DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

6 March 2001

Tuesday, 6 March 2001

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MR SPEAKER (Mr Cornwell) took the chair at 10.30 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

Justice and Community Safety—Standing Committee
Scrutiny Report No 3 of 2001

MR HARGREAVES: I ask for leave to present Scrutiny Report No 3 of 2001 of the Standing Committee on Justice and Community Safety performing the duties of a scrutiny of bills and subordinate legislation committee, and to make a statement.

Leave granted.

MR HARGREAVES: Mr Speaker, I present the following report:

> Justice and Community Safety—Standing Committee (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report No 3 of 2001, dated 6 March 2001.

The report contains the committee's comments on one bill, 14 subordinate laws and one government response. I commend the report to the Assembly.

Leases (Commercial and Retail) Bill 2000 [No 2]
Detail stage

Clause 1.

Debate resumed from 1 March 2001.

Mr Stefaniak: Before we start, Mr Speaker, I seek leave to have Mr Peter Quinton from the Justice and Community Safety Department sit somewhere close by me while we go through this bill. It is an incredibly complex bill. I think for efficiency's sake that that would be sensible. I do not think anyone has any problems with that. I note we have done that with complex legislation in the past.

MR SPEAKER: The Clerk tells me it might be more convenient if you sat in the Chief Minister's seat, Mr Minister, so that we can have a chair placed beside you there.

Mr Stefaniak: Whatever is convenient, Mr Speaker.

MR SPEAKER: It is all right. Stay where you are. In the past we have had officers there, but there happens to be a chair vacant next to you, if leave is granted by the Assembly.

Leave granted.

Ms Tucker: Mr Speaker, I was just talking to Mr Rugendyke. It may not be necessary, but obviously we may need to have that same advice. If it is okay for Mr Stefaniak, if we find that things get too complex, I am asking that other members have that same support.

Mr Stefaniak: I do not have a problem with that.

Mr Kaine: I don't know where they are all going to sit.

Ms Tucker: Well, I don't either, but if Bill can have it we can. We can bring a chair in.

MR SPEAKER: You are asking for the officer's advice to be available for other members, Ms Tucker.

Ms Tucker: If necessary.

MR SPEAKER: The minister has no objection.

Mr Stefaniak: I don't. I seem to recall one instance—I think it might have been in regard to land and planning, probably in the old Assembly—when there were two departmental officials over there. I think there was someone assisting the opposition as well. I think there are precedents for that. I have no objection, Mr Speaker.

MR SPEAKER: I am sure there are precedents. In fact, in fairness and equity, I think that assistance should be made available anyway. Thank you. That will be done.

Mr Kaine: Could I ask a question, Mr Speaker, of the minister? Is his ability to understand this plethora of amendments so much greater than mine that he can have an official sitting at his elbow while I am supposed to make my way through them totally unaided? What is the difference in principle, Mr Speaker? I think this is a precedent that, quite frankly, I find objectionable—that a minister can bring a public official onto the floor of this house because the problem is a bit complex.

Ms Tucker: We have done it before.

MR SPEAKER: Mr Kaine, this is not a precedent. It has occurred before. The other point is—as we have just agreed with Ms Tucker—that the officer will be available to all members if you wish. He is not there for the exclusive use of the minister.

Mr Kaine: If I had been given the option I might have chosen to use somebody other than a public official to advise me on the matter. This is almost unprecedented. It never occurred to me that I would do anything but battle my way through these amendments, which seems to be beyond the capacity of the minister.

Mr Moore: Mr Speaker, perhaps I can be of assistance here as manager of government business, and also having been on the crossbenches. As I recall, a precedent was set in dealing with electoral legislation. As a crossbench member at that time I did have an assistant on the floor with me. The Assembly gave permission for that. Certainly, in the case of a very complex issue like this, should Mr Kaine wish to have some

assistance I am sure the government would be very relaxed about giving him leave to have that kind of assistance if he feels it is necessary.

Mr Kaine: It is a bit late, minister, I suggest.

Mr Stefaniak: No problem.

Mr Stanhope: If I may add to the discussion: I do acknowledge, as we all do, Mr Speaker, that Mr Kaine is the only true Liberal left in the place.

MR SPEAKER: Relevance, Mr Stanhope.

Mr Stanhope: I guess he is expressing that rugged individualism that was, I understand, a hallmark of liberalism. The fact that Mr Kaine is the only Liberal left is probably reflected in his comments. Having said that—

MR SPEAKER: I trust you are not reflecting on the chair, Mr Stanhope.

Mr Stanhope: Absolutely not, Mr Speaker. I am sure that were you down here you would have similar views to mine. Perhaps, Mr Speaker, you misunderstood, or perhaps I did. I think Ms Tucker's point was that each of us, in relation to our consideration of this bill, had to rely very heavily, as you would expect, on officers within our offices. Mr Stefaniak has relied on a departmental officer. We, of course, do not have that same capacity. I have relied on officers on my personal staff.

I have no difficulty with Mr Stefaniak being assisted by a departmental officer. Mr Kaine does have some issues around that. Should the occasion arise during the debate that I feel the need to consult a member of my staff, rather than rushing to the back of the room today to consult with him it would be more convenient and efficient if I had him here. I think that is what Ms Tucker was saying. She was not suggesting that we should have access to the departmental official, but rather one of our own officers. It might be more convenient, rather than rushing to the back of the room all day, to have them sitting here.

Mr Stefaniak: I have no problem with that. We have done that before.

Mr Stanhope: On the other issue, I do disagree with you, Mr Kaine, which is a very rare occurrence these days, but every other parliament does have arrangements whereby officials assist ministers in complex and difficult debates.

MR SPEAKER: Yes. I think, Mr Stanhope, that your interpretation and mine initially were the same. I understand now what the other members are saying—that they require assistance on the floor as well. However, I am a little reluctant to—

Mr Kaine: Mr Speaker, if I may speak briefly again: I have now just received six different sets of amendments. They have just been put on my desk.

MR SPEAKER: So have I.

Mr Kaine: How ridiculous is this debate becoming? We have been inundated with this stuff for days. Here we are, about to begin the debate in detail on this bill, and I have six different sets of amendments now placed before me. How am I supposed to understand what these amendments do, Mr Speaker? I suggest that we ought to adjourn the debate for another week so that we can have a look at all this stuff that keeps pouring in to us. If the legislation is so bad that we have to keep bringing this number of amendments in at this stage of the debate, why don't we just adjourn the debate entirely until the government introduces an acceptable bill? It is getting a bit beyond me, Mr Speaker. I have no idea what these amendments purport to do, none whatsoever, and yet you are going to ask me to debate them and vote on them. I think it is a scandal, Mr Speaker.

MR SPEAKER: Mr Kaine, first of all I would observe that the amendments that have come down do not appear to come from the government. Nevertheless, I take your point that they are coming in very late. It would seem to me that the sensible thing to do would be to adjourn the debate until members can have an opportunity to have a look at these amendments.

Mr Moore: Mr Speaker, I believe that these amendments that came in are the same amendments; they are just colour coded. They are colour coded as a convenient way of making sure that members know which one we are talking about at any given time. This bill has not only been the subject of a huge amount of discussion outside the chambers, but also has been adjourned a number of times already. The colour coding, I think, is a useful way of assisting members to understand which amendments they are discussing at any given time.

Mr Stanhope: That is not entirely true, Mr Speaker. We have been keeping abreast of this, but the government has introduced amendments this morning which none of us have seen. I understand what you are proposing.

Mr Stefaniak: There are several there as a result of discussions with your office, Mr Stanhope. Yes, there are a couple of those which are new as a result of discussions with your staff.

MR SPEAKER: Order! One at a time. Well, what is the wish of the Assembly?

Mr Stanhope: Trevor wants to move for an adjournment. He can still move it.

Mr Moore: Our wish is to proceed, Mr Speaker.

Mr Kaine: With due respect, Mr Speaker, I think the government ought to be moving for an adjournment. I do not know what sort of a dog's breakfast this legislation is going to end up as if we proceed to debate all this stuff without anybody ever having seen it. I think the minister ought to be moving the adjournment.

MR SPEAKER: There are three options—to proceed now, to adjourn to a later hour today, or to adjourn to a later day. It is entirely in the Assembly's hands.

Mr Stefaniak: Mr Speaker, I think everyone apart from Mr Kaine is fairly keen to proceed, but I do appreciate that there are some new amendments. I have my officer here who is completely across the list. I think Mr Stanhope's staff are fairly well across this as well as my staff. It may be sensible to adjourn this debate and do the Unit Titles Bill first, and not do this before, say, 11.30 am. I am quite happy to do that. I understand that only several amendments are new and I think most people seem reasonably keen to get on with this, but I do take Mr Kaine's point. I think with that short adjournment, Mr Quinton could assist him in relation to any fresh amendments that hit the deck today.

Mr Moore: The Unit Titles Bill first.

Mr Stefaniak: Yes.

Mr Stanhope: And the Discrimination Amendment Bill.

Mr Stefaniak: Yes. I think that might assist Mr Kaine. Mr Quinton, in the meantime, can have a talk with him.

MR SPEAKER: Before we proceed further, could I have an assurance, if that is possible, that all amendments by all members have now been circulated?

Mr Rugendyke: Mr Speaker, all my amendments have been circulated.

MR SPEAKER: Thank you, Mr Rugendyke.

Mr Stanhope: All of the Labor Party's amendments have been circulated.

MR SPEAKER: Thank you, Mr Stanhope. Ms Tucker?

Ms Tucker: All the Greens' amendments have been circulated.

Mr Stefaniak: I understand there are some final ones coming within the next 10 minutes, and that is it from the government.

MR SPEAKER: I beg your pardon?

Mr Stefaniak: I understand there is still one more lot from the government which will be circulated within the next 10 minutes.

Mr Stanhope: I think you are making Mr Kaine's case for him, Bill.

Mr Moore: Mr Speaker, I think the Assembly, if I have judged comments correctly, would like to proceed to deal with the two unit titles bills and the discrimination bill, the next bills on the paper, and to adjourn this bill until 11.30. Having done those bills we can proceed with this one. That will give people time to have a look at those amendments. I hope that meets Mr Kaine's needs. It is a relatively short time, but we do want to proceed with this. At least we can have a look at this morning's amendments.

Mr Kaine: I might as well absent myself from the debate while you go ahead and debate your own bill if you are not going to give us time to look at stuff. I don't know what to—

MR SPEAKER: Order, please! Mr Kaine, please. You are addressing the chamber. Please rise.

Mr Moore: We need to adjourn the debate.

MR SPEAKER: Mr Moore and Mr Stefaniak have already spoken. Somebody is going to have to adjourn this.

Debate (on motion by **Mr Moore**) adjourned to a later hour.

Unit Titles Bill 2000

[Cognate bill:
Unit Titles Consequential Amendments Bill 2000]

Debate resumed from 1 March 2001, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with order of the day No 3, the Unit Titles Consequential Amendments Bill 2000? There being no objection, that course will be followed. I remind members that in debating order of the day No 2 they may also address their remarks to order of the day No 3.

MR CORBELL (10.47) Mr Speaker, the Labor Party will be supporting this bill today, along with the Unit Titles Consequential Provisions Bill. Issues relating to the maintenance of unit title in the ACT have been conducted under a piece of legislation which is increasingly outdated and inappropriate for the current growth in unit title plans in the ACT. There have been a number of issues relating to the administration of unit title plans which create problems for the administration of those units where the plans are applying.

For example, there have been problems in relation to the application of the resolution of issues relating to deadlock in the administration of unit title plans. Unit titles have previously required the unanimous consent of all unit title holders before a proposal to provide for improvements and maintenance or changes to the administration and planning can take place. This has resulted in considerable problems for those people administering unit title plans and, further, has resulted in an inability for members of body corporates to proceed with upgrades or improvements to their administration of the unit title area. For that reason, Mr Speaker, the Labor Party believes it is important that this bill is supported today.

There is a major review of the entire unit titles process. This review has been ongoing over quite a period of years. As a member of this place I have received numerous representations from people concerned about the inadequacy of the existing legislation and the need for major improvements. This legislation undertakes those improvements

and I understand is the result of many years of grafting to reach this stage. The process proposed in the two bills is one which will lead to considerable improvement to the administration of unit titles in the territory.

The Labor Party views these bills as uncontentious. They will provide for a greater streamlining and more effective administration of unit titles in the ACT. We will be supporting the legislation.

MS TUCKER (10.50): Mr Speaker, this bill replaces the existing Unit Titles Act which has been in operation for 30 years and has not been substantially changed over that time. However, I understand that over the years a number of deficiencies have been identified with the legislation and that there is a need to upgrade it to match current ownership practices in unit titles.

This legislation sets the rules for the unit titling of townhouses, flats and the like. By their nature there is a need to ensure exclusive ownership and control of individual units within the complex, but to have shared ownership and control of common areas on the block. There is, thus, a need to ensure that the internal management arrangements for these complexes are equitable, democratic and accountable, and also to ensure that disputes between unit holders can be fairly resolved and as simply as possible. I do not think anybody can disagree with these objectives.

The bill contains a lot of detail regarding the procedural aspects of how unit plans are managed. In a sense it is like a constitution by which unit owners have to operate. I understand that the government has consulted with various stakeholders in developing the bill, so I trust that there has been sufficient scrutiny of these detailed procedural arrangements. We will be supporting this legislation.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.51), in reply: Mr Speaker, I guess that after almost seven years of consultation and work on this legislation there will be a lot of relieved people out there. I thank members for their support. I think the process followed and the time taken has produced something that is worth while. Clearly, the agreement of all members that the bill can go through unamended is an indication by the Assembly anyway that we have got it right.

I think the public servants who have been working on this for some time have done a very good job in making sure we get this right. There are a number of them, and some of them are in the gallery. I welcome their presence here to see the culmination of all their work. This affects where people live, and it is very important that we get it right. People who invest in property do have a say as to how that property is managed and looked after.

The importance of the bill is that it does include dispute resolutions for deadlock orders. It does allow minor alterations to internal boundaries. It simplifies the procedures for the cancellation of the unit plan. It does provide for the staging of multi-storey developments, and it allows owners' corporations to enforce the articles of their corporation. I think in the interest of accountability and equity it does allow decisions to approve or refuse an application to unit title, or a decision to approve or refuse an application to alter a unit titles plan, to be appealable to the AAT.

The bill does represent the culmination of a lot of work. I thank all those who had a part in it and in all the consultation, and for all the letters that I have received and I know that others have received. I offer thanks to all those who participated in the processing of this bill, including the Law Society's property law subcommittee. I also thank the Assembly for supporting this bill today.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Unit Titles Consequential Amendments Bill 2000

Debate resumed from 1 March 2001, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Discrimination Amendment Bill 2000

Debate resumed from 30 March 2000, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (10.54): Mr Speaker, I will speak only relatively briefly to this bill. This bill makes it lawful to discriminate against a person on the grounds of age in relation to the provision of credit or the terms under which credit is given if the criteria for refusal or the terms imposed are based on actuarial statistical data on which it is reasonable for the credit provider to rely, or, if there is no such data, on other data on which it is reasonable to rely, and reasonable having regard to the data and any other relevant factors, and the credit provider tells the commissioner or tribunal the sources on which the data is based and the relevant factors if so required.

Mr Speaker, in relation to this bill: I do wonder whether or not the government or the former Attorney-General who introduced the bill have been as open as they might about exactly what, for instance, the Discrimination Commissioner thinks about amendments of this sort. I find it very difficult to believe that the Discrimination Commissioner, for instance, would support any further diminution of the philosophy or

the underlying principles of the discrimination legislation that is such a feature of Australian jurisdictions and a hallmark of human rights legislation in Australia.

I understand from the Attorney's introductory speech that the Discrimination Commissioner nevertheless has acknowledged that the amendment that the government is proposing does not prevent a complaint being made and being fully investigated. She acknowledges that the onus of proving there was no discrimination lies with the credit provider. I believe that the Discrimination Commissioner has indicated in any event that she can only recall one instance of discrimination by a credit provider on the grounds of age and that that was quickly resolved in favour of the complainant. Of course, that really does beg the question as to why it is that the government thinks this particular amendment is necessary. There is no clear answer to that. I do not believe that the government has provided any justification for this amendment to the Discrimination Act to allow discrimination in these eventualities on the ground of age.

I did raise some questions about the bill with the former Attorney-General. He replied stating, amongst other things, that the proposed amendments would not make it any easier to discriminate against those persons at either end of the age spectrum and explained advice from the Australian Finance Conference about how credit assessments are made. The Attorney-General went on to state:

> Young and older credit applicants will therefore benefit from improvements in the accuracy of the credit assessment process resulting in the ability to compare the credit characteristics of an applicant against those of a similar age group. Hence the consequence of this legislation would be to make the credit assessment system fairer.

I do not accept that argument. The argument seems to be that the credit industry wants to apply a generic assessment of the credit worthiness of certain people by age group. The credit industry believes it appropriate to devise a system whereby they are empowered to discriminate against, in particular, older people or younger people—people at either end of the potential borrowing spectrum, perhaps young people just out of school or older people after they have retired—and in terms of the generic assessment of the credit worthiness or credit status of people within a particular age cohort to be then able to discriminate against them on the basis of some generic actuarial advice that people between, say, the age of 18 and 21 are more likely to default in relation to the credit than people, say, from 25 to 30. Therefore, you can take into account the general credit worthiness of 18 to 21-year-olds in refusing a particular application for credit, irrespective of that person's particular or personal circumstances.

So the credit provider is no longer required to assess each application for credit on the basis of merit but is enabled by this particular amendment to look more broadly at other criteria applying to the age cohort generally and to say, "Look, we have actuarial data or actuarial information that indicates that this particular age group are very poor credit risks. Despite the fact that you seem to have a good steady job and a very sound income, we are able and entitled to discriminate and to take this factor into account when deciding whether or not to grant you credit."

Another basis on which I and the Labor Party are not comfortable with this amendment is the fact that it continues this government's approach permitting discrimination against marginalised groups in the community or actually discriminating at all. There have been a number of instances over the last couple of years of this government winding back commitments that are made throughout all parliaments in Australia to outlaw prescribed discrimination. We have had a number of examples of it and this is a continuation of this government's practices.

Members will remember the 1999 amendment to this act to allow discrimination against disabled people by service providers who are supposed to help them. That amendment to the Discrimination Act still rankles very seriously with me. We have actually institutionalised discrimination against disabled people. The government can now discriminate against disabled people in the provision of services. I guess that is ironic in the context of the inquiries that are going on currently.

In addition, the government and its supporters have now voted twice to permit the victims of crime legislation to discriminate against ordinary victims. Ordinary citizens, ordinary residents, young workers working in a service station or young workers working in late-night shopping centres, who are subjected to quite horrendous trauma as a result of crime, are deemed by this government and its supporters in this place as less worthy of criminal injuries compensation than the police or emergency services providers. That is absolutely outrageous discrimination against people more marginalised and less able to access support in consequence of those traumatic arrangements than the police or emergency services.

This is more institutionalised discrimination by this government. We see, coming on top of discrimination against disabled people, discrimination against a whole raft of workers who are deemed by this government not as worthy as support as police officers under the victims of crime legislation. There is a history of discrimination by this government. It is determined not to be fair and even-handed. A major concern that we have about this amendment to the Discrimination Act to allow discrimination on the grounds of age is that it continues a history of a practice of discrimination; of winding back legislation and winding back provisions designed to ensure that we are all treated equally, that there will be no discrimination, and that discrimination in all its emanations is unacceptable.

For those reasons the Labor Party will not support this amendment bill. We think it is bad as a matter of policy. We do not think the case has been made. This is not a particularly serious or pressing issue within the community. The credit industry does not really need this amendment at all. It has the capacity to consider applications for credit on merit and it should continue to do so. Those in the industry should not rely on some out that they can discriminate against an individual on the basis of some generic or actuarial advice about the credit worthiness of a particular group within the community. We oppose this determination by this government to continue to find opportunities to discriminate against people who really have a right to rely on legislatures to protect everybody equally.

MR MOORE (Minister for Health, Housing and Community Services) (11.03): Mr Speaker, I rise to support the legislation and to deal with some of the rhetoric that Mr Stanhope has used in this debate, just in the same way that he used inappropriate

rhetoric in the debate on the Psychologists Bill. At that stage we heard this sort of rhetoric time and time again, about how the world was going to end and how things were going to get worse. He took a fairly simple concept and reconstructed it into something entirely different. In so doing he built a straw man that would discourage people from seeing things clearly.

Mr Speaker, this is actually a fairly simple concept. The concept is that when somebody aged 85 or so applies for credit, there is actuarial evidence to show that somebody of that age who needs credit may not have the wherewithal to continue paying the loan over the next 30 years. At the moment the legislation would say no, that you cannot do that on the ground of ageism because you cannot discriminate on the grounds of age. Most of us would see the sensible approach taken by this bill. People who have the responsibility of lending money and who should be able to expect a reasonable return on that money ought to be able to take a proper and appropriate approach.

This legislation does not provide for a complete free-for-all in that it does allow the commissioner to examine a particular case and make sure that a decision was made on sensible grounds and that the issue was dealt with appropriately.

Just so I am clear about it, the legislation allows discrimination on the ground of somebody's age at the other end of the spectrum as well. If somebody is very young and there is a statistical actuarial view that suggests that a particular group is a very high risk group, then the credit provider is given the opportunity to take that into account. It is entirely appropriate that the provider should be able to take it into account. We are talking about what are often significant sums of money, and this is how these sorts of decisions can be made.

If an individual feels that they have been disadvantaged by what they think of as a discrimination, they can still approach the Discrimination Commissioner and deal with it. This is a sensible way to deal with a business issue. That is not what the legislation was trying to achieve when we wanted to avoid discrimination in terms of age.

Mr Speaker, it is appropriate that the government, having seen an anomaly, identify that anomaly and deal with it, and that is what we are doing in this case. Just as Mr Stanhope misrepresents, in my view, what happened with the discrimination legislation in regard to people with disabilities, and I know he has the opposite view which he has put very clearly, this Assembly's view was that we were ensuring appropriate use of our financial capacity to deal with people with disabilities. In this case I think that, basically, the same concept needs to be applied. So, Mr Speaker, I will be supporting this Discrimination Amendment Bill because it is a sensible amendment.

MR RUGENDYKE (11.07): Mr Speaker, as has been outlined, this bill, if passed, will allow credit providers to take a person's age into account as part of the assessment process for credit applications. As far as I am concerned, age is not the sole reason for people entering into credit arrangements that they cannot afford. The real issue is that credit providers are not checking whether people can meet repayments, and the only

way to solve the problem is to pass legislation that makes it compulsory for all applications to be thoroughly assessed.

Last year I revealed that credit providers in the ACT were luring people into debt with unsolicited increases of up to more than three times the previous credit limit. The applications were mailed out, with the only requirement being that the customer has to sign a pre-approved form for the credit limit to be raised. My chief concern is that the credit providers are not assessing whether the consumer has the capacity to repay the increased credit limit. Neither are they checking to see whether the income of the customer has varied since the credit card was issued.

I would like to foreshadow to members that I am preparing a bill to correct the anomaly, and I expect to table it in the next sitting period. The age of the applicant is not the issue. The issue is whether the debtor conducts an appropriate assessment in all circumstances. At the moment this is not occurring.

Allowing credit providers to discriminate against age could have an adverse impact in that it could rule out people who genuinely have the means to repay the debt. What about a teenager who has been in the work force for a couple of years or someone who is over 65 and does have money behind them? They simply stand to be cut out of a right. I think the banks and other credit providers have a hide to ask the Assembly to discriminate against age when they are presently not adhering to their own codes of conduct by issuing pre-approved credit limits.

Mr Speaker, at first blush it appears that this is a good bill that makes it harder for young people to get a credit card. That would be a good thing. But, Mr Speaker, when you look deeper it is much more sinister. It is one factor that could tip credit providers over the edge to wipe out and not approve people who require a loan. I will be opposing this bill.

MS TUCKER (11:10): The Greens also will be opposing this bill. This is an attempt to give credit agencies legal certainty to refuse loans or to put conditions on loans when they have considered age as one of the factors. It could affect older or younger people. It just depends on the loan agency having actuarial or other statistical data that shows that a particular age group presents a greater risk of failing to repay the loan.

The questions for the Greens in assessing this bill were, firstly, what is the need being addressed here; secondly, is this an appropriate way to address this need; and thirdly, what secondary effects will we feel by amending the Discrimination Act?

Mr Moore accused Mr Stanhope of using rhetoric. I was interested because we obviously consulted quite broadly on this. We talked to people who work in the sector. COTA, the youth sector and the Discrimination Commissioner had concerns. The CARE financial counselling people also had concerns. Obviously they have the interests of the client group in mind when they give a view. So this is pretty much a Liberal ideological piece of legislation once again, which Mr Moore, unfortunately, was coopted into.

The main argument from government is about the needs of the finance industry. The need we are most interested in is whether there is this need in the community, and whether people are being caught in traps which amending the Discrimination Act could help. Evidence from the community services sector, as I said, suggests that there is an increasing problem with unrepayable consumer debt that we should be confronting. There is, I am told, for the first time an upward trend in the numbers of people retiring with consumer debt which they cannot pay back.

Among young people, I am told, there is a significant minority who are getting into debt through their credit cards—credit cards which perhaps are too easy to get. In many cases the consequences of severe financial difficulties for young people can be compounded by a lack of experience and knowledge of the implications of declaring oneself bankrupt, for instance.

But this information about the problem does not immediately suggest to me that the solution is to further weaken the Discrimination Act. It is a new trend to see older people in financial trouble, but it is more likely due to recent changes in our social economy than the establishment of the Discrimination Act. The act is there to enshrine principles of a fair go, of equity, and a fair go for all people.

Now, if an older person needs some capital, for instance, it is not acceptable to allow a bank to discriminate on the basis of age. Yes, the bank is running a business, but we do not know who this particular individual is. Are they good at saving; are they good at paying back their debts? These are the legitimate interests of a lending institution. Employment or income stability is another. The risk of age is an emergent factor. It appears because of the proportions of people in that age group who are in a situation of limited income or reduced stability. Those grounds are enough without adding age.

This amendment bill gives power to a sweeping generalisation, unnecessarily broader than the individual assessments which are more properly the basis for a decision on credit.

The government has based its arguments on submissions from lending bodies, such as the Australian Finance Conference, the Australian Bankers Association and so on, but I do not believe that they consulted with the agencies who could have advised them on alternative ways to deal with the problem or who could point out the pitfalls of this so-called solution.

Interestingly too, when I wrote to ask the ACT's Discrimination Commissioner for an opinion of this bill, she had not been made aware of it. So, although I should not be surprised, here we have the Liberals taking advice from the banks and not from social justice agencies or even our own statutory authorities responsible for upholding our fair go and equity laws.

So why weaken the Discrimination Act? There is not, I understand, an outbreak of credit providers being held ransom by the Discrimination Act. In the last three years there has been only one case of an allegation of discrimination by a credit provider being referred to the Discrimination Commissioner, and this was resolved easily through conciliation.

Our currently allowed exemptions to the Discrimination Act on the basis of age are to do with youth wages, actors where the role requires a particular age, and clubs for particular age groups. These provisions relate more, except for youth wages, to allowing services to be targeted rather than allowing services to be taken away. Those such as OH&S exemptions allow access to particular jobs to be restricted. Those exemptions are of a different nature from these proposed today.

The government and the finance industry argue that insurance providers and superannuation providers are allowed within the act to discriminate on the basis of actuarial or other reasonable data. However, it is not clear that there is any value in allowing discrimination on the basis of age. The finance industry's papers on this matter, with which they sought this amendment, include contradictory arguments on how this amendment might affect their business. On one page they claim it is a strong predictor, on another that it is not.

The government has tried to make this change palatable by its softening terms and clauses. The reasonableness of the conditions or the refusal is one factor to soften its impact. It must be based on actuarial or statistical evidence. It is only one of the factors to be considered, although we do not have any restriction on this in the legislation.

None of these are good enough arguments for further weakening the Discrimination Act. There are other criteria which more properly assess a person's risk. We do not want to allow people to be shut out from obtaining access to capital because of the common conditions of their age peers. That is discrimination, and that is what this act is here to protect.

The minister told us that New South Wales, Victoria and Tasmania allow this type of thing. The argument that we should be like other jurisdictions is often used by this government, although often, I note, when standards are actually being lowered. There are arguments for uniformity, of course, but you cannot take those as the basic rationale for supporting legislation which we feel is going to be diminishing standards of rights.

Since other Australian jurisdictions have tried this out, I would also like to hear from the government whether or not it has made a difference. What has happened to people in those age groups? Did they find alternatives?

The minister put the case that the lending institutions take on a risk. Well, they do not seem to be doing too badly. Protection of people is what we need to focus on. It is very telling to read in the minister's tabling speech that this will be "removing an impediment" to the "business of credit providers".

To really address the problem of rising rates of unsustainable debt among retirees or any other group we need to focus not on removing impediments to business but rather to increasing protection for people. There are plenty of ideas around, such as enforcing the consumer credit code, education and support of people to understand the implications of debt, and financial planning assistance. We remember so well how this government was not able to find, I think it was $80,000, to support a community service that was dealing with CARE Credit and Debt Counselling Service issues. Basically, we need to see support given to the community to make informed decisions.

I am interested in Mr Rugendyke's comments and his foreshadowing of some sort of legislative response to how the credit industry is actually working. I am wondering whether the government has put any work into looking at unsolicited credit offers. When I go to the counter at the bank on occasions I am quite often asked whether I want to increase my home loan. This is unsolicited. I do not go there to do that; I go there to do a totally different transaction. This obviously is something that staff in the banks are being told to do to customers.

The Greens will not accept that there are no other remedies to the issues of concern here. We are very concerned to see the government being willing to weaken and undermine the Discrimination Act.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (11.19): Mr Speaker, I think I can speak now in this debate even though I introduced the bill originally. If I cannot, I seek leave to do so.

MR SPEAKER: No, it's all right. I am advised that you can speak. It will be Mr Stefaniak who will close the debate. It is the officer rather than the person, Chief Minister.

MR HUMPHRIES: Thank you, Mr Speaker. I want to try to rebut some of the very foolish things that have been said in the course of this debate about what this legislation is all about. This is not the ACT government deciding that it is going to suddenly put the squeeze on little old ladies and young people in the community that we think should now be denied access to credit. Nobody would wish to see anybody denied access to money to do the things they want to do with their lives. But I think we would all want to make sure that credit was not provided in circumstances that were clearly and obviously inappropriate.

Mr Speaker, essentially that is what this bill is all about. It is not about restricting access to credit, but rather preventing inappropriate access and ensuring those who provide credit can provide it in circumstances where they are able to ensure that the person to whom they are lending is capable of repaying that money. It is not in the bank's interest or the building society's interest or the credit union's interest to lend that money in inappropriate circumstances. It is certainly not in the interest of those people in the community who are having money lent to them if they cannot repay it, and it is not in the broader interest of the community that that should be the case.

I am particularly surprised to hear Mr Rugendyke join in the criticism from some of those opposite because he has made a great point in the past of saying that people are being offered credit inappropriately in this community at the moment. And they are being offered credit, often too readily. What do we do about that? What we should do about that is make sure that people should not be offered credit in the first place if they are not in a position to repay the money.

Mr Rugendyke: So stop them doing it now.

MR HUMPHRIES: Well, it is unfortunate, Mr Speaker. I will give members an illustration, perhaps a slightly extreme illustration, of what this bill facilitates. A bank manager is sitting in his office and in comes a lady of 85 years of age and she says, "I wish to take out a 20-year loan." Say it is a personal loan for argument's sake. The bank manager is well aware that there is probably little likelihood that this lady sitting in his office is going to be alive at the age of 105 to make the last repayment on her loan. He knows intuitively, as a human being, that people generally do not live to the age of 105, but he is not in a position to say to her, "Sorry, I do not think you are going to be around to repay this loan," if he has no legal basis on which to refuse that person the loan. If she checks off on the other points on the check list in front of that bank manager he is compelled, unless he is in breach of the Discrimination Act, to give that person that money.

How would he know that that person is not going to live to be 105? Of course, he cannot know whether she is going to live to 105 or not, Mr Speaker. But if this legislation is passed he will be able to rely on actuarial data which indicates the likelihood of her capacity at the age of 85 to be able to repay a loan of 20 years. He cannot rely on subjective information about this lady, but he can rely on objective evidence about people in her position.

Mr Speaker, it is entirely reasonable that we should be able to look at the likelihood in those circumstances of her capacity to repay and to say, "No, I think you are going to have to provide me with another basis on which to make this loan." He might convert it into a loan on her house, a mortgage, on which basis he would have a security. He would not have to worry about her means over the next 20 years, Mr Speaker. But to do so in circumstances where he is not provided with any capacity to refuse what are obviously inappropriate loans is an invitation to problems.

We are not discriminating in favour of older people if we refuse to pass this bill; we are discriminating against them because we hurt them if they have not got the capacity to be protected against inappropriate loans. I think that is a very significant concern, Mr Speaker.

Ms Tucker says the Liberals are taking advice from the banks. Well, whoever we are taking advice from, Mr Speaker, it is the same people who have given advice to governments in other parts of Australia. Indeed, the Labor governments of New South Wales, Victoria and Tasmania all administer the same legislation, apparently without the same qualms about the impact on other people, and it is entirely appropriate that that be the case, Mr Speaker, because this is about ensuring that we have a balanced and reasonable arrangement on which to make loans.

We all had something to say a few years ago in this place, Mr Speaker, about the position of CARE Credit and Debt Counselling Service. It was not given continuation of funding from the government to continue to do its particular work in terms of counselling people in debt situations. Well, we certainly would be creating a new market for such a service if we facilitate continuation of a position where people are being made loans in circumstances where the banks or building societies or whatever know that they should not be making those loans but have no legal basis on which to refuse them.

I think the offer of credit in this community, frankly, is too great at the moment. I think too many people are getting access to credit who should not be having that access, and today, Mr Speaker, we are facilitating the continuation of that—

Mr Rugendyke: So fix it properly.

MR HUMPHRIES: We are facilitating the continuation of that in this particular case. We are refusing to allow objective information about the position of people in the community who might seek such loans to be taken into account when they front the bank manager or officer to obtain that loan, and that is irresponsible, Mr Speaker. I can see people in this place coming back at some later stage and complaining about people who are in over their heads, people who have got into deep water and are in so much trouble et cetera, et cetera, but they have not taken the step today to do something about that, and in my view that is irresponsible.

MR KAINE (11.25): Mr Speaker, I am opposed to this bill, and the Chief Minister's speech just then did not convince me one bit that I should change my view.

The Chief Minister says that this bill is not discriminating against little old ladies. Well, in fact, Mr Speaker, it is. It is discriminating against people simply on the basis of age. There is no need for it. In fact, the legislation is wide open anyway because the bill proposes that the criteria for refusal, or the terms imposed, are based on actuarial or statistical data on which it is reasonable for the credit provider to rely, or, if there is no such data, on other data on which it is reasonable to rely. The word "reasonable" is used several times, so we are leaving it to the credit provider to determine what is reasonable. So the bill in no way addresses the question of whether an older person or an extremely young person should be given credit or not.

In fact, Mr Speaker, this particular provision ought not be necessary because the Chief Minister, when he tabled this bill a year ago, listed in his tabling speech the relevant factors that a credit provider should take into account when determining whether to make a loan or not. He said that some of these factors—so there were clearly others—which come into play are income level, employment stability, domicile, number of dependants, credit and savings history, and assets and liabilities. Those are the things that a credit provider should take into account in determining whether to lend money or not, not whether you are aged 20 or 75. If those factors are properly taken into account by the credit provider, a person of 75, if he or she matches all these criteria, is just as entitled to a loan as is a 25-year-old in employment with no dependants and paying off his own house.

Why is age considered by the Chief Minister to be a relevant criteria? It is not. The Chief Minister just then tried to explain it by saying, "Oh well, the credit provider cannot be sure that they will get their money back." Well, they can. If they properly consider the person's income level, credit and savings history, and assets and liabilities they can know absolutely whether, if the person is to trip over a step and die this morning, they are going to get their money back, just as they can with a 20-year-old, or a 30-year-old or a 40-year-old. I repeat, Mr Speaker, that age is no criterion and ought in no way reflect on a person's eligibility and qualification for a loan.

In terms of the repayment of the loan, a person of 25 or 30 can just as easily be killed in a car accident or be run over by a bus as a 75 or 80-year-old. Where is the certainty of getting the money back from a 25-year-old who is living beyond his or her means anyway and gets a massive loan on the strength of future earnings and then gets run over by a bus? There is no guarantee of return of the money. In fact, in that case the lender might have less certainty of getting it back than with a 75-year-old who has significant assets which can be relied upon for the recovery of the money at the end of the day. So the Chief Minister's argument is totally spurious.

I agree with Mr Rugendyke that there has been a bit of attention focused lately on the propensity for lending institutions to encourage people to borrow more and more, and I see it daily. In the last year I have probably received six or seven letters from different lending agencies asking me whether I want to increase the credit limit that I already have or whether I want a new credit card. Some of them know nothing about me. In some cases I am told that if I want a credit card or if I want to increase my existing credit limit it is already pre-approved. All I have to do is sign the dotted line and I get a new credit card or I get a new credit limit.

