with taxi drivers not recognised at common law as contracts of employment will not be deemed to be contracts of employment for the purposes of the Act.

The Government does not intend that this amendment will affect who will or will not be considered to be subject to a common law contract of employment.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

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

The amendment explains that the provisions for the review of harsh, unjust or unreasonable dismissals are directed towards giving effect to the *Termination of Employment Convention* and ensuring that both employers and employees are accorded a 'fair go all round'.

The amendment also inserts an additional object related to assisting employees to balance work and family responsibilities (cf s. 3(i) of the Cth Act).

Clause 4: Amendment of s. 4—Interpretation

This clause makes amendments of a minor definitional nature. The amendment to the definition of contract of employment excludes contracts with taxi drivers that would not be recognised at common law as contracts of employment.

Clause 5: Amendment of s. 39—Constitution of Full Commission

The amendment makes it clear that a Commissioner on a Full Bench may be an Industrial Relations Commissioner or an Enterprise Agreement Commissioner.

It preserves the requirement that at least one member of the Full Commission be an Enterprise Agreement Commissioner if the matter to be determined is an enterprise agreement matter.

Clause 6: Amendment of s. 40—Constitution of the Commission

The amendment provides that the requirement that an Enterprise Agreement Commissioner constitute the Commission applies if the Commission is to determine a matter relating to the negotiation, making, approval, variation or recision of an enterprise agreement (rather than to all enterprise agreement matters which include industrial disputes arising between parties to an enterprise agreement—see definition in section 4).

Clause 7: Amendment of s. 79—Approval of enterprise agreement

The amendments extend the references to State awards to include awards under the Commonwealth Act.

Clause 8: Amendment of s. 81—Effect of enterprise agreement

A note is added to the section to the effect that section 152(3) of the *Workplace Relations Act 1996* provides that a State employment agreement may displace the operation of a federal award regulating wages and conditions of employment.

Clause 9: Substitution of s. 83—Duration of enterprise agreement

The substituted section is similar to the current section except that the Commission is not compelled to call a conference of the parties to assist in re-negotiating an enterprise agreement. The power to do so remains.

Clause 10: Insertion of s. 89A: Representative majority

The amendment means that in a ballot of employees on whether an agreement or a modification is approved only the views of those employees who cast valid votes will be taken into account. This is similar to the effect of ss. 170LE and 170LK of the Cth *Workplace Relations Act 1996*.

Clause 11: Insertion of new Part 2A of Chapter 3

New Part 2A provides that the provisions in the Commonwealth Act about the employment advocate and Australian workplace agreements apply as a law of the State. The regulations may modify the Commonwealth provisions for that purpose.

Clause 12: Amendment of s. 99—Triennial review of awards

The amendment extends the period allowed for the Commission's first review of all awards to 31 December 1997.

Clause 13: Substitution of Part 6 of Chapter 3: Unfair Dismissal

This clause substitutes the Part dealing with unfair dismissal.

Division 1—Preliminary

105. Interpretation

The proposed section defines remuneration and non-award employee for the purposes of the Part. Remuneration is broadly defined to include non-monetary benefits of a kind prescribed by regulation.

105A. Application of this Part

This proposed section places limits on the application of the Part.

Unfair dismissal applications may only be made by employees covered by awards, industrial agreements or enterprise agreements with salaries below a limit fixed by regulation. This is similar to current s. 105(2)*(ab)* although that section sets the salary limit at $60 000 indexed.

As provided currently by s. 105(2)*(b)* the regulations may exclude classes of employees from the operation of the Part. The new provision includes the descriptions of classes of employees that may be excluded set out in s. 170CC of the Cth Act.

Division 2—Application for relief

106. Application for relief

The time limit for an application has been extended from 14 days to 21 days in line with the Cth Act.

Proposed subsection (2) is similar to current s. 105(2)*(a)* and 105(3) but brings the law into line with ss. 170HB and HC of the Cth Act. The subsection prevents multiple proceedings being taken to remedy an unfair dismissal.

Proposed subsection (3) provides the Commission with power to decline to proceed if of the opinion that proceedings have been taken or might be more appropriately taken under some other Act or law.

Proposed subsection (4) is new and requires an application to be accompanied by the fee fixed by regulation.