Some of the ones that offer me increased money have done no check on my financial situation for years. I have had credit cards for years and they have done no check, to my knowledge, since they gave me the credit card in the first place. So how would they know whether I am capable of meeting a higher level of credit? They don't. It is a concerted campaign to encourage people, regardless of age or economic circumstance, to go into debt and to take credit beyond, in many cases, their ability to repay, and it is the responsibility of the lending institutions. If they want to protect their investment it is their problem to make sure that the people that they lend money to are capable of repaying it. We should not be enacting legislation of this kind to protect a lending institution from its own stupidity. So, Mr Speaker, I am opposed to this legislation.

I have said many times in this place that every time this place enacts legislation it restricts somebody's rights. It restricts somebody's lifestyle. We never enact legislation that makes life easier for people. It is always to restrict. This is a classic case of restricting the ability of certain people in our community, or assisting in doing so, to borrow money when they need it. Mr Speaker, I think it is totally iniquitous and I find it astonishing that a Liberal government would be putting this sort of legislation forward.

Mr Rugendyke is right. Put the onus on the credit institutions to tighten up their procedures so that they guarantee their own investments. Why should we pass legislation to do it for them? It is totally in error. I will not support this legislation

MR STEFANIAK (Minister for Education and Attorney-General) (11.32), in reply: I thank members for their comments. Mr Speaker, this amendment bill will allow credit providers to consider a person's age as a factor when assessing credit applications. Mr Rugendyke said he thought initially that it was all right. Then he thought there was something sinister here and he is going to bring in some legislation of his own. I look forward to seeing that. I agree with the Chief Minister, and probably with you, Mr Rugendyke, that credit can be far too easily available for people who do not have the capacity or the likely capacity to pay it too, so I look forward to that

legislation. Mr Rugendyke, I would say you could actually do both because this would complement what I detect to be the thrust of what you are trying to do. It would not necessarily be exclusive to what you might be trying to do.

Essentially this amendment will allow age to be used as a factor where there is objective evidence based on statistical or actuarial data that a person's age puts him or her in a higher or lower credit risk category than any other person. Alternatively, if there is no such data, a credit provider may rely on other data on which it is reasonable to rely. The criteria for refusal of credit or the terms imposed under the credit contract must be reasonable having regard to the data and to other relevant factors, and the sources of the data and other factors relied on must be disclosed to the Discrimination Commissioner and the Discrimination Tribunal if so requested.

There obviously are concerns around this house that the proposed legislation could prevent credit providers to discriminate against applicants on the grounds of age alone. What the government is saying, Mr Speaker, is that this is not the case. As Mr Humphries explained to Mr Stanhope in correspondence late last year, I think, while age is certainly a relevant factor in assessing credit risk, it does not necessarily work adversely against the applicant.

I will give a simple example by applying a basic credit scoring system to demonstrate that. Let us assume that there are two applicants applying for credit approval. The first is a 21-year-old woman who lives with her parents. She does not have any economic dependants or financial liabilities. She has started her first job and she wants to buy her first car. She is on a good wage and she has a reasonable amount of savings.

The second applicant is a 45-year-old married man who has two teenage children. He wants to build a home extension. He has job stability. Let us say he has been in his job for 10 years. He has a good income but he does have substantial financial liabilities and substantial expenses.

It is assumed here that 25 points are required for credit approval based on three factors. In reality, Mr Speaker, I think the number of factors and the number of points required would be greater, but let us assume there are three factors. The first applicant might score five points for age, zero points for job stability, but 20 points for debt to income ratio. Remember, she has a good job, does not have any debt, lives at home with her parents and has no economic dependants. She totals 25 points. That is sufficient for the credit approval subject to income.

The second applicant, the 45-year-old man with the two teenage kids, with some debt but good job stability, gets 10 points for age, 10 points for job stability but only 5 points for debt to income ratio. Again that totals 25 points, meaning that his credit application will be approved, again subject to income.

That is a simplistic example but it does illustrate how a low score in one category can be offset by a good score in another category, and that is something that happens all the time. It also shows that age does not necessarily contribute a large portion of the total credit score.

As stated in Mr Humphries' presentation speech, credit will only be refused where an applicant receives a low score across a number of factors. I am informed that the finance industry assigns each factor a weight based on how strong a predictor of credit risk is by statistically analysing large samples. These are then adjusted and reviewed periodically.

Credit applications are commonly rejected, particularly in the case of young people, due to insufficient savings, a poor savings record, and over commitment. I think Mr Rugendyke or someone else gave an example of concerns about over commitment. Age alone will not be a determinant of credit refusal, and nor should it.

I would like to further assure members that the proposed amendment would not make it any easier to discriminate against young people or our senior citizens. Any age discrimination must be statistically supportable or based on relevant data upon which it is reasonable to reply. Hence, mere assumptions by credit providers that the very young or the very old are poor credit risks are not acceptable for the purposes of the provision. Such assumptions would also fail the reasonableness requirement imposed by the provision. Again there is that word "reasonableness".

The amendment recognises the importance of making sound commercial decisions in the assessment of credit applications. Finance providers have obligations to protect not only their own interests but also those of their shareholders, creditors, guarantors and other third party security providers who have assumed the risk of default of the finance provider's customers. It is in no-one's interest to lend money to people who do not have the capacity to pay it.

Quite seriously, the third party security providers are very important here, Mr Speaker, because that is required. They are required by law, and have been for about the last six or seven years, to get independent legal assessment of what they are going into. I want to point out that there are lots of checks and balances in any system in terms of issuing credit.

Mr Humphries also mentioned uniformity. That is a very important point. Things like this do not have any boundaries. We are a small island within New South Wales. I think uniformity with our neighbouring states of New South Wales and Victoria—Mr Humphries also mentioned Tasmania—is also a relevant factor. It makes good business sense. It makes good practical sense for the territory to have similar credit assessment laws as those states.

Mr Speaker, I hark back to what Mr Rugendyke said earlier. I think this legislation complements what I believe he is trying to do. It would not be inconsistent, I would suggest, with what he indicated he will do some time down the track. I simply urge those members who have spoken so far to reconsider that and to support this sensible piece of legislation.

Question resolved in the negative.

Leases (Commercial and Retail) Bill 2000 [No 2]
Detail stage

Debate resumed.

Clause 1 agreed to.

Clause 2.

MR STEFANIAK (Minister for Education and Attorney-General) (11.40): Pursuant to standing order 185, I move:

> That consideration of clause 2 be postponed until after consideration of schedule 2 of the bill.

Question resolved in the affirmative.

Clauses 3 to 6, by leave, taken together and agreed to.

Clause 7.

MR STEFANIAK (Minister for Education and Attorney-General) (11.41): I move amendment No 1 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*. I also present the supplementary explanatory memorandum, which has been circulated.

Amendment agreed to.

MS TUCKER (11.42): I move amendment No 1 circulated in my name *[see schedule 2 part 1 at page 690]*.

In speaking to this amendment I am also speaking to my second amendment, which would delete 7 (4), and amendment 17, which deletes schedule 1. Schedule 1 is a list of examples of commercial premises rather than retail operations. It excludes too many businesses which are self-evidently retail, either through the sale or hire of goods or the retail supply of services but which may need to occupy a large space. To give a couple of examples, this bill excludes operators of craft workshops, businesses providing health care services, businesses providing facilities for indoor sports, gymnasiums and night clubs.

Leases presently covered by the code have their rights and dispute resolution procedures protected. This act, through schedule 1, will retrospectively strip away the rights of those tenants so that when they seek to renew their lease they will lose the option of the five-year term, mediation provisions and market rent provisions. It will affect numerous existing businesses and every other essentially retail operation that needs more than 300 square metres. This clause would strip such tenants of the protection offered by the existing code and would, in effect, give them nothing. It offers them only chaos. It is an unnecessary and unfair definition and should be deleted.

Through the operations of the Tenancy Tribunal, the difference between commercial and retail leases has now been clearly established. The inclusion of premises identified in schedule 1 and the addition of the rather ambiguous clause 7 (4) do not create certainty; rather, they open up a limitless stream of conflicts in court where property owners and managers will seek to define a whole range of businesses that until now have had the protection of the act under the definition "commercial". I would like to remind members that my amendments would nonetheless leave the existing definitions of "commercial" and "retail" intact and so maintain the existing clarity and certainty.

MR STEFANIAK (Minister for Education and Attorney-General) (11.45): I speak to Ms Tucker's amendment 1—and amendment 2; they both relate to clause 7—to remove the schedule of commercial premises from the act. The government opposes the amendments. The act draws a distinction between commercial and retail premises, and these are defined in clause 7 (5). The act only applies to small commercial premises—that is, of less than 300 square metres—or retail premises of less than 1,000 square metres, not leased by a publicly listed company.

This reflects a distinction in the existing act and code, a separation which has now existed for many years and which has been factored into commercial decisions. The Greens' amendments seek to remove a schedule included in the act that identifies a number of premises as commercial premises. Different stakeholders have adopted different positions on the desirability or otherwise of the approach taken by the bill. Originally, the Law Society supported the inclusion of a list of this nature. Whilst this support has dwindled, it is understood that the society still supports the policy objective of bringing certainty to this area.

The government presses its amendments to the bill on the basis that they remove uncertainty. The list in the schedule is based on the ordinary distinctions made in town planning in this and other jurisdictions. The effect of removing the schedule is simple: it will expose all of those in the grey area to uncertainty; it will mean that these matters will be litigated on a case-by-case basis.

The government opposes amendments 1 and 2 relating to clause 7, which remove the clear distinction between retail and commercial tenancies. The distinction was included on the advice of the expert committee, which argued that, if the schedule is retained, consideration be given to ensuring that anything contained in the schedule is removed from the definition of "retail premises". The effect of removing this provision is to further muddy the waters.

MR KAINE (11.47): I have some difficulty with schedule 1 as a matter of principle because it in no way claims to be a definitive list of what constitutes a commercial premises. They are merely examples and in some cases not even clear examples. Take item 5:

> Authorised deposit-taking institutions, finance companies and other financial establishments.

Who and what are they? Item 9, a list of amusement facilities, ends with "… and other indoor entertainment facilities". Such as? Item 12 reads:

> Premises used for the bulk storage or wholesale distribution of petrol, oil, petroleum products or other inflammable liquids.

You can go to any supermarket and buy all sorts of inflammable things in bottles, jars and plastic containers. But which of them are comprehended in this definition?

The schedule is not only unclear as to what in fact constitutes commercial premises; these are only examples anyway. So who, at the end of the day, defines what is or is not a commercial premises? I am not certain what the purpose of this is. I am sure that there are many businesses out there that consider themselves to be commercial operations but do not come within the descriptions given here. How do they know whether they are regarded as commercial premises or not? It is by no means certain which premises are commercial and which are not. Could the minister explain what the purpose of schedule 1 is, if it is so unclear as to what does or does not constitute commercial premises.

MR STANHOPE (Leader of the Opposition) (11.49): I concur with the comments of both Ms Tucker and Mr Kaine in relation to this. I understand that the government's intention is to provide through the schedule a list of examples for the purpose of avoiding or overcoming potential ambiguity. But I take the point made by Mr Kaine and Ms Tucker—and I think it is well made—that the reverse could be the case: that you could actually generate greater ambiguity by having an incomplete list such as this that could potentially be used to exclude businesses rather than act as an aid to interpretation. So the Labor Party will support Ms Tucker's amendments.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (11.50): I now move amendment No 2 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

MR STANHOPE (Leader of the Opposition) (11.51): While I agree with government amendment No 2, I think it would assist the debate—I know it is going to be long and perhaps a bit tortuous—if the Attorney attempted to give some justification for his amendments, for the sake of the record. I think it would facilitate debate.

MR STEFANIAK (Minister for Education and Attorney-General) (11.51): It is a technical amendment suggested by the Law Society. I just make that point for Mr Stanhope.

Amendment agreed to.

MS TUCKER (11.52): I move amendment No 2 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment deletes a subclause which appears to provide that, if some area of the premises is used for commercial purposes, the premises cannot be described as retail premises. It invites contention in court, and it offers no benefit overall. It could mean anything; it is very unclear.

Amendment agreed to.

Clause 7, as amended, agreed to.

Clause 8.

MR STEFANIAK (Minister for Education and Attorney-General) (11.53): This clause was actually consequential on the non-passage of the Unit Titles Bill. That has now been passed. I would simply substitute "Unit Titles Act 2000" with "Unit Titles Act 2001".

Clause 8 agreed to.

Clause 9 agreed to.

Clause 10.

MR STEFANIAK (Minister for Education and Attorney-General) (11.54): I move amendment No 4 circulated in my name *[see schedule 1 part 1 at page 679]*.

Again, this is a technical amendment which, I understand, was suggested by the Law Society.

Amendment agreed to.

Clause 10, as amended, agreed to.

Clause 11 agreed to.

Clause 12.

MS TUCKER (11.55): I move amendment No 3 circulated in my name *[see schedule 2 part 1 at page 690]*.

It is important that the protection this bill offers to tenants is available for charities, incorporated associations, businesses providing both business and secretarial services, child-care businesses, art galleries and so on. Community associations and charities make invaluable contributions to society and often lack even the flexibility of small businesses when it comes to negotiating leases and finding accommodation.

Businesses providing a combination of business and secretarial services are an anomaly within this bill. They can justifiably be seen as retail operations. Such provisions can be made through regulations but, in the context of a bill which seeks to specify the application of the act and to incorporate so many aspects of the existing code, it seems appropriate to include these provisions in the act.

MR STEFANIAK (Minister for Education and Attorney-General) (11.56): The government opposes this amendment. We propose to do what Ms Tucker is suggesting by regulation, as under the existing scheme—indeed, draft regulations have been provided to the Greens. The nature of the entities described may change from time to

time in response to changing social and taxation conditions. These should be retained in regulation form to allow continuing supervision of the inclusion of this group.

Question put:

> That **Ms Tucker's** amendment be agreed to.

The Assembly voted—

Ayes 8		Noes 6	
Mr Berry	Mr Stanhope	Mrs Burke	Mr Stefaniak
Mr Corbell	Ms Tucker	Mr Cornwell	
Mr Hargreaves	Mr Wood	Mr Humphries	
Mr Moore		Mr Kaine	
Mr Rugendyke		Mr Smyth	

Question so resolved in the affirmative.

Amendment agreed to.

Clause 12, as amended, agreed to.

Clause 13.

MR RUGENDYKE (12.00): I ask for leave to move amendments 1 and 2 circulated in my name together.

Leave granted.

MR RUGENDYKE: I move amendments Nos 1 and 2 on the white sheet circulated together in my name *[see schedule 3 part 1 at page 695]*.

This is the first in the series of amendments that apply. One of the key planks of my bill was to retain the Tenancy Tribunal, and I strongly oppose the government's push to abolish the Tenancy Tribunal. I have already put to members the case that dealing with disputes in the Magistrates Court will unfairly advantage the wealthy, top end of town.

It has also been put to members that transferring the jurisdiction to the Magistrates Court will in practice transfer the court's civil jurisdiction rules of procedure to tenancy disputes, to the disadvantage of anyone who is not equipped to argue and follow technicalities. It will be more complex for small business. Small business advocates have also put that the Tenancy Tribunal does not generally award costs against the unsuccessful party, whereas the government's proposal will make the award of costs more likely.

I again refer to the House of Representatives inquiry report, *Finding a fair balance*. This committee recommended that all jurisdictions in Australia should have low-cost tenancy dispute resolution and low-cost mediation and conciliation of tenancy

disputes. It also said that tribunals around Australia should be able to make binding decisions on disputes and afford limited rights of appeals to the court. The government's push to abolish the Tenancy Tribunal would not achieve this aim and would certainly not give small business a fair go. I urge members to support these amendments, which would maintain the role of the Tenancy Tribunal.

MS TUCKER (12.02): The Greens will be supporting these amendments, substituting "Tenancy Tribunal" for "Magistrates Court". It is dealt with in detail by Mr Rugendyke's amendments 1 and 2. While the Tenancy Tribunal is essentially conducted under the aegis of the Magistrates Court, it provides a less complex and intimidating environment at less cost. It may be suggested that the proposal to look to the Magistrates Court rather than the tribunal is one that was suggested by the Law Society. In point of fact, the government have not put that proposal into effect, as it included a number of streamlining and simplification procedures.

The tribunal has operated well until now, and there has been no great call from any other interest group to shift the jurisdiction to a court, so you wonder why the government has chosen to pursue this path. In every situation where parties with greater or lesser resources are pitted against each other, the Greens are of the view that care must be taken to have mechanisms in place that assure a reasonable degree of balance. On this basis we will be supporting Mr Rugendyke's amendments.

MR STEFANIAK (Minister for Education and Attorney-General) (12.04): The government would not necessarily agree with Ms Tucker's proposition that the current system is working well. In this case the government is suggesting a different approach from the 1994 approach, and that is to rectify some serious problems in the existing dispute resolution process that result in delay and, indeed, uncertainty. The bill transfers jurisdiction from the Tenancy Tribunal to the Magistrates Court and imposes a new court directing process.

We have had a tribunal for some five years, and we are now in a position to judge whether it should be retained. We believe the existing system should go because the tribunal proceedings take too long, and delay translates into cost. For example, the time to first directions averaged 167 days; the longest time was 870 days. Half of the disputes going to directions hearings averaged four directions hearings. And the time to hearing averaged 292 days; the longest time there was 921 days. Surely that is something people would not accept.

Since 1998 there has been some decrease in the time required to bring the matter on for hearing but, despite those improvements, the times are still unacceptable within a commercial environment. That is unacceptable for everyone.

In this act we are proposing that a court be required to actively manage disputes within a flexible framework. It will accommodate both simple and complex disputes through a case management hearing process, and at that hearing the court will be required to virtually assess the likelihood of the parties resolving the issues in question before going to hearing and, indeed, assisting and encouraging them to do so by the most appropriate method. Also, where settlement seems unlikely, the court can give directions concerning the manner in which the proceedings will be pursued. This, in

the opinion of the court, will enable costs again to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties to the proceedings.

I think that will be a significant improvement to the current arrangements and the delays I have mentioned. The approach also has the flexibility to enable a sensitive response to the resolution requirements of each dispute. Additionally, it will require the court to encourage the resolution of disputes by non-litigious means. I urge members not to support these amendments, which might serve to cut back the approach proposed in this bill, because I do not think turning back the clock will be in anyone's real interest.

MR STANHOPE (Leader of the Opposition) (12.06): The Labor Party will not be supporting these amendments. I have to say at the outset that I think the Attorney's comments are fair. Some of the explanations he makes about the failings of the tribunal are a quite serious reflection on the efficiency of the tribunal that we have in the ACT and in themselves warrant some other response. It is a matter of grave concern that it takes an average of 167 days from application to a first directions hearing in the Tenancy Tribunal. That is more than six months to get your foot in the door. The Attorney then advises us that a matter before the Tenancy Tribunal requires an average of four directions.

The Attorney then advises us of a matter—the longest-standing matter, perhaps an extreme example—being before the Tenancy Tribunal for over 900 days. That is almost three years. Yet we are led to believe that, if you want a speedy and cheap resolution of the matter, you take it to the tribunal and have the matter dealt with expeditiously, cheaply, more efficiently and better than the Magistrates Court can deal with it. Those figures do not suggest that that is the case at all. They suggest that the tribunal is not particularly timely. If a matter is before the Tenancy Tribunal for three years it is a little bit difficult to stand up in this place and suggest that it is a speedy and therefore cheap way of resolving an issue.

It cannot be said that the Tenancy Tribunal has covered itself in glory. The government's approach to the matter is to give the Magistrates Court a go, and we are all aware of the joint resources and the similarities that there are in any event between the tribunal and the court. A magistrate heads up both organisations, of course. A magistrate will continue to deal with matters, as magistrates in the past have dealt with tenancy matters. I think the registrar is the same person, and the procedures are basically the same. But one area into which the government has made significant inroads in the last couple of years, although there is an awful lot more work to be done, is the case management of matters that come before the Magistrates Court.

The basis on which the Labor Party has decided to oppose these recommendations and support the new scheme that is being introduced to the bill is very much a recognition that, through improved and enhanced case management and a genuine commitment to alternative dispute resolution mechanisms, a new approach will be to the benefit of tenants, landlords and everybody involved in disputes involving commercial retail tenancy.

The Labor Party believes it is worth giving the new scheme a chance. That decision is based on the significant advances that have been made in case management within the Magistrates Court and, I hope, a real determination by the Magistrates Court to genuinely exploit every avenue for alternative dispute resolution and bring them to the fore in disputes between landlords and tenants. That is the stated intention of the bill; it is the government's intention; it is the ethos that is beginning to prevail. The expeditious handling of matters within the Magistrates Court is a hard nut to crack, but it is the direction in which we are moving.

It might be the case that the government could have been a little bit more rigorous or muscular in its determination to see alternative dispute resolution mechanisms utilised. The provisions within the act that require the magistrate at a case management hearing to seek to achieve a consensus between the landlord and the tenant to pursue alternative dispute resolutions might have been imposed a little bit more vigorously with the suggestion—as is the case in other jurisdictions—that the parties go away and attempt arbitration or mediation before coming back to the Magistrates Court to have the matter dealt with there.

It is something the government might have achieved, and it is something that we could pursue down the track. But if, within the bill, the government has determined to abolish the tribunal and allow the court to do the work previously done by the tribunal—and, I insist, not done particularly well—it may have been opportune to provide that parties to a dispute be required to attempt mediation, conciliation or arbitration of some sort before the court even entertains dealing with an action or a matter. I lay on the table as something that the Labor Party is prepared to keep alive the suggestion that in every instance of a dispute coming before the court or an application being made, the magistrate send the parties off to arbitration or mediation before the case can be brought back to the court for the more expensive and more litigious approach to dispute resolution.

These are the bases on which the Labor Party has decided to support the government's bill—the government's determination to try a new way of resolving disputes that tenants and landlords cannot settle between themselves through consultation. We recognise that in all aspects of life there are matters where parties cannot sit down and arrive at a consensus that suits each of their positions or requirements and that, in those circumstances, there is a need for an independent arbitrator to do the work they cannot do themselves. There is recognition that new ways of proceeding that are less adversarial and less litigious are needed and that the way forward is through determined dispute resolution mechanisms. We believe that this model will enhance the opportunity for that more than the tribunal currently does.

MS TUCKER (12.13): I need to clarify the Greens' position. I acknowledge that there have recently been difficulties in the tribunal. I think I was not quite clear on that when I spoke before. But the point I want to make is that I do not believe that this move is going to make the process cheaper, faster or simpler. Mr Stanhope says he understands that the government has a stated intention to improve processes in the Magistrates Court. I would like to see the government simplify or improve the processes in the tribunal because we do see advantages in sticking with the tribunal model.

MR RUGENDYKE (12.14): I hear what members are saying about lengthy delays in the tribunal and in the Magistrates Court—and in all courts in the territory. However, these amendments complement further amendments that will include a 28-day turnaround in dispute resolution. I continue to urge members to retain a form of Tenancy Tribunal and streamline that process, as was the intent of my original bill. I urge members to support these amendments.

Amendments negatived.

Clause 13 agreed to.

Clause 14 agreed to.

Clause 15.

MS TUCKER (12.15): I move amendment No 5 circulated in my name *[see schedule 2 part 1 at page 690]*.

The point at issue here is whether an assigned lease, the lease the original tenant has sold or transferred to someone else, should attract the protection of this act. In accepting a lease from another tenant, the new tenant ought rightly be entitled to the same protection as the original tenant, if it is warranted. There have been court decisions that support the view that a new lease is commenced on assignment. It strikes me as inappropriate to legislate via this act to remove protection established through these courts' decisions.

Amending the bill in this way does not mean that an assignee would be entitled to protection under the act simply because the original tenant enjoyed that protection. Clause 12, "What leases does this Act apply to?" would still operate in exactly the same way. This amendment simply provides that the assignee is taken to have entered into a lease, and all other applications and conditions of the act would still apply—if the lease is prescribed under the act or if the nature of the business is commercial and occupies more than 300 square metres, et cetera. For example, this amendment would allow a tenant who has bought a commercial business, had the lease assigned to them and changed it to a retail business with the landlord's approval to be covered by this act.

MR STEFANIAK (Minister for Education and Attorney-General) (12.17): The government opposes Ms Tucker's proposed amendment to clause 15. The simplification is inconsistent with government amendment 5 to clause 15, which I will speak to now. It is a replacement clause which clarifies the operation of proposed section 15. As framed, section 15 does not work in situations of multiple assignments.

Take, for example, a lease that is within the operation of the act but the lease is subsequently assigned to a person for whom the act would cease to operate, for example, as in clause 12 (7). Under the existing formulation, a further assignment back to the original leaseholder or another person for whom the act would otherwise operate may not have the effect of bringing the lease back under the operation of the act. The bill, particularly with the qualification at clause 12 (2) (b), makes it clear that the application of the act only ceases during the period of the first assignment. The

government will be opposing Ms Tucker's amendment No 5 and proposing its own, which I have just mentioned.

MR STANHOPE (Leader of the Opposition) (12.18): The Labor Party will support Ms Tucker's amendment.

MR RUGENDYKE (12.18): For the information of members, I will also be supporting this amendment.

Question put:

> That **Ms Tucker's** amendment be agreed to.

The Assembly voted—

Ayes 7		Noes 7	
Mr Berry	Ms Tucker	Mrs Burke	Mr Smyth
Mr Corbell	Mr Wood	Mr Cornwell	Mr Stefaniak
Mr Hargreaves		Mr Humphries	
Mr Rugendyke		Mr Kaine	
Mr Stanhope		Mr Moore	

Question so resolved in the negative, in accordance with standing order 162.

MR STEFANIAK (Minister for Education and Attorney-General) (12.23): I move amendment No 5 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*, which I spoke to earlier.

It clarifies the operation of section 15 which, as framed, does not work in the situation of multiple assignments. This amendment makes it clear that the application of the act only ceases during the period of the first assignment. It clarifies that situation.

Amendment agreed to.

Clause 15, as amended, agreed to.

Clause 16 agreed to.

Clause 17.

MR RUGENDYKE (12.24): I move amendment No 1 on the green sheet circulated in my name *[see schedule 3 part 2 at page 695]*.

This amendment picks up on an aspect of my bill in relation to the application of the act. The intention is to ensure a broad application of the fundamental requirements proposed. However, in attempting to amend the government bill with this, the issue arises of what law applies when we apply the government bill. I am concerned about the broader implications of the convoluted tables put up by the government in clause 17 and the prospect of precluding protection where it is needed. I believe that

my amendment simplifies the guidelines and makes it clear that the act has the broadest possible application.

MR STEFANIAK (Minister for Education and Attorney-General) (12.26): The government will be opposing Mr Rugendyke's amendment. The approach taken by the government is one which the expert committee of the Law Society have carefully crafted. It is a tabular approach, adopting the style used in other complex pieces of legislation. A lot of work has been put into this clause by the committee of the Law Society.

MS TUCKER (12.27): The Greens are supporting this amendment as it simplifies the application of the act so that it applies to disputes in regard to all leases in force on the commencement day of the act. There may be some retrospective implications when extending the fair conditions and procedures encapsulated in the act to leases that have already been entered into. But, in effect, it simply ensures that the act will apply, as it should, to all existing leases.

The existing arrangements in this bill are complex and open up yet more fertile ground for action in court that would argue the point and resist the provisions for dispute resolution in the act. It shifts the balance to parties with more time and resources available to them. There is no cogent argument for creating such complex arrangements, given that the intent of the dispute resolution process is to be fair to both parties in a dispute. Also, we are talking about actions or activities which are arguably unfair or unjust, irrespective of whether they occurred before or after the commencement day of the act. It seems clear that such a process ought to apply to all existing leases.

MR STANHOPE (Leader of the Opposition) (12.28): The Labor Party will not be supporting Mr Rugendyke's amendment. It is an interesting amendment insofar as it simply reflects a different approach to arriving at the same end as the government. I honestly think that, between the government's provisions that are currently in the bill and Mr Rugendyke's proposal, you could really toss a coin. It seems to us that the tabulation of areas of disputes that the act applies to, probably in response to new drafting techniques, reflects an amendment to drafting by the Parliamentary Counsel. It is more specific, and it does give the appearance of being a bit more complex or convoluted than the approach Mr Rugendyke favours of a more general description of factors or of disputes to which the act applies.

I can see no good reason not to support the approach adopted by the government in the bill. It reflects the determination of draftspeople these days to be more precise in legislation. I disagree with Ms Tucker: I do not believe it generates the possibility of further disputation. It should refine it.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.29): I support the view that to pass the amendment Mr Rugendyke has moved is to throw out a very large amount of work that has been done between the parties in a process which has gone on for a large amount of time to secure a satisfactory arrangement. Members will note that the legislation as placed before the Assembly provides a number of opportunities to reopen issues that occurred in the past—it is very common for them to have occurred in the past.

In some cases that is time limited; in other cases it is not. It is not simply resolved by someone spinning a bottle and determining a position randomly across a range of scenarios. It is the result of exhaustive discussion in the working party, which I established something like six years ago. The great concern the government has about the many amendments before the house is that any finely wrought compromises and agreements that were the basis of the report that came from that working party and any subsequent work will be undone by some of these amendments.

I would argue that it is important not to throw out the baby with the bathwater, as Mr Rugendyke is proposing to do with this new version of clause 17. I think it is better to rely on the arrangement put forward in the government bill as amended—or will be in a moment, I think—by my colleague Mr Stefaniak.

Amendment negatived.

MR STEFANIAK (Minister for Education and Attorney-General) (12.31): I move amendment No 7 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This inserts into clause 17 (a) reference to a proposed lease or provision of a proposed lease, adding those to the categories of lease or provision of a lease.

Amendment agreed to.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour.

Sitting suspended from 12.32 to 2.30 pm

Questions without notice

Totalcare—housing contract

MR STANHOPE: Can the Chief Minister tell the Assembly whether he agrees that Totalcare's failure to win the ACT Housing maintenance contract will be seen as a vote of no confidence by other organisations with which Totalcare might tender? Can the Chief Minister tell the Assembly why ACT Housing has refused to debrief Totalcare about its failure to win the tender?

MR MOORE: Mr Speaker, I will take that question as I deal with matters with regard to the total facilities management tender and the final part of Mr Stanhope's question was: why has Housing refused to brief Totalcare? It has not refused to debrief Totalcare, Mr Stanhope. Although I am not aware of the timing of that briefing, I shall certainly find out and let Mr Stanhope know. The normal process following a tender is that unsuccessful tenderers are briefed as to why they were unsuccessful. Not just Totalcare, but other unsuccessful tenderers will need to be briefed.

It is interesting that Mr Berry put out a press release today which reflected some confusion about what was the case with regard to Totalcare. I think I could use the example that I gave to the press when we announced the total facilities management

tender outcome. To make it clear, I used the example of a worker coming out and fixing a tile which had fallen off in a bathroom and then coming out two weeks later to fix another tile that had fallen off in the bathroom, whereas what ought to have happened is that somebody should have identified the fact that the bathroom itself needed refurbishment and did a full refurbishing of the bathroom.

Extending that analogy, the person who came and fixed the tile in the bathroom under those circumstances probably did a very good job and probably would have got a very high satisfaction rate for fixing that tile and would have got a very high satisfaction rate for fixing the second tile as well—the job was well done, fitted nicely and was grouted properly—but the reality is that the tenant of that house would still feel dissatisfied because what was needed to be done was proper management of the house as a whole.

That is the issue that was causing dissatisfaction. That is the issue that caused Housing to go to tender to try to ensure that Housing was providing a better system of looking after its tenants to get better satisfaction. Of course, running parallel to that is the need for an appropriate approach to looking after a $1.4 billion-odd asset, so the total facilities management approach was the one that was adopted. Tenders were called. Housing went through an expressions of interest approach and, as it turned out, the successful tenderers—Transfield and Haden—will have that work from the middle of the year and Totalcare was not a successful tenderer. As you would be aware, Mr Stanhope, those tenders are done at arm's length from us, which is as you would expect.

MR STANHOPE: Mr Speaker, I have a supplementary question. The nub of my question was whether the failure to win the contract would be seen as a vote of no confidence in Totalcare. That is why I thought the Chief Minister, as the responsible minister, would take the question. My supplementary question goes quite rightly and appropriately to that question, Mr Speaker, so I am not quite sure whether the minister for housing can answer it. My supplementary question is: what is the government's strategy for Totalcare's future? Is Totalcare likely to trade in the black in the current financial year? Will the minister responsible confirm that the government is intent on winding down Totalcare's business with a view to getting rid of it?

MR HUMPHRIES: Mr Speaker, I will take that supplementary question. As far as the reflection of confidence in Totalcare's other business activities is concerned, I do not believe that the fact that Totalcare has lost this contract or any other recent contracts means that Totalcare is on the ropes. But what Totalcare needs to do, and this is partly in answer to the question that Mr Stanhope has just asked about what its future holds and how it deals with that situation, is to position itself with respect to a different part of the ACT market.

I have no doubt at all that Totalcare has a reasonably good future if it works on its strengths and moves less in the field of its weaknesses. By its strengths, I include things like the venture into a quarry at Williamsdale, which has been a successful venture, at least to date. I also refer to the joint venture it is currently planning with an American company for the establishment of a new incinerator at Mitchell which will have a capacity to burn off or to destroy toxic waste without any emissions at all, I am advised.

Those sorts of ventures are ones where Totalcare is not relying on a work force which is operating in conditions which are substantially different from those of its private sector competitors. It is operating in a field where it has few, if any, competitors, where it can do very well by virtue of the use of technology and the leveraging of its present position. That, Mr Speaker, is the approach that I, as a shareholder in Totalcare, will be expecting the Totalcare organisation to be heading towards as it deals with these sorts of problems.

Will Totalcare trade in the black for the rest of this year? Totalcare has always been a body which has had to be subsidised, in effect, by the government. As I recall, it has not returned a dividend for some time. I do not expect that situation to change in the immediate future, but I am satisfied that the members of the Totalcare board, after discussions between me and them over the last few months, are aware of the challenge which the loss of this contract poses to them and are suitably developing strategies to ensure that risks of this kind are minimised in the future.

Commonwealth Grants Commission

MRS BURKE: Mr Speaker, I direct my question to the Treasurer, Mr Humphries. Can the Treasurer confirm that, as a result of Commonwealth Grants Commission recommendations, the ACT will receive an extra $4.6 million in revenue from the Commonwealth? Can the Treasurer please inform the Assembly whether this amount is correct and, more importantly, whether it will add to the budget surplus for 2001-02 already announced?

Mr Hird: A good question.

MR HUMPHRIES: I thank Mrs Burke for that question. It is a good question. Mr Speaker, it is true that the Commonwealth Grants Commission report *State Revenue Sharing Relativities—2001 Update* has recommended for the ACT an ongoing increase, a net increase, of $4.6 million.

Mr Quinlan: Over what?

MR HUMPHRIES: Over what we had been getting before. That is the net position.

Mr Quinlan: In what document?

MR HUMPHRIES: Over 2000; what we got from the Grants Commission recommendation in 2000.

Mr Quinlan: Over the prevailing budget this financial year?

MR HUMPHRIES: No. To alleviate Mr Quinlan's confusion, if it translates into a Commonwealth government decision, which is a big if, it amounts to a $4.6 million increase in the ACT government's budget base; that is, it is a future continuous improvement in our budget base.

Mr Quinlan: And the budget base was set when?

MR SPEAKER: Mr Quinlan, you did not ask the question; stop interrupting.

MR HUMPHRIES: You have got a question coming up. You can ask that question, Mr Quinlan.

Mr Quinlan: I just thought people might want the facts—a novel concept.

MR HUMPHRIES: We will have, obviously, an amount coming forward. Mr Quinlan is probably right in some ways to interject, because he has been very critical—

MR SPEAKER: No, he is not; it is out of order.

MR HUMPHRIES: Indeed, Mr Speaker. He has been very critical of the fact that what we have done with our previous draft budget is given members a view of the outlook for the territory as of the date that the draft budget was presented and then, of course, we have had to present a different position as of the time the budget itself was presented in May, where some changes in the parameters have taken place, including through things such as improvements or changes in the recommendations made by the Commonwealth Grants Commission.

Mr Speaker, to deal with that situation, what the government has done in this year's case has been to refer to the Assembly committees which are presently considering the draft budget that $4.6 million. Mr Speaker, members of the committees will recall that I have written to them in the last week dividing that $4.6 million between the portfolio areas covered by the committees as if the same division were occurring in our recurrent budget for the whole of the ACT.

Mr Speaker, I have also written to the Finance and Public Administration Committee inviting it to advise on whether there are any whole-of-government uses that that $4.6 million could be put to. For example, in the case of the education and community services committee, that means an additional $1.692 million for initiatives, should it wish to spend that amount.

Having put that on the table, as opposed to simply piling it up in the surplus, presently predicated to be about $12.9 million, the ACT government has put it on the table for the committees to consider. So, rather than having the situation which committees complained about before where they were not told about improvements in the financial position between January and May, we have done what the committees complained had not been done last year and given them information about the improved financial position.

Has that made anybody happy on the committees? Apparently not, Mr Speaker. I understand, from listening to the public hearings of those committees last week, that we have had nothing but complaints from the committees about the fact that they have been given this additional money to play with, as it were. We have heard complaints continuously about people not being consulted about these matters; but when the money actually does hit the deck as additional money which the government has received effectively, you might argue, as a windfall, we hear complaints such as:

"There is not enough time to consider this properly. We do not have the mechanisms to be able to ask the questions of the community."

Mr Hargreaves: We don't have a draft budget.

MR HUMPHRIES: You do know what we are proposing to do with additional spending for this year.

Mr Hargreaves: You haven't given us a draft budget.

MR HUMPHRIES: You have got the draft budget, Mr Hargreaves. If you have been too lazy to pick up your papers and read them carefully, I suggest that you get some of your staff to do that for you.

Mr Hargreaves: You haven't got a draft budget.

MR HUMPHRIES: You have seen the initiatives that we are proposing for the coming year.

MR SPEAKER: Mr Hargreaves, you are going to be very shortly the first one to get warned.

MR HUMPHRIES: We are adding $4.6 million to them; the $4.6 million in additional spending which has come through from the Grants Commission—provisionally, I should point out.

Mr Speaker, after the criticism of last year, you would think that those opposite would be happy with that. We are giving them the chance to shape the budget with no strings attached. This $4.6 million has not been allocated in any way by the government. It could be spent on new initiatives, it could be spent on increasing existing initiatives, it could be spent on reducing revenue, it could be spent on retiring debt and it could be spent on increasing our superannuation kitty; anything at all or any combination of those things is available. You wanted more latitude in the fiscal position and you have got it.

What have we got, Mr Speaker? We have complaints: "We have not got the time to consider this properly. We have not got the means to go back and ask the community." I cannot understand how it is that people who have been in politics for years and years do not have some idea already of how the expenditure of $4.6 million might improve the social position of this territory. Surely they have got some inkling, some glimmer of a thought about how they might spend that $4.6 million to improve the lot of the people who live in this territory.

Mr Kaine: Spend the lot on reducing poverty, Chief Minister; that is a good start.

MR HUMPHRIES: Thank you. Mr Kaine, decisive as ever, has put a suggestion on the table. Indeed, Mr Speaker, there are lots of things that we could do to pick up further the agenda which has been placed on the table by the ACT Council of Social Service to address poverty. That is actually a good suggestion. If the committees recommend that, I would be very willing to consider it very seriously indeed,

Mr Speaker. But I would like some contribution. I would like a little bit of elbow grease from those opposite, a little bit of acceptance of the fact that the lot over there have responsibilities. We are more than capable of making such a decision, Mr Speaker. We have shown over the last six years that we have been able to shoulder the responsibility of getting the territory into the black for the first time, eliminating a $344 million operating loss, Mr Speaker. We have shown that we can make the hard yards and we can do the hard yakka. All those opposite have to do is to find uses for the $4.6 million. It cannot be that hard, Mr Speaker. I hope that they will roll their sleeves up, get their calculators out and do the work which the community expects them to do.

Demountable classrooms

MR KAINE: My question is to the Minister for Education. Minister, I note that your approach to airconditioning in schools as so strongly put last week has markedly changed in the last few days, so much so that now, according to reports, you could spent up to $800,000 on rectifying the problem. Last week you were not going to spend a penny. Minister, this is a good thought, but where is the money coming from? Is it already in your budget, will you be bringing forward a supplementary appropriation bill to provide the money or will you shift money around within your own portfolio and deny money where it is currently programmed to be spent so that you can aircondition schools? Which alternative, which of these options, will you adopt?

MR STEFANIAK: I thank the member for the question. In relation to this issue, Mr Speaker, this government, unlike those opposite, has shown clearly that it is quite capable of listening to people, considering an issue and taking a quick decision. I wonder what the lot opposite would have done in relation to this matter, Mr Speaker. Would they have listened? Would they have had the school board in and gone through its concerns in great detail to see what the problems really were and then seen whether they could do something about it? I suspect not.

Mr Kaine: Very commendable.

MR STEFANIAK: Thank you, Mr Kaine. It was a very commendable and, indeed, well-considered decision. In terms of the government's proposal, I do not necessarily expect all of the money to be taken up at the start as it will be available over a four-year period. Of course, we have a budget coming up for which I hope you will vote.

Mr Kaine: Do you mean that you are not going to fix this by next summer?

MR STEFANIAK: Mr Kaine interjects. The whole idea of the government's proposal is that the schools resources group which will consider this matter will ensure that the cases that need fixing first are fixed first, and that is what it is all about. Mr Speaker, I am quite convinced, having talked to the Gordon school board, that they, with four demountables of two classrooms each, do have some very real concerns.

Mr Hargreaves: How about Charles Conder?

MR STEFANIAK: That is why, Mr Hargreaves, we had monitoring this summer. Guess what the monitoring showed?

Mr Hargreaves: It was 40 degrees at Charles Conder. Have you been there?

MR STEFANIAK: I am glad you mentioned Charles Conder, Mr Hargreaves. The monitoring showed, as of last week, that on eight occasions Gordon was over 30 degrees. I would expect Charles Conder to be in a reasonably similar boat, Mr Hargreaves. I think they were up to about six days; in fact, they came second. Indeed, in the debate last week, someone made the reasonably sensible point that schools are different and there are different circumstances attached to each school.

Obviously, schools in a greenfields area in the far south and maybe some schools in the far north will have different problems and different concerns from other schools and it is reasonable to expect the monitoring to show, and that is why we monitor, that those schools will be the ones where the temperature is higher. They are the ones where, if action is to be taken, it should be taken first. Basically, that is occurring. The expenditure will be over four years. The first $200,000 will come from the 2001-02 budget and will be taken from minor capital works. I hope that you will vote for the budget, Mr Kaine; I think you usually do. Indeed, given the way our capital works budgets work, if there is any leeway this financial year as a result of some jobs being finished or giving us a bit of flexibility there, we might even be able to do something before the end of the financial year. Certainly, we will have money for it under capital works in the forthcoming budget because of this government's decision to allocate money to it in the budget.

The schools resources group will look at these matters on a case-by-case basis. It is called the transportable amenities improvement program. Not in all instances will schools want to avail themselves of the money for airconditioning. There are other things that might well go to assist in the amenities of particular transportables. Again, every school is different and every situation is different. All in all, I think that there has been an indication that this government is prepared to listen—

Mr Berry: Ha, ha!

MR STEFANIAK: You might laugh, Mr Berry, but I can remember some amazingly stupid and stubborn things that you did in the Follett government. Take nurses, for example. You are blaming Mr Moore about nurses. Look at what you did; it was absolutely appalling.

Mr Berry: They would have me back with open arms tomorrow.

MR STEFANIAK: Mr Berry says they would have him back with open arms. How incredibly churlish you were. Perhaps you should learn a bit of manners. At least the people on the Gordon school board had the decency to appreciate what this government does. It shows that we listen. It also shows that we are capable of calling people in and going through—

Mr Berry: You had to be ground into the dirt.

MR STEFANIAK: We listen, Wayne, and we are flexible enough to be able to assess the situation and come up with fairly quick solutions.

MR KAINE: I have a supplementary question, Mr Speaker. I think the minister's answer was: "Watch this space." Minister, what cataclysmic event occurred along the road to Damascus, or was it the road to Gordon, that compelled you to change your mind, some might even say do a backflip, other than your sudden realisation that an election is just around the corner?

MR STEFANIAK: I talked to the board, Mr Kaine. I said to them, "It's a bit of a shame that you guys did not come in earlier as we could have gone through this."

Opposition members: Ha, ha!

MR STEFANIAK: I am being quite serious.

Mr Berry: We could have told you to open two windows.

MR STEFANIAK: They made a lot more sense than you, Wayne. Mr Speaker, I think I have answered the question. They had some very good arguments. I do not suspect that their school is the only school, Mr Kaine. That is why the government has come up with this proposal. Also, we indicated as early as last year that we would monitor the situation and take temperature readings. As much as anything else, we indicated that if there were serious problems they would be rectified. The board was of great assistance in terms of how they could be rectified.

Mr Kaine: When?

MR STEFANIAK: "When" is going to be pretty quick, Mr Kaine. I think that I have indicated when these things can occur. As a result of all of those factors, what we have come up with solves the situation for Gordon. I must say that I was delighted to get some very nice messages back from there.

Mr Hargreaves: I got one that wasn't very nice about you.

MR STEFANIAK: What have you done wrong, John?

Mr Hargreaves: No, about you.

MR STEFANIAK: I got very nice ones. I was delighted to get them as it means that the very difficult situation at that school has been rectified. I might say, having gone through their school finances with them, that I was very impressed with how they run school-based management. They have some excellent programs for which they utilise money from school-based management and which have nothing to do with this matter. I was particularly impressed and happy to have the opportunity to go through it with them, Mr Speaker. That has probably answered your question, Mr Kaine, and I thank you for it.

Cancer—electromagnetic radiation

MR QUINLAN: Mr Speaker, my question is to the Minister for Urban Services, I think. There have been media reports today of a statement to be issued in the United Kingdom by the advisory group on non-ionising radiation of Britain's National Radiological Protection Board that there is some link, certainly a suspected link, between electromagnetic field radiation and the instance of cancer in children. Debate on this subject has been going on for quite some time and there have been previous studies and previous arguments about it. To some extent, it parallels the cigarettes/cancer debate.

Mr Moore: I do not think so. We have got conclusive evidence from the first epidemiological study.

MR QUINLAN: I mean that the stakeholders have seemed to come up with reports that suited their particular position. A couple of phrases occur to mind, such as prudent avoidance or precautionary principles to be applied. Can the minister advise us whether there are any planning issue or there is any review of planning parameters to ensure while this debate remains unresolved, and it may do for some time, that we do observe precautionary principles?

MR SMYTH: Mr Speaker, that is a good question because it concerns the public health of not only all Canberrans, but all Australians and ultimately all citizens of the world. As Mr Quinlan points out, there is a large amount of conflicting interest and conflicting data. Some of it says that there is an effect and some of it that says that there is not an effect. The issue that would impact specifically on the ACT is, of course, the building of the mobile phone telecommunications towers or the siting of the transmitters.

Currently, we build those or site those to an Australian standard. That is the accepted standard at this time. I believe that there has been a study by the Senate which was to report late last year, but I think that that has been pushed out. I am not aware of the results of that inquiry. To talk in generalities would be easy, but if there is a specific siting issue or an issue that Mr Quinlan is interested in, any approvals that would be given for any such structure currently would be in compliance with the land act and also in compliance with the Australian standard.

MR QUINLAN: Now that Actew/AGL is in place and is, one presumes, at least a quasi-private sector enterprise and is operating as such, what is the mechanism in the ACT for the carriage of this issue to ensure that we do, in fact, apply a precautionary principle rather than an Australian standard that might not have taken this into account? Should we not have within government, as opposed to within now a private sector operation, some sort of review to ensure that we are avoiding the worst outcome, given that questions probably will remain unresolved for some time?

MR SMYTH: Mr Speaker, there is legislation and there are guidelines and standards currently in place that would cover the siting of these towers, of these telecommunication facilities. There is evidence to say that that is entirely adequate, where met, and anything that is built in the ACT should meet not only the Australian

standards for the siting of these towers and telecommunications facilities but also the requirements of the land act as such.

Of course, there are those that say that that is not adequate at this stage. I believe that what is approved does meet the standards and that that is adequate until there is data otherwise. There is a large amount of work being done round the world, some of which is inconclusive, some of which says that the current situation is safe, and some of which says that it is not safe. What we have to do is to wait until the federal inquiry is finished, and I will get information for the member on where that is at and we will draw our conclusions from that.

Residential development applications

MR CORBELL: Mr Speaker, my question is also to the Minister for Urban Services. Minister, the proposed policies for residential development for the ACT, also known as ACTCode 2, that you issued in a draft form in September of last year include the following statement:

> This information does not have interim effect. Interim effect will be initiated on the release of the draft variation of the Territory Plan.

Minister, given this statement, will you now explain why PALM is requiring development applicants to adhere to the draft ACT code which has no legal effect in deciding whether PALM will refuse or approve applications? Will you indicate the number of applications that have been refused in these circumstances by PALM?

MR SMYTH: Mr Speaker, the revisions to ACTCode 2 also included two other documents, the draft verge guidelines and the list of appropriate plants to restore the bush capital, because we all know that some of the planning mistakes that Simon Corbell always refers to as Bill Wood's planning mistakes back in the early 1990s have led to less acceptable outcomes. We think the street width is too narrow. We think there should be more room for trees to grow. We think we should guarantee that the bush capital survives. We are very keen to do that. Everything that this government does is aimed at building up the social capital of the ACT, making it a better place in which to live. That is the whole point of ACTCode 2.

Mr Corbell: Do they have legal effect?

MR SPEAKER: Order, Mr Corbell! You have asked your question.

Mr Corbell: He is not answering the question, Mr Speaker.

MR SMYTH: Mr Speaker, the purpose of ACTCode 2 has been explained. Mr Corbell asked whether applications have been denied; if so, how many? I am not aware; I would have to find out. The important thing here, Mr Speaker, is about what it is that we seek to achieve.

Mr Corbell: You don't know.

MR SMYTH: Mr Corbell says that I do not know. I do not know whether any applications have been received. That is not data that ministers would carry around in their heads. I do not get a briefing every time an application is denied. It is unreasonable to expect that and it is being incredibly overbureaucratic. As I have just said, I would have to seek—

Mr Corbell: Why is your department requiring development applicants to adhere to a law that isn't in force?

MR SPEAKER: Order, Mr Corbell! You have not asked a supplementary question yet; you will have a chance.

MR SMYTH: The whole purpose of the ACTCode 2 revisions, which have been done with a lot of work and the involvement of a large group of people, is to restore and save the bush capital, some of which was denuded under the work that Labor did in the early 1990s. It is simply about giving trees more room to grow on the verges, about wider streets for communities to live on—

Mr Corbell: I rise to a point of order on relevance, Mr Speaker. My question was: given the statement, will the minister explain why PALM is requiring development applicants to adhere to the draft ACT code when it has no legal effect? That was the question, Mr Speaker, and he is yet to answer it.

MR SPEAKER: That is not my concern, I am sorry. The minister can answer how he sees fit.

Mr Corbell: Yes, it is, Mr Speaker; you are responsible for upholding the standing orders.

MR SMYTH: Mr Corbell does not like it when you expose the past mistakes of Labor and, of course, he is feeling tender about that.

Mr Corbell: Answer the question.

MR SMYTH: Mr Speaker, I have already answered the question. Mr Corbell asked how many applications were refused.

Mr Corbell: No, I asked why your department is requiring development approval—

MR SMYTH: You should go back to your question. You actually asked how many. Mr Speaker, it is impossible for a minister to know how many applications have been rejected and on what grounds at a given point in time. If that is their answer to planning, the so-called independent planning commissioner and the independent planning minister who does not want to be a minister insisting that every decision that PALM makes is run past their would-be planning minister, then what we would be setting up would be a bureaucratic nightmare for planning should Labor get into office.

Mr Corbell: Answer the question.

MR SMYTH: I will get the information to Mr Corbell. I will get the information that Mr Corbell has asked for. I will find out how many applications have been refused and on what grounds.

Mr Hargreaves: What about the first half?

MR SMYTH: Mr Speaker, we do not have to take what they say. They stand up here and make accusations and assertions all the time. I am not going to respond to those. I am going to find out and I will answer his question. In the interim, what he does not like is that we are reminding the people of Canberra of their planning mistakes in the past.

MR SPEAKER: Do you have a supplementary question, Mr Corbell?

Mr Wood: Try again, Mr Corbell.

Mr Corbell: I will try again, Mr Speaker.

MR SPEAKER: Judging by your interjections, I would have thought you had exhausted everything you had to say.

MR CORBELL: Thanks for your impartiality, Mr Speaker. Thank you very much for your impartiality. Mr Speaker, my supplementary question is: Minister, why is your department requiring development applicants to adhere to a code which has no legal effect and threatening not to approve such applications if they do not adhere to this code?

MR SMYTH: Mr Speaker, I have already said to the member that I will take that on notice, but his supplementary question does give me the opportunity again to remind them, particularly as Mr Corbell is constantly reminding Mr Wood of his planning failures—

Mr Berry: I take a point of order, Mr Speaker. He has taken the question on notice and he should be sat down.

MR SPEAKER: I will make that decision.

MR SMYTH: Mr Speaker, it would appear that Mr Berry is also tender about Labor's past mistakes. Given that it is Mr Berry, I would not be surprised as to why.

Mr Berry: Mr Speaker, I thank you again for your impartiality in not calling that member to order.

MR SPEAKER: Thank you; you are welcome.

Emergency services levy

MR HIRD: Mr Speaker, I have a question for Mr Humphries in his capacity as Treasurer. Treasurer, I draw your attention to remarks made recently by none other than Mr Quinlan on the subject of the government's commitment to return $10 million in revenue cuts to the community. Is that, as Mr Quinlan has suggested, a one-off community dividend?

MR HUMPHRIES: Mr Speaker, I thank Mr Hird for that question. Yes, I have seen the statement of Mr Quinlan, which is on the Labor Party's web site. I recommend the web site to members who want to get a bit of a lift, a bit of a kick. It is a very enjoyable place to go for a bit of a laugh, a bit of a giggle. Mr Speaker, the things that the media will not run usually end up on the Labor Party web site, so I have had a look at that site and seen a release by Mr Quinlan in which he gets stuck into what he describes as the government's discredited and hated emergency services levy.

I had not noticed crowds outside baying for the blood of the government over the discredited and hated emergency services levy. I have to say that I would like to know, Mr Speaker, why it is that the levy which is discredited and hated in the ACT and which is being applied in exactly the same way across the border in New South Wales is apparently respected and loved in the hands of the Labor government of that state. I do not know why. Perhaps it is the way in which the money is taken out of your pocket in New South Wales that makes all the difference.

Mr Speaker, the nub of the release, though, is what Mr Quinlan says later. Talking about the repeal of the emergency services levy, he says:

> So we have a situation where the Government has taken $30 million out of your pockets—

sic—

> and is only putting $10 million back. That sounds like a very Liberal deal.

Further on he says:

> …the best the Government can do is a $10 million hand back, and only after they took $30 million.

I am not sure what Mr Quinlan is referring to. If he is referring to the cancellation of the emergency services levy, the levy is being cancelled indefinitely, permanently, for as long as any of us are able to foresee such things, forever if you like.

Mr Quinlan: So you are giving $100 million back, are you?

MR HUMPHRIES: On Mr Quinlan's calculation, yes, it is a lot of money. If you are going to add the $30 million taken out of people's pockets over the last three years that the levy was in place, you would have to say that over the next 10 years with the reduced levy there would be $100 million put back into the pockets of the people of the ACT.

Mr Hargreaves: It is their money in the first place.

MR HUMPHRIES: Indeed it is, but Mr Quinlan has said that we will be putting back $10 million. If he is referring to that $10 million, obviously it is going to be more than $10 million, is it not, Mr Quinlan? We have nothing but a giggle. I told you that the site was good for a giggle, Mr Speaker.

It may be that Mr Quinlan is referring to the $10 million that the government has decided to reduce ACT taxes and charges as part of the draft budget, which is a matter before Mr Quinlan's committee at the moment. It seems that this reference to a $10 million only hand back by the government reveals some sort of misapprehension on Mr Quinlan's part that the $10 million was a one-off. Of course, the $10 million reduction that the government is proposing in ACT government taxes and charges is a permanent reduction. It will continue and be removed from the territory's budget base forever, unless those opposite are promising by their attack to undo the effect of this tax reduction.

Mr Hargreaves: Here comes a Gary.

MR HUMPHRIES: I would like to know what your position is. We have had very few indications of what your position is. I know that you are waiting for the May budget to come down. You lot can promise to do away with this $10 million give away of the government's without its costing you anything, because it is costing us $10 million to do it. So, if the lot opposite promise to cancel the $10 million reduction in taxes which the government has already proposed, they will save $10 million, but they will not be doing it.

We were told when the promise to reduce revenue by $10 million was made that it was a "pathetic attempt to buy votes". Later we were told that the $10 million was not enough to be giving back to the people of the ACT. Apparently it is pathetic because it is not big enough; there should be more. Mr Speaker, I am reminded of the story of Goldilocks and the three bears, except that in this case you might say that it is the story of Teddy and the three bears.

Members interjecting—

MR SPEAKER: Order! I want to hear the fairy story, please.

MR HUMPHRIES: At the first taste of the $10 million, Teddy says, "No, no, it is too hot." On the second taste he says, "No, no, it is too cold, it should be hotter." Presumably, on the third taste when he says that it will be just right will be when Mr Quinlan is Treasurer of the ACT. However, in the meantime, people should be aware that what Mr Quinlan and his colleague rail against is something that they are not prepared to promise to undo. Mr Speaker, presumably we will have to see that coming forward in the course of the coming few months of this campaign. If you think that the promise we have made to reduce taxes by $10 million is not enough, how much are you going to reduce taxes by?

ACTION bus accidents

MR HARGREAVES: Mr Speaker, my question is to the Minister for Urban Services. Minister, I received a complaint yesterday regarding an accident involving an ACTION bus. Apparently, the accident occurred on Sunday at about 4.30 pm on the corner of Launceston Street and Hindmarsh Drive and involved three cars and an ACTION bus. Minister, there have been at least six accidents this year involving ACTION buses. Can you confirm that an ACTION bus was involved in this accident on Sunday? If so, what were the circumstances surrounding the accident?

MR SMYTH: Mr Speaker, many surveys have proven over time that bus transport is second only to rail as the safest way to travel. We do not have rail, which makes buses the safest way to travel in the ACT, particularly for schoolchildren. Mr Hargreaves asks about an incident that occurred at 4.30 pm on Sunday. It is not an incident of which I am aware and I will have to ask ACTION whether it can provide details.

MR HARGREAVES: I thank the minister for his Schultz-like answer. Mr Speaker, I have a supplementary question. What is your government doing to ensure the safety of ACTION buses, their patrons and drivers? Is it true that, due to changes in routes, schedules and rosters, drivers are under more pressure to complete their runs on time and, if they do not complete their runs on time, they are required to make up time in their lunch hour?

MR SMYTH: Mr Speaker, the government makes no bones about the fact that ACTION must run efficiently and must service the needs of the people of Canberra. One of the things that must be done to achieve this is to ensure that buses run on time. If those opposite object to buses running on time, then so be it; they will be known for what it is that they promise. But we take road safety seriously and any time there is an incident involving an ACTION bus it is thoroughly investigated to find out what the circumstances were and whether there are any lessons to be learned from it. The new EBA and the changes in conditions have been in operation for a couple of years and the whole issue of whether—

Mr Hargreaves: And everybody is happy with it.

MR SMYTH: Obviously, you have information, Mr Hargreaves, that I am sure you will share with us. I believe that ACTION is working better than ever and it is working better because it is actually starting to operate like a bus company, as in any other jurisdiction. The question for those opposite is whether they are foreshadowing through Mr Hargreaves' question that in government they would change the route structure.

Heroin addiction

MR RUGENDYKE: My question is to the health minister, Mr Moore, and comes about as a result of a recent episode of that great ABC television series, *Australian Story*. The episode was called "Love is the drug" and featured a family's struggle to find a positive solution to the destructive problem of heroin addiction. The focal point was a Mr Tony Sands, one of only a handful of people in Australia known to be getting injectable morphine from his own doctor. Mr Sands had a 20-year drug history.

He has been receiving this new treatment for the past 12 months, with positive results. Mr Sands said:

> There was no way I was going back on methadone. It had just taken 10 years of my life, nearly killed me, and here they are trying to put me back on methadone. Although I was critically ill I walked out of hospital rather than go back on methadone.

Minister, has the ACT health department assessed morphine for the treatment of heroin addiction? Could you advise me whether it is viewed as a viable method of treating heroin addiction.

MR MOORE: Mr Speaker, as you would be aware, a ministerial conference not so long ago agreed to trial a range of pharmacotherapies across Australia. Oral morphine, as I recall, was one of those pharmacotherapies that were worth trialling. Whenever we are looking at intervention in terms of pharmacotherapies, I think it is appropriate that we ought not to rely just on anecdotal evidence, but that we should trial each of those pharmacotherapies to see their efficacy and determine how useful they are in terms of treatment.

I am aware of morphine being used for some time in other places in Australia. For example, I know that some people who had been on heroin in the Northern Territory, where methadone was not available, were prescribed morphine some years ago to assist them, but it was only applied in cases where they were in great pain and had put a case to that effect. I understand that the morphine was delivered in terms of the pain rather than in terms of the addiction. The outcome of that, once again, was anecdotal evidence. I think that in looking at the range of pharmacotherapies we have to make sure that we do study them carefully.

As you know, Mr Rugendyke, this government has committed itself to providing diacetyl morphine to people who are dependent on heroin because we think that it is a possible pharmacotherapy. Unfortunately, the Prime Minister, John Howard, has made it very difficult for us to do that, and certainly was not prepared to approach the International Narcotics Control Board and ask them to approve the use of heroin in the treatment of heroin addiction, diacetyl morphine being heroin.

Mr Rugendyke, we will look at that. We look at all the pharmacotherapies and make sure that we can expand our range of treatments available. I should point out to you that the research done on methadone has shown that it is still the single most successful treatment for heroin; but, even as the single most successful treatment for heroin, it does not suit some people. Some people would prefer to go cold turkey, some would prefer to use the Salvation Army's 12-step plan. We have had significant success at Karralika. Different people respond to different treatments in different ways and I think that we ought to ensure that a drug like morphine is one of our treatments. Mr Rugendyke, if you would recommend that, I would take that on as something that we should proceed with.

MR RUGENDYKE: Minister, I would be happy to recommend it as a drug treatment. I wonder what further investigation of this method of treatment for adults is being undertaken by your department, given that morphine is already used to treat drug-affected babies.

MR MOORE: As I said, Mr Speaker, I believe that at the time we were looking at a range of pharmacotherapies; morphine was one of them. Mr Rugendyke, I shall take that matter on notice specifically to see exactly where we are with the outcome of that study and get back to you personally and to members of the Assembly.

Totalcare—housing contract

MR BERRY: Mr Speaker, my question is directed to the minister for housing, Mr Moore, and follows his best described bogus and dismissive answer to the question from Mr Stanhope earlier in relation to Totalcare in which he mentioned an analogous situation of which it seems he has intricate knowledge whereby the sticking on or not sticking on of tiles might have been behind the reason for the government ditching Totalcare as a successful tenderer for housing repairs. This is based on Mr Moore's assertion that the perceived lower satisfaction levels were to some degree behind the dumping of Totalcare as the successful tenderer.

Mr Moore, I would like you to take these figures into account and then I will come to my question. There were 10,921 responsive repairs, which would have included the sticking on and falling off of tiles, I suggest. The satisfaction level was 95.8 per cent. Where, from those figures, could you find a perceived lower satisfaction level? In after-hours and emergency calls there were 2,000 jobs. The satisfaction level was 100 per cent.

Mr Hargreaves: Everybody.

MR BERRY: Everyone. In planned maintenance, there were 6,973 jobs and the satisfaction level was 99.2 per cent. How is it that Totalcare has lost its tender to deal with housing trust matters on the basis of a bogus perceived lower satisfaction level against those figures? Why is it, Mr Minister, that the facts were not taken into account?

MR MOORE: Of course, there are none so blind as those that will not see and there are none so deaf as those that will not listen, and here we have the distinction between Mr Stefaniak, who listened, responded and took action, and Mr Berry and the Labor Party, who simply will not listen. I did give the specific example earlier of the tiles for very good reason, Mr Speaker.

Mr Berry: Tiles! Right! We can change—

MR SPEAKER: Order, Mr Berry! Your question was heard in silence. I expect the same courtesy to be shown to the minister's answer.

MR MOORE: Mr Speaker, it was for very good reason that I used the specific example of the tiles and pointed out that the tiles were fitted back on and the grouting was done properly. It was probably an excellent job, but when those sorts of jobs are repeated a 100 per cent or 95 per cent satisfaction rate is warranted.

Mr Berry, you would be aware that the Donovan report of 1999-2000 identified South Australia, Queensland, Western Australia and Tasmania as having the highest levels of satisfied clients, whereas the ACT, Victoria and New South Wales had the highest levels of dissatisfaction. The ACT, at 21 per cent, had the highest level of dissatisfaction over Victoria at 17 per cent and New South Wales at 16 per cent, Mr Speaker, these are the issues that—

Mr Berry: Is that for maintenance? No, of course not.

MR SPEAKER: Silence! Stop yapping.

Mr Berry: Mr Speaker, I must raise a point of order. Mr Moore has confused his management with satisfaction with the work of Totalcare.

MR SPEAKER: There is no point or order. I ask that Mr Moore be heard in silence.

MR MOORE: I pre-empted this answer by saying that there are none so deaf as those that will not listen, and Mr Berry is not listening. There is some dissatisfaction amongst housing tenants. Having the highest level of dissatisfaction in Australia is a matter of concern.

Mr Corbell: You are blaming Totalcare for your failures.

MR SPEAKER: Order!

Mr Corbell: You are blaming Totalcare for your failures.

MR SPEAKER: I warn you, Mr Corbell.

MR MOORE: Mr Speaker, I have not blamed Totalcare for anything. In fact, I was the one who was standing here a minute ago, using tiling as an example, saying that it was a very good and we were aware of lots of times that the jobs were done like that.

Housing were interested in making sure that we had a process, which they referred to as total facilities management, that changes the way we approach the management of housing. That is what it was about. Housing wanted to change the way they approached the management of their assets, the management of the maintenance of homes. In going about changing that approach they said that they would go to tender to get the best possible way, the most effective way, to manage the housing. Yes, Mr Berry, I had a number of briefings on this matter because I thought it was a serious matter.

Mr Berry: It is not at arm's length, then, is it?

MR MOORE: Mr Berry, the whole process was at arms length and when the result was announced I sought information, as you are doing now.

Mr Berry: Yes, Bruce Stadium, the hospital implosion.

MR MOORE: Mr Berry, if you will just be silent and listen for a short while, you will realise that the numbers that you have there are totally irrelevant to the process that we are talking about. You are sitting there struthioid-like making sure that you hold on to a set of figures that somehow you think interfere with this process whereas they have nothing at all to do with the process. The figures are reasonably irrelevant because what we wanted to do, what Housing wanted to do and what this government was interested in doing, was to give the best possible overall service. No doubt, many of the same people who are delivering that style of service, putting the tiles back on the walls, will still do that, because there is no doubt that Transfield—

Mr Berry: You look like a goose, Michael. Sit down while you are in front.

MR MOORE: Mr Speaker, will you warn this man, for heaven's sake?

MR SPEAKER: I warn you, Mr Berry.

MR MOORE: Transfield and Hagen have already begun the process of looking for people to deliver this sort of service in the ACT. But what was the request for tender? What were the things that were in there? They were:

(a) price;
(b) level of contractual security offered to ACT Housing through the Tenderer's proposals on:
    (1) level of compliance with the RFT…
    (2) financial viability
    (3) price variation; and
    (4) insurance and indemnity.
(c) ability of the Tenderer to implement the Contract requirements by the Commencement Date;
(d) ability of the Tenderer to deliver and manage the Services consistent with the Specifications;
(e) ability of the Tenderer to design and achieve a cost effective and innovative outcome from the responsive repairs and maintenance pricing model transition process;
(f) capability and technical skills of the Tenderer;
(g) appreciation of the project requirements, incorporating the achievement of value for money on the following bases:
    (1) effective, efficient and contestable project management;
    (2) effective, accessible information management systems;
    (3) realistic costing of services within the budget allocation from time to time;
    (4) service standards which exceed the minimum requirements set out in the specifications;
    (5) demonstrated capacity to ensure that all personnel and contractors have the interpersonal skills and the technical ability to achieve the highest levels of customer satisfaction, and
    (6) establishment of straightforward and achievable means for measuring the required outcomes incorporated in the "value for money" concept.
(h) effectiveness of proposed strategies, systems and procedures, covering:
    (1) conflict management
    (2) equal opportunity and diversity training
    (3) customer satisfaction

(4) quality assurance
(5) human resources
(6) industrial relations
(7) occupational health & safety; and

(i) relevant experience of the Tenderer.

Mr Speaker, when people apply for such a complex tender, obviously a whole range of things are taken into account: not just the one small part that Mr Berry happens to have in his hand, but a whole range of things are taken into account. Of course, there were appropriate probity checks on how the tender process was done. It was done at arm's length from me. When the result was decided, I was informed and I sought a very thorough briefing on the full range of issues.

I have to say, Mr Berry, that I was disappointed that Totalcare did not get it. Of course I was. What's more, I was disappointed that at least one other local firm which applied did not get it. But that is what happens when we put things at arms length in a tender process and we make sure that there is appropriate probity. The process is set out very clearly through the request for tender and then the decisions are made and weighted in a way that the probity officer checks. Mr Speaker, there is no point in going off on one small tangent and saying that it proves everything. It was an extraordinarily complex tender.

Mr Berry: A 100 per cent satisfaction rate.

MR MOORE: Yes, Mr Berry, a 100 per cent satisfaction rate in one small area. In an attempt to get you to understand, Mr Berry, I went right through the complexities of what was in the tender and the tender process, but—

Mr Berry: Eleven thousand jobs.

MR MOORE: Why bother?

MR SPEAKER: Do you have a supplementary question?

MR BERRY: Yes, Mr Speaker. How is it that a response of perceived lower satisfaction levels is a better indicator than an accredited ISO 9002 customer complaints register which delivers a 95.8 per cent satisfaction level for 11,000 jobs, a 100 per cent satisfaction level for 2,000 jobs and almost a 100 per cent—99.2 per cent—satisfaction level for 7,000 jobs?

MR MOORE: Mr Speaker, I taught for 17 years, and one of the frustrations I used to have was when I would actually teach the same thing three or four times and something just did not go in.

MR SPEAKER: A question fully answered cannot be renewed, Mr Moore.

MR MOORE: As a teacher, you would find other ways of trying to explain it. I will have yet another try. Mr Berry, let me say this to you slowly: a tender process like this one is an extraordinarily complex process, of which the matter you raise is simply one small part. Mr Speaker, I will use this opportunity to point out—

Mr Stanhope: The *Canberra Times* got it right: "Moore hands 100 Totalcare jobs to Sydney."

MR MOORE: I will come back to Mr Stanhope's interjection, Mr Speaker.

MR SPEAKER: I hope not.

MR MOORE: Before I do I will point out that Housing is to debrief Totalcare on the contract this Thursday at 4.00 pm.

Mr Speaker, the silly headline that said that I had sent 100 jobs to Sydney was just simply nonsense. The work that was being done—the example I gave was of the tiles being put on—still has to be done. If Mr Stanhope thinks that a silly headline like that—by the way, it was quite a good story, actually—is going to be taken as a mantra, it just shows, Mr Speaker, how the people opposite operate totally on negativity and probably will continue to operate in total negativity.

Mr Berry: Mr Speaker—

MR SPEAKER: Why are you standing? Do you have something to say?

Mr Berry: I was just going to raise a point of order, but you could not hear me.

MR SPEAKER: No, I could not, through the interjections from your colleagues.

Litter

MS TUCKER: My question is directed to the Minister for Urban Service, Mr Smyth. Minister, while many Canberrans were out on Sunday cleaning up the city on Clean Up Australia Day, one of your own waste contractors who should know better was creating its own litter problem. If you go to the BFI waste recycling centre at Hume today, although I notice that it is now called Pacific Waste Management, you will find that across the road from the plant are huge amounts of paper and plastic that have blown across the street and are now littering the open space there, including in a creek gully.

The proprietor of a business over the road from BFI which has to put up with this litter continually has regularly complained to BFI, which cleans up the litter occasionally but does not stop the problem. In fact, last weekend the litter got so bad that my constituent rang up the city rangers phone number to get some action but, ironically, was told that all the rangers were out doing things for Clean Up Australia Day, so they were too busy to address this litter problem. Minister, will you get BFI to clean up this litter problem immediately and consider taking action against it under the Litter Act?

MR SMYTH: Mr Speaker, the rangers are very busy. Having them out on Clean Up Australia Day was entirely appropriate, but we need to address problems as they arise. One of the things that are very important in keeping the city looking good is that we all take responsibility for the leases that we hold. Certainly, if there is a problem, Pacific Waste or BFI should be addressing it. One of the difficulties that we have had over recent times is with the inability or the force of law to do so, but it is very pleasing that

recently we did get a court order to help clean up a site in Conder that had been causing difficulty for some time. It was quite a boost to the rangers and the others who work in this area that they now have that precedent. That is the first time that it has happened. We will certainly make sure that, where incidents are reported, the compliance units and the rangers take them up with the leaseholders and make sure that they do keep their blocks clean.

MR SPEAKER: Is there a supplementary question?

MS TUCKER: I am not sure whether the minister answered my question. What will you do to ensure that this problem stops?

MR SMYTH: Mr Speaker, where any problem is reported to the rangers, to Urban Services or to any of the authorities, we act on it. This one will be taken up with the lessees to make sure that they undertake their obligations to keep their lease clean and, if appropriate, penalties will be levied.