Division 3—Conciliation conference

107. Conference of parties

This provision is equivalent to current s. 106. It is similar to the conciliation requirements of s. 170CF of the Cth Act.

Division 4—Determination of application

108. Question to be determined at hearing

This provision takes the place of current s. 107. The Commission is to continue to have regard to the rules and procedures set out in Schedule 8. The reference to the *Termination of Employment Convention* is removed.

References to State awards and enterprise agreements are extended to include Commonwealth awards, certified agreements and Australian workplace agreements.

109. Remedies for unfair dismissal from employment

This provision takes the place of current s. 108 and is brought into line with s. 170CH of the Cth Act.

Division 5—Miscellaneous

110. Costs

This provision is equivalent to current s. 109.

111. Decisions to be given expeditiously

This provision is equivalent to current s. 110. There is no equivalent provision in the Cth Act.

Clause 14: Substitution of Part 1 of Chapter 4—Freedom of Association

This clause substitutes the Part dealing with principles of association.

Division 1—Preliminary

115. Prohibited reason

This interpretive provision is similar in effect to s. 298L of the Cth Act.

Division 2—Protection of freedom of association

116. Freedom of association

This provision is equivalent to current s. 115(1) and provides that no person may be compelled to become, or remain, a member of an association.

116A. General offences against the principle of freedom of association

This provision is similar to current s. 115(3). It also covers matters included in s. 298M of the Cth Act.

116B. Dismissal etc for prohibited reason

This provision is similar to s. 298K(1) of the Cth Act. It takes the place of current s. 117 and s. 115(3).

116C. Cessation of work

This provision is similar to s. 298N of the Cth Act.

117. Prohibition of discrimination in supply of goods or services

This provision is similar to current s. 118 but links the offence in subsection (1) to the definition of prohibited reason. It also refers to purchase as well as supply.

118. Conscientious objection

This provision is equivalent to current s. 116.

Clause 15: Amendment of s. 119—Eligibility for registration

The amendment reduces the requirement for membership from 100 employees to 50 employees in line with s. 189(1) of the Cth Act.

The other amendments provide for registration of 'enterprise branches' as contemplated by s. 188 of the Cth Act.

Clause 16: Amendment of s. 122—Registration of associations

Current s. 122(1)(e) requires the Commission to be satisfied, before registering an association, that the association is entirely comprised of employees employed in a single business or there is no other

registered association to which the members might conveniently belong.

The equivalent Cth provision (s. 189(1)-(3)) contains a further qualification that an association may be registered despite the existence of another association to which the members might conveniently belong if the association gives a satisfactory undertaking to prevent or minimise the possibility of demarcation disputes between the associations.

The amendment includes this qualification.

Clause 17: Insertion of s. 147A—Recovery of arrears

A new section requiring proceedings to recover arrears in association dues to be commenced within 12 months is included in line with s. 264A of the Cth Act.

Clause 18: Amendment of s. 198—Assignment of Commissioner to deal with dispute resolution

Section 198(2) is amended to alter the matters that must be dealt with by an Enterprise Agreement Commissioner from disputes arising under enterprise agreements to disputes relating to the negotiation, making, approval, variation or recision of an enterprise agreement.

Clause 19: Amendment of s. 213—Powers of Full Commission on reference

This amendment ensures that the Full Commission may direct any member of the Commission to provide a report.

Clause 20: Insertion of s. 223A—Associations acting against employees or members

The new section prohibits an association from acting against employees or members in relation to industrial action and is similar to ss. 289Q and R of the Cth Act.

Schedule: Amendment of Penalties

The schedule converts divisional penalties.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

BANK MERGER (NATIONAL/BNZ) 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 facilitate the transfer of the assets and liabilities of Bank of New Zealand ('BNZ'), located in South Australia, to its parent, the National Australia Bank ('National').

Bank of New Zealand ARBN 000 000 288 is a company incorporated in New Zealand.

National Australia Bank ACN 004 044 937 is a company limited by shares incorporated in Victoria and is a company within the meaning of the Corporations Law.

BNZ became a wholly owned subsidiary of National in February 1993.

National carries on the business of banking throughout Australia and elsewhere in the world and BNZ carries on the business of banking primarily in New Zealand and also in Australia in all Australian jurisdictions, with New South Wales having the largest share of BNZ's business.