Parking meters at Woden

MR WOOD: Mr Speaker, my question is to Mr Smyth. I raise a problem about parking meters in one part of Canberra that is fairly well known. Indeed, in the last week the minister would have received at least one letter on this subject, so I expect that he can give a pretty sympathetic and rapid response today.

Minister, immediately adjacent to the ACT government shopfront at Woden is an area of parking meters which are set to run for only 15 minutes; there is no provision for anything longer. I know that this has been an ongoing concern for the counter staff at the shopfront and certainly the clients of the shopfront as there are frequent delays there which mean that the clients are in a queue for longer than 15 minutes. What do you do? Do you go back and feed a meter, do you ask someone to hold your spot or do you just cross your fingers and hope that the parking attendants aren't about? In fact, they are around there pretty regularly because they know that it is a good spot, so clients get booked.

The shopfront is used by many people on a regular basis, not just a once a year visit for something as part of their job. I am told that even the counter staff have requested that the meters be replaced by meters which indicate a maximum of 30 minutes. That is not too much to ask. Can it be done; it is as simple as that?

MR SMYTH: Of course it can be done where complaints are received. We review the parking arrangements in any given area to make sure that we meet the needs of the blend of users of areas. There is a case for some short-stay parking and there is a case for medium and long-stay parking. Where areas are brought to our attention, we will investigate. I will do so.

MR WOOD: I understand that it has been raised more than once. I understand that it is a well-known problem and there have been formal approaches to fix it. Could you give us a deadline by which time you will come back with an answer, a week or something like that? Would you be able to tell us in a week's time what your answer is?

MR SMYTH: Mr Wood says that it is a well-known problem. It is something he knows about, but I will have to check whether it is a well-known problem. We get so many assertions in this place from those opposite and it is worth checking what they say. If issues are brought to the attention of the department, to my office or to the offices of any of the other ministers, we investigate them and, if necessary, we make amendment, we change things. Mr Stefaniak was asked today about airconditioning and he indicated that he has made changes.

I often get questions on whether parking arrangements can be changed. Sometimes they are, sometimes they are not. If there is a complaint about this matter, it will be investigated and, if appropriate, it will be changed.

Mr Humphries: I ask that further questions be placed on the notice paper, Mr Speaker.

Relocation of streetlight

MR HUMPHRIES: Mr Kaine asked Mr Smyth a question on Wednesday, 28 February about the relocation of light posts in Quiros Street, Red Hill. It actually falls within my portfolio and I will provide an answer. The information which has been provided to me by Actew/AGL reads:

> Actew/AGL has in the past relocated many streetlight fixtures where the fixture has created annoyance or inconvenienced a resident. Actew/AGL's first approach is to paint the rear of the light fitting, but often this has only a short time relief as the paint oxidises then flakes away. The next best alternative is to either remove the fitting or relocate it.
>
> In this particular case the paint approach had been tried over several periods without any real success.
>
> Actew/AGL's General Manager, Energy Networks has responsibility, and the appropriate financial delegation to ensure that Actew/AGL customers are not inconvenienced. It was on this authority that the column was relocated as part of ongoing operation and maintenance of street and public lighting in the ACT.
>
> I am advised that the cost was borne by Actew/AGL.

Mr Quinlan: Are you sure about that?

MR HUMPHRIES: I am quoting to you what was provided to me by Actew/AGL, Mr Quinlan. I table the information provided to me by Actew/AGL.

Mr Speaker, I also note that a question and answer on 7 December 2000—I am not sure whether it was a mistake by Hansard or whether it was the way in which the question was asked—referred to the cost of that work being $365,000. Obviously, we would not be relocating any streetlights if they cost $365,000 to relocate. We would not put in any streetlights if they cost that amount of money. The figure should have been $3,650.

I present the following paper:

> ActewAGL—Light post in Quiros Street Red Hill—Relocation—Answer to question without notice asked of Mr Smyth by Mr Kaine and taken on notice on 28 February 2001.

Redevelopment—Deakin oval

MR SMYTH: On 1 March, Ms Tucker asked whether the Croatia Deakin Football Club had complied with the requirements of a disallowable instrument. Mr Speaker, the grant of block 16 section 36 was made to the Croatia Deakin Football Club Inc as a community organisation. Checks at the time indicated that the club met all of the provisions described in part 1 of disallowable instrument No 131 of 2000. In response to Ms Tucker's specific question, the club does not hold a club licence. I apologise for the mistake in tabling the incorrect recommendation from the conservator in relation to block 16 section 36. The conservator, in order to ensure that all aspects in relation to this development were covered, issued two recommendations on 19 February 2001. I table the relevant recommendation. I present the following paper:

> Land (Planning and Environment) Act—Croatia Deakin Soccer Club—Copy of recommendation of Conservator of Flora and Fauna to Executive Director, Land and Property, Environment ACT, dated 19 February 2001.

Parking for the disabled

MR SMYTH: Mr Osborne asked about disability parking in the ACT. There is a difference between ACT government car parks and those operated by private enterprise or other organisations. Disability parking spaces are free in ACT government car parks. In fact, holders of mobility parking scheme permits are able to park in any ACT government pay parking space free of charge for extended time periods compared with other motorists.

Parking at the airport is managed by the Canberra International Airport. It is not an ACT government car park. It is up to the airport's owners and managers to make their own commercial decisions about car park pricing, including the pricing of any disabled parking spaces.

In regard to the Bruce Stadium authority, it is an independent statutory authority. The authority has decided to apply a commercial parking charge to all of its customers. The authority, however, does provide easy access parking spaces suitable for use by holders of mobility scheme permits.

Discharge from Belconnen landfill

MR SMYTH: On 28 February, Mr Corbell asked for additional information on the testing that had been done on the material released from the Belconnen landfill. I table that. I present the following paper:

> Belconnen Landfill—Discharge of retention ponds from Belconnen Landfill to Murrumbidgee River—Answer to question without notice asked of Mr Smyth by Mr Corbell and taken on notice on 27 February 2001.

He also asked why it had been discharged four to six times a year, given an assurance by the manager of ACT Waste in 1994. At the time, in 1994, it was the expectation of the manager concerned that water from the sediment retention pond would be reused on site and under normal rainfall conditions there would be no need for discharge of water from the landfill. However, this has proven not to be practical and the discharge has been undertaken in accordance with the environmental authorisation. Only water within acceptable limits as specified by environmental authorisation can be discharged. Once the landfill is closed for general waste later this year, it is intended to rehabilitate the site. That work will include measures to reduce run-off into the sediment retention ponds and reuse on site to irrigate new vegetation.

Mr Corbell asked as a supplementary question whether any downstream users of the creek were advised in advance of the discharge. No, they were not because the water discharged had to comply with the relevant environmental authorisation conditions which make it safe for the environment. He also asked whether the department has procedures in place to warn people. The department does not notify people downstream if there is no environmental threat.

Impulse Airlines

MR SMYTH: Ms Tucker asked whether Impulse Airlines' operational headquarters were being constructed and whether the construction was on time. The operational headquarters are being constructed as part of Impulse's heavy maintenance and engineering centre. The centre is currently expected to be completed around the middle of the year, but under the ACT/Impulse agreement Impulse is not required to complete it until December of this year.

Commercial agreement—harvesting cork plantations

MR SMYTH: On Thursday of last week, Mr Corbell asked about the harvesting of cork oak. He asked me to confirm that a commercial agreement now exists between the ACT government and Amorim for harvesting the plantation and to explain how the harvesting of the plantation was let and whether it was the subject of a public tender. In a supplementary question, Mr Corbell asked me to table a copy of the arrangements with Clifton Amorim "in keeping with the Humphries government's new enthusiasm for open government", I think were his words.

As Mr Corbell observed, the government does have an open approach to government. It is so open, in fact, that a week before Mr Corbell asked his question on notice I had already written to him offering a briefing on the cork oak plantation. Unfortunately, Mr Corbell, having accepted my offer, was not able at the last minute to attend that briefing yesterday.

Mr Speaker, the cork oak plantation at Glenloch is a heritage site. It is recognised by our own Heritage Council and it is listed on the register of the National Estate. It is important in the history of Canberra as the nation's capital and any activities undertaken there require the approval of the National Capital Authority. Mr Corbell may not be aware that in addition to its heritage value, which is the primary value to the community and, of course, to the government, it is the largest cork oak plantation

in the southern hemisphere. It has not been well cared for and the trees suffered considerably in the longish drought several years ago.

The heritage significance of the plantation cannot be underestimated and is recognised by many eminent people in cultural heritage and several professors of landscape architecture who were recently interviewed on national television about the plantation. Some time ago, at the government's expense, advice was sought from a silviculture expert who came to Australia from Portugal, the principal site of world knowledge about cork oak in botanical, cultural and plantation management terms. The government paid for the report, which recommended thinning and harvesting of the trees in the interests of their conservation. Mr Corbell was provided with a copy of that report some time ago.

Any commercial advantage in harvesting is both incidental and slight. It is a small plantation by European standards. Its principal commercial value in many ways is in its novelty and its association with the cultural heritage of Canberra. The local wine industry has been very interested in the use of the cork and, if it is feasible, it will be used for the closures of its wine. This will then be of value to them in promoting their local product.

Mr Speaker, I can confirm that, at the time I responded to Mr Corbell's question on notice in early January, there was no agreement with Amorim. However, there is now an arrangement between Amorim and ACT Forests for the first stripping of the cork. We are sharing with Amorim the costs of the expert workers who came to Australia to carry out the stripping. Forty per cent of the plantation has now been treated.

It is not yet clear whether the cork which has been stripped will be of any commercial value. ACT Forests will be meeting with Amorim in early April to discuss the value of the cork and its potential uses, as well as arrangements for stripping the remaining part of the plantation. The cork trees will need to be continuously managed and conserved and will need to be harvested to improve the quality of the cork at about 10-year intervals. The trees can live for 250 years or more if properly cared for. In future harvests we will give Amorim the first right of refusal in harvesting the cork. If the cork is of any commercial value, they will pay a commercial price.

Mr Corbell asked whether we had put this process out to public tender. That would be like putting an advertisement in the *Canberra Times* for somebody to do the conservation work on *Blue Poles* or Phar Lap's heart; it is just plain silly. You have to have the experts when there is such a unique item to be conserved and there are no experts in cork oak management in Australia. Mr Speaker, we found people who were experts. We asked for their advice, we paid them for it and we acted on it. We got the NCA and heritage organisations to approve the approach proposed, and then tried to achieve the conservation objectives at minimum cost to the taxpayer.

Mr Corbell's adviser was provided yesterday with a copy of the arrangements with Amorim. In view of the explanation I have given, I do not propose to table a copy of the document, but any member who is interested in having one can contact my office and get one.

Personal explanation

MR CORBELL: Mr Speaker, I seek leave to make a personal explanation under standing order 46.

MR SPEAKER: Proceed.

MR CORBELL: In his answer, Mr Smyth indicated that I had refused a briefing from ACT Forests. I would like to clarify that, whilst I was unable to receive that briefing, a member of my staff did.

Aboriginal deaths in custody
Paper

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (3:49): Mr Speaker, for the information of members, I present the following paper:

> Aboriginal Deaths in Custody—1999-2000 ACT Government Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody.

I move:

> That the Assembly takes note of the paper.

Mr Speaker, I am very pleased today to table the government's report for 1999-2000 on the implementation of the recommendations of the royal commission. In 1987 the Royal Commission into Aboriginal Deaths in Custody was established to investigate the deaths of 99 Aboriginal people who had died in custody from 1 January 1980 to 31 May 1989.

The commission inquired into how and why those people died and considered the social, cultural, economic and legal factors that contributed to their deaths. The commission's report was tabled in federal parliament on 9 May 1991. The report consisted of 339 recommendations to be implemented by the Commonwealth, state and territory governments and recommended that the Commonwealth, state and territory governments should report annually on their implementation of the recommendations.

This report for 1999-2000 is the sixth implementation report prepared by the ACT government and covers the period from December 1998 to the end of the last reporting period, to June 2000. As recommended by the ACT Aboriginal Justice Advisory Council, the proposed report is structured under five key themes as follows:

1. consultation with Aboriginal and Torres Strait Islander peoples in developing policies and programs;
2. law and legislation;
3. preventing deaths in custody and reducing the incarceration rate;
4. addressing the underlying issues; and

5. reconciliation.

The majority of the royal commission's recommendations have been addressed. However, a number of recommendations address particular organisations, programs or circumstances that are not relevant to the ACT government's jurisdiction, and these have been identified accordingly in the report.

Following the 1997 Ministerial Summit on Aboriginal Deaths in Custody, all states and territories except the Northern Territory agreed to develop strategic plans that would address the issues underlying deaths in custody. Subsequently, the key issue for the ACT government is the development and implementation of the Aboriginal and Torres Strait Islander policy framework and associated strategic plans addressing justice, health, housing, education, training and employment. These are discussed in part 6 of the report.

In the reporting period, the framework was developed in draft and was circulated in consultation with Aboriginal and Torres Strait Islander people representative bodies. The plans for health and employment have been completed and released. The plan for justice is in development by the Aboriginal Justice Advisory Committee, with the consultation stage having begun in September of last year. The plans for education and training are in development and will be in keeping with related national plans.

As noted in the report, there have been no Aboriginal deaths in custody in the ACT. I am also pleased to report that the number of Aboriginal people processed through the police watch-house decreased across all categories between the 1998-99 and 1999-2000 financial years. There were particularly notable reductions in the number of juveniles arrested or taken into protective custody over this period.

The report demonstrates the effort made by this government to address the wider issues underlying deaths in custody. This is with the aim not only of preventing future deaths in custody but of reducing the over-representation of Aboriginal people in the justice system and improving the overall quality of life for the Aboriginal and Torres Strait Islander communities in this territory.

In keeping with the aim of improving outcomes for Aboriginal and Torres Strait Islander people, the Council of Australian Governments agreed in November 2000 to develop a national framework for benchmarking, monitoring and reporting on outcomes for indigenous people. COAG identified three priority areas as follows:

1. investing in community leadership initiatives;
2. reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young people, particularly in the area of family violence, drug and alcohol dependency and other symptoms of community dysfunction; and
3. forging greater links between indigenous communities and the business sector to help promote economic independence.

The ACT government is supporting and contributing to the development of this framework. We will report to COAG through our participation in a range of ministerial councils.

As well as being presented to the Legislative Assembly, this report will be provided to the ACT Aboriginal Justice Advisory Committee for scrutiny and will of course be made publicly available.

There are many important issues in this report, and I commend it to the Assembly for further consideration.

MR STANHOPE (Leader of the Opposition) (3:54): I of course have not had an opportunity to peruse the report. I look forward to doing that. I note with interest the comments made by the Chief Minister in relation to the black deaths in custody report and its implementation in the ACT. I am a little bit surprised at some of the statistical information provided by the Chief Minister, presumably taken from the report. Perhaps it is a reflection of the fact that the report is now eight or nine months old. It is interesting that the information provided in the report and revealed by the Chief Minister in his speech is, on first blush—as I said, I have not looked at the report—somewhat at odds with the Productivity Commission's reports in relation to indigenous arrest rates.

I have commented earlier about the very disturbing fact that the Productivity Commission reported just a month ago that the ACT now leads the nation in indigenous arrest rates. On a per capita basis, we lead the nation in the number of indigenous people processed through the criminal justice system. Members would be aware that the last annual report of the Community Advocate contained a very disturbing analysis of the number of indigenous juveniles processed in the ACT, the number of indigenous juveniles resident in Quamby and the extremely disproportionate representation of indigenous youth within the criminal justice system in the ACT.

The disproportionate representation of indigenous youth in the ACT in the criminal justice system is just about the worst in Australia. We have the highest indigenous arrest rate and the highest indigenous incarceration rate. I think we potentially have the highest rate of indigenous youth incarceration in the nation. Canberra, the national capital, the wealthiest city in the nation, has an incapacity to deal with indigenous issues.

All of the health indicators in relation to indigenous people in this nation are the same as or worse than the health indicators everywhere else. The indigenous post-natal death rate is three times higher than the non-indigenous rate.

The average life expectancy of indigenous people in the ACT is 20 years less than the average life expectancy of non-indigenous people. The disadvantage suffered by indigenous people is reflected through crime rates and reflected through the level of indigenous substance abuse in this city—potentially the highest level of substance abuse of any indigenous population in Australia. There is an enormous over-representation of heroin use in the indigenous community in the ACT. These are all indicators of disadvantage, all indicators of a community that is not receiving, as

elsewhere in the nation, the support that is needed to break the cycle of despair, disadvantage and discrimination that has characterised our treatment of indigenous people over the last 200 years.

Whilst I think the government's implementation report in relation to black deaths in custody, to the extent to which in a black-and-white sense we can be seen to have implemented the recommendations in relation to the black deaths in custody report—we can probably give ourselves a big tick and say, "There are a hundred recommendations and we have complied with them all"—indicators of indigenous disadvantage lead inexorably to conflict or contact between indigenous people and the criminal justice system which then leads to their appalling over-representation within our youth institutions and our jails. As a result of the enormous and appalling over-representation of indigenous people within our jails, within our criminal justice system and within our youth institutions, of course there is going to be an inordinate over-representation of black people in statistics on deaths in custody.

Whilst we can point at all the practical things we have done to make it hard for people within our institutions to kill themselves, we still have not addressed the underlying issues, despite some very good programs. I acknowledge the work the government has done in some respects to deal with some of these issues. Of course, it is never enough, but I do acknowledge that the government has made some moves. We simply have not addressed those issues that lead inexorably from disadvantage at birth to truancy from school, to a lack of support and nurturing at home, to flirtation with substance abuse, to crime, to jail, to death. Whilst the government, in tabling this report, might be giving some indication of the advances we have made, there is an awful long way to go.

Debate (on motion by **Mr Quinlan**) adjourned to the next sitting.

Financial Management Act—instruments
Papers and statement by minister

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (4.01): For the information of members, I present the following papers:

> Financial Management Act—
>
> An instrument directing a transfer of funds between appropriations and a statement of reasons, pursuant to section 14.
>
> Instruments (2) directing a transfer of funds within appropriations and a statement of reasons for the reallocation, pursuant to section 15.
>
> Instruments (3) transferring functions between departments and a statement of reasons, pursuant to section 16.

I ask for leave to make a statement.

Leave granted.

MR HUMPHRIES: The papers I have tabled relate to the 2000-01 financial year and relate mostly to changes flowing from changes in the Administrative Arrangements pursuant to my becoming Chief Minister. I commend the papers to the Assembly. I move:

That the Assembly takes note of the papers.

Debate (on motion by **Mr Quinlan**) adjourned to the next sitting.

2000–2001 capital works program—September quarter progress report
Paper and statement by minister

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (4.03): For the information of the members, I present the following paper:

2000-01 Capital Works Program—Progress report—December quarter.

I ask for leave to make a statement.

Leave granted.

MR HUMPHRIES: This is the second progress report for the current financial year's program. The report provides quarterly and full-year expenditure information on all programs included in the 2000-01 capital works program. It also includes deferred and unspent financing from previous years at individual project level.

Territory departments incurred expenditure on capital works of $21.898 million in the December quarter. This takes the year-to-date expenditure to $31.979 million, which represents 38.9 per cent of the original annual budget.

Two major projects—the Belconnen pool and the Woden joint emergency services centre—have experienced delays in construction commencement. Design work on the joint emergency services centre is now complete, after taking into consideration all the stakeholders' requirements, and the tenders have now been called. However, the full forecast expenditure is not expected to be incurred in the current year.

Similarly, the forecast expenditure on the pool project is not expected to be incurred in the current year, pending finalisation of the tender process, which of course is the appropriate way to do it. The government has partly addressed this through project advancement and substitution of projects from the supplementary program and project acceleration within the current year's program. Where project substitution or acceleration has not been possible, the remaining unspent amount will be deferred to 2001-02. Details of the variations are outlined in the report.

In terms of expenditure, the Department of Health and Community Care was the largest contributor to the capital works program expenditure in the second quarter, with $7.948 million expenditure. This takes the year-to-date expenditure to $13.548 million for the department, or 49 per cent of funds available for expenditure.

Major projects contributing to this expenditure included the stage 2 refurbishment of non-in-patient administrative areas ($2.053 million), replanning non-in-patient clinical areas ($1.310 million) at Calvary Hospital, the refurbishment of the psychiatric

building, ($0.952 million), works at the ACT Hospice ($0.93 million), and the pathology building ($0.855 million) at the Canberra Hospital.

Also during the second quarter a number of projects progressed to the final stages of completion. Works at the ACT Hospice are now 96 per cent complete. The Gundaroo Drive extension project (Rolf Avenue to Gungahlin Drive) is 93 per cent complete, and 100 per cent of works at EPIC are completed.

I commend the second quarter report on the capital works program for 2000-01 to the Assembly. I move:

> That the Assembly takes note of the paper.

MR STANHOPE (Leader of the Opposition) (4.06): I rise to give the Minister for Education an opportunity to explain all the amazing perambulations on the construction of the Belconnen pool and what he has done with all our money for our pool. I do not know whether you want to take the opportunity, Minister, to explain exactly what you intend in relation to the Belconnen pool, but I am becoming extremely nervous at the prospect of you turning the sod another half-dozen times before the next election. What do I see in the capital works program? Money from Belconnen pool is to be used for cooling Gordon demountables.

Debate (on motion by **Mr Quinlan**) adjourned to the next sitting.

Leave of absence to member

Motion (by **Mr Humphries**) agreed to:

> That leave of absence for 6 and 8 March 2001 be given to Mr Osborne.

Subordinate Legislation

Papers

Mr Moore presented the following papers:

> Animal Welfare Act—Approval—Australian code of practice for the care and use of animals for scientific purposes—Instrument No 26 of 2001 (No 9, dated 1 March 2001).
>
> Bookmakers Act—Determination of event to be a sports betting event—Instrument No 21 of 2001 (No 9, dated 1 March 2001).
>
> Canberra Tourism and Events Corporation Act—Appointments to the Canberra Tourism and Events Corporation Board—
>
> > Chairperson—Instrument No 22 of 2001 (S8, dated 22 February 2001).
> >
> > Members—Instruments Nos 23 to 25 of 2001 (inclusive) (S8, dated 22 February 2001).
>
> Occupational Health and Safety Act—Approval—Code of Practice for the National Standard for Occupational Noise and the National Code of Practice for Noise Management and Protection of Hearing at Work—Instrument No 27 of 2001 (No 9, dated 1 March 2001).

Leases (Commercial and Retail) Bill 2000 [No 2]
Detail stage

Clause 17.

Debate resumed.

MR STEFANIAK (Minister for Education and Attorney-General) (4.08): I move amendment No 8 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This amendment is to item 3 on page 10, in the table of disputes to which the act will apply. It is being amended to ensure that disputes about variations to leases made after 1 January 1995 are also disputes to which the act applies. This reflects the existing law and meets the expectation within the markets that this will occur.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (4.09): I move amendment No 1 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment is consequential on amendment No 23. This item will make reference to sections 105, 114B or 114E. Those are provisions that I propose by later amendment be incorporated within division 12.4. Division 12.4, the new part that I propose be inserted, deals with the procedure for termination of a lease by the lessor. The aim of the part is to prevent what might blatantly be referred to as a lockout. The part sets out in detail the circumstances in which a lease might be terminated. It requires the lessor to give written notice of termination to the tenant, and then sets out a procedure whereby the termination notice might be put into effect. If the termination is disputed by the lessee, the lessor requires a magistrate's order agreeing to the termination. It is a provision which gives significant comfort to the tenant in circumstance where a lessor seeks to act unilaterally to exclude a tenant from premises rented by him.

MR STEFANIAK (Minister for Education and Attorney-General) (4.12): The government will be agreeing to Mr Stanhope's amendment. We will also be moving a small amendment to insert a new clause 107C, "Abandonment", which is relevant to what Mr Stanhope is doing. I give notice of that. Mr Stanhope is well aware of that. We agree to his amendment.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.13): I move amendment No 9 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

Item 9 is being amended to permit a breach after 1 January 1995 to be a dispute to which the act applies. This is similar to my amendment No 8.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (4.14): I move amendment No 2 circulated in my name *[see schedule 4 part 1 at page 720]*.

As with amendment No 1, this amendment is consequential on the amendments I will be later moving in relation to termination by a lessor. This is necessary in the context of later amendments which the government has foreshadowed that it will be supporting.

Amendment agreed to.

Clause 17, as amended, agreed to.

Clauses 18 to 22, by leave, taken together and agreed to.

Clause 23.

MS TUCKER (4.15): I move amendment No 6 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment ensures that whichever party requires a lease to be registered must pay the registration fee. It does, however, shift the onus of the costs of drawing up and registering new subleasing plans to the lessor. The cost of drawing up a subleasing plan would be $200 to $400, with perhaps a further cost of $200 in registering them.

The drawing up of such plans and their registration are reflected in the value of the asset. They do not deliver any value for the tenant, nor do they reflect any cost incurred by a tenant. That is why the Greens do not accept that it is appropriate to shift the burden of such costs to the tenant. It is only fair that such expense be borne by the beneficiary.

MR STANHOPE (Leader of the Opposition) (4.16): The Labor Party will be supporting this amendment. I understand that the amendment is also supported by the government.

MR STEFANIAK (Minister for Education and Attorney-General) (4.16): The government regards the amendment as a simplification which is an improvement to the bill, so we support it.

Amendment agreed to.

Clause 23, as amended, agreed to.

Clauses 24 to 29, by leave, taken together and agreed to.

Clause 30.

MR STEFANIAK (Minister for Education and Attorney-General) (4.17): I move amendment No 10 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

This amendment deals with the timeframe in subclause 30 (2). My amendment will bring it back into line with the existing law and market practice. It is an amendment which has been suggested by the Law Society. It will bring it back to seven days. Seven days is existing market practice.

MR STANHOPE (Leader of the Opposition) (4.17): The Labor Party does not agree with this amendment. This amendment that has been proposed by the government shortens the time that a lessor must give a tenant information before a lease is entered into. We do not believe that there is any justification for shortening from 14 to seven days the period of time in which information should be given. I foreshadow a Labor amendment to extend the time. The Labor Party does not support this amendment. It seems to us that we are talking about a reduction in time from 14 to seven days. We think the government's original proposal of up to 14 days was much more satisfactory.

MS TUCKER (4.18): We are also concerned about that reduction in time. The Greens will not be supporting the amendment.

MR RUGENDYKE (4.18): I will not be supporting the amendment to this subclause. I foreshadow that I will be supporting Mr Stanhope's amendment on this issue.

Amendment negatived.

MR STANHOPE (Leader of the Opposition) (4.19): I move amendment No 3 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment omits from subclause (3) of clause 30 the term "one month" and substitutes with "3 months". The effect of this amendment is to allow a tenant that extra time to ask for a disclosure statement from the lessor when considering a renewal of his lease. We think the time of one month is unnecessarily short. Three months does not seem to us to be onerous. In the view of the Labor Party, the extension of the time of one month to three months provides an appropriate balance between the interests of the lessor and those of the lessee.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.20): I move amendment 11 *[see schedule 1 part 1 at page 679]*.

This amendment will probably suffer the same fate as the previous one I moved. It omits "14" and substitutes "7". It is similar to my amendment No 10. Again, we would say that the timeframe would be brought back in line with existing law and existing market practice.

MR STANHOPE (Leader of the Opposition) (4.20): I repeat the Labor Party's opposition to the proposition to reduce the time.

Amendment negatived.

MR STEFANIAK (Minister for Education and Attorney-General) (4.21): I seek leave to move amendment No 12 circulated in my name.

Leave granted.

MR STEFANIAK: I move amendment No 12 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

It is an amendment to clause 30 (5). The replacement clause simplifies it. It makes it clear that only the times, rather than the actual obligation to provide a disclosure statement itself, may be varied. I would certainly hope there would be no objections to this one.

MR STANHOPE (Leader of the Opposition) (4.22): The Labor Party supports the amendment.

Amendment agreed to.

Clause 30, as amended, agreed to.

Clauses 31 to 34, by leave, taken together and agreed to.

Clause 35.

MR STEFANIAK (Minister for Education and Attorney-General) (4.23): I move amendment No 13 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

The replacement clause simplifies subclause 35 (2). It makes it a lot clearer than it was. It inserts words like "approved handbook" to ensure that it is clear. It is a Law Society suggestion to improve the legislation.

MR STANHOPE (Leader of the Opposition) (4.23): The Labor Party supports the amendment.

Amendment agreed to.

Clause 35, as amended, agreed to.

Clauses 36 and 37, by leave, taken together and agreed to.

Clause 38.

MS TUCKER (4.24): I move amendment No 1 circulated in my name on the buff sheet *[see schedule 2 part 2 at page 694]*.

This amendment makes it clear that tenants who have paid key money are entitled to have it returned to them. It echoes a provision in the existing code and would appear to be unarguable.

MR RUGENDYKE (4.24): I will be supporting this amendment.

Amendment agreed to.

Clause 38, as amended, agreed to.

Clause 39.

MR STANHOPE (Leader of the Opposition) (4.25): I move amendment No 4 circulated in my name *[see schedule 4 part 1 at page 720]*.

This proposed amendment inserts a new subclause 39 (2) which provides:

> If the lessor requires payment of more than 3 months rent in advance, any advance payment over 3 months rent is taken, for this section, to be bond.

The intention of this amendment is to ensure that the landlord cannot in any circumstances manipulate the payment of rent in advance to obtain a bigger bond. It is a safeguard in that regard.

MR STEFANIAK (Minister for Education and Attorney-General) (4.26): The government supports the amendment.

Amendment agreed to.

Clause 39, as amended, agreed to.

Clause 40.

MR STEFANIAK (Minister for Education and Attorney-General) (4.27): I move amendment 14 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This amendment was suggested by the Law Society. The replacement clause makes it clear that the lessor may accept additionally a guarantee and indemnity under this clause.

MR STANHOPE (Leader of the Opposition) (4.27): The Labor Party supports the amendment. It seems quite reasonable to us that a guarantee or indemnity be accepted instead of a bond.

Amendment agreed to.

Clause 40, as amended, agreed to.

Clauses 41 to 43, by leave, taken together and agreed to.

Clause 44.

MR STEFANIAK (Minister for Education and Attorney-General) (4.28): I move amendment No 15 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

This is a replacement subclause. It provides that a 30-day period qualifies both circumstances in paragraphs 44 (2) (a) and (b), not just (a) as is presently constituted.

MR STANHOPE (Leader of the Opposition) (4.28): The Labor Party will be supporting the amendment.

Amendment agreed to.

Clause 44, as amended, agreed to.

Clause 45.

MR STEFANIAK (Minister for Education and Attorney-General) (4.29): I move amendment No 16 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

Again, this amendment provides that the 30-day period qualifies both circumstances in paragraphs 45 (2) (a) and (b). It also limits the operation of the provision to a situation where the guarantee is not part of the lease, as it would be undesirable for the lease to be returned in those circumstances. It covers such things as where the documents are generally bank guarantees.

MR STANHOPE (Leader of the Opposition) (4.29): This is a very sensible proposal, and the Labor Party supports it.

Amendment agreed to.

Clause 45, as amended, agreed to.

Clauses 46 to 50, by leave, taken together and agreed to.

Clause 51.

MR STANHOPE (Leader of the Opposition) (4.30): I move amendment No 5 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment is a proposal to amend paragraph (1) (b) of clause 51 to substitute the period 12 months for the period three months contained in the bill. The design behind the amendment is to ensure that there is nothing to be gained by a landlord, heaven forbid, dragging out negotiations or being disinclined to negotiate new arrangements on renewal to continue to receive or obtain more or higher rent simply as the result of the effluxion of time. One would hope that this sort of practice would not be a feature of arrangements anywhere, let alone here in Canberra. This is a provision that ensures that a tenant's position is protected.

MS TUCKER (4.31): The Greens will be supporting this amendment. What Labor is trying to do here is to ensure that there is not a possibility of manipulation. The landlord will have to hold off for 12 months rather than three, which is fairer. It would make it less likely that landlords would manipulate the process.

The act provides for existing tenants to have the option to renew their lease and to have it assessed for market rent. The bill, however, allows for a landlord to hold off on making an offer to the existing tenant for three months, thus avoiding having to face a market rent assessment and being able to further push up the rent. I agree with Mr Stanhope. We certainly hope that this sort of thing does not happen, but in creating laws you want to make it much less likely that it will happen.

MR STEFANIAK (Minister for Education and Attorney-General) (4.32): The government accepts the amendment.

Amendment agreed to.

Clause 51, as amended, agreed to.

Clause 52.

MR STEFANIAK (Minister for Education and Attorney-General) (4.33): I move amendment No 17 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This is a formal amendment. It makes clear the circumstances in which subclause 52 (2) applies. It omits "this section" and substitutes "Subsection (2)".

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.34): I move amendment 18 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

Again, this is a formal amendment clarifying the operation of subclause 52 (3) by inserting the word "also", which makes it read logically.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (4.35): I move amendment No 6 [*see schedule 4 part 1 at page 720]*.

This is an amendment to subparagraph (3) (a) (ii) of clause 52. The design in this amendment is to extend from three months to 12 months the period in relation to which a negotiation may open or commence between a landlord and a tenant. The intention is to facilitate the opening of negotiations at a much earlier stage, in the hope that matters will be settled between the landlord and the tenant in a timely fashion. It also allows the tenant more scope and more time to apply at an earlier stage for whatever orders they may wish of the Magistrates Court in respect of things that they may be unhappy with.

MR STEFANIAK (Minister for Education and Attorney-General) (4.35): The government accepts the amendment.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (4.35): I move amendment No 7 circulated in my name *[see schedule 4 part 1 at page 720]*.

Mr Speaker, this amendment seeks to omit paragraph (b) from clause 53 (3) and replace it with the following paragraph:

> the tenant accepts the lessor's offer to renew the lease subject to the rent for the lease being market rent.

What this amendment does is clarify the tenant's right to accept an offer to renew but it reserves to the tenant the right to argue about the level of rent. Once again, it is a provision that enhances the position of the tenant in terms of the tenant's negotiating position vis-a-vis rent.

Amendment agreed to.

Clause 52, as amended, agreed to.

Clause 53.

MR STEFANIAK (Minister for Education and Attorney-General) (4.36): Mr Speaker, I move amendment No 19 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

This amendment to subclause (2) of clause 53 provides that when a report is received from the valuer, the court must give it to, rather than actually just tell, the parties. The amendment seeks to simplify subclause (3).

MR STANHOPE (Leader of the Opposition) (4.36): The Labor Party will support the amendment.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.37): Mr Speaker, I move an amendment circulated in my name on the dark green sheet *[see schedule 1 part 2 at page 685]*. I also present an explanatory memorandum.

This amendment introduces the concept of an interim agreement for a determination of market rent in accordance with clause 52. Once the interim agreement comes into effect, when the tenant requests the court to deal with the market rent neither lessor nor tenant may withdraw from the agreement unless, of course, both agree to do so.

MR STANHOPE (Leader of the Opposition) (4.38): Mr Speaker, the Labor Party will support this amendment. The amendment requires that the positions of the lessor and the lessee are the same and balanced in relation to negotiations around an interim agreement. It requires that if an interim agreement is entered into in relation to renewal or extending of a lease, the position of each of the parties that entered into that arrangement is the same. If a deal was done at that stage, then the deal was done and each of the parties should be in the same position in relation to that.

MS TUCKER (4.38): The Greens will not be supporting this amendment. We believe the landlord will always have the whip hand in situations where parties are negotiating a renewal of a lease. Our interest lies in ensuring that tenants are not disadvantaged by lessors choosing to withdraw from negotiations once the market rent is established. However, under clause 108 a tenant would have the right to terminate the lease with one months notice in any event. The point of trying to lock a tenant into a new lease once the parties have agreed to market rent valuation—because it seems to be about treating the parties equally—is both unreasonable and pointless.

MR RUGENDYKE (4.39): Mr Speaker, I concur with Ms Tucker on this amendment. I will not be supporting it either.

Amendment agreed to.

Clause 53, as amended, agreed to.

Clauses 54 to 56, by leave, taken together and agreed to.

Clause 57.

MS TUCKER (4.40): I move amendment No 7 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment and my amendment No 8 make transparent the vexed issue of conflict of interest for valuers. It is not sufficient to simply require valuers to advise the parties that they may have a conflict of interest. The amendments make clear that the details of any conflict of interest will be made known to the parties. The amendments also specify that recent or current interest in commercial property ownership or management might conflict with the proper working out of market rent.

I think it is important to remind the Assembly that such a conflict would not in itself rule out a valuer on the grounds of conflict of interest. One of the parties would have to object on the basis of the information disclosed and the court would have to make the decision that such a conflict of interest would disqualify the valuer. These amendments are about transparency, not about ruling some valuers out of action.

MR STANHOPE (Leader of the Opposition) (4.41): Mr Speaker, the Labor Party will support this amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (4.41): We will support the amendment. I think Ms Tucker might have been talking to other amendments, but certainly we will support the amendment to clause 57 (1).

Amendment agreed to.

MS TUCKER (4.42): I move amendment No 8 circulated in my name, which I just spoke to *[see schedule 2 part 1 at page 690]*.