On 1 October 1996 the Managing Director and Chief Executive Officer of NAB, Mr Don Argus, wrote to the Treasurer seeking the South Australian Government's sponsorship of legislation to facilitate the transfer of the banking business of BNZ to NAB following NAB's full acquisition of BNZ in February 1993.

NAB has indicated that BNZ will continue in existence after the Bill has been proclaimed.

As with the Advance Bank/BankSA and Westpac/Challenge Bank mergers, present Reserve Bank of Australia policy requires one banking authority for each banking group. BNZ is therefore required to surrender its banking authority before the middle of 1997.

In addition, following an acquisition of one bank by another, the full benefits of the acquisition cannot be realised until there is full legal integration of the banking operation of the two banks.

For these reasons it is proposed that with the exception of certain excluded assets, the assets and liabilities of BNZ in Australia will be transferred to its parent company, NAB. In order to facilitate the transfer of the BNZ banking business, it is proposed that enabling legislation be passed in the States and Territories where BNZ conducts its business.

NAB is seeking to have the relevant legislation come into force as soon as possible, preferably in the May session of Parliament.

The Bill will transfer to NAB the assets and liabilities of BNZ with the exception of the goodwill owned by BNZ in South Australia. Plant and equipment which is owned by BNZ will be retained by BNZ and leased to the Bank for an appropriate fee. The name BNZ will after legislative integration of the assets and liabilities of the two entities continue to be used in South Australia for business activities.

BNZ employees in South Australia have already been transferred to NAB including seven BNZ employees from its one branch in South Australia.

The assets being transferred by BNZ to NAB in South Australia comprise loans and receivables which, for stamp duty purposes, can be divided into two major groups:

1. Loans secured by mortgages and corporate debt securities;
2. Unsecured loans comprising leases, hire purchase agreements and other facilities.

In South Australia, BNZ has approximately 275 overdraft accounts, 1 300 mortgage related accounts, 1 300 current deposit accounts and 50 term deposit accounts.

The Government is of the view that the absorption of the one BNZ branch operating in South Australia into NAB's South Australian banking operations will not lead to any significant diminution in competition or consumer choice between banks in South Australia.

The Bank Merger (National/BNZ) Bill 1997 is conventional and largely follows the form of legislation which has been enacted in respect of other bank mergers.

The legislative approach to effect such mergers has in the past been adopted because of the large number of accounts and other assets and liabilities required to be transferred. In the absence of this type of legislation it would be necessary to contact every customer of BNZ for the purposes of gaining authorisation to transfer their accounts to NAB. Even with the relativity small level of BNZ's banking operations in South Australia, the work involved in preparation of documents and contacting parties concerned would be an unproductive and expensive exercise for the bank. It would also cause great inconvenience to customers of the bank.

The Bill includes a section to ensure that the transfer of registered company charges from the bank of New Zealand to NAB complies with section 268 of the Corporations law.

The Government is currently contemplating the possibility of omnibus legislation to provide a framework for any future bank mergers. However, in order to meet the timing requirements of the NAB, specific legislation is proposed in this case.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

This clause contains definitions for the purposes of the measure.

Clause 4: Act binds the Crown

This clause confirms that the measure binds the Crown.

Clause 5: Extra-territorial application

This clause provides for extra-territorial application of the measure but ensures that the operations of BNZ in a jurisdiction in which it remains a separate entity are unaffected.

PART 2

VESTING OF BNZ'S UNDERTAKING IN NATIONAL

Clause 6: Vesting of undertaking

This clause vests the undertaking of the Bank of New Zealand in National Australia Bank Ltd.

Clause 7: Transitional provisions

This clause ensures a seamless transition for the merger from the Bank's and customer's view points. Provision is made for National to take over BNZ accounts, securities, cheques etc.

Clause 8: Direct payment orders to accounts transferred to BNZ

Instructions for direct payments to a BNZ account are to be taken to be instructions for direct payments to the corresponding National account.

Clause 9: Registration of title, etc.

This clause provides for the recognition of the merger by the Registrar-General or other registering authority without further formality.