MR STEFANIAK (Minister for Education and Attorney-General) (4.42): Mr Speaker, we agree to Ms Tucker's amendment No 8 but subject to the deletion of the words "direct or indirect". The clarification improves the bill but the additional words may have the effect of disqualifying a range of valuers—for example, someone with a superannuation entitlement would be disqualified from a number of property developments in the ACT. So we are quite happy to support the amendment but we could not support it if it contains the words "direct or indirect".

MR SPEAKER: If you wish to amend the amendment, you will need to put it in writing.

MR STEFANIAK: I think I may have to do that, Mr Speaker.

MR STANHOPE (Leader of the Opposition) (4.43): I must say that I hate being presented with these things on the run. I wonder whether Ms Tucker might like to speak to her proposal and explain to me why I should not support the government in relation to the words "direct or indirect". I might just say to Ms Tucker that I genuinely would like a response. As I say, I am being forced to think about this at this moment. I would appreciate hearing from you, Ms Tucker, whether or not an indirect interest in the circumstance of this provision is not taking things just a little bit too far.

An indirect interest, for instance, could be ownership of a share in some sort of managed fund. I cannot agree that a valuer should be excluded or disqualified because he might have a managed fund share portfolio that contains a share in a company that just happens to have shares in a shopping mall or some such undertaking. It seems to me that perhaps the government has a point but I would like to hear your views on the late amendment that is to be proposed by the government.

MR KAINE (4.44): Mr Speaker, I will comment on this matter, and Ms Tucker may choose to defend herself. When I first read the amendment I had the same difficulty as the minister because it seemed to me to be a very wide definition of a possible reason to exclude somebody. It was not only indirect or direct but it applied to any commercial property ownership or commercial property management anywhere.

I took the question up with Ms Tucker and said, "I'm the person involved and I did have some minor involvement in the management of a property in Brisbane six months ago, but why would that exclude me?" I am satisfied with Ms Tucker's explanation. The point with this is that it is not an automatic exclusion. Somebody has to appeal to the court and have a person declared ineligible. By making the wording pretty broad, as Ms Tucker has done, it allows the magistrate or whoever is hearing the thing to consider what is relevant and what is not relevant and to make a judgment.

When Ms Tucker explained the intent along those lines, I was happy then to accept it. First of all, people would hardly lodge an appeal unless they suspected that they had good reason to do so. Then a judicial officer has to make a judgment whether those are reasonable grounds for the objection. So it would seem to me that it does not matter too much if they do appear to be a withdrawal because it is not an automatic thing and it has to be done by the decision of a judicial officer. So I accepted that and I now support Ms Tucker's amendment.

MS TUCKER (4.46): Mr Speaker, I will speak briefly. I understand what the government's concerns are although I do not necessarily think it is necessary to delete the words. As Mr Kaine said, if it was unreasonable then it would not be supported and it would be ruled out anyway by the court. Basically, it is just about transparency. There could be an indirect connection with the property market that was of interest. It is just a matter of keeping it broad. We think the process is there to ensure that it will not be misused. Members can support the government's amendment if they want to but I personally do not have a problem with what we have in our amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (4.47): Whilst it is probably true that the matter could be looked at by a court, I think it is preferable to take the words out. If we can end up with clearer legislation, we should. I think that will ultimately assist a court. I am concerned about disqualifying too broad a range of valuers. Mr Speaker, it is simply safer, given all the circumstances, to take the words out. As I said, we do not have any problems with the rest of the amendment but I feel it is safer if the government's amendment is supported.

MS TUCKER: Mr Speaker, I seek leave to speak again to the amendment.

Leave granted.

MS TUCKER: I do not agree that what the minister is suggesting in his amendment makes it clearer. What we have makes it clearer. We are saying, yes, we want to have all the information. So, in fact, by deleting the words it makes it less clear.

MR STEFANIAK (Minister for Education and Attorney-General) (4.48): Mr Speaker,
I seek leave to move the amendment.

Leave granted.

MR STEFANIAK: I formally move the amendment circulated in my name *[see schedule 1 part 3 at page 685]*.

MR STANHOPE (Leader of the Opposition) (4.49): After listening intently to the debate, Mr Speaker, I indicate that the Labor Party will support Ms Tucker's amendment and will not support the government's amendment.

Mr Stefaniak's amendment to **Ms Tucker's** amendment negatived.

Ms Tucker's amendment agreed to.

Clause 57, as amended, agreed to.

Clause 58 agreed to.

Clause 59.

MR STANHOPE (Leader of the Opposition) (4:51): Mr Speaker, I ask for leave to move amendments Nos 8 and 9 circulated in my name together.

Leave granted.

MR STANHOPE: Mr Speaker, I move amendments 8 and 9 *[see schedule 4 part 1 at page 720]*.

Amendment No 8 omits the word "rent" from the heading in clause 59 and amendment No 9 omits the words "rent concession" and substitutes the word "concession" in clause 59 (1). The purpose of these amendments is to give recognition to the fact that landlords give concessions other than rent subsidies. It is simply a recognition of the practice that sometimes occurs, that there are concessions other than rent subsidies granted by the landlords, and this reflects that fact.

MS TUCKER (4.52): The Greens support these important amendments. Relevant concessions that a lessor may offer a tenant and ought to be declared when working out market rent for another tenant ought not be limited to rent concessions. Concessions are a great way of trying to establish an artificially high rental and property value. You can offer a tenant of your choice something like a free fit-out or an expensive car or what have you, making it well worth the while of that tenant to pay a higher rent. Then you can use this higher rent as a basis for other rents and indeed the valuing of the premises to your own advantage.

Amendments agreed to.

MS TUCKER (4.53): I move amendment No 2 on the buff sheet circulated in my name *[see schedule 2 part 2 at page 694]*.

This amendment is consistent with the government's amendments to clause 53 where information used to determine market rent is made available to both parties. Transparency of the process and information used in establishing market rent is crucial to its effectiveness. If a landlord chooses to support another tenant—for reasons that might include the addition of a customer attractor, the development of a point of difference or on the basis that a particular tenant has been an asset to the property but is not in a strong position at present—that may be good business but it is no reason that it should be kept secret.

In other words, whether the information is disclosed or remains confidential, property managers and owners will always need to find attractors and points of difference to draw customers to their properties. On the other hand, if the landlord wishes to represent its business and its rental income is higher than in fact it is—in order to secure artificially high rents from other tenants or in order to over-value the assets of sale, for example—then the capacity to keep confidential any information on concessions it offers will assist them in doing that.

If these concessions are hidden from the fair market rent process, then other tenants will find their "fair market rent" quite unfair in effect. This amendment is just about ensuring that the process is fair and above board.

MR STANHOPE (Leader of the Opposition) (4.54): Mr Speaker, although the Labor Party will support the amendment, I would just indicate that I am not 100 per cent comfortable with it insofar as I am not quite clear on the practical application of a confidentiality clause such as this and the implications for its removal in any event, having regard to information that is going to be provided to the court and the fact that it will get into the public domain. Although I am not quite sure of the issues here, I will support the amendment but I want to ensure that its practical application and impact is monitored.

MR RUGENDYKE (4.55): Mr Speaker, I advise members that I will be supporting this amendment.

Amendment agreed to.

Clause 59, as amended, agreed to.

Clauses 60 to 65, by leave, taken together and agreed to.

Clause 66.

MS TUCKER (4.56): I move amendment No 9 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment removes the presumption that land tax is a levy on the operation of the premises as rental property. Land tax is not the same as rates. It is in fact levied on the capital value of the property. The fact that such a property is leased for retail or commercial purposes is not the basis for the charge and it is unreasonable to imply that tenants ought to unequivocally carry the can. Excluding land tax from those outgoings that do not need to be prepared by an auditor will act as a disincentive for property owners to include land tax in the cost of rental property management. The Greens believe it is expenses directly associated with managing rental property which ought to figure in these calculations rather than the generic costs of owning property.

MR STEFANIAK (Minister for Education and Attorney-General) (4.57): Mr Speaker, the government opposes this amendment. I think the effect of this quite clearly will be to generate additional unnecessary compliance work.

MR RUGENDYKE (4.57): I advise that I will be supporting Ms Tucker's amendment.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.58): Mr Speaker, I ask for leave to move amendments Nos 20 and 21 circulated in my name on the purple sheet.

Leave granted.

MR STEFANIAK: I move the amendments *[see schedule 1 part 1 at page 679]*.

Again, Mr Speaker, these amendments are consequential on the passage of the Unit Titles Act 2000.

MR STANHOPE (Leader of the Opposition) (4.58): Mr Speaker, the Labor Party will support the amendments.

Amendments agreed to.

Clause 66, as amended, agreed to.

Clauses 67 to 69, by leave, taken together and agreed to.

Clause 70.

MR STANHOPE (Leader of the Opposition) (4.59): Mr Speaker, I move amendment No 10 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment adds subclause (4) to clause 70. Subclause (4) states:

> Further, subsection (1) (a) (ii) does not allow the lessor to recover from the tenant an outgoing in relation to premises that are usually leased but are currently unleased.

In the context of the clause, this amendment is designed to ensure that a lessor cannot spread the cost of temporarily vacant premises across the board. Tenants in a centre or a leased premises should not be asked to bear the cost of a vacancy within premises.

Once again, the purpose of this amendment is to ensure that a lessor cannot spread his costs resulting from a vacancy in premises within a particular building across the range of tenants that remain in the premises. It is a protection for existing and continuing tenants against, as I say, an unscrupulous landlord seeking to shift costs in that way.

At 5.00 pm, in accordance with standing order 34, the debate was interrupted. The motion for the adjournment of the Assembly having been put and negatived, the debate was resumed.

MS TUCKER (5.01): We will be supporting the amendment moved by Labor. The new subclause rightly prevents lessors from recovering from tenants the cost of maintaining premises usually leased but currently unleased. In other words, you cannot expect tenants to fork out for maintaining parts of premises that happen to be untenanted.

Amendment agreed to.

Clause 70, as amended, agreed to.

Clauses 71 and 72, by leave, taken together and agreed to.

Clause 73.

MR STANHOPE (Leader of the Opposition) (5.02): Mr Speaker, I move amendment No 11 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment to clause 73 requires that specified minimum standards be reasonable. Clause 73 applies to employment restrictions. For the information of members, clause 73 (1) states:

> a lease provision is void if it limits, or has the effect of limiting, a tenant's right to employ people chosen by the tenant.

Subclause (2) states:

> Subsection (1) does not prevent a lease containing provisions to the effect of any of the following:
>
> (a) a provision specifying minimum standards of competence and behaviour for people employed on the premises or others … working on the premises.

This enables the lessor to impose on a tenant a range of minimum standards of competence and behaviour, et cetera, that a lessor might require of a tenant. All my amendment does is require that any standards that a lessor seeks to impose on a tenant be reasonable in the circumstances. "Reasonable" is a test known to us all and it is only appropriate that provisions such as this be measured against a standard of reasonableness.

MR STEFANIAK (Minister for Education and Attorney-General) (5.03): The government supports the amendment.

Amendment agreed to.

Clause 73, as amended, agreed to.

Clauses 74 to 82, by leave, taken together and agreed to.

Clause 83.

MS TUCKER (5.04): I move amendment No 10 circulated in my name *[see schedule 2 part 1 at page 690]*.

Mr Speaker, this very important amendment relates directly to the situation many retailers in shopping centres find themselves. The act as it stands allows a shopping centre, at no penalty, to change the mix of business it houses no matter what impact such change may have on the tenants. There are instances where, for whatever reason, the shopping centre has been in conflict with a tenant—let us say a butcher—and has solved the problem by bringing in a couple of other butchers and setting them up right

next door, obviously with the intent and the effect of undermining the existing business.

This amendment will allow tenants to apply for compensation when changes to the mix of tenants materially affects their business, not merely because the mix has changed but only and justifiably when that change to the mix affects the viability of their businesses.

A shopping centre is not a free market. A large proportion of retail business in Canberra is conducted in privately managed and owned shopping centres. One disturbing aspect of this shift from private to public space is the increased control that these major enterprises have over the retail environment, with a consequent loss of diversity and, on occasion, a shift from local to national businesses and franchises. Such changes can have a destructive impact on the economic, community and cultural fabric of our society.

It should be remembered that in applying for compensation under this amendment the onus would still be on the tenant to demonstrate that the change of mix has materially affected the viability of their business. Any business which has been struggling for some time would be hard pushed to shift all the responsibility onto the introduction of new tenants. Of course, shopping centre management may well have found that changing the tenant mix was a very useful tool in forcing businesses out. It seems only reasonable, however, that in such instances those businesses have recourse to compensation.

One of the arguments put is that tenants have recourse to the unconscionable conduct provision in the act. But this is disingenuous as the task of proving such conduct is significantly more complex legally and more daunting to tenants. The scrutiny of bills committee also raised questions as to the broad brief that this bill, in clause 22, gives to the Magistrates Court in determining harsh or unconscionable conduct. It does not, however, identify those occasions where the change of tenant mix is used to undermine the viability of the business. If the government was of the view that such unreasonable actions would constitute harsh or unconscionable conduct, it ought to have been identified. This amendment, however, makes clear that the act of altering tenant mix in order to materially disadvantage a tenant warrants compensation.

MR RUGENDYKE (5.08): Mr Speaker, I think it is important to put on the record that I will be supporting Ms Tucker's amendment. You just have to look at how the major malls treat small businesses. Have a look at the Canberra Centre where three, four or five bakeries were obviously materially affecting each other. You have just got to look at Westfield where there were, on my last count, about nine mobile phone retailers. A struggling mobile phone business like Phonies at Westfield mall has a very small area. Now they are competing with about eight others. Ms Tucker's amendment would be a great benefit to small businesses which are forced to compete unfairly against other like businesses. So I will be supporting this amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (5.09): Mr Deputy Speaker, unconscionable conduct is dealt with in clause 22 part 5 of this bill. Under this clause, matters can be corrected if there is in fact unconscionable conduct.

Clause 83 reads:

> A tenant of premises in the retail area of a shopping centre is not entitled to compensation under section 81 Compensation for disturbance) only because—
>
> … … …
>
> (b) there is a change in the mix of tenants who hold leases in the shopping centre.

Ms Tucker's amendment seeks to add the following words at the end of paragraph (b):

> unless the change materially affects the tenant's business.

Mr Deputy Speaker, this amendment would allow a tenant to seek compensation when a shopping centre enlargement results in additional competition to the tenant. It would enable a tenant to seek compensation in relation to any shopping centre enlargement if that caused a change that materially affected the tenant's business.

We strongly oppose the amendment because the effect would be to allow a tenant to get compensation on the grounds that the enlargement results in additional competition to that tenant. I think that is an outrageous provision. For example, assume that the tenants are selling clothing. Will the tenants be allowed to sue the landlord every time a new tenant comes into a centre selling like goods? Quite clearly, that would be ridiculous.

There are a number of tenants at Westfield, Belconnen, for example, who sell clothing. I am sure that some of them do very well. Let us say that two shops are selling clothing and another person wants to come in and sell clothing. Under Ms Tucker's amendment the other two tenants would be able to sue the landlord for compensation. Quite clearly, that is a ridiculous situation. It is not something that I think most people would want to see happen. If Ms Tucker or anyone else are worried about any sort of unconscionable conduct, that is already catered for in clause 22 of the bill. So the government would strongly oppose this amendment.

MR STANHOPE (Leader of the Opposition) (5.11): The Labor Party has looked long and hard at this provision. My office has been engaged in quite detailed negotiations, particularly with Ms Tucker's office and also with the minister's office, in relation to this. I say at the outset—and I will explain my reasoning—that the Labor Party will not be supporting this amendment. I acknowledge that this is a difficult issue. The tenant mix—and the extent to which a tenant mix impacts on a particular business' profitability—is something I guess that could potentially affect quite significantly some tenants or some businesses.

People make decisions when they go into business, and Mr Rugendyke used the example of a number of bakeries that are located in the market across the road from the Assembly. We can have an interesting debate about whether or not people who went into those businesses could or should potentially be compensated simply as a consequence of a commercial decision which they took to establish a business in competition with a number of existing businesses of the same sort.

Mr Rugendyke referred to the City Market. It is interesting to note that Supabarn has a bakery at that centre. Bakers Delight is also in the centre. This very profitable bakery has a most charming sales assistant, which I have no doubt has enhanced their business

no end. I should say to my colleagues that nothing is confidential: my daughter reports back to me faithfully what each of you buy for lunch. Some of you have the most outrageous scones—so beware. But, in addition to that, a bakery has just recently opened on the corner, next to the chemist. There is a bakery opposite to that. Also there is a bakery that has now moved outside as a result of renovations which the Queensland Investment Corp is making to extend its building in Adelaide Avenue.

Mr Rugendyke's argument—and I believe Ms Tucker's argument—is based on the number of shops. I could come along, have a look around and think, "There are four other bakeries within 15 metres of where I propose to establish a shop. It might be that my bakery will be a real hit but, then again, gee there is a bit of competition here. Perhaps I need to think seriously about whether this is where I should open this shop." The landlord, who is looking for tenants, might say, "Well, yeah, if you want to have a go. Look, I am not exactly being knocked over in the rush for people to take this particular premises, but if you want to open a fifth bakery within 15 metres of four other bakeries, I am happy to rent you the shop. It is your decision."

It has been suggested here that if a business does not go well, the landlord did not control the tenancy so therefore it is the landlord's responsibility. I think that is a fairly long bow to draw. As the Attorney has suggested, there are a range of other avenues open to tenants that have been subjected to inappropriate conduct. Is it seriously being suggested in those circumstances that the landlord is acting unconscionably? If that is what is being suggested, it does not fit within my definition of unconscionable behaviour.

I have to say that the bakery example that underpins Mr Rugendyke's support for this amendment does not fall within my understanding of unconscionable conduct on the part of a landlord of rented premises. Somebody comes in with their eyes open and says, "Look, I see that there are four other bakeries but I will have a go. I will open a fifth." Why is that unconscionable conduct on the part of the landlord? The landlord might sit back and think, "Well, gee, I think you're going to do it tough. I think you're going to have strife." But is it for the landlord to counsel the tenant and say, "Look, I really don't think you are going to do well here"?

It is being suggested by this amendment that the tenant who opens the fifth shop and who does not fit in well—or even one of the other tenants with an established business who perhaps is not surviving—is automatically entitled to compensation. But is that unconscionable? It does not fit very neatly within my understanding of unconscionable. In any case, if it is unconscionable conduct it can be pursued independently. A tenant may believe that in those circumstances they are being forced out or squeezed out by a landlord who simply is simply filling premises with a like business. If it is unconscionable conduct then it can be pursued independently. So why provide this automatic right of compensation, this automatic compensation in circumstances where unconscionability has or has not been tested?

I can see the force of the argument that some people acted in good faith on the basis that when they came there were only two or three bakeries and they never expected there to be any more. If these people think there has been unconscionable conduct, they can pursue the matter. There is real protection for tenants in those circumstances.

In addition to that, there are other provisions within the bill that allow tenants to sue for relief through the Magistrates Court.

As I said, my office discussed this provision at length with Ms Tucker's office. We also discussed it at length with the government to try to come to an understanding of the range of circumstances in which tenants can pursue an unconscionable, an unfair or a rapacious landlord. We feel, on balance, that the legislation provides tenants with a range of protections and that we do not need this specific provision over and above the range of other avenues that are available.

To some extent the issues of fact in relation to why a particular business went bad would become horribly confused in the circumstances proposed by Ms Tucker or Mr Rugendyke—the facts and the proof that would be required to illustrate or determine that a particular business suffered materially as a result of a tenant mix rather than as a result of bad management or bad business practices. I am not quite sure how you can differentiate between them.

MS TUCKER (5.20): I understand the concerns of Labor and other members about this, but the reality as we understand it is that there is a problem here. I accept what the majority of the Assembly is saying today—Labor and Liberal anyway—about their concerns about the language. Perhaps there is another way of doing it. Perhaps it should be included in clause 22 and in some way specifically mentioned as an issue.

I can see that the amendment will not be successful. I understand the arguments but I also understand there is a problem out there in the real world. So this place needs to be aware that we may well want to have this debated again. Perhaps we can find another solution if this continues to be a problem.

As I said, its our understanding that it has been a problem and this amendment is a response to particular behaviours that have been occurring. I hope that we will see a willingness to deal with this issue in another way if we continue to get feedback that this behaviour is not acceptable.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (5.21): Mr Deputy Speaker, I want to indicate that I agree with what the Attorney-General and the opposition leader have had to say. I think the more one considers the implications of passing this amendment—which, incidentally, I think in many respects negates the effect of clause 83 (b)—the more one realises that its effect would be to make it impossible for any centre owner to effectively change the mix of their tenants.

If a centre were so small that it had just one clothing store, one newsagency, one bakery and one supermarket, there might not be a problem, although there are examples where, say, a newsagent will sell some of the same product lines as those sold by a supermarket. We have larger centres where there are more than one clothing store or more than one store selling food, and inevitably any change in the mix of the centre results in potentially improved competition and, therefore, you have the potential of somebody who is not as competitive as another tenant in the centre losing market share.

It follows from the wording of the amendment that a person would be entitled to compensation. I think that would be a foolish result. Ms Tucker's amendment is also anomalous in that a person in a centre would be able to claim compensation if a similar store moved into the other end of the centre but could not claim compensation in respect of somebody close to them across the road who was selling products that competed with their own. That highlights the anomalies of that provision. So I think it would be wise not to support the amendment.

MR QUINLAN (5.23): I want to speak very briefly on this point, which I know some of the lobbyists are quite concerned about. I have to say that the amendment would be taking the legislation just that one step too far. Certainly, if you are a tenant in a mall and you have a particular type of business, there is a high probability, if not a certainty, that the advent of a similar type of business is going to have some particular impact. But I do not know that that is really something that should be incorporated into legislation or, as the Chief Minister has just said, whether it is practicable in its application.

Any form of exclusivity that is given to tenants should be part of the initial lease. That would be a condition that a tenant and the tenant board would negotiate in the first instance and that provision would be part of the lease. But I do not think it would be practical to make it part of the legislation.

Certainly, if you are looking at this legislation strictly from the perspective of the tenant, you would say, "Yes, we would like to see that in." I am sure that a lot of tenants would like to see it in but I do not think it is practical. I would like to add that this would not happen with strip shopping. If you were in High Street, Preston, or in Leichhardt or Balmain in Sydney, you would have no control over the fact that someone was going to rent a shop, a premises, one or two doors down the road or across the road and open another bakery. That is just part of the vicissitudes of being in business.

Similarly, it would not happen with strata tile—one of the section 56 propositions, had it been adopted, effectively would have given strata title for retail outlets. Again, there is no the control that says that not only are you renting the space but you are given some particular insulation against competition. I firmly believe that if tenants are to be insulated against competition then that has to be part of their initial negotiations with the landlord—it has to be on hard copy with the provisions being laid down in black and white. We cannot go to the extent of providing this level of protection or insurance for business. If you tried to do so I think you would reach a ridiculous stage in terms of the level of protection that is provided in the so-called private sector market. I am sure that most of the people and most of the small businesses that occupy malls would extol the virtues of competition in the private sector market. In light of that, I do not think you could sustain this degree of protection if it is not part of the original agreement.

There is every argument for somebody who wants to set up a bakery to do a deal with the landlord and say, "Well, I am going to have a bakery. It is not a big complex but I will do it on the basis that you guarantee me that you will not set up in opposition next door or within arm's reach of my particular business because my market research tells me that there is only room for one bakery in this area." That is a decision that both

parties consciously take. But the level of protection of the magnitude proposed by the amendment is not practicable in its application. You will never, at the end of the day, be able to work out what are the consequences.

Amendment negatived.

Clause 83 agreed to.

Clause 84.

MR STANHOPE (Leader of the Opposition) (5.28): I move amendment No 12 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment relates to arrangements that apply where premises are damaged. It seeks to introduce into the bill some consistency in relation to the treatment and application of damaged premises and damaged buildings and the provisions that are contained within the buildings. It is to be noticed that the bill is not consistent across its clauses in the way it deals with the implications or the consequences of damage to premises as opposed to damage to a building. Clause 84 provides:

> (1) This section applies if—
> (a) leased premises are damaged; and
> (b) the premises cannot be used for their normal purpose because they have been damaged.
> (2) The tenant is not required to pay rent or outgoings under the lease while the premises cannot be used unless the Magistrates Court decides otherwise.

What the provision does not go on to explain and does not include is a circumstance where premises that are leased are not damaged but the building in which the premises are contained is damaged. If a tenant cannot get to his shop because something else has happened, the protections provided by the clause do not apply.

My amendment 12 to clause 84 ensures that if the premises are contained within larger premises there is a consistent treatment. If premises are rendered uninhabitable or unusable or if use is diminished as a result of damage that has been sustained to the premises, then it is only appropriate that rent should not be paid or should be adjusted. Similarly, if for whatever reason a tenant cannot get to the premises because of some other impact outside the premises but within the building, the same provisions should apply.

MR STEFANIAK (Minister for Education and Attorney-General) (5.31): The government supports the amendment.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (5.32): I ask for leave to move amendments Nos 13 and 14 circulated in my name together.

Leave granted.

MR STANHOPE: I move amendments Nos 13 and 14 *[see schedule 4 part 1 at page 720]*.

These amendments apply in exactly the same way as amendment No 12, to which I have already spoken.

Amendments agreed to.

Clause 84, as amended, agreed to.

Clause 85.

MR STANHOPE (Leader of the Opposition) (5.33): I move amendment No 15 circulated in my name *[see schedule 4 part 1 at page 720]*.

This is of the same order as the previous amendments.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (5.33): I move amendment No 22 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This amendment to clause 85 (1) (b) is a formal simplification of the language in that clause.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (5.34): I move amendment No 16 circulated in my name *[see schedule 4 part 1 at page 720]*.

This again is an amendment which is the same in import as the immediately preceding amendments I have moved.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (5.34): I move amendment No 17 circulated in my name *[see schedule 4 part 1 at page 720]*.

Once again, this is the same amendment.

Amendment agreed to.

Clause 85, as amended, agreed to.

Clause 86 agreed to.

Clause 87.

MR STANHOPE (Leader of the Opposition) (5.35): I move amendment No 18 circulated in my name *[see schedule 4 part 1 at page 720]*.

This is one of the great beauties of legislation and parliamentary drafting. This looks much longer and looks intimidating, but it has exactly the same effect as the previous amendments. It achieves the same purpose.

Amendment agreed to.

Clause 87, as amended, agreed to.

Clause 88.

MS TUCKER (5.36): I move amendment No 11 circulated in my name *[see schedule 2 part 1 at page 690]*.

I will speak to my amendment No 12 as well. These two amendments provide some guidance for the court as to the basis on which a lessor can determine that damaged or deteriorated premises are not to be repaired.

My amendment No 11 requires the lessor reasonably to consider that repairs to the premises are impracticable. A lessor might put forward any reason to argue unreasonably that repairs are impracticable. "Reasonable" is a fair and minimum threshold.

These amendments also take out "undesirable" as a rationale for not repairing premises. Again, "undesirable" is such a catch-all term. A lessor may find repair undesirable simply for the reason that they do not like the lessee or that they are bored with the whole responsibility of property management and they want an excuse to terminate the lease. It seems to me that the term "impracticable" is also quite broad and would cover all genuine reasons for a lessor not to repair damaged premises.

MR STEFANIAK (Minister for Education and Attorney-General) (5.38): The government will be opposing this amendment. Ms Tucker is removing the lessor's discretion not to rebuild if it is undesirable. We believe the owner should continue to have a discretion not to be forced to rebuild if that is impracticable or undesirable. This amendment would impose unreasonable restrictions on a landlord, and we oppose it.

MR STANHOPE (Leader of the Opposition) (5.38): The Labor Party supports the amendment. We think the introduction of "reasonableness" into a provision such as this is appropriate. I am concerned by the subjectivity of the concept of undesirability in relation to this sort of clause. "Undesirable" is an unnecessarily subjective term to introduce into a consideration of this sort.

MR RUGENDYKE (5.39): I too will be supporting this amendment, for the reasons outlined by Ms Tucker.

Question put:

That **Ms Tucker's** amendment be agreed to.

The Assembly voted—

Ayes 8		Noes 7	
Mr Berry	Mr Stanhope	Mrs Burke	Mr Smyth
Mr Corbell	Ms Tucker	Mr Cornwell	Mr Stefaniak
Mr Hargreaves	Mr Wood	Mr Hird	
Mr Quinlan		Mr Humphries	
Mr Rugendyke		Mr Moore	

Question so resolved in the affirmative.

Amendment agreed to.

Clause 88, as amended, agreed to.

Clause 89.

MS TUCKER: I move amendment No 12 circulated in my name *[see schedule 2 part 1 at page 690]*.

I have already spoken to this amendment.

Amendment agreed to.

Clause 89, as amended, agreed to.

Clause 90 agreed to.

Clause 91.

MR STEFANIAK (Minister for Education and Attorney-General) (5.44): I move amendment No 23 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This merely corrects a cross-reference.

Amendment agreed to.

Clause 91, as amended, agreed to.

Clauses 92 to 96, by leave, taken together and agreed to.

Clause 97.

MR STANHOPE (Leader of the Opposition) (5.45): I move amendment No 19 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment seeks to add a subclause (6) to clause 97. Clause 97 relates to mortgagees and head lessors. As currently arranged in the bill, it provides for certain actions in relation to requirements that might apply to a tenant. For the information of members, I will read the first couple of subclauses:

> (1) This section applies if the lessor—
>
> (a) receives a request from a tenant under section 95 (Request for consent to assign, sublease or mortgage); and
> (b) has a mortgagee, head lessor or both; and
> (c) is required under the mortgage or head lease to obtain the consent of the mortgagee or head lessor to the assignment, sublease or mortgage of the lease.

Subclause (2) sets out certain requirements:

> The lessor must tell the lessor's mortgagee, head lessor or both that the request has been made and of the terms of the request as soon as practicable after receiving the request.

It imposes obligations on the lessor. What it does not go on to do, however, is discuss the circumstance in which the head lessor or a mortgagor decides to do nothing, simply dallies and seeks to obfuscate. Proposed new subclause (6) prevents a mortgagor or head lessor from doing nothing and thereby thwarting the intentions of the section. It provides that the head lessor or mortgagor will be deemed to have consented if the head lessor or mortgagor takes no action within 14 days.

Once again, this provision ensures that a tenant will be protected against a landlord acting wilfully to subvert the intention of clause 97. It is not groundbreaking or all that startling, but it is another significant protection of the tenants in their dealings with landlords.

MS TUCKER (5.49): The Greens will be supporting this amendment. It ensures that a head lessor does not just sit on an issue in dispute and thus avoid resolving it. It seems a very sensible precautionary measure.

Amendment agreed to.

Clause 97, as amended, agreed to.

Clauses 98 to 103, by leave, taken together and agreed to.

Clause 104.

MR RUGENDYKE (5.50): I move amendment No 3 on the green sheet circulated in my name *[see schedule 3 part 2 at page 711]*.

This amendment is about preserving security of tenure for tenants. I find it astounding that we have a provision which rules the tenant or small business out of the minimum five-year lease if they receive independent legal advice before entering into the lease. Receiving legal advice is not an adequate reason for excluding tenants from minimum five-year leases. What if the landlord forces the tenant to obtain a certificate of advice? This in effect robs the small business of the entitled five-year lease.

This is a clear-cut example of the imbalance of power that this government is trying to preserve. Landlords can hold small business to ransom in negotiations by making it mandatory to obtain a certificate. This is unfair, and I encourage members to remove this provision from the bill.

MR STEFANIAK (Minister for Education and Attorney-General) (5.51): The government is opposed to this amendment. It removes, probably in error, the capacity for parties to contract out for five years. They would be contracting out with independent legal advice, so we oppose the amendment.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (5.52): I should explain why clause 104 is drafted as it is. It is clearly designed to ensure that tenants who are not aware of their legal entitlement under the legislation are protected in those circumstances. A tenant who enters into an arrangement unaware that they are entitled to a minimum five-year lease is able to come back and arrange for their entitlement under the legislation to be enforced at a later point.

Quite reasonably, the provisions here to deal with tenants' entitlements are not exercised at any time in any way. They are circumscribed in a particular way by clause 104. Not surprisingly, the clause says that a tenant is not entitled to take advantage of this right to take up a five-year lease if, before entering into the lease, they obtained independent legal advice—not just advice in general about their position but advice about the particular effect of the clause.

If a person has gone to get legal advice from a solicitor and been told that they have an entitlement or right to take up a five-year lease but decline, notwithstanding that, to enforce their right to a five-year lease, then it would be unreasonable to afford that tenant the protection which comes to those who are ignorant of their rights when they enter into that lease arrangement.

People are entitled to take decisions in the full knowledge of what they are doing, and we need to avoid the situation where we try to prevent people from making decisions in the full and harsh glare of a knowledge of the law. If they obtain advice independently about the effect of section 104, why should they not be able to say, "I know that I am entitled under section 104 to a five-year lease, but I do not want to take up that right"? Why should they not be able to say, "It suits me to have a three-year lease"? If they make that decision in light of the knowledge that they have that entitlement, it would be wrong to give them the power unilaterally to reopen that negotiation and say, "Sorry, I have now decided that I want the five-year lease. Yes, I know I was entitled to a five-year lease at the beginning. I was advised to that effect and I declined the advice. I have now changed my mind. I want to have the five-year lease."

That would contribute uncertainly to the relationship between landlord and tenant and is unnecessary. Mr Rugendyke has not explained why a tenant should be able, unilaterally, to in effect reopen the term of their lease to provide for that kind of right, particularly when they already had a clear indication of what their legal position was before they entered into that lease. It would be unwise to support this amendment.

MR STANHOPE (Leader of the Opposition) (5.55): The Labor Party will not be supporting this amendment, on the same grounds as articulated by the Chief Minister. In our consideration of every clause of this bill we have been mindful of the rights of tenants and the need for tenants to be protected in recognition of what we regard as a very obvious difference that exists in economic and bargaining power. But at some point it is only reasonable that we look at the nature of the relationship between landlords and tenants and say that tenants need to accept responsibility for decisions they take, despite our overwhelming desire to protect them and to support them to the greatest extent possible.

The assumption that underlies the desire to remove paragraph (b) is that, no matter what a tenant or a landlord negotiate between them at any stage, the tenant is always entitled to a five-year lease. The assumption is that, no matter what advice you take before you enter into an arrangement, no matter what decision you make, no matter what agreement you come to with the landlord, as a tenant you should be entitled to say, "Yes, I did go to a solicitor, and the solicitor did tell me of the consequences of taking the action I took, but I have this inalienable right to a five-year lease, despite the fact that I have just signed up for a six-month lease and I did it with my eyes open and on the basis of legal advice."

We are really stretching things a little bit too far to suggest that a tenant, even in circumstances where he gets legal advice and as a result of that legal advice does or does not do something, and irrespective of the decision that he then takes, can say, "It no longer suits me to have a six-month lease. I would now like a five-year leases, even though I entered into agreement, and I did it knowingly and I did it with my eyes open." That does not seem reasonable to me. It is too much to expect that you can take advice, ignore it and enter into an arrangement and then seek to have that arrangement abrogated.

MS TUCKER (5.59): This has been a difficult one for us. We will not be supporting the amendment, but I remind members that the next amendment of mine will ensure that any legal advice is formalised. We are bringing in greater accountability to any legal advice that is given. The arguments have been put well today, by Mr Stanhope in particular, and I have sympathy with them.

Amendment negatived.

MR RUGENDYKE (6.00): I will not move amendment No 4 on the green sheet. It was consequential on the success of the previous amendment, which was soundly defeated.

MS TUCKER (6.00): I move amendment No 13 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment deletes the provision that a tenant can lose the right to a five-year term if a lawyer has merely advised them of the effect of section 104. At least the protection in the current code is that such advice needs to be offered in the form of a solicitor's certificate. Under the government's bill, however, any form of lawyer's advice would be sufficient. I think it is fair to say that tenants ought to get independent advice, but without making any more formal demand on the solicitor and his client or her client the tenant can inadvertently be trapped into surrendering the right to an extension of lease.

Even with this amendment, it will still be possible for a lessor to prevail on a tenant to surrender the right to a five-year term. This amendment will provide some protection in requiring a tenant to get a solicitor's certificate, with the detail and formality that process ensures, before surrendering the right to five years. There will be an issue of some additional cost, but on balance the Greens are of the view that this detail and formality are of sufficient importance to outweigh the cost involved.

MR STEFANIAK (Minister for Education and Attorney-General) (6.02): This amendment calls for the removal of a deeming provision about when a person is independently advised. It would mandate lawyers' certificates in every case. This would increase the costs to tenants. I would suggest that the Greens might have been poorly advised. One has to ask in whose interest the amendment is being made. It does not seem to be an amendment that would benefit tenants but more one that would benefit tenants' lawyers, so the government opposes it.

MR STANHOPE (Leader of the Opposition) (6.03): I worry that there is some force to the argument that the Attorney makes in his response. I have some sympathy with the position Ms Tucker is putting—namely, that in every circumstance, for the sake of certainty, a written statement should be provided. I understand your argument to be that in every single case, in the absence of evidence to the contrary, a written statement should be provided. Clause 104 states:

> For this section—
>
> (a) a tenant is taken to have been independently advised about the effect of this section if, before entering into the lease, the tenant was so advised by a lawyer who was not acting for, or nominated by, the lessor ...