Clause 10: Exclusion of obligation to inquire
This clause removes the need for a person dealing with BNZ or National to inquire into whether an asset to which the transaction relates is or is not a transferred asset.

PART 3
GENERAL

Clause 11: Taxes and duties
This clause exempts transactions under the Act from stamp duty, financial institutions duty and debits tax but requires National to pay to the Treasurer an amount estimated by the Treasurer as equivalent to the foregone duties and taxes.

Clause 12: Notice of assignment of charges under Corporations Law
This clause ensures that the Australian Securities Commission receives fees for the assignment of registrable charges on company property under this Act.

Clause 13: Name in which National carries on business
This clause enables National to carry on business in SA in the name of Bank of New Zealand Australia.

The clause also provides for registration of certain other names on the application of National.

Clause 14: Service of documents
This clause provides that on or after the appointed day service is effective whether it is on National or BNZ.

Clause 15: Evidence
This clause enables the CEO of National to certify whether or not assets or liabilities are transferred assets or liabilities under the measure.

Clause 16: Act overrides other laws
This clause provides that the measure has effect despite other laws.

Clause 17: Effect of things done or allowed under Act
This clause ensures that the measure does not have undesirable commercial consequences.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

BANK MERGERS (SOUTH AUSTRALIA) 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.

Members will recall that two bank mergers have recently come before the House to facilitate the integration of the banks' assets and liabilities. The integrations are a condition of Reserve Bank approval of the relevant Bank mergers which requires the banking license of the acquired bank to be relinquished. The previous mergers were between Advance Bank and Bank SA and Westpac and Challenge Bank.

The Government has decided to progress with specific legislation in the case of the merger between the National Australia Bank and the Bank of New Zealand due to the timing requirements imposed and the fact that this process commenced before the development of a general merger framework.

Given the level and extent of continued rationalisation occurring within the banking industry and the release of the Wallis Report into the Australian financial system, it is likely that further banking acquisitions and mergers will occur which, in due course, will require each State and Territory to pass relevant legislation to enable the legal merger of the entities to occur.

The Bank Mergers (SA) Bill proposes a general framework which will allow bank mergers to be dealt with by:

- a set of case-specific regulations which will have the same effect as the previous specific legislation; or
- regulations adopting the relevant law of another State or Territory with modifications as necessary; or
- a combination of these two mechanisms.

The Parliament of New South Wales passed similar legislation last year and other jurisdictions are known to be considering a similar course which would effectively enable the Governor in Executive Council to make regulations, orders or proclamations providing for the merger of two or more banks.

The Bill allows the regulations to provide for the continuation of the special arrangements with respect to the superannuation rights of State Scheme employees as well as the continuation of the guarantee attached to certain BankSA deposits.

Because of accounting and legal requirements, merging banks invariably require legislation to be proclaimed on the same day in all relevant jurisdictions. Banks have encountered a significant practical difficulty in the past in their attempts to coordinate common proclamation dates in several jurisdictions at the same time. This can be a very difficult task to achieve because of differing legislative priorities, Parliamentary sitting times etc in each State.

The establishment of an ongoing legislative framework for bank mergers would improve legislative efficiency, by reducing the level of relatively routine business requiring Parliament's direct consideration.

The legislation is consistent with the Government's commitment to facilitating business efficiency in South Australia without prejudicing the integrity of the State's revenue base.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Interpretation
This clause extends the meaning of bank to include wholly owned subsidiaries and defines merger to include any form of amalgamation or merger. It also includes other definitions for the purposes of the measure.

Clause 3: Regulations for the merging of banks
This clause provides general regulation making power for facilitating bank mergers. The powers given cover the matters currently provided for by special Acts of Parliament for individual mergers. The regulations may override State laws. A special provision is included for the continuation, modification or exclusion of government guarantees by regulation.

Clause 4: Application of merger laws of other jurisdictions
This clause allows the regulations to operate by applying a law of another jurisdiction relating to a bank merger as a law of this State subject to any modifications specified in the regulations.

Clause 5: Extra-territorial operation of regulations
The regulations are to extend to any jurisdiction outside the State.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

STAMP DUTIES (RATES OF DUTY) 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 *Stamp Duties (Rates of Duty) Amendment Bill 1997* seeks to amend the Stamp Duties Act in respect of three separate issues.