That seems pretty straightforward to me. If you have a lawyer and you take advice, then you have been independently advised. The clause continues:

> and
>
> (b) in the absence of evidence to the contrary, a written statement by a lawyer certifying that the lawyer has, at the request of the tenant, explained the effect of this section to the tenant and, in particular, that the giving of the certificate will result in the tenant being unable to use this section to increase the total term of the lease to 5 years, is conclusive evidence of the facts in the statement.

I am struggling to understand how the deletion of paragraph (a) benefits the tenant. If you consulted a lawyer, there should be a presumption that you listened to his advice and chose not to take it, without the need for a written statement conveying information in relation to the potential to move to a five-year lease. With great respect

to all the lawyers in this town, I can see this provision becoming a costed item—"certificate of proof under section 104, preparation thereof, $200".

I am still open to being persuaded, Ms Tucker. I respect the position you have taken on these things, and it may be that I have missed something here. If you wish to contribute to the debate again, I would be interested in hearing whether or not you have concern that the Attorney is not right in relation to this provision.

MS TUCKER (6.06): I need to speak again. I think that we have made an error here. I am glad members have pointed it out. Our intention is not being met by the wording we have, so I understand why people are concerned. Do I withdraw my amendment?

MR DEPUTY SPEAKER: We will vote on it. I think the indication is that we will be voting it down.

Amendment negatived.

MS TUCKER (6.07): I move amendment No 14 circulated in my name *[see schedule 2 part 1 at page 690]*.

Under this bill tenants on a continuous occupation lease are excluded from the right to extend to a five-year term, a provision which does not exist in the current code. It is another example of the bill giving with the one hand the right to a five-year lease but taking with the other.

A continuous occupation lease is a short-term or monthly lease which has been in place for over six months. It captures the classic monthly tenancy, where the tenant is hanging on month to month, and this can be a highly unsatisfactory situation. It would also capture those tenants whose lease has expired and who are in a "holding over" situation for six months. Once these tenants have been strung along for six months, they will never acquire the rights to a five-year term.

This provision would encourage landlords to put tenants on a monthly lease until the opportunity to convert to a five-year lease is lost. It undermines at least some of the intent of this bill. Consequently, this amendment deletes paragraph (7) (c) so as to ensure that the intent of the bill is pursued.

MR STEFANIAK (Minister for Education and Attorney-General) (6.08): This amendment applies to a continuous occupation lease. The government will be opposing it. Such short-term leases are defined in clause 10. Ms Tucker's amendment would turn all short-term leases in the ACT into five-year leases. That is highly inappropriate and obviously counter to what most members would want.

MR STANHOPE (Leader of the Opposition) (6.09): I have some difficulty with this proposal, though I am so impressed by Ms Tucker's response to sweet reason in relation to the last amendment that I am almost inclined to support every other amendment she moves today, in acknowledgment of the fact.

I am concerned about the implications of this amendment. Subclause (7) provides:

> This section does not apply to—
> (a) a lease granted under an option to extend the previous lease ...
> (b) a change of use lease; or
> (c) a continuous occupation lease.

A continuous occupation lease is defined in clause 10:

> A ***continuous occupation lease*** is a lease for premises for a term of less than 6 months if—
> (a) the tenant was in occupation of the premises with the owner's consent when the lease was entered into; and
> (b) the tenant has been in continuous occupation of the premises with the owner's consent for at least 6 months.

It may be that the lease as entered into was for a period of less than six months. It might have been for a month or a couple of months. A tenant and a landlord might enter into a lease for a matter of weeks and the lease is then extended to six months. Because it is extended to six months, under the deletion Ms Tucker is contemplating the tenant would have an automatic right to the benefits of section 104 relating to a right to a minimum five-year lease. I do not fully understand why there is this assumption about a lease of, say, less than 6 months that is rolled over and becomes a continuous lease for six months. It seems an incredible trial to me that a tenant can enter into a lease of, say, four weeks, extend it to six months and become automatically entitled to apply for the benefits of section 104 which result in a right to a five-year lease.

I do not fully understand why a one-month lease extends after 6 months into a right to a five-year lease. I am prepared to support Ms Tucker's amendment if she can explain to me what in the relationship between the landlord and tenant could lead to that scenario—namely, a one-month lease after six months developing into an automatic right to a five-year lease.

MS TUCKER (6.13): I think the point of this amendment is that people can get trapped in a continuous occupation lease. The fact that we have this provision that a tenant can get legal advice and then go into a shorter term lease allows that to happen. This amendment was to deal with the problem of those people who are trapped into a continuous lease situation. They will still have the right to have a short-term lease, if that is what they want, with legal advice. That is being supported.

MR STANHOPE (Leader of the Opposition) (6.13): I do not have a difficulty with that, Ms Tucker, if action is being taken to deliberately exclude a tenant from a long lease. I am interested in the philosophical approach you are propounding here. The suggestion is that if a tenant enters into a one-month lease and it is rolled over six times that automatically translates into a right to a five-year lease.

Are there not some circumstances where a landlord should not perhaps have the right to restrict the length of the lease? Do we have to assume that all landlords, once they enter the business, must as a minimum offer five-year leases? Is that the suggestion that is being made? Is that the consequence? Can a tenant always demand a five-year lease and can a landlord not oppose a five-year lease?

MS TUCKER: I seek leave to speak again.

Leave granted.

MS TUCKER: If people have to deal with this on a month-by-month basis, it is not a good situation for a tenant. There is a lot of insecurity. If the landlord wants to have that short-term arrangement, then there is a capacity to do that now. This amendment is about not having tenants caught up in a situation which is very insecure and difficult for them.

MR QUINLAN (6.15): I wanted to cite an example. In Cooleman Court in Weston where I live, one shop has had a number of tenants. It would appear that that shop is being let at a fairly cheap rate to people who have goods to sell but are experimenting in business. It may well be that the short continuous lease of six month by six months or three months by three month is by mutual convenience. It could be that both the landlord and the tenant are benefiting from it.

Now we get to a situation where if that goes beyond a rather short period then all of a sudden that mutual arrangement falls totally within the control of the tenant. If you look again at life strictly through the eyes of the tenant, it is a good protection but it could have inhibited landlords from providing that facility for the people who were in that shop some time ago flogging hardware at a fairly cheap rate. Now it is full of T-shirts and footy jumpers and whatever. I do not know what it will be full of next time around.

An automatic right accruing to a tenant in that situation could mean that landlords cannot offer that facility anymore because they would be at risk of being tied down to an arrangement they were not happy with. I think the amendment needs a rethink and needs to be a little bit more sophisticated to be part of this legislation.

MS TUCKER: I seek leave to speak again briefly.

Leave granted.

MS TUCKER: I am not quite sure whether I have made it clear what we are saying. We are not saying that after the six months it is automatically a five-year lease. We are saying that that is where you make a decision one way or the other, and you can get legal advice, as we have already debated, to have a shorter period of time. We are not saying it has to be five years. We are saying that you have to make an agreement. You have to make up your mind what is going on here, not drag tenants through month by month indefinitely.

Amendment negatived.

MS TUCKER (6.18): I move amendment No 15 circulated in my name *[see schedule 2 part 1 at page 690]*.

The bill as it stands cuts down on the rights of tenants vis-a-vis the existing code. The code has been interpreted to mean that successive leases must be for a period of five years each, but 104 (8) (c) carelessly includes a period immediately before a lease as part of the total term to be considered in applying for an extension.

If, for example, you complete a four-year lease and then enter into a new lease of one year, you will be deemed to have enjoyed a total term of five years. You will have no entitlement to an extension, and everything will be up for grabs again. In other words, where a tenant has been in possession for a total of five years, in whatever way, there are no further rights to successive five-year periods.

It may not be the intention of paragraph (8) (c) to so emphatically undermine the rights of tenants in regard to security of tenure, but that is its effect. So this amendment deletes it.

MR STANHOPE (Leader of the Opposition) (6.19): The Labor Party accepts the wisdom of this amendment and will support it.

MR STEFANIAK (Minister for Education and Attorney-General) (6.19): The government supports the amendment too.

Amendment agreed to.

Clause 104, as amended, agreed to.

Clause 105 agreed to.

Proposed new clause 105A.

MR RUGENDYKE (6.20): I move amendment No 5 on the green sheet circulated in my name *[see schedule 3 part 2 at page 711]*, which proposes a new clause 105A.

This amendment picks up key provisions from my leases bill relating to preference being given to the existing tenant. This is consistent with enhancing appropriate continuity of leases and security of tenure for small businesses. This would require a landlord to give preference to an existing tenant over other possible tenants if the existing tenant wanted to renew or extend the term of the lease.

The owner must assume the existing tenant wishes to renew or extend the term of the lease unless otherwise advised by the tenant during the 12 months prior to the expiration of the lease. The owner must also begin negotiations in good faith with the existing tenant for renewal or extension of the lease between six and 12 months before the end of the term of the lease. This will prevent landlords from stringing out tenants or leaving tenants in limbo as the end of the lease approaches.

This amendment removes the ambiguity and sets out a clear process that brings certainty and balance to both landlords and tenants.

MR STEFANIAK (Minister for Education and Attorney-General) (6.22): The government opposes Mr Rugendyke's amendment. The concept of preferential rights essentially is a right of first refusal given to a sitting tenant where a lessor may not make an offer to another person to lease a premises without giving the existing tenant the opportunity to accept that same offer. The crucial point of the preferential right is that the existing tenant is able to accept the same offer that would otherwise have been accepted by another tenant.

We are opposed to this amendment because it tips the balance achieved within the bill, a bill that has been painstakingly achieved through an exhaustive consultative process, in favour of one side of the market. After the five years or so of extensive public consultation involving representatives of all stakeholders and the Law Society, it is significant, that the working party, the government or the Law Society did not recommend preferential rights.

If this amendment were passed, preferential rights would add excessive rigidity to our ACT retail market, a market that needs to stay vibrant and innovative in order to offer employment opportunities. Ultimately, I do not think they will help the very people Mr Rugendyke is seeking to help. There are other ways in which leases finish, even on what Mr Rugendyke is proposing. Rigidity in our market is something we need to avoid.

The government bill provides tenants with far more important rights in the form of market rent provisions. The preference provisions may simply muddy the water. They would create confusion, to the ultimate cost of tenants.

The ACT's renewal rights, which currently exist under the tenancy code and which are contained in clause 107 of the government's bill, are already duplicated in section 20J of the South Australian act.

Preferential treatment has been tried in other states, not just for leases. I recall provisions in the New South Wales Landlord and Tenant Act not totally dissimilar to what Mr Rugendyke suggests. That act caused immense grief to quite a number of people. It certainly stopped a lot of investment in that state.

Mr Berry: In New South Wales?

MR STEFANIAK: It was a long time ago, about 15 years ago. Quite clearly, it helped no-one and certainly did not create a level playing field. What we are trying to do here—what I hope we are all trying to do—is create a level playing field. We do not want to tip the balance which has been achieved to date in favour of one group or the other. That is why the government has been quite happy to support amendments and quite happy to support a process which gives tenants a fair go. I think you can see in the debate so far that we have accepted amendments which quite clearly will be beneficial to tenants, but we do want to see the playing field tipped overly in favour of either landlords or tenants. This proposal will tip that balance, and that will not help anyone.

MS TUCKER (6.26): The Greens will be supporting this amendment. This proposed new clause gives existing tenants preference in all new leases. Under this amendment, if the lessor proposes to re-lease the premises, they must enter into genuine negotiations with the tenant for renewal or extension of the lease.

It should be borne in mind that lessors are still free to offer a lease to some other business if it is substantially beneficial to do so or to carry on some other business of their own. Shopping centres are still free to change the tenancy mix and so search for a new and different tenant.

The amendment is about giving retail businesses security of tenure. It puts the onus on landlords who wish to re-lease premises to begin genuine negotiations with the tenant for a renewal or extension of the lease, all other things being equal.

Once a tenant has enjoyed a five-year lease, then there is no obligation, without this amendment, for the landlord to enter into further negotiations for a new lease. Without this level of security of tenure, without the opportunity to negotiate for a new or extended lease in the first instance, tenants will always be vulnerable to arbitrary decisions by landlords and what could be extreme consequences.

Retail businesses are dependent on location and on goodwill. The opportunity for them to renew a lease, to maintain their position in the market and indeed in the neighbourhood, is vital to their capacity to operate and to develop. The Strand Arcade in Sydney is a case in point. It is a 110-year-old heritage-listed building especially designed for small specialist shops such as knife sharpening, shoes and engraving as well as surgeries, but the new owners want to bring in high fashion and they are pushing these business upstairs or out. It is these businesses and Sydney, which has no shortage of high fashion, that are the losers.

The House of Representatives report *Finding a balance towards fair trading* came down strongly for tenants to have the right of first refusal of a lease, and South Australia has already introduced similar legislation. Some property owners and managers may say that this is the end of the world, but my belief is that it is the way of the future. After all, there is also social benefit in shifting the balance in favour of tenants so that the social fabric that encompasses a sustainable retail environment offers some degree of certainty, some equal bargaining power for tenants.

MR STANHOPE (Leader of the Opposition) (6.28): The Labor Party is sympathetic to Mr Rugendyke's amendment. As members may be aware, Mr Rugendyke's amendments on the green sheet propose a regime for ensuring preference to existing tenants in certain circumstances. Mr Rugendyke, in amendments on the pink sheet, has also proposed a regime for ensuring preference to existing tenants in certain circumstances. This is a proposal that my office has consulted extensively with Mr Rugendyke and his office on. Mr Rugendyke is aware that we support the proposal that preference be given to tenants in certain circumstances.

The Labor Party is prepared to support a model for ensuring preference based on the South Australian provisions, which are the provisions Mr Rugendyke has incorporated in his pink amendments. I am not entirely sure why Mr Rugendyke has proceeded with

two sets of amendments. We, as supporters of proposals for preferential rights, will support his pink amendments but will not support his green amendments.

I would like to make detailed comment on Labor's reasons for extending this level of preference, but I think I will do it when the pink amendments are proposed. While we are opposing the amendment proposed by Mr Rugendyke to insert a new clause 105A, we will be supporting the amendments his pink sheet proposes in relation to this same issue. We are not disagreeing with this initiative, but I will speak to it when the pink amendments are moved. Suffice it to say at this stage that the Labor Party will not be supporting the amendment that Mr Rugendyke has moved.

MR KAINE (6.31): I support Mr Rugendyke on this issue. It has been my concern during this whole debate that we could end up shifting the balance too far. It has been argued over a long period of time that tenants are at a disadvantage, and presumably the purpose of this bill was to rectify the balance. When I read the totality of Mr Rugendyke's proposed new clause, I think it is an acceptable recipe. He starts off with quite a hard-nosed approach. He says:

> If the lessor proposes to re-lease the premises and the tenant wants to renew or extend the term of the lease, the lessor must give preference under this section to the tenant.

That is pretty strong language, and you would think it did not leave much room for debate. Proposed new subclause (2) is of a similar tenor:

> The lessor must assume the tenant wants a renewal or extension of the term of the lease, unless the tenant has told the lessor in writing (otherwise than in the lease) within 12 months before the end of the term that the tenant does not want a renewal or extension.

It is very strongly in favour of the tenant. When I read that, I wondered whether maybe Mr Rugendyke was going a little bit too far. But by the time I got down to proposed new subclauses (4) and (5) as proposed by his amendment, I decided that he was not, because the tenor changes a little bit. Proposed new subclause (4) says:

> The lessor must not offer to lease the premises to someone other than the tenant unless it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.

In other words, if there is a potential lessee who will take the lease at a substantially higher rate than the present lessee, then it lets the lessor off the hook. That is the way I read that.

Proposed new subclause (5) softens it even further. It says that the "lessor is not obliged to prefer the tenant under this section" under a number of circumstances, one of which is:

> the lease is for premises in a shopping centre and the lessor reasonably wants to change the tenancy mix within the whole precinct of the shopping centre;

Taking the totality of Mr Rugendyke's amendment, it does strike the right balance, and I do not have any difficulty with it. I will support this amendment.

Amendment negatived.

Sitting suspended from 6.30 to 8.00 pm

Clauses 106 and 107, by leave, taken together.

MR RUGENDYKE (8.02): I move amendment No 4 circulated in my name on the pink sheet which proposes that these clauses be omitted and that proposed new clauses 106, 107, 107A, 107B and 107C be substituted *[see schedule 3 part 3 at page 716]*.

Mr Speaker, these amendments relate to the renewal process and to improving security of tenure. They replace my earlier failed amendment relating to preference being given to the existing tenant and to security of tenure. I have been negotiating with Labor on this point. It became clear that Mr Stanhope was close to supporting my original proposals but would be more comfortable if we adapted amendments that resembled what was already in place in South Australia. I acknowledge the patience and time afforded by Mr Stanhope's office and also Parliamentary Counsel as we have worked through these issues. I also thank Kerrie Tucker's office for cooperating in this process and Mr Stefaniak's staff for participating in consultation in the lead-up to this debate.

I have mentioned already that the federal government inquiry endorsed security of tenure as a measure that was imperative to striking a fair balance. While these amendments are not my preferred model, this is at least a step in the right direction and is certainly an improvement of what was proposed by the government.

This division relating to renewal is introduced with a clear policy statement that the objective is to achieve an appropriate balance between lessors and tenants in lease renewals. This makes it clear that the tenant can request the lessor to advise whether it is intended to renew the lease within specified time periods. This new division also includes clear guidelines on rules of conduct at the end of a lease for shopping centre leases, giving the existing tenant preference to renew over other possible tenants.

Mr Speaker, there are provisions where first right of refusal would not apply, and that includes if the landlord reasonably wants to change the tenancy mix or if the tenant breaches the lease. There are other exemptions which are outlined, and they are more extensive than my original proposals. That is the compromise I have had to explore to try to achieve an improvement for a small business.

The South Australian model also includes certified exclusionary clauses which exclude tenants from the rights under proposed new section 107A. I am not an admirer of these and, if they are adopted, I will carefully monitor how they operate in practice as I am concerned that there is scope for landlords to place undue pressure on small businesses to take them up. If the landlord fails to comply with this division there is a provision for tenants to make an application to the Magistrates Court.

There is a further amendment that proposed new section 107A only applies to prospective leases as per South Australia. I urge members to support these provisions.

MR STEFANIAK (Minister for Education and Attorney-General) (8.06): Mr Speaker, the government will not be supporting Mr Rugendyke's amendments. If they are successful we will be moving some amendments to them. Again, I reiterate what I said before the dinner break—that these amendments would tip the balance within the bill which has been painstakingly achieved over that consultation period I mentioned.

Mr Speaker, the ACT's renewal rights which currently exist under the tenancy code and which are contained in clause 107 of the government's bill are already duplicated in South Australia in section 20J of their act. Importantly, however, the South Australian provisions do not contain the distinguishing feature of the ACT legislation that on a renewal the commencing rent cannot exceed the market rent.

I understand there might be support for Mr Rugendyke's amendments on the basis, supposedly, that they mirror the South Australian tenant preference provisions. Whilst there are some similarities between his amendments and the South Australian provisions, the South Australian legislation does not make provision in relation to market rent and if passed without amendment, unlike in South Australia, an existing tenant in the ACT would have the right to accept the offer that would otherwise have been accepted by the other tenant. Further, the existing tenant is able to amend the offer that would have been acceptable to a new tenant by challenging the rent through the Magistrates Court. It is proposed that an existing tenant will have a preferential right and yet, on the other hand, it is also proposed that the existing tenant will have a further right to challenge the rent, the subject of the offer, even if that same offer is acceptable to another tenant.

This fundamental inconsistency between renewal rights and preferential rights has been overlooked in the amendments before the Assembly. If passed, Mr Rugendyke's amendments should be limited to avoid confusion between the two processes that will be in the act. The scheme of Mr Rugendyke's amendments does not include key provisions dealing with implementation issues. The amendments do not provide any guidance at all as to what is meant by the concept of preferring the existing tenant.

Under the South Australian model a mechanism is provided which allows both parties to understand what is meant by the concept of preferring the existing tenant, and that is sections 20E (1) through to 20E (5). In South Australia these provisions specify the time periods within which the lessor must negotiate and provide notice to the existing tenant, the way in which an offer is to be made, and also what material is to be provided, the relevant time limits that an offer for renewal remains open, and requires the parties to negotiate in good faith.

Without a certain mechanism neither party will have the certainty of knowing what is envisaged by preferential rights. In effect, the Assembly members will be abandoning their legislative duty and obliging disputes to arise before the Magistrates Court so that the Magistrates Court can sort out the mess. I would hope that that is something that members would not like to see.

MR SPEAKER: Have you formally moved that, Mr Stefaniak?

MR STEFANIAK: Do you want me to move my amendments as well? I have not spoken to them yet; I have just spoken to Mr Rugendyke's amendments at this stage, Mr Speaker.

MR SPEAKER: Yes. Do you wish to formally move your amendment No 1 on the white sheet to Mr Rugendyke's amendment No 4 on the pink sheet?

MR STEFANIAK: I am happy to move it now.

MR SPEAKER: It would assist the debate, minister.

MR STEFANIAK: I move amendment No 1 on the white sheet circulated in my name to Mr Rugendyke's amendment No 4 on the pink sheet *[see schedule 1 part 4 at page 686]*.

I will speak a bit further to that. In relation to my amendments, Mr Speaker, as noted earlier, a key omission from Mr Rugendyke's amendments are machinery provisions included in the South Australian legislation. The government amendments remedy this omission by providing how a lessor must commence negotiations and how a tenant may accept a lease offered under the preference provisions. The amendments provide that negotiations must be conducted in good faith.

In addition, provision is made, similar to that in South Australia, for a lessor to advise tenants when the preference provision will not apply and, if not, why. South Australia has no market rent provisions as proposed in the ACT bill. It is necessary to reconcile the provisions without upsetting the right of tenants and lessors to rely on those provisions in circumstances outside the negotiation of a new lease under the preference provisions. This is done, ensuring that the lessor cannot, as under the market rent provisions, make a conditional acceptance of a lease subject to market rent being determined. To do otherwise would be to upset the balance that exists between the rights of tenants and lessors to too great a level.

MR SPEAKER: We seem to have the rainbow alliance here.

MR STANHOPE (Leader of the Opposition) (8.11): Mr Speaker, as I indicated previously, the Labor Party has had extensive discussions with Mr Rugendyke's office and quite extensive discussions with a range of interested parties. I think these are probably the most discussed and consulted on parts of the entire package that we are debating today. I got to the stage where I was not game to look at the fax machine or to answer a phone.

As I indicated previously, the Labor Party will be supporting Mr Rugendyke's amendments, and I will indicate now that we are also supporting the government's amendments to Mr Rugendyke's amendments except for subclause 7 of clause 107AA, to which I also have circulated an amendment.

In relation to Mr Rugendyke's amendments: as I mentioned, my office has worked cooperatively with Mr Rugendyke on this. We have consulted extensively on it and we have taken a decision that we are prepared to support a provision that in effect mirrors the provision that exists in the South Australian legislation.

As Mr Rugendyke has indicated, the Labor Party believes that the amendment quite obviously assists the tenant in their negotiations of a renewal or extension of a lease. I think it does need to be made clear that it is not an absolute right of preference. Indeed, the Labor Party could not support an absolute right of preference. I think we must remain mindful of the rights that are conveyed in relation to a lease. We must remain conscious of a distinction between the granting of property rights and the granting of a lease as such. The two should not be abused to the extent that this sort of provision does tip the balance too far in the direction of an automatic right of renewal of a lease. It is in effect tantamount to the granting of a property right which would be quite inappropriate.

Having said that, we do not believe that this issue does go too far. A number of leases are excluded from the provision. For example, if the lease contains an exclusionary clause and the tenant receives independent legal advice of the effect of that clause the lease is excluded. Subleases are excluded. Other leases may be excluded by regulation. Although the provision will be of great assistance and comfort to tenants, as I have just indicated, it is important that we remain mindful of the rights of landlords and of investors in property developments in relation to these issues.

One other provision in relation to which there has been significant discussion with me and my office is the right of the landlord to change the mix of tenants within a shopping centre. That right is preserved in Mr Rugendyke's amendments under proposed subclause 107A (5) (a). That was one of the provisions that were particularly raised in discussions with me by a range of representatives of some of the major developments around Canberra. Certain legal advisings or opinions were proffered to me. I actually never did see any written legal opinion on it, but I was advised by representatives of major investors in town of their understanding of what proposed subclause 107A (5) (a) meant.

As a result of those representations I did take legal advice on the same issue. The advice that I received, in effect, was not consistent with what had been proffered to me by representatives of landowners in that regard. That is an issue that we need to raise and to talk about. Proposed subclause 107A (5) says:

> … the lessor is not obliged to prefer the tenant under this section if—
> (a) the lessor reasonably wants to change the tenancy mix within the shopping centre; or
> (b) the tenant has breached the lease substantially or persistently; or
> (c) the lessor—
> (i) does not propose to re-lease the premises within a period of at least 6 months after the end of the term of the lease; and
> (ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant of the premises).

Proposed subclause (6) says:

> Also, this section does not apply in relation to the lease if—
>
> (a) section 107B applies in relation to the lease; or

(b) if the lease is a sublease—the sublease is as long as the term of the head lease allows; or
(c) the lease arises when the tenant holds over after the end of an earlier lease with the consent of the lessor and the holding over is for 6 months or less; or
(d) the lease is excluded from this section under the regulations.

They are some of the exclusions that I referred to previously. As I said, I think it is appropriate that those exclusions exist within this section having regard to the particular rights of investors and recognition of the fact that we are not here in the business of conveying title, and an absolute right of preference really does convey title. It effectively conveys the landlord's interests in his own property, and that really does need to be avoided.

But the particular point I made is: what does this mean: "The lessor is not obliged to prefer the tenant under this section if the lessor reasonably wants to change the tenancy mix within the shopping centre"? It seems to me that that is a paragraph that should be interpreted according to the ordinary meaning of all the words used there. If the lessor reasonably wants to change the tenancy mix within the shopping centre then the provision does not apply. It was put to me by some developers that that needs to be construed in terms of the overall mix. If you change the mix in the shopping centre you are talking about a significant or substantial change in the tenancy mix.

Some of the representatives of mall owners, the large investors in town, insisted to me that that meant that the landlord, in order to be able to rely on that particular exclusion, would have to be proposing to change 20, 25 or 30 per cent of the centres tenancy mix. I responded by saying, "Well, on what basis do you make that sort of claim? Where did you grab these figures from? On what basis do you assume that, in order to reasonably change the tenancy mix you are talking about, a court would construe that as meaning that you have to change 20 or 25 or 30 per cent?" It is a nonsensical suggestion to me. The advice that was provided to me is that it does not mean that at all. A change in tenancy mix means a change in precisely that, being the arrangements that currently exist in relation to the tenants that currently lease premises within the building. I think it is important that we have a debate about what that means so that we are all clear, as legislators, in relation to what it is that we are legislating on.

Mr Rugendyke's exception there talks about a lessor reasonably wanting to change the tenancy mix within a shopping centre. If anybody here thinks that that means that we are talking here about 20 per cent or 30 per cent rather than the clear words that are expressed there for the tenancy mix, then I think we probably need to get that on the record now so that perhaps some judicial notice can be taken of what it is that this legislature intends. As far as I am concerned it means just what the words say; a change in the tenancy mix may mean a change in the make-up of the building. That is my understanding of what it means, and if others believe it means something else they should say so for the edification of our magistrates and judges.

As I said, a landlord has other rights reserved in the section, such as the right not to prefer a tenant who consistently or substantially breaches the lease, and the right not to re-let the premise if the landlord wants it for his own purposes.

I am not being derisory or dismissing the representations I have received from landlords. I have received persistent, significant and consistent representations from probably every major property developer currently operating in the ACT about their concerns. This is not a provision that landlords or the major investors view with any affection at all. They are significantly opposed to this provision.

I have to say that I do not fully understand the extent of their opposition. It reminded me a little bit of the symbolic importance that the betterment issue generated amongst some sectors of the community; an importance way above and beyond the significance of the issue as far as I was concerned. It seems to me that the investors and the landlords have invested in this particular provision a status that it simply does not deserve; a sort of hoodoo about the woe that is going to befall investment in the ACT as a result of the passage of this particular provision.

MR SPEAKER: Order! You have used up your first 10 minutes. Would you like to continue?

MR STANHOPE: Yes, I will soldier on. Thank you, Mr Speaker. As I said, this is the most contentious provision in this bill and it does deserve some debate. I think it behoves all of us to place on the record the basis on which we have supported this, what we believe it to mean and how we expect it to operate. I think it is relevant that we do record the concerns that representatives of landlords and major developers and investors in the ACT have about this provision. I do not take their concerns lightly. Some very significant claims have been made to me about some of the implications in terms of investment and the preparedness of landlords and developers to invest in this territory as a result of the passage of this particular provision.

These are hard calls that legislators have to make. We make judgments on these things. I do not want to scare away investors. I do not want people who invest in this territory to come to think that this is not a great place in which to invest; that we do not have here a robust economy that we wish to nurture and that we wish to ensure continues; and that in the judgments that we make on this particular provision we have not taken the concerns of investors into particular account. We want the economy to continue to bubble to the extent that it does. We want it to continue to grow at the rate that it does. It is vital that we encourage, foster and nurture the investment that the major developers have brought to this town. They are quite significant amounts of dollars.

Serious claims are being made by those investors that this particular provision will act as a disincentive; that, on weighing up an investment opportunity in the ACT as opposed to an investment opportunity in a location that does not have this sort of provision, if everything else is equal they will not invest here. I find that very surprising. In terms of the judgments I make, I do not believe that when the crunch comes that will be what happens. I do not believe that that has been the experience in South Australia, and I do not believe that it will be the experience here. We have a robust and vigorous economy that will continue to grow. The ACT will continue to be a great place to invest, if not the greatest place to invest. I do not believe there is anything in this provision that should frighten the horses in that regard.

As I say, it does appear to me that this provision has developed in the minds of some a symbolic importance that it does not deserve. I will say no more on that other than that I do not think some of the concerns that have been expressed will come to pass. I believe, when one reads through this range of sections, that the discretions that it contains are sufficient to ensure that the landlord can continue to protect his particular interests and investments yet allow the tenant this preferential right, this right to first refusal, if I might express it as such. It seems to me to be fair and appropriate. It ensures that the tenant does have a security of tenure that would otherwise not be available. It is on that basis that the Labor Party is prepared to take this reasonably dramatic step in ensuring the protection in this regard of this range of tenants' rights.

As I said before, the Labor Party accepts the government's position and argument in relation to the amendments which Mr Stefaniak has moved. As I also indicated, the Labor Party will not support proposed subclause 107AA (7). I am happy to move that particular amendment now.

MR SPEAKER: If you would, please.

MR STANHOPE: I beg your pardon, Mr Speaker. I am advised that the government proposes to amend proposed clause 107AA to achieve the same purpose that my amendment would achieve. Assuming that the government does that, I will not proceed with my amendment at this stage. If they do not do it I will.

MS TUCKER (8.27): The Greens have already made their position clear on this particular matter because we supported Mr Rugendyke's first amendment, and this is basically a watered down version. These amendments share some of the objectives of the previous amendment, but these are modelled closely on similar provisions now in force in South Australia. This offers the preferential treatment only to tenants in shopping centres and reflects, perhaps, the ongoing pressures of property owners and landlords to limit the impact of Mr Rugendyke's amendments.

These amendments also provide a few extra allowances for landlords, including the provision of certified exclusionary certificates which allow for a tenant, on gaining advice from an independent lawyer, to surrender their right to be a preferred tenant. This amendment also makes clear that this preferential treatment is also limited if the lease is a sublease by the terms of the head lease, or if the lease is excluded under regulation. The principle remains, however, that existing tenants are allowed to renew or extend their lease in preference to other possible tenants, but in this case only in shopping centres. We will be supporting this.

MR STEFANIAK (Minister for Education and Attorney-General) (8.29): Mr Speaker, I formally move the amendment which I mentioned to Mr Stanhope.

MR SPEAKER: We need to have it circulated first, Mr Stefaniak.

MR STEFANIAK: I give notice that I will do that. I want to say a few words in relation to some of the comments to date. I think Mr Stanhope made a very good point in relation to investment. Investment is something that is not just important for big business. It is important also for small business. If we do not have investment there is no opportunity for many small businesses to operate.

Even with Mr Rugendyke's proposed new section 107A there would be ways for landlords ultimately, with some difficulty, to get out of continuing leases, and continuing the problem Mr Stanhope mentions of almost giving proprietal rights, but it would certainly take a considerable effort. That, I don't think, is something that Mr Rugendyke would necessarily want to see. If you make it too difficult for landlords to operate, if you make it too difficult for them to invest, if you set the bar for them too high, and unfairly too high, they will not invest. My point is that even if this were to get up it is still not impossible, I suppose, for them basically ultimately to get vacant possession.

Far better, I think, for it to be fair for everyone, so that tenants have the ability to stay there, if that is what is in the best interests of everyone, and so that landlords have the flexibility to conduct their business appropriately as well. I do not think Mr Rugendyke's amendments do that. I suspect, if his amendments get up and if there are any problems with the operation of the government amendments which both the Labor Party and the Liberal Party are supporting, we might see a situation where there is a flight of capital. We might see a situation where, for example, certain national chains are preferred in some of our big centres rather than the mum and dad stores which I think Mr Rugendyke wants to protect, and which I certainly would like to see given a fair go too. I think everyone in this house would.

This particular clause, this particular part of the bill, is terribly important. It is terribly important for everyone concerned, for getting investment into this city and not having a flight of capital. I think the concerns expressed to the government are the same as the concerns expressed to the Labor Party, and I think they are very real concerns.

We need to be very careful here, Mr Speaker, because if the playing field is made too un-level we will see that flight of capital. We will see a development where the very people Mr Rugendyke seeks to protect are the ones who are ultimately disadvantaged as well, and I don't think that is in anyone's interest. I ask members to be very careful in relation to this particular clause. It is very important. I think other members have highlighted this as one of the most important aspects of this bill.

MR SPEAKER: Is leave granted for the Attorney-General to move his amendment which has just been circulated?

Leave granted.

MR STEFANIAK: I formally move that amendment *[see schedule 1 part 5 at page* 688] to my amendment No 1 *[see schedule 1 part 4 at page 686]*.

This does quarantine the market rent provisions from the preference provisions. If we do not have something to this effect in there we will get ourselves into all sorts of serious difficulties, and I do not think that is what everyone wants.

MR SPEAKER: The question now is that Mr Stefaniak's amendment to his own amendment No 1 on the white sheet to Mr Rugendyke's amendment No 4 on the pink sheet be agreed to. I hope nobody here is colourblind. Are we clear on it, members? Thank you.

MR STANHOPE (Leader of the Opposition) (8.33): I need to read this. I do not know what the procedure is, Mr Speaker, but I need to read this amendment.

MR SPEAKER: Very well.

MR STANHOPE: I have a steel trap mind but it does not work quite that fast.

MR RUGENDYKE (8.34): Mr Speaker, I understand that what is happening now is that the Attorney has said that this new amendment to clause 107AA of his amendment does what Mr Stanhope's amendment relating to subclause (7) does. I would like the Attorney to explain to the Assembly how this purports to do what Mr Stanhope's amendment so clearly says it does. This is quite out of left field, I think, and it needs a good explanation as how proposed section 51 comes into play in relation to this proposed new section 107AA.

MR STEFANIAK (Minister for Education and Attorney-General) (8.35): It is relatively simple, Mr Speaker. It basically means that if there is an agreement between the landlord and the tenant the tenant cannot the very next day effectively rip up that agreement and then just go off to the Magistrates Court. It means the tenant has to actually accept the agreement that they have made, and they have made with their eyes open, between themselves and the landlord.

MR SPEAKER: Members, are you able to debate this now, or would you like a suspension?

Mr Stanhope: I would like a suspension for five minutes, Mr Speaker.

MR SPEAKER: Well, let us make it 15 minutes.

MR STANHOPE: I do not need that long. I am trying to listen to what is going on and I am trying to work out what this means.

MR SPEAKER: I understand. I will compromise with you, Mr Stanhope. We will make it 10 minutes.

Sitting suspended from 8.35 to 8.46 pm.

(Quorum formed.)

Question put:

> That **Mr Stefaniak's** amendment to his amendment No 1 to **Mr Rugendyke's** proposed amendment No 4 be agreed to.

The Assembly voted—

Ayes 6		Noes 6	
Mrs Burke	Mr Stefaniak	Mr Berry	Mr Wood
Mr Cornwell		Mr Hargreaves	
Mr Hird		Mr Rugendyke	
Mr Kaine		Mr Stanhope	
Mr Smyth		Ms Tucker	

Question so resolved in the negative, in accordance with standing order 162.

MR STANHOPE (Leader of the Opposition) (8.53): I seek leave to move an amendment.

Leave granted.

MR STANHOPE: I move the amendment circulated to Mr Stefaniak's amendment No 1 to Mr Rugendyke's proposed amendment No 4 *[see schedule 4 part 2 at page 728]*.

The issue has been reasonably well canvassed. For the record, I am seeking to delete subsection (7) from proposed new section 107AA. The subsection, as currently expressed, reads:

> A tenant may not accept an offer under this section subject to the amount of rent being worked out.

It is the view of the Labor Party, a view which I believe is supported by other members, that that is a provision which unnecessarily restricts the role of the tenant in relation to the notion of a preferential right in relation to renewal of a lease, that it significantly undermines the intention that underlines this whole preferential scheme. On that basis, I am moving for its deletion.

MR STEFANIAK (Minister for Education and Attorney-General) (8.55): We thought that our amendment would make the situation better. As it has not succeeded, the government will be pressing what it had originally in relation to subsection (7) and I apply the same arguments.

Question put:

> That **Mr Stanhope's** amendment to **Mr Stefaniak's** amendment No 1 to **Mr Rugendyke's** proposed amendment No 4 be agreed to.

The Assembly voted—

Ayes 7		Noes 5
Mr Berry	Ms Tucker	Mrs Burke
Mr Hargreaves	Mr Wood	Mr Cornwell
Mr Kaine		Mr Hird
Mr Rugendyke		Mr Smyth
Mr Stanhope		Mr Stefaniak

Question so resolved in the affirmative.

Mr Stanhope's amendment agreed to.

Mr Stefaniak's amendment No 1, as amended, to **Mr Rugendyke's** proposed amendment No 4 agreed to.

Mr Stefaniak's amendment No 2 *[see schedule 1 part 4 at page 686]* to **Mr Rugendyke's** proposed amendment No 4 agreed to.

Mr Rugendyke's amendment No 4 , as amended, agreed to.

Clauses 106 and 107, as amended, agreed to.

Proposed new clauses 107A and 107B.

MR STANHOPE (Leader of the Opposition) (9.00): Mr Speaker, I move amendment No 20 circulated in my name *[see schedule 4 part 1 at page 720]*.

Mr Speaker, this amendment proposes a new division 12.2, entitled "Termination generally". The new part proposes a new procedure on termination to permit termination by agreement, to provide for a termination notice to be given to a landlord and disputed in court, if it needs to be disputed—that is not something that happens particularly frequently in Canberra; only a mere handful of such notices is currently given—and to allow a court to confirm action by a landlord if premises are abandoned by a tenant.

Proposed new clause 107A preserves the existing rights of parties in relation to a leasehold and proposed new clause 107B provides that divisions 12.3 and 12.4 do not prevent the termination of a lease by agreement between the parties, so the new provision does not affect the capacity of parties to a lease to terminate by agreement.

Mr Kaine: Mr Speaker, I seek clarification. We have just passed Mr Rugendyke's amendment, which included proposed new clauses 107A and 107B. Can you explain to me the effect of this amendment from Mr Stanhope? Does it replace the proposed new clauses 107A and 107B that we just voted on?

MR SPEAKER: I am advised that if this amendment is agreed to, the legislation will be altered in accordance with standing order 191, which reads:

> Amendments of a verbal or formal nature may be made, and clerical, grammatical or typographical errors may be corrected, in any part of the bill by the Clerk acting with the authority of the Speaker.

Mr Kaine: It is hardly a typographical or grammatical error, Mr Speaker, with due respect.

MR SPEAKER: It is tidying up, Mr Kaine.

MR STANHOPE: On that point, if I may, Mr Speaker: we passed legislation last week, the Legislation Bill 2001, which deals precisely with the point. I am sure that you followed the debate with great interest, Mr Kaine. We provided last week that the Office of Parliamentary Counsel can in these circumstances amend any legislation to correct these sorts of typographical and grammatical errors.

MS TUCKER (9.04): The Greens will be supporting Mr Stanhope's amendment. It defines more closely the process for terminating a lease by a lessor. In order to be consistent, Labor's amendment No 22 simply changes the heading of division 12.2 to "Termination by tenant" and the guts of the matter is in the new division 12.3—termination by lessor. It requires the lessor to apply to the magistrates court for termination orders. If the lessor needs to enter the premises occupied by the tenant, they can only do so after getting a court order or warrant.

This amendment also lays down guidelines for the magistrate which provide a level of protection against hardship for the tenant and the lessor and which allow the court to refuse to make a termination order if it finds the matter has been or is likely to be resolved. It also provides ground rules for the termination of leases and the issuing of warrants for eviction. It was surprising to me that these provisions were not already included in the bill. The Greens are pleased to support Labor's amendments which, in part, rectify the situation.

An issue which has not been addressed is the use of minor transgressions of a lease as a rationale for landlords precluding tenants from exerting an option to renew. I hope to be able to address this issue through the Conveyancing Act at a later time.

MR STEFANIAK (Minister for Education and Attorney-General) (9.06): The government supports the amendment. It merely codifies existing practice.

MR SPEAKER: Do you have an amendment, Minister?

MR STEFANIAK: I do. I move amendment No 1 to Mr Stanhope's proposed amendment No 20 *[see schedule 1 part 6 at page 688]*.

The amendment is self-explanatory and does codify existing practice.

MR STANHOPE (Leader of the Opposition) (9.07): Mr Stefaniak's amendment is a sensible extension of the amendment I have proposed and the Labor Party supports it.

MR RUGENDYKE (9.07): I support the Attorney-General's amendment. I make note that the amendments to this division essentially are modelled on provisions I had included in my own leases bill and I am extremely pleased that Mr Stanhope is supporting my approach to this matter in such a forthright manner. This is a long overdue addition to this system and it is much needed to stamp out unscrupulous behaviour from landlords in relation to evictions.

This amendment sets out clear procedures for the termination of leases by landlords. It sets out rights of tenants in this process and outlines the process for evictions. In essence, this will prevent landlords from locking out tenants and other such bullying tactics when disputes arise. This is a sensible step, for the reasons outlined by Mr Stanhope. It has to be stressed, though, that the government did not see fit to include this provision in its bill. The government's bill was so slanted towards the top end of town that this basic requirement of small business was ignored.

While I remain dismayed that my bill was rejected by the Assembly, I take some solace from this part of my reforms being salvaged in the interests of small business owners in the ACT. I thank members for supporting these very wise amendments.

Mr Stefaniak's amendment No 1 to **Mr Stanhope's** proposed amendment No 20 agreed to.

Mr Stanhope's amendment No 20, as amended, agreed to.

Proposed new clauses 107A and 107B agreed to.

Clause 108.

MR STANHOPE (Leader of the Opposition) (9.09): Mr Speaker, I move amendment No 21 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment simply omits the heading of the division and replaces it with a new heading, "Determination by tenant", which reflects the content of the division.

Amendment agreed to.

Clause 108, as amended, agreed to.

Clauses 109 and 110, by leave, taken together and agreed to.

Clause 111.

MR STANHOPE (Leader of the Opposition) (9.10): The Labor Party will be voting against this clause.

MR RUGENDYKE (9.10): I, too, will be opposing clause 111.

Clause 111 negatived.

Clause 112 agreed to.

Clauses 113 and 114, by leave, taken together and agreed to

Proposed new clauses 114A to 114F.

MR STANHOPE (Leader of the Opposition) (9.12): Mr Speaker, I move amendment No 23 circulated in my name *[see schedule 4 part 1 at page 720]*.

Mr Speaker, this amendment is the start of a new division 12.4, entitled "Determination by lessor". It simply continues for the sake of completeness the provisions which the Assembly has just agreed to in relation to termination generally and in relation to termination by a tenant. These provisions would apply in relation to the termination of a lease by a lessor.

These provisions have previously been referred to as preventing a lock-out of tenants by a landlord. The division sets out a process and a procedure which will be followed in the future, subject to the acceptance of this amendment by the Assembly. As indicated in the amendment, there is a range of clauses. Clause 114A—the procedure for termination of a lease by a lessor—sets out the proposal for termination by a lessor and the situation should a tenant wish to contest the termination. Clause 114B is about confirmation of a contested termination and clause 114C is about confirmation of an uncontested termination.

Clause 114D is about the content of termination orders that may be made. Clause 144E is about the content of warrants for eviction and clause 114F is about the issuing of warrants for eviction and the circumstances that would apply in the magistrates court to the issuing of a warrant. It is a detailed set of circumstances relating to the termination of leases. As I indicated, there are detailed, step-by-step procedures in relation to the termination of a lease, all designed to protect a tenant from an unscrupulous landlord, heaven forbid that there are any in Canberra.

MR RUGENDYKE (9.15): I spoke to this amendment also in my previous speech. I do note that this amendment appears once again to be a cut-and-paste from my original bill. I congratulate Mr Stanhope for his foresight in picking up such important and well drafted amendments that certainly do give small business operators heart in these matters. I support this amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (9.16): The government accepts the amendment.

Amendment agreed to.

Proposed new clauses agreed to.

Clause 115 agreed to.

Clause 116.

MR STANHOPE (Leader of the Opposition) (9.17): I move amendment No 24 circulated in my name *[see schedule 4 part 1 at page 720]*.

Mr Speaker, this amendment adds a subclause to clause 116, which is a provision that goes to the use of turnover figures. Subclause (1) provides that the lessor must not require the tenant to supply periodic turnover figures unless the lease provides that rent is to be worked out by reference to turnover. Subclause (2) provides that the lessor must not divulge or communicate a tenant's periodic turnover figure to anyone except a significant list of people and organisations to whom it is appropriate that those turnover figures be provided, but the provision does not go on to prevent anyone on that long list of people and organisations then revealing the content of the periodic turnover. This is a confidentiality clause of some sort which prevents the odd revelation of turnover figures.

Amendment agreed to.

Clause 116, as amended, agreed to.

Clauses 117 to 121, by leave, taken together and agreed to.

Clause 122.

MR STANHOPE (Leader of the Opposition) (9.18): Mr Speaker, I move amendment No 25 circulated in my name *[see schedule 4 part 1 at page 720]*.

This amendment to clause 122 of the bill is in relation to arrangements for consultation that must be carried out before a redevelopment. Subclause (2) currently provides that the lessor is taken to have consulted about the proposed redevelopment if the lessor conducts a meeting about the proposal, the tenants are invited to the meeting, the lessor gives reasonable notice of the meeting and the meeting takes place before a final decision is made to redevelop.

This amendment is about a precautionary inclusion in that range of circumstances to provide that the lessor should distribute a written summary of the proposed redevelopment at or before the meeting. It is precautionary to ensure that the lessor actually gives written notice of the redevelopment and does not just go through a process but not get round to it.

MS TUCKER (9.20): The Greens will be supporting this amendment. It is basically to ensure that tenants are informed about what is happening to their place of business. Labor's amendments Nos 25 and 26 prevent a landlord from getting away with merely inviting a representative body of the tenants to a meeting or providing that body with a summary of the proposal. I think that it is an extraordinary insight into the government's understanding of consultation if giving a representative group a summary of a proposal is seen to be sufficient. Labor's amendments address the problem by deleting that provision and by ensuring that a summary of the proposal is available to all tenants prior to or at the general meeting of the tenants.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (9.21): Mr Speaker, I move amendment No 26 circulated in my name *[see schedule 4 part 1 at page 720]*.

Mr Speaker, this amendment deletes subclause (4) of clause 122, relating to consultation before redevelopment. Subclause (4) currently provides that the lessor is taken to have consulted or invited tenants or given them a summary if the lessor has consulted or invited a representative body of a majority of the tenants in the centre or part or given it a summary.

I do not think that there is any development in Canberra or in the ACT that is so huge that the landlord should be given this sort of exception. It seems to me not too much to expect that landlords make a genuine attempt to consult with each and every one of their tenants before proposing a redevelopment in this way. I do not think that this would be a hardship. I do not think that it would be particularly onerous.

The notion "We consulted with the representative body and the representative body either did not consult with its membership or was fairly sanguine about the proposal; therefore, we have done our duty" seems to me to be being unnecessarily generous to the landlord. This provision simply requires that in any proposal for redevelopment the landlord make a genuine attempt and, in doing so, consult with each and every tenant and not just go through a consultation process with a representative body. I am not suggesting that any of the representative bodies are not fully committed to each and every one of their members and that they would consult, but one can in extreme circumstances imagine situations where this sort of provision could be open to abuse.

Amendment agreed to.

Clause 122, as amended, agreed to.

Clauses 123 to 131, by leave, taken together and agreed to.

Clause 132.

MR RUGENDYKE (9.24): I move amendment No 6 on the green sheet circulated in my name *[see schedule 3 part 2 at page 711]*.

This amendment simply modifies when an application can be made for dispute resolution in accordance with the rest of my following amendments that go to tying in a quick resolution.

Amendment agreed to.

Clause 132, as amended, agreed to.

Proposed new clause 132A.

MR RUGENDYKE (9.25): I move amendment No 7 on the green sheet circulated in my name which proposes a new clause 132A *[see schedule 3 part 2 at page 711]*.

This amendment also seeks to input part of my bill into the new regime in relation to the timing of rental applications. This creates an obligation on the tenant to respond to rent increases before the increase takes effect. This means that disputes can be dealt with in a timely manner and heard before the increase takes effect.

Amendment agreed to.

Proposed new clause 132B.

MR RUGENDYKE (9.26): Mr Speaker, I move amendment No 8 on the green sheet circulated in my name which proposes a new clause 132B *[see schedule 3 part 2 at page 711]*.

MR STEFANIAK (Minister for Education and Attorney-General) (9.26): We oppose this, Mr Speaker. We have a new case management system which we need to focus on here and by imposing a 28-day period there you encourage a culture of adjournments. I think that would be unrealistic. It will generate costs. It will engender that undesirable culture of adjournments and go against the case management system which the bill actually sets up. So, far from doing what Mr Rugendyke might think this will do, this will just generate more costs for everyone concerned, including tenants.

MR SPEAKER: Mr Rugendyke, do you want to comment?

MR RUGENDYKE (9.27): This is a further amendment taken from my bill relating to requiring prompt resolution of disputes. One of the criticisms I have previously outlined in the process is disputes being tied up for excessive periods. I understand that the current average is around 285 days. This is not acceptable, particularly for small businesses who have limited resources and backing. I propose that a clear direction is made by the Assembly to ensure that disputes are dealt with promptly, and a period of 28 days is defined to reach resolution. It is in the interest of all parties to reach a prompt outcome. I commend this amendment to members.

MS TUCKER (9.28): I am a bit concerned about this amendment. Mr Rugendyke did not address the arguments that Mr Stefaniak raised about it leading to different ways of adjourning proceedings, which is not going to solve the problem. I agree with the concerns of Mr Rugendyke for the tribunal and the Magistrates Court, and the long delays. I do not know that this is the way to deal with it though. Perhaps Mr Rugendyke wants to speak again to answer Mr Stefaniak's concerns. I will listen to Mr Stanhope as well. At this point I do not feel that we can support that because we have also heard that there are possibly just going to be adjournments resulting from this rather than actually dealing with the problem.

MR STANHOPE (Leader of the Opposition) (9.29): I share those concerns. While I think we all applaud the sentiment contained within the proposed amendment, I do not think there is all that much to be gained by telling the Magistrates Court that you think they should deal with the matter in 28 days. You have no capacity to enforce it. If the court feels inclined to accept an exhortation, which it cannot be bound to in any event, it will only accept it in the terms suggested by having matters listed and then adjourning them so people can go away and think.

I applaud the sentiment, Mr Rugendyke, but I just do not think it would work. It is an exhortation. It would be good to think that the Magistrates Court would deal with matters within 28 days, but it cannot be directed to do it. It would encourage adjournments. It is a form of exhortation that I do not think enhances legislation or the legislative process.

Amendment negatived.

Clauses 133 and 134, by leave, taken together and agreed to.

Clause 135.

MR RUGENDYKE (9.31): Mr Speaker, I move amendment No 9 on the green sheet circulated in my name *[see schedule 3 part 2 at page 711]*.

MR STANHOPE (Leader of the Opposition) (9.31): The Labor Party will support this amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (9.31): So does the government.

Amendment agreed to.

Clause 135, as amended, agreed to.

Clause 136 agreed to.

Proposed new clause 136A.

MR RUGENDYKE (9.32): Mr Speaker, I move amendment No 10 on the green sheet circulated in my name which proposes a new clause 136A *[see schedule 3 part 2 at page 711]*.

Once again this amendment has been taken from my original bill. It relates to the granting of interim orders. This provides expressly for the court to make interim orders where urgent and appropriate circumstances require such an order to be made. Interim orders also ensure that there is an immediate response to any inappropriate conduct by landlords or tenants. The aim of the concept is to act and to resolve the situation while it is a molehill and before it turns into a mountain. I commend this amendment to the Assembly.

MR STEFANIAK (Minister for Education and Attorney-General) (9.32): The government will be opposing this amendment. The focus should be in terms of people resolving matters. At any rate this merely effectively duplicates unnecessarily the jurisdiction of the court in clause 131 which indicates that the Magistrates Court has jurisdiction to decide applications under this act, including these types of matters. It is quite unnecessary. The court already has the powers in its exercise of a broad equitable and legal jurisdiction under this act. Clause 131 does that.

MR STANHOPE (Leader of the Opposition) (9.33): Yes, the Labor Party shares the views of the government in relation to this. My views on the matter are very similar to those in relation to the previous amendment I spoke on, the direction of the court to act promptly. Here we have a proposed amendment to provide some detailed directions to the Magistrates Court in terms of its procedures. I think the Attorney rightly points out that under part 14 of the bill there are quite specific arrangements for the jurisdiction of the Magistrates Court. It seems to me that it is not good practice and not good policy, having decided, for instance, under section 131, that the Magistrates Court has jurisdiction to decide applications under the act, and the jurisdiction of the Magistrates Court is not affected by the amount claimed in the application and a range of other provisions in relation to the resolution of disputes and the powers of the Magistrates Court.

For instance, under proposed section 137 the Magistrates Court may decide its own procedures. Proposed section 137(2) says:

> Without limiting subsection (1), the Magistrates Court may adopt, either completely, in part or in a modified form, the procedures in the following parts of the Magistrates Court (Civil Jurisdiction) Act 1982.

It then sets out proceedings in relation to reply, third party procedures, payment into court, pleadings and particulars, interlocutory matters, evidence and arrangements for transfer to court. The danger that I would be concerned about in supporting the proposed amendment is the confusion and the uncertainty that is potentially raised by introducing into this act a set of specific procedures to be followed by the Magistrates Court in relation to a particular matter when you have already given it broad and general powers to set its own procedures and to deal with matters according to already established rules. I think there is a risk of confusion and uncertainty, things that we would wish to avoid in order to ensure the procedures are as expeditious as possible.

Amendment negatived.

Proposed new clause 136B.

MR RUGENDYKE (9.36): Mr Speaker, I move amendment No 11 on the green sheet circulated in my name which proposes a new clause 136B *[see schedule 3 part 2 at page 711]*.

MR STEFANIAK (Minister for Education and Attorney-General) (9.36): Mr Speaker, the government opposes this amendment on the same basis that we opposed the amendment proposing a new clause 136A.

MR STANHOPE (Leader of the Opposition) (9.36): For the reasons that I stated in relation to the last amendment moved by Mr Rugendyke, the Labor Party will not be supporting this amendment either.

Amendment negatived.

Clauses 137 to 139, by leave, taken together and agreed to.

Clause 140.

MS TUCKER (9.37): I move amendment No 16 circulated in my name *[see schedule 2 part 1 at page 690]*.

This amendment simplifies the process of addressing the issue of costs. The bill as it now reads includes a provision that encourages the court to award costs against the unsuccessful party. In a situation where legal costs incurred by a large property owner are likely to outstrip the means of retail tenants, this provision would act as too great a disincentive for tenants seeking redress. My amendment simply mirrors the provision in the existing act that parties ordinarily carry their own costs. It still allows for the court to award costs when it believes such action is called for, but the notion of automatically indemnifying the successful party is removed.

MR STEFANIAK (Minister for Education and Attorney-General) (9.38): Mr Speaker, what is in the current bill merely replicates what the normal situation is in any civil matter before the court, and that is that normally costs do follow the event. I would not say that this amendment is meaningless, but the effect will be that all decisions will end up in a costs order and may mean that more cases go to hearing for that reason. I do not think she will achieve what she sets out to achieve.

MR STANHOPE (Leader of the Opposition) (9.38): The Labor Party will support Ms Tucker's amendment, Mr Speaker. I think this provision does ameliorate or deal with some of the concerns that have been expressed, particularly by tenant representatives, in relation to potential additional cost as a result of a decision made earlier in the day to dispense with the Tenancy Tribunal.

I mentioned in some detail before, Mr Speaker, the significant representations that have been made to my office, and I assume to others, by representatives of landlords and developers in relation to preferential treatment of tenants. As I mentioned before, I think that was the provision that generated most debate in terms of representation in relation to this bill. I think the issue of the move from the Tenancy Tribunal to the Magistrates Court for the resolution of disputes was the issue that raised the second greatest level of concern. Of course, the issue at point in relation to concerns about a move from the Tenancy Tribunal to the Magistrates Court was the question of costs more than anything else. This amendment is a proposal by Ms Tucker to deal with concerns in relation to that. I think it is appropriate. It is a recognition of the differential in economic power that generally exists between landlords and tenants. The Labor Party, whilst endorsing quite strongly, as I have, the move to the Magistrates Court, accepts the thrust of this amendment.

MR RUGENDYKE (9.40): Mr Speaker, I, too, will be supporting this amendment moved by Ms Tucker.

Amendment agreed to.

Clause 140, as amended, agreed to.

Clause 141.

MR RUGENDYKE (9.41): Mr Speaker, I move amendment No 12 on the green sheet circulated in my name *[see schedule 3 part 2 at page 711]*.

This amendment addresses the appeals process and takes on that aspect of my bill which sought to restrict appeals to points of law only. In the government bill appeals can be made to the Supreme Court on questions of law or fact. Again, this is geared towards prolonging disputes. My bill proposes that only questions of law may be subject to appeal, which is streamlining the process to promote a quicker resolution and removes the temptation for wealthy landlords to prolong the dispute in court.

MR STEFANIAK (Minister for Education and Attorney-General) (9.42): Mr Speaker, the government will be opposing this amendment. In fact it is contrary to section 48A of the self-government act. The Supreme Court has all original and appellant jurisdiction that is necessary for the administration of justice in the territory. That was set down by our self-government act. This really is effectively an impossible amendment for Mr Rugendyke to move.

MR STANHOPE (Leader of the Opposition) (9.42): Mr Speaker, on the basis of the constitutional advice provided by the Attorney on this provision, the Labor Party will not support this amendment. The government's advice is that the prospect of this amendment being passed is tantamount to being unconstitutional; that it is simply not possible to subsume the self-government act. I am prepared to accept that advice and we will not accept this amendment.

MS TUCKER (9.43): Well, after listening to the argument it seems impossible to support this amendment. I am a bit surprised that the amendment was put at all. When did you get this advice, and was it communicated to Mr Rugendyke?

MR STEFANIAK (Minister for Education and Attorney-General) (9.43): I am advised that the advice was conveyed to Mr Rugendyke through meetings of officials.

Amendment negatived.

Clause 141 agreed to.

Clause 142 agreed to.

Clause 143 agreed to.

Clause 144.

MR STEFANIAK (Minister for Education and Attorney-General) (9.44): Mr Speaker, I move amendment No 24 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This is a formal amendment to insert the words "in the lease" in the final part of paragraph 144 (2) (c). Those words were, I understand, incorrectly omitted from the existing bill.

MR STANHOPE (Leader of the Opposition) (9.44): The Labor Party agrees.

Amendment agreed to.

Clause 144, as amended, agreed to.

Clause 145.

MR STEFANIAK (Minister for Education and Attorney-General) (9.45): I move amendment No 25 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This is the definitional section for division 16.1. However, it did not include in the bill the definition of lease for the purpose of the transitional divisions. Accordingly, I am seeking to put that in through this amendment.

Amendment agreed to.

Clause 145, as amended, agreed to.

Clauses 146 to 148, by leave, taken together and agreed to.

Proposed new clause 148A.

MR RUGENDYKE (9.46): Mr Speaker I move the un-numbered amendment on the red sheet circulated in my name which proposes a new clause 148A *[see schedule 3 part 4 at page 719]*.

This amendment provides that provisions under clause 107A for rules of conduct at the end of a lease term for shopping centre leases only applies for leases entered into after the commencement of this act, as was introduced in South Australia.

MR STEFANIAK (Minister for Education and Attorney-General) (9.47): The government accepts this amendment.

MR STANHOPE (Leader of the Opposition) (9.47): Mr Speaker, the Labor Party supports this amendment. We think this is an important amendment. It is probably relevant to note that it does mirror provisions contained in the South Australian act. I do not believe at this stage that any leases that are subject to the South Australian act have been subjected to the preferential arrangement.

I understand that the Attorney's commencement date for this bill is now 1 July next year, so this piece of legislation is not commencing for another 15 months. It may be that the South Australian provisions will kick in before this act comes into effect, and certainly no preferential leases will be issued pursuant to the ACT legislation for quite some time to come. That is appropriate. It is appropriate that this legislation be prospective and that it not have any retrospective element, in my opinion.

It think it would be unreasonable if this bill should apply to a lease, for instance, that might be terminating on 2 July of next year. It think that is only appropriate. We can now view new events in South Australia with some interest, as I am sure each of us

will, and we will see whether or not the prognostications of doom that some of us perceive come to pass.

MS TUCKER (9.49): Yes, we will be supporting this, although obviously the support is not needed. I would just comment that I think it is another weakening of the position that we would like to take and that Mr Rugendyke took. It is obviously something he has put because it is necessary to get support for it, but I think it is actually quite disappointing.

Amendment agreed to.

Proposed new clause 148A agreed to.

Clause 149 agreed to.

Clauses 150 to 161, by leave, taken together and agreed to.

Schedule 1.

MR STEFANIAK (Minister for Education and Attorney-General) (9.50): That has been withdrawn.

Ms Tucker: I will oppose schedule 1.

MR STEFANIAK: I was to move amendment No 26. I think that is now withdrawn, Mr Speaker. My amendment does not need to proceed.

MR SPEAKER: You are not going to move your amendment No 26, Mr Stefaniak?

MR STEFANIAK: No.

Mr Stanhope: This has something to do with Manuka Plaza, hasn't it, Bill? Car parking premises.

MR STEFANIAK: I think that was section 400 or something.

Schedule 1 negatived.

Schedule 2.

MR STEFANIAK (Minister for Education and Attorney-General) (9.52): Mr Speaker, I move amendment No 27 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

This clarifies paragraphs 2 (i) and (j) in schedule 2. In paragraph (i) it restricts the value of rental value, and in (j) it extends it to a proposed lease.

MR STANHOPE (Leader of the Opposition) (9.52): The Labor Party supports this amendment, Mr Speaker.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (9.53): Mr Speaker, I move amendment No 28 circulated in my name *[see schedule 1 part 1 at page 679]*.

To avoid barren debate and argument about section 2, this ensures that the valuer must take into account other matters.

Amendment agreed to.

MS TUCKER (9.54): I move amendment No 19 circulated in my name *[see schedule 2 part 1 at page 690]*.

This is about procedural fairness. We believe it is only procedural fairness that parties to a lease are advised as a matter of course that they have the right to make a submission in relation to the valuation. It is no great burden on the process to ensure that the parties are given information on the rights, whereas the act as it exists would on occasion see uninformed tenants disadvantaged. This amendment requires the valuer to advise the parties to a lease that they do have a right to make a submission.

Amendment agreed to.

MS TUCKER (9.55): I ask for leave to move amendment No 20 circulated in my name.

Leave granted.

MS TUCKER: I move amendment No 20 *[see schedule 2 part 1 at page 690]*

This is in the interest of transparency. It is a simple amendment which requires the valuation to include particulars of the matters that the valuer has taken into account.

Amendment agreed to.

MS TUCKER (9.56): I ask for leave to move my amendment No 21.

Leave granted.

MS TUCKER: I move that amendment circulated in my name *[see schedule 2 part 1 at page 690]*.

My amendment varies the information that the valuer must disclose so that it is not only rental concessions relevant to the valuation but also any relevant inducements or concessions—for example, fitouts that may have a bearing on the valuation.

Amendment agreed to.

Schedule 2, as amended, agreed to.

Postponed clause 2.

MR STEFANIAK (Minister for Education and Attorney-General) (9.57): Yes, Mr Speaker. I move amendment No 1 on the single sheet circulated in my name which relates to the commencement date being 1 July 2002 *[see schedule 1 part 7 at page 689]*.

Amendment agreed to.

Postponed clause 2, as amended, agreed to.

Remainder of bill, by leave, taken as a whole.

MR RUGENDYKE (9.57): Mr Speaker, I move amendment No 5 on the pink sheet circulated in my name *[see schedule 3 part 3 at page 716]*.

This amendment is consequential to other amendments on the pink sheet which insert the meaning of "certified exclusionary clause" in the definitions.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (9.58): I move amendment No 2 circulated in my name in relation to the commencement date, 1 July 2002 *[see schedule 1 part 7 at page 689]*.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (9.59): I move amendment No 29 on the purple sheet circulated in my name *[see schedule 1 part 1 at page 679]*.

This is to omit the definition of "disclosure statement" and substitute the following definition: "disclosure statement means a disclosure statement under section 30". It is formal and it clarifies the operation of that definition.

Amendment agreed to.

MS TUCKER (9.59): I move amendment No 22 circulated in my name *[see schedule 2 part 1 at page 690]*.

The problem with the definition of "key money" in the dictionary is that it provides room for a lessor to create a nominal business and make it a condition of the lease that the lessee pay him an inordinate sum for nominal goodwill and assets. My amendment simply puts the onus on the lessor to demonstrate that the goodwill and assets relate to a bona fide business operation.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (10.00): Mr Speaker, I move amendment No 30 circulated in my name on the purple sheet *[see schedule 1 part 1 at page 679]*.

Yes, this is consequential upon the passage of the Unit Titles Act, Mr Speaker.

Amendment agreed to.

Remainder of bill, as a whole, as amended, agreed to.

Recommittal of clauses 51, 52 and 104.

MR RUGENDYKE (10.01): Mr Speaker, pursuant to standing order 187 I move:

> That clauses 51 (as amended), 52 (as amended), and 104 (as amended) be recommitted and considered seriatim.

I propose to move new amendments to these clauses.

MR SPEAKER: For the benefit of members I quote standing order 187:

> At the conclusion of consideration of the detail stage of a bill, a Member may move that the bill be reconsidered either in whole or in part.

Question resolved in the affirmative.

Recommittal of clause 15.

MS TUCKER (10.02): I move:

> That clause 15, as amended, be recommitted.

There was confusion earlier today with pairing. Mr Osborne was not here and I was not made aware of it. A vote was lost basically because that pairing arrangement was not made. Mr Kaine has now said that he is happy to pair with Mr Osborne, so I am recommitting what actually was my amendment. It was my fifth amendment. This is my amendment regarding assignment. I can, if you like, speak again to that.

Mr Stanhope: Yes, I would agree to that.

MS TUCKER: Okay. The point at issue here is whether an assigned lease, the lease the original tenant has sold or transferred to someone else, should attract the protection of this act. In accepting a lease from another tenant the new tenant rightly ought to be entitled to the same protection as the original tenant if it is warranted. There have been court decisions that support the view that a new lease is commenced on assignment. It strikes me as inappropriate to legislate via this act to remove that protection as established through these courts.

Question put:

> That clause 15, as amended, be recommitted.

The Assembly voted—

Ayes 7		Noes 5
Mr Berry	Ms Tucker	Mrs Burke
Mr Corbell	Mr Wood	Mr Cornwell
Mr Kaine		Mr Hird
Mr Rugendyke		Mr Smyth
Mr Stanhope		Mr Stefaniak

Question so resolved in the affirmative.

MR SPEAKER: Ms Tucker, would you mind moving that so much of standing order 136 be suspended in respect of your amendment No 5?

MS TUCKER (10.11): I move:

> That so much of standing order 136 be suspended as would prevent me from moving amendment No 5 circulated in my name.

Question put:

The Assembly proceeding to a vote—

Mr Stefaniak, by leave, withdrew his call for a vote.

Question resolved in the affirmative, with the concurrence of an absolute majority.

Clause 15, as recommitted, as amended.

MS TUCKER (10.14): I move amendment No 5 circulated in my name *[see schedule 2 part 1 at page 690]*.

MR SPEAKER: Ms Tucker, do you wish to speak to it?

MS TUCKER: Well, I believe I have already spoken to this twice.

MR STEFANIAK (Minister for Education and Attorney-General) (10.14): Mr Speaker, I will just say a little bit on this, because this is going to enable a tenant, or a tenant company, to manipulate the act. It is a highly artificial provision. I think it is something that we will revisit, because it is probably just going to stuff up the system totally, if it gets through. Members who voted against it initially were very sensible. This is something that we will revisit, if it comes through, because surely people do not intend to allow one party to manipulate the act artificially. It is very bad law if it is passed.

Ms Tucker, by leave, withdrew her amendment No 5.

Clause 15 agreed to.

Clause 51, as recommitted, as amended.

MR RUGENDYKE (10.16): Mr Speaker, we are back to the pink sheet. I move amendment No 1 on the pink sheet circulated in my name *[see schedule 3 part 3 at page 716]*.

Mr Speaker, this is consequential to the insertion of my amendments relating to the lessors' intentions about renewal, and rules of conduct at the end of the lease term, for shopping centre leases under proposed sections 107 and 107A.

MR STEFANIAK (Minister for Education and Attorney-General) (10.18): The government will be opposing it, of course, Mr Speaker.

Question put:

> That **Mr Rugendyke's** amendment No 1 be agreed to.

The Assembly voted—

Ayes, 6		Noes, 5
Mr Berry	Ms Tucker	Mrs Burke
Mr Corbell		Mr Cornwell
Mr Hargreaves		Mr Hird
Mr Rugendyke		Mr Smyth
Mr Stanhope		Mr Stefaniak

Question so resolved in the affirmative.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (10.23): Mr Speaker, I will not proceed with this next amendment.

MR SPEAKER: Thank you.

MR STANHOPE: Could I speak, just briefly. Do I need leave to speak or—

MR SPEAKER: Proceed.

MR STANHOPE: This particular provision mirrors one that we debated earlier and which the Labor Party, in the event, chose not to support. It was an amendment moved by Mr Stefaniak.

I have to say that the issue has caused me some heartburn, and I think it is one of those issues over which opinion really is very split. At the end of the day, it does call for a judgment to be made. We have made judgment on it now.

I think it is relevant that I put this on the record. I would just like to say that, if an arrangement is made between a landlord and a tenant under the new preferential tenancy arrangements under proposed section 107A—or whatever the appropriate

section is going to be when it is renumbered, but I think it is 107A—and a deal is struck as a result of the preferential arrangements, and a continuing tenant enters into an agreement with the landlord to continue as a tenant as a consequence of those provisions, then really the expectation would be that those arrangements would be entered into in good faith and would be complied with, and would set the nature of the arrangements between the landlord and tenant.

One would expect that to be the case. When a deal is struck, when it is set and an arrangement is made between a landlord and tenant, unless there is undue pressure or unconscionable conduct, surely that is the arrangement that should apply. There is, however, a provision in relation to clause 51 regarding market premiums. The contrary view that is stated is, of course, that under every circumstance a tenant should be entitled, under the new regime, to an appropriate market rent.

I think there is a view among some of us that perhaps there is some inconsistency in the legislation now between the potential defects of section 51 and the potential impact of 107A. In terms of the judgment reached by the Labor Party, we are assuming that there is not enough conflict there to impact on the entry into appropriate arrangements.

As I say, we have made a judgment here tonight on it, and the Labor Party will stand by its judgment, but it is an issue on which there are conflicting and contrary views within both the landlord and the tenancy camps. There is a divergence of opinion about what is appropriate. The Labor Party has today chosen to accept the position put by tenant representatives that we do it in an expectation that arrangements entered into between landlords and tenants will be entered into in good faith. If the preferential provisions to which we have now agreed are to work, then it will require that degree of good faith or, I think, everybody here knows that this is an issue that will also be revisited.

MR STEFANIAK (Minister for Education and Attorney-General) (10.27): I am very disappointed in Mr Stanhope's choosing not to move this amendment, because it takes our legislation a step further than South Australia and it gets to a situation where I think we are not getting to a level playing field. A lot of work has gone into this legislation over many, many years, a point Mr Stanhope has recognised himself, and we have seen tonight some changes which no-one had anticipated being made when we started the debate. So I am very disappointed to see that Mr Stanhope, who has brought forward what I thought was quite a sensible amendment, is now not going to move it.

I think he will probably rue the day he did that. I do note that we have until 1 July next year for the act to commence. I imagine the South Australian provisions might start applying there before then, so we may see how they actually work. However, what we are considering tonight actually goes beyond what has happened in South Australia. I think this is something that will have to be revisited, because there could be very bad consequences if it is not. It is unfortunate in the extreme that Mr Stanhope has seen fit, now, to change his mind at about one minute to 12, and not move what we consider to be a sensible amendment, which we would have supported.

Clause 51, as recommitted, as further amended, agreed to.

Clause 52, as recommitted, as amended.