The first amendment proposed in the Bill provides an exemption from stamp duty in respect of transfers of property from the Official Trustee in Bankruptcy, or a registered trustee, to the bankrupt or former bankrupt.

The exemption has been constructed so that where the conveyance is from the trustee to a person other than the bankrupt, the benefit of the divorce exemption and the spouses' exemption will still be applicable.

The second amendment proposed in the Bill deals with the treatment of conveyances of property from superannuation funds to Pooled Superannuation Trusts (PST), in exchange for units in the PST.

Since the commencement of the *Superannuation Industry (Supervision) Act 1993* (Cwth) ('the SIS Act') Commonwealth Government policy has placed the onus on superannuation fund trustees, including the trustees of small funds from 1 July 1996, to formulate and implement broad investment strategies for the purpose of risk minimisation.

The best way that small funds can achieve the required diversification is by effecting *in specie* transfers of their members property to PST's, in exchange for units in the PST. In undertaking such a strategy, prohibitive costs would be incurred, including a significant stamp duty component. Passing on of these costs could result in losses for members, which could reduce the benefits obtained by complying with the SIS Act.

It is therefore proposed to amend the Act to provide a concessional rate of stamp duty, being a flat fee of $200 or the actual amount of duty, whichever is the lesser, on the transfer of property from a superannuation fund to a PST in exchange for units in a PST, where such funds comply with the SIS Act.

This proposal will be welcomed by the Superannuation Industry and small business and will ensure that those who prepare for their retirement will not see their benefits eroded by costs incurred in complying with the SIS Act. The proposed amendment is consistent with approaches taken interstate.

The final amendment proposed in the Bill involves the stamp duty payable on the transfer of marketable securities made by way of gift.

Under the existing legislation, such transfers are subject to conveyance rates of duty with marginal tax rates ranging from 1 per cent to 4.5 per cent. Transfers of marketable securities by way of sale however attract lower rates of 30¢ per $100 of value for listed marketable securities and 60¢ per $100 of value for unlisted marketable securities.

This is viewed as an anomaly when compared to the duty applied to transfers of marketable securities by way of sale, and the practice in other jurisdictions of applying the same rates of duty, irrespective of whether the transfer is by way of sale or gift.

The Bill therefore, seeks to amend the Stamp Duties Act to reduce the rate of stamp duty payable on the transfer of marketable securities made by way of gift so as to align with transfers by way of sale ie, 30 cents per $100 of value for listed marketable securities and 60 cents per $100 of value for unlisted marketable securities.

Removing the anomaly increases the degree of consistency in this tax regime, simplifies calculation of duty for the industry, and removes a possible trap for persons who are not familiar with the present provisions in respect of share transactions. Additionally, for those taxpayers familiar with the current provisions it removes the need for taxpayers to have to artificially construct transactions to take advantage of the lower rate of duty.

These amendments although they are not major are consistent with the Government's desire to take action, wherever it can within existing budgetary restraints, to ease the burden on the taxpaying community.

I would also like to take this opportunity to thank the various tax industry interest groups for their ongoing willingness in providing valuable input into the development of these proposals.

I commend this Bill to the honourable members.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Insertion of s. 71CD

Clause 2 inserts new section 71CD into the principal Act. This provision treats the Official Trustee in Bankruptcy and a registered trustee in bankruptcy as being in the shoes of the bankrupt for the purposes of stamp duty. Consequently a transfer of property from the Official or registered trustee to the bankrupt is exempt from duty and a transfer to any other person will be assessed for duty as though it were a transfer from the bankrupt.

Clause 3: Amendment of s. 71DA—Duty on certain conveyances between superannuation funds, etc.

Clause 3 inserts two new subsections into section 71DA of the principal Act dealing with transfers of property from superannuation funds to pooled superannuation trusts or from trusts to funds or to other pooled superannuation trusts. Paragraph *(b)* of the clause updates the definition of 'complying superannuation fund' which is used in subsection (1) of section 71DA.

Clause 4: Amendment of schedule 2

Clause 4 amends the duty payable on transfers of shares by way of gift as already discussed.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

ADJOURNMENT

At 6.16 p.m. the Council adjourned until Tuesday 8 July at 2.15 p.m.