MR RUGENDYKE (10.28): I move amendment No 2 on the pink sheet circulated in my name *[see schedule 3 part 3 at page 716]*.

MR STEFANIAK (Minister for Education and Attorney-General) (10.28): The government opposes it, Mr Speaker.

MR RUGENDYKE (10.29): This amendment is consequential to the insertion of my amendments relating to the lessors' intentions about renewal, and rules of conduct at the end of a lease term, for shopping centre leases under proposed sections 107 and 107A.

Amendment agreed to.

Clause 52, as recommitted, as further amended, agreed to.

Clause 104, as recommitted, as amended.

MR RUGENDYKE (10.29): I move amendment No 3 on the pink sheet circulated in my name *[see schedule 3 part 3 at page 716]*.

This amendment simply deletes the words, "and renewal" from the heading and leaves the heading as just the word "extension". It is consequential to amendments that establish a new division for renewal.

Amendment agreed to.

Clause 104, as recommitted, as further amended, agreed to.

Bill, as amended, agreed to.

Adjournment

Motion (by **Mr Stefaniak**) proposed:

> That the Assembly do now adjourn.

Footpaths in Macquarie
Canberra Hospital—equipment

MR BERRY (10.31): Mr Speaker I want to take this opportunity to read into *Hansard* an email that I received today:

> I am writing to you in the hope that you may be able to get action taken to improve footpaths in Macquarie. I live on Blackman Crescent in Macquarie and I have two young children. I phoned and wrote to the Urban Services minister, requesting that a footpath be put along Blackman Crescent just between the main walkway to Jamison Centre and Redfern Street, as well as repairs made, which are urgently needed, to the walkway in Jamison.

> The answer was such that I believe it was not even considered. I was told that detailed "surveys" of the need for footpaths were undertaken when the suburb was first planned (over 30 years ago) and that there was no need then, and was no need now. This is despite the proposed redevelopment of Jamison, the school in Cook and Cook shops.
>
> My own situation is this: I do not have a car, I have two small children—a three-year-old and a four-month-old baby. I am reliant on walking everywhere, usually to Jamison to shop or to catch a bus.
>
> Due to the poor state of the footpaths and no clear area also the road where it is possible to push a pram, I have to walk along the road pushing the pram with one hand, and hanging onto my three-year-old with the other. The road is dangerous, people already exceed the 60 kilometre limit so I have no real expectation that the 50 kilometre limit will make any difference. I am frightened for my children. I have taught my eldest child not to go on the road, so to have to do so in order to get anywhere is confusing to him.
>
> My pram has been ruined by constantly being caught in the ruts along the access path to Jamison, which is dangerous as well as uncomfortable for my youngest child. I believe, that as a tax-paying person in the ACT, my children and I deserve better. It angers me that money is spent on the "high end" of town, while we are virtually ignored. I sincerely hope that you are able to address these problems and help make this area safer for my children.

I will not mention the constituent's name and I will pass that on to the minister's office, but I think this email is a sign of frustration from this particular constituent that needs to be addressed by the minister's office. It looks as though she has had the brush-off in relation to this matter, and I would hope that she, and her family, get better treatment once the minister is aware of her name, which I have brought to his attention.

I wish to raise one other matter, Mr Speaker, though I do not wish to delay the Assembly and those members who have worked too long this evening. A little while ago—I think it was in last week's sitting—I raised the issue of a constituent who had some difficulty with a plaster cast and a more modern version of a cast on her arm. This constituent had difficulties with her arm and went to accident and emergency and had a high-tech cast removed with the usual saws and so on. The trouble is that the plaster cast that replaced it was the normal plaster model, which in turn had to be replaced with the high-tech Goretex model.

The difficulty was that the teaching hospital was not in a position to replace it with a high-tech model. She had to be sent to a private clinic to have the high-tech cast fitted. I find it extraordinary that we have a teaching hospital, and a clinical medical school and so on, and we are not able to provide what are, by today's standards, basic high-tech lightweight casts for broken limbs, or limbs that need attention. I draw that matter to the attention of the minister for health again, and I hope that I do not have to take this further before I get some sort of response.

Secretariat staff

MR RUGENDYKE (10.35): I will be very brief. I had intended to mention, during the debate on this leases bill, my wholehearted thanks and appreciation for the excellent work of the clerical staff, Mr Clerk, Ms Weeks and Mr Catchpole. We particularly thank them for the guidance given by the running sheet, because I am sure that all members will agree that, without that running sheet, we would all be totally lost. I do give members of the secretariat, as well as, of course, other secretarial staff and officers of this place, departmental officers, and the respective advisers of each of our offices, my wholehearted thanks on behalf of all members.

MR SPEAKER: Thank you, Mr Rugendyke. I can but echo your thanks. I think that the secretariat and other people have done a magnificent job. I sincerely hope we do not have to go through the same thing again. There is a great deal of work involved in this, and I would hope that, in future, we can organise things a little better in relation to legislation.

Question resolved in the affirmative.

Assembly adjourned at 10.36 pm

Schedule 1

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Attorney-General

PART 1

1
Clause 7
Paragraph (1) (a)
Page 3, line 31—

Omit the paragraph, substitute the following paragraph:

(a) the permitted use of the premises under the lease or proposed lease is for commercial business; or

2
Clause 7
Paragraph (3) (a)
Page 4, line 7—

Omit the paragraph, substitute the following paragraph:

(a) the permitted use of the premises under the lease or proposed lease is for retail business; or

3
Clause 8
Subparagraph (1) (b) (ii)
Page 5, line 3—

Omit '*2000*', substitute '*1970*'.

4
Clause 10
Proposed new subclause (2)
Page 5, line 28—

At the end of the clause insert the following new subclause:

(2) However, a proposed lease is not a ***continuous occupation lease***.

5
Clause 15
Subclause (2)
Page 9, line 1—

Omit the subclause, substitute the following subclause:

(2) However, if this Act applied to the lease immediately before the lease was assigned, subsection (1) has the effect of ceasing the application of this Act to the lease, or to a dispute in relation to the lease, only—

(a) if this Act would not have applied to the lease if the assignee had been the original tenant; and

(b) while that assignee is the tenant.

6
Clause 16
Paragraph (1) (a)
Page 9, line 10—

Omit '*2000*', substitute '*1970*'.

7
Clause 17
Paragraph (a)
Page 9, line 21—

Omit the paragraph, substitute the following paragraph:

(a) the lease or proposed lease, or a provision of the lease or proposed lease, to which the dispute relates, was entered into, extended under an option, renewed or, for a provision only, varied, at or after the corresponding time mentioned in column 2 (if applicable); and

8
Clause 17
Table, item 3
Page 10—

Omit the item, substitute the following item:

3	a provision of a lease if— (a) the provision was varied or inserted as part of a variation; and (b) the variation happens on or after 1 January 1995; and (c) this Act would apply to the dispute if the lease had been entered into or extended under an option on or after commencement day	any time	1 January 1995

9
Clause 17
Table, item 9, column 2
Page 11—

Omit 'commencement day', substitute '1 January 1995'.

10

11

12
Clause 30
Subclause (2)
Page 18, line 19—

Omit ‘14’, substitute ‘7’.

13
Clause 30
Subclause (4)
Page 18, line 25—

Omit ‘14’, substitute ‘7’.

14
Clause 30
Subclause (5)
Page 18, line 26—

Omit the subclause, substitute the following subclause:

(5) The time limits mentioned in this section do not apply, or apply as varied, if the tenant provides the lessor with a certificate signed by a lawyer stating that the tenant is aware of the time limits under this section and has chosen to waive the time limits, or to vary them as set out in the certificate.

15
Clause 35
Subclause (2)
Page 20, line 6—

Omit the subclause, substitute the following subclause:

(2) For subsection (1), the commissioner for fair trading may approve a handbook (the ***approved handbook***) that helps lessors and tenants to understand this Act.

16
Clause 40
Page 22, line 6—

Omit the clause, substitute the following clause:

40 Guarantees and indemnities

The lessor may accept a guarantee, indemnity or both for the performance of the tenant’s obligations under the lease as well as, or instead of, a bond.

17
Clause 44
Subclause (2)
Page 23, line 12—

Omit the subclause, substitute the following subclause:

(2) The lessor must give the tenant the bond and the interest earned on it, less any amount deducted by the lessor in accordance with this Act, not later than 30 days after the later of the following:

(a) the end of the lease;

(b) the tenant vacating the premises.

18
Clause 45
Page 23, line 17—

Omit the clause, substitute the following clause:

45 Return of guarantees

(1) This section applies if—

(a) the lessor has required a guarantee to secure the tenant's obligations under the lease; and

(b) the guarantee is not part of the lease; and

(c) the lease is not being extended under an option; and

(d) the tenant has performed the obligations secured by the guarantee.

(2) The lessor must return the guarantee document to the tenant not later than 30 days after the later of the following:

(a) the end of the lease;

(b) the tenant vacating the premises.

19
Clause 52
Subclause (1)
Page 26, line 2—

Omit 'This section', substitute 'Subsection (2)'.

20
Clause 52
Subclause (3)
Page 26, line 10—

After 'may' insert 'also'.

21
Clause 53
Subclauses (2) and (3)
Page 27, line 6—

Omit the subclauses, substitute the following subclauses:

(2) On receiving a report from the valuer, the Magistrates Court must give the parties to the lease a copy of the report.

(3) The market rent worked out by the valuer is the rent under the lease if the parties fail to agree on a different rent to be charged within 14 days after being given a copy of the valuer's report.

22
Clause 66
Subparagraph (4) (a) (v)
Page 33, line 16—

Omit the subparagraph, substitute the following subparagraph:

(v) a contribution paid to a corporation in accordance with a determination under the *Unit Titles Act 1970*, section 39, to the extent that the contribution is used, or is to be used, for an outgoing mentioned in subparagraphs (i) to (iv); and

23
Clause 66
Paragraph (4) (a), note
Page 33, line 20—

Omit the note.

24
Clause 85
Paragraph (1) (b)
Page 41, line 4—

Omit the paragraph, substitute the following paragraph:

(b) the tenant can use the premises (fully or in part) for their normal purpose despite the damage.

25
Clause 91
Paragraph (1) (b)
Page 43, line 22—

Omit 'paragraph 88 (a)', substitute 'section 88'.

26
Clause 144
Paragraph (2) (c)
Page 67, line 23—

Omit the paragraph, substitute the following paragraph:

(c) provide that the words used in a lease, or a mortgage for leased premises, have a wider meaning than that set out in the lease or mortgage, and may prescribe the meaning.

27
Clause 145
Proposed new definition of *lease*
Page 68, line 7—

After the definition of ***dispute***, insert the following new definition:

lease means a lease within the meaning of the repealed Act.

28
Schedule 1
Item 22
Page 73, line 14—

Omit the item, substitute the following item:

22 Car parking premises.

29
Schedule 2
Paragraphs (2) (i) and (j)
Page 75, line 1—

Omit the paragraphs, substitute the following paragraphs:

(i) particulars required to be disclosed in a disclosure statement that affect or potentially affect the rental value of premises, including particulars about a tenant's obligations, costs or responsibilities;

(j) the terms of the lease or proposed lease;

30
Schedule 2
Proposed new item 3A
Page 75, line 12—

After item (3), insert the following new item:

3A Items 2 and 3 do not limit the matters that the valuer may take into account in relation to the premises.

31
Dictionary
Definition of *disclosure statement*
Page 77, line 29—

Omit the definition, substitute the following definition:

disclosure statement means a disclosure statement under section 30 (Disclosure statements).

32
Dictionary
Definition of *Territory lease*
Paragraph (b)
Page 80, line 24—

Omit the paragraph, substitute the following paragraph:

(b) a lease under the *Unit Titles Act 1970*;

PART 2 – Attorney-General

Clause 53
Subclause (4)
Page 27, line 14—

Omit the subclause, substitute the following subclauses:

(4) If the parties to a lease enter into an interim agreement about renewing or extending the lease—

(a) the lessor cannot withdraw the offer to renew or extend; and

(b) the tenant cannot withdraw the acceptance of the offer.

(5) However, subsection (4) does not apply if the parties agree, after the interim agreement is entered into, that the offer or acceptance may be withdrawn.

(6) For subsections (4) and (5), an interim agreement is entered into if the tenant has accepted the lessor's offer to renew or extend the lease subject to the rent being market rent and, under section 52 (3), requested the Magistrates Court to refer a dispute about the rent for mediation.

PART 3 – Attorney-General's amendment to Ms Tucker's amendment No. 8

Omit from proposed subclause (4) the words ", whether direct or indirect,".

PART 4 – Attorney-General's amendments to Mr Rugendyke's amendments

1
Amendment 4
Proposed new sections 107AA and 107AB—

After proposed section 107A, insert the following proposed new sections:

107AA Implementation of preferential right

(1) If the tenant has a right of preference, the lessor must, at least 6 months (but not more than 12 months) before the end of the term of the lease, begin negotiations with the tenant for a renewal of the lease.

Note Renewal of a lease includes extension of the lease (see dict).

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

(a) make a written offer, expressed to be made under this section, to renew the lease with the tenant on terms no less favourable to the tenant than those of the lease proposed to be entered into with the other person; and

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

(3) If the lessor offers to renew the lease under this section—

(a) the offer remains open for the period stated in the offer (the ***acceptance period***) or until its earlier acceptance; and

(b) the tenant must tell the lessor in writing within the acceptance period whether the tenant accepts the offer; and

(c) if the tenant does not tell the lessor in writing within the acceptance period that the tenant accepts the offer—the offer lapses.

(4) The acceptance period must be a reasonable period (at least 10 business days) after the offer is made.

(5) The negotiations must continue until—

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

(b) the tenant tells the lessor in writing that the tenant does not want to continue negotiations for a renewal of the lease.

(6) The negotiations must be conducted honestly.

(7) A tenant may not accept an offer under this section subject to the amount of rent being worked out.

107B Notice of absence of right of preference

(1) If the tenant does not have a right of preference, the lessor must, by written notice—

(a) tell the tenant that the tenant does not have a right of preference; and

(b) explain why the tenant does not have a right of preference.

Note Section 107 (3) sets out the circumstances in which the tenant does not have a right of preference.

(2) The lessor must give the notice to the tenant—

(a) at least 6 months, but not more than 12 months, before the end of the term of the lease; or

(b) if the term of the lease is 12 months or less—at least 3 months, but not more than 6 months, before the end of the term.

2
Amendment 4
Proposed section 107B (2) (b)—

Omit "gave the lawyer apparently credible assurances", substitute "told the lawyer".

PART 5 – Attorney-General's amendment to his amendment No. 1 to Mr Rugendyke's amendment No 4

Amendment to proposed new section 107AA.

Delete subclause (7), insert new subclause (7).

> "Section 51 does not apply if the tenant has accepted an offer expressed to be made under section 107AA.".

PART 6 – Attorney-General to Leader of the Opposition's amendments

1
Proposed new division 12.2
New clause 107C—

After proposed new clause 107B, insert the following new clause:

107C Abandonment

(1) If the tenant abandons the premises, the lease terminates on abandonment.

(2) If the tenant abandons the premises before the end of the lease, the lessor may apply to the Magistrates Court for—

(a) an order declaring the lessor's right to enter the premises to recover possession of them; and

(b) compensation for any damage caused to the lessor because of the abandonment, including the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to someone else.

(3) In working out the amount of compensation that may be awardedunder this section in relation to costs, the Magistrates Court must have regard to—

(a) when, apart from the abandonment, the lease would have ended; and

(b) whether the lessor would have incurred the costs at the end of the lease.

(4) The lessor is not entitled to be compensated under this section for a loss that could reasonably have been avoided by the lessor.

(5) This section does not limit any right of the lessor to enter abandoned premises without a declaration under subsection (2) (a).

Example of when lessor may enter abandoned premises without declaration

As a reasonable response to an emergency situation.

PART 7 – Attorney-General

1
Clause 2
Page 1, line 6—

Omit the clause, substitute the following clause:

2 Commencement

This Act commences on 1 January 2002.

2
Dictionary
Definition of *commencement day*
Page 77, line 10—

Omit the definition, substitute the following definition:

commencement day means 1 January 2002.

Schedule 2

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Ms Tucker

PART 1

1
Clause 7
Subclause (2)
Page 4, line 4—

Omit the subclause.

2
Clause 7
Subclause (4)
Page 4, line 13—

Omit the subclause.

3
Clause 12
Proposed new paragraphs (1) (ca) to (cg)
Page 7, line 8—

After paragraph (c), insert the following new paragraphs:

(ca) premises under a lease to an association incorporated under the *Associations Incorporation Act 1991*, or an entity eligible to be incorporated under that Act, other than premises used for residential purposes;

(cb) premises under a lease to an unincorporated charitable entity, other than premises used for residential purposes;

(cc) premises under a lease that are used to provide a combination of business accommodation and secretarial services;

(cd) premises under a lease that are used as a child care centre;

(ce) premises under a lease that are used as a sports centre (other than premises covered by another paragraph);

(cf) premises under a lease that are used as an art gallery;

(cg) premises under a lease that are used as a gardening supply centre;

4
Clause 12
Subclause (2)
Page 7, line 12—

Omit the subclause, substitute the following subclause:

(2) However, this Act does not apply to a lease if the lease is for less than 6 months, unless the lease is a continuous occupation lease.

5
Clause 15
Page 8, line 26—

Omit the clause, substitute the following clause:

15 Is assignment the same as entering into lease for working out application of Act?

In working out whether this Act applies to a lease, a person (the ***assignee***) is taken to have entered into the lease when the lease is assigned to the assignee.

6
Clause 23
Subclause (2)
Page 15, line 25—

Omit the subclause, substitute the following subclause:

(2) However, if a party requires the lease to be registered under the *Land Titles Act 1925*, the party must pay any fee for registration of the lease.

7
Clause 57
Subclause (1)
Page 28, line 15—

After "about the conflict", insert "(including details of the conflict)".

8
Clause 57
Proposed new subclauses (4) and (5)
Page 28, line 21—

At the end of the clause, insert the following new subclauses:

(4) For this section, the valuer is taken to have an interest that could conflict with the proper working out of the market rent for the lease if the valuer has or has recently had an interest, whether direct or indirect, in commercial property ownership or commercial property management.

(5) Subsection (4) does not limit the circumstances in which the valuer has an interest that could conflict with the proper working out of the market rent for the lease.

9
Clause 66
Subparagraph (4) (a) (i)
Page 33, line 12—

Omit the subparagraph.

10
Clause 83
Paragraph (b)
Page 40, line 15—

After "centre", insert "unless the change materially affects the tenant's business".

11
Clause 88
Paragraph (a)
Page 42, line 5—

Omit "considers repair of the premises or building is impracticable or undesirable", substitute "reasonably considers repair of the premises or building is impracticable".

12
Clause 89
Subparagraph (1) (c) (iii)
Page 42, line 23—

Omit "or undesirable".

13
Clause 104
Paragraph (6) (a)
Page 52, line 1—

Omit the paragraph.

14
Clause 104
Paragraph (7) (c)
Page 52, line 19—

Omit the paragraph.

15
Clause 104
Subclause (8), definition of *total term*, paragraph (c)
Page 52, line 28—

Omit the paragraph.

16
Clause 140
Page 65, line 23—

Omit the clause, substitute the following clause:

140 Costs

The parties in a proceeding under this Act must bear their own costs unless the Magistrates Court or Supreme Court makes an order about costs.

17
Schedule 1
Page 72, line 1—

Omit the schedule.

18
Schedule 2
Paragraph (2) (i)
Page 75, line 2—

Before "value", insert "rental".

19
Schedule 2
Item (5)
Page 75, line 17—

Omit the item, substitute the following item:

(5) The valuer must, in writing, tell each party to the lease of the party's right to make a submission in relation to the valuation.

20
Schedule 2
Item (8)
Page 75, line 26—

Before "the matters", insert "particulars of".

21
Schedule 2
Item (9)
Page 75, line 28—

Omit the item, substitute the following item:

(9) The valuation must include particulars of any concession or inducement disclosed to the valuer.

22
Dictionary
Definition of *key money*, paragraph (b)
Page 78, line 24—

Omit the paragraph, substitute the following paragraph:

(b) a payment for the goodwill or other assets of a business genuinely operated by the lessor that is sold or to be sold by the lessor to the tenant; or

PART 2 – Ms Tucker

1
Clause 38
Proposed new subclauses (2) and (3)
Page 21, line 2—

At the end of the clause, insert the following new subclauses:

(2) If key money is accepted by the lessor in contravention of this section, the amount paid, or the value of the benefit given, to or at the direction of the lessor is recoverable as a debt owing by the lessor to the tenant.

(3) Subsection (2) does not limit any other remedy of the tenant for the contravention.

2
Clause 59
Subclause (2)
Page 29, line 5—

Omit the subclause.

3
Clause 106
Page 53, line 16—

Omit the clause, substitute the following clause:

106 Asking lessor's intention about renewal

The tenant may, in writing, ask the lessor to tell the tenant whether the lessor intends to renew the tenant's lease—

(a) for a lease for longer than 1 year—at any time in the year before the lease ends; or

(b) in any other case—at any time in the 6 months before the lease ends.

Schedule 3

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Mr Rugendyke

PART 1

1
Clause 13
Subclause (2)
Page 8, line 16—

Omit "Magistrates Court", substitute "tenancy tribunal".

2
Clause 13
Subclause (3)
Page 8, line 19

Omit "Magistrates Court", substitute "tenancy tribunal".

3
Clause 17
Page 9, line 18—

Omit the clause, substitute the following clause:

17 What disputes does this Act apply to?

(1) This Act applies to a dispute about, or arising from, a lease or a right arising from this Act.

(2) Without limiting subsection (1), this Act applies to disputes about the following:

(a) the termination of a lease;

(b) a rental rate increase;

(c) a claim for compensation in relation to, or arising from, a lease or this Act;

(d) a lease that is no longer in force.

(3) This Act applies to a dispute about, or arising from, a lease irrespective of when the lease was entered into, renewed or extended.

(4) However, this Act does not apply to a lease that is no longer in force if the lease ended before the commencement of this Act.

(5) This Act applies to a dispute about an act or omission irrespective of when the act or omission happened.

(6) However, if the act or omission, or latest of a series of acts or omissions, giving rise to the dispute happened more than 6 months before the commencement of this Act, the tenancy tribunal has a discretion about whether to hear and decide the dispute.

4
Clause 18
Page 12, line 9—

[Oppose the clause.]

5
Clause 22
Subclause (2)
Page 14, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

6
Clause 22
Subclause (2)
Page 14, line 9—

Omit “court” substitute “tribunal”.

7
Clause 22
Subclause (4)
Page 15, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

8
Clause 22
Subclause (5)
Page 15, line 19—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

9
Clause 52
Subclause (2)
Page 26, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

10
Clause 52
Subclause (3)
Page 26, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

11
Clause 52
Subclause (4)
Page 26, line 21—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

12
Clause 52
Paragraph (4) (a)
Page 26, line 23—

Omit “court” substitute “tribunal”.

13
Clause 52
Subclause (5)
Page 26, line 27—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

14
Clause 52
Subclause (5)
Page 26, line 28—

Omit “court” substitute “tribunal”.

15
Clause 52
Subclause (6)
Page 26, line 30—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

16
Clause 52
Subclause (6)
Page 26, line 31—

Omit “court” substitute “tribunal”.

17
Clause 53
Subclause (1)
Page 27, line 5—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

18
Clause 53
Subclause (2)
Page 27, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

19
Clause 53
Paragraph (3) (a)
Page 27, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

20
Clause 53
Paragraph (4) (b)
Page 27, line 17—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

21
Clause 57
Subclause (1)
Page 28, line 14—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

22
Clause 57
Subclause (2)
Page 28, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

23
Clause 57
Subclause (3)
Page 28, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

24
Clause 58
Subclause (1)
Page 28, line 23—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

25
Clause 58
Subclause (2)
Page 28, line 30—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

26
Clause 60
Paragraph (1) (a)
Page 29, line 14—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

27
Clause 60
Paragraph (1) (b)
Page 29, line 16—

Omit “court” substitute “tribunal”.

28
Clause 60
Subclause (2)
Page 29, line 19—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

29
Clause 84
Subclause (2)
Page 40, line 22—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

30
Clause 84
Subclause (3)
Page 40, line 24—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

31
Clause 85
Subclause (2)
Page 41, line 7—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

32
Clause 85
Subclause (3)
Page 41, line 8—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

33
Clause 86
Paragraph (1) (a)
Page 41, line 16—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

34
Clause 86
Paragraph (1) (b)
Page 41, line 18—

Omit “court”, substitute “tribunal”.

35
Clause 86
Subclause (2)
Page 41, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

36
Clause 87
Subclause (1)
Page 41, line 25—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

37
Clause 98
Subclause (1)
Page 47, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

38
Clause 99
Subclause (5)
Page 48, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

39
Clause 104
Paragraph (1) (b)
Page 51, line 8—

Omit the paragraph.

40
Clause 104
Subclause (6)
Page 51, line 29—

Omit the subclause.

41
Clause 105
Paragraph (2) (b)
Page 53, line 5—

Omit "Magistrates Court", substitute "tenancy tribunal".

42
Clause 105
Subclause (3)
Page 53, line 6—

Omit "Magistrates Court", substitute "tenancy tribunal".

43
Clause 105
Subclause (5)
Page 53, line 10—

Omit "Magistrates Court", substitute "tenancy tribunal".

44
Proposed new clause 105A
Page 53, line 12—

After clause 105, insert the following new clause:

105A Preference to be given to existing tenant

(1) If the lessor proposes to re-lease the premises and the tenant wants to renew or extend the term of the lease, the lessor must give preference under this section to the tenant over other possible tenants for the premises, particularly if there is substantial goodwill in relation to the tenant's business at the premises.

(2) The lessor must assume the tenant wants a renewal or extension of the term of the lease unless the tenant has told the lessor in writing (otherwise than in the lease) within 12 months before the end of the term that the tenant does not want a renewal or extension.

(3) Unless the tenant has told the lessor within that 12 months that the tenant does not want to renew or extend the term of the lease, the lessor must begin genuine negotiations with the tenant for a renewal or extension of the lease—

(a) for a lease longer than 1 year—at least 6 months, and not longer than 12 months, before the end of the term of the lease; or

(b) in any other case—at least 3 months, and not longer than 6 months, before the end of the term of the lease.

(4) The lessor must not offer to lease the premises to someone other than the tenant unless it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.

(5) However, the lessor is not obliged to prefer the tenant under this section if—

(a) the lease is for premises in a shopping centre and the lessor reasonably wants to change the tenancy mix within the whole precinct of the shopping centre; or

(b) the tenant has breached the lease substantially or persistently; or

(c) the lessor—

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

(ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).

45
Clause 112
Subclause (1)
Page 55, line 18—

Omit "Magistrates Court", substitute "tenancy tribunal".

46
Clause 114
Paragraph (a)
Page 56, line 6—

Omit "Magistrates Court", substitute "tenancy tribunal".

47
Clause 114
Paragraph (b)
Page 56, line 8—

Omit "court" substitute "tribunal".

48
Clause 131
Page 63, line 8—

Omit the clause, substitute the following clause:

131 Jurisdiction to decide applications under Act

The tenancy tribunal has jurisdiction to decide applications under this Act.

49
Clause 132
Page 63, line 13—

Omit the clause, substitute the following clause:

132 Applications that may be made to tribunal

An application may be made in relation to a dispute to which this Act applies.

Note Section 17 sets out the disputes to which this Act applies.

50
Proposed new clause 132A
Page 63, line 19—

After clause 132, insert the following new clause:

132A Timing of rental applications

(1) An application by a tenant in relation to a rent increase must be made at least 28 days before the increase is proposed to take effect, unless the tenancy tribunal waives this requirement.

(2) However, the tenancy tribunal may hear an application relating to a proposed rental rate increase made less than 28 days before the day the increase is proposed to take effect, if satisfied that—

(a) the application is late because of special circumstances; and

(b) to hear the application would not place the lessor in a significantly worse position than the lessor would have been had the tenant applied at least 28 days before the day the increase is proposed to take effect.

51
Proposed new clause 132B
Page 63, line 20—

Before clause 133, insert the following new clause:

132B Tribunal to act promptly

If an application is made to the tenancy tribunal in relation to a dispute, the tribunal must endeavour to resolve the dispute, or hear and decide the application, within 28 days after the application is made to the tribunal.

52
Clause 133
Subclause (1)
Page 63, line 21—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

53
Clause 134
Page 64, line 2—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

54
Clause 135
Subclause (1)
Page 64, line 16—

Omit "Magistrates Court", substitute "tenancy tribunal".

55
Clause 135
Subclause (2)
Page 64, line 20—

Omit "Magistrates Court", substitute "tenancy tribunal".

56
Clause 135
Paragraph (2) (a)
Page 64, line 21—

Omit the paragraph, substitute the following paragraph:

(a) hearing the dispute as quickly as possible; and

57
Clause 136
Page 64, line 24—

Omit "Magistrates Court", substitute "tenancy tribunal".

58
Proposed new clause 136A
Page 64, line 27—

After clause 136, insert the following new clause:

136A Interim orders

(1) This section applies if, at any time after an application is made to the tenancy tribunal for resolution of a dispute, a person who has a direct interest in the dispute (the ***applicant***) applies to the tribunal for an interim order.

(2) If the tenancy tribunal is satisfied that, if an interim order were not made, the applicant would suffer detriment, the tribunal may make an appropriate interim order to safeguard the position of the applicant.

(3) If the person against whom the interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

(4) The interim order remains in force until the earlier of the following:

(a) the tenancy tribunal revokes the order;

(b) the tribunal makes an order at the end of a hearing.

(5) On application by the applicant or any other person who has a direct interest in the dispute, the tenancy tribunal may vary or revoke the interim order.

59
Proposed new clause 136B
Page 64, line 28—

Before clause 137, insert the following new clause:

136B Power to grant relief

(1) The tenancy tribunal may exercise any power to grant relief in relation to a dispute to which this Act applies that would be exercisable by the Magistrates Court under the *Magistrates Court (Civil Jurisdiction) Act 1982* if that Act applied to the dispute, unless this Act expressly states otherwise.

(2) In addition to any other order the tenancy tribunal may make, the tribunal may do any or all of the following:

(a) reopen a lease and take whatever action it considers appropriate in the circumstances, including—

(i) varying the lease, whether by inserting new terms or otherwise; and

(ii) setting the lease aside, in part or whole;

(b) make any order required to enforce this Act;

(c) restrain a person from breaching a lease or contravening this Act;

(d) require performance of the terms of a lease or a provision of this Act;

(e) require the payment of compensation for loss caused by or resulting from a breach of a term of a lease or a contravention of a provision of this Act;

(f) restore a lease to a person and give the person possession of the premises—

(i) from which the person was evicted in contravention of this Act; or

(ii) that are vacated because of the misleading behaviour of the lessor, including giving a notice that purports to be a notice to vacate that is invalid;

(g) require payment of all or part of the rent payable under the lease to the tribunal until the tribunal orders otherwise;

(h) direct payment to be made out of amounts paid to the tribunal;

(i) terminate a lease and give vacant possession of the premises to the owner.

(3) In addition, the tenancy tribunal may make any other order it considers appropriate.

(4) However, the tenancy tribunal may not make an order under this section that would be inconsistent with this Act.

(5) The tenancy tribunal is not limited in any amount it may order to be paid.

60
Clause 137
Subclause (1)
Page 64, line 29—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

61
Clause 137
Subclause (2)
Page 65, line 1—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

62
Clause 137
Subclause (3)
Page 65, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

63
Clause 137
Subclause (4)
Page 65, line 13—

Omit the subclause, substitute the following subclause:

(4) If the tenancy tribunal does not decide its own procedures, the procedures in the provisions of the *Magistrates Court (Civil Jurisdiction) Act 1982* mentioned in subsection (2) apply as if a reference in the provisions to the Magistrates Court were a reference to the tenancy tribunal and any other necessary changes were made to the provisions.

64
Clause 138
Page 65, line 17—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

65
Clause 138
Page 65, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

66
Clause 139
Page 65, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

67
Clause 140
Paragraph (a)
Page 65, line 26—

Omit "Magistrates Court", substitute "tenancy tribunal".

68
Clause 140
Paragraph (b)
Page 65, line 27—

Omit "court", substitute "tenancy tribunal or Supreme Court".

69
Clause 141
Subclause (1)
Page 66, line 3—

Omit "or fact from a decision of the Magistrates Court", substitute "from a decision of the tenancy tribunal".

70
Clause 142
Paragraph (a)
Page 66, line 13—

Omit "Magistrates Court", substitute "tenancy tribunal".

71
Clause 142
Paragraph (b)
Page 66, line 15—

Omit "Magistrates Court", substitute "tenancy tribunal".

72
Proposed new part 14A
Page 66, line 17—

After part 14, insert the following new part:

Part 14A Tenancy tribunal

142A Tenancy tribunal

The Tenancy Tribunal is established by this section.

142B Constitution of tribunal etc

(1) The tenancy tribunal consists of—

(a) the president; or

(b) the president and 2 members appointed by the president under section 142C (3).

(2) The president is responsible for ensuring the orderly and prompt discharge of the business of the tenancy tribunal.

142C Membership of tribunal

(1) The president must be a magistrate appointed by the Minister in writing.

(2) The president holds office for the period (not longer than 5 years) stated in the instrument of appointment.

(3) If, having regard to the nature and complexity of a particular dispute, the president considers it desirable, the president may appoint the following 2 additional members to the tribunal for hearing and resolving or deciding the dispute:

(a) 1 member selected from the panel appointed under subsection (4);

(b) 1 member selected from the panel appointed under subsection (5).

(4) The Minister must appoint people who, in the Minister's opinion, are qualified by experience and expertise to represent the interests of tenants to a panel established for this subsection.

(5) The Minister must appoint people who, in the Minister's opinion, are qualified by experience and expertise to represent the interests of owners to a panel established for this subsection.

142D Powers of tribunal

The tenancy tribunal has power to do everything necessary or convenient to be done for or in connection with the exercise of its functions unless expressly stated otherwise in this Act.

142E Expenses of tribunal members

The Territory must reimburse a member mentioned in section 142C (3) (Membership of tribunal) for expenses reasonably incurred in the exercise of the member's functions.

142F Registrar and deputy registrar of tribunal

(1) The registrar of the Magistrates Court is the registrar of the tenancy tribunal.

(2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tenancy tribunal.

(3) Subject to any direction of the registrar, a deputy registrar may exercise the powers of the registrar.

(4) The registrar may, in writing, delegate to a public servant all or any of the registrar's powers under this Act.

142G Protection of tribunal members etc

(1) An action or proceeding does not lie against a relevant person in relation to an act done or omitted to be done honestly in the exercise or purported exercise of a function under this Act.

(2) In this section:

relevant person means—

(a) a member of the tribunal; or

(b) a member of the staff of the tribunal; or

(c) the registrar or a deputy registrar; or

(d) a person acting under the direction or authority of the tribunal; or

(e) a participant in a proceeding in the tribunal.

73
Clause 144
Paragraph (2) (a)
Page 67, line 19—

Omit "Magistrates Court", substitute "tenancy tribunal".

74
Clause 144
Paragraph (2) (b)
Page 67, line 20—

Omit "court" substitute "tribunal".

75
Clause 145
Proposed new definitions of *new tribunal* and *old tribunal*
Page 68, line 7—

Insert the following new definitions:

new tribunal means the tenancy tribunal established by section 142A (Tenancy tribunal).

old tribunal means the Tenancy Tribunal established by section 60 of the repealed Act.

76
Clause 145
Definitions of *tribunal* and *tribunal registrar*
Page 68, line 10—

Omit the definitions, substitute the following definition:

tribunal registrar means the registrar of the old tribunal.

77
Clause 146
Page 68, line 16—

Omit "tribunal", substitute "old tribunal".

78
Clause 150
Page 69, line 18—

[Oppose the clause.]

79
Clause 152
Page 70, line 5—

Omit the clause, substitute the following clause:

152 Old tribunal decisions

A decision of the old tribunal under the repealed Act is taken to have been a decision of the new tribunal under this Act.

80
Clause 159
Paragraph (c)
Page 71, line 18—

Omit the paragraph.

81
Clause 160
Proposed new section 12, note
Page 71, line 25—

Omit the note.

82
Dictionary
Definition of *Magistrates Court*
Page 79, line 17—

Omit the definition.

83
Dictionary
Proposed new definition of *tenancy tribunal*
Page 80, line 11—

Insert the following new definition:

tenancy tribunal means the Tenancy Tribunal established by section 142A.

PART 2 – Mr Rugendyke

1
Clause 17
Page 9, line 18—

Omit the clause, substitute the following clause:

17 What disputes does this Act apply to?

(1) This Act applies to a dispute about, or arising from, a lease or a right arising from this Act.

(2) Without limiting subsection (1), this Act applies to disputes about the following:

(a) the termination of a lease;

(b) a rental rate increase;

(c) a claim for compensation in relation to, or arising from, a lease or this Act;

(d) a lease that is no longer in force.

(3) This Act applies to a dispute about, or arising from, a lease irrespective of when the lease was entered into, renewed or extended.

(4) However, this Act does not apply to a lease that is no longer in force if the lease ended before the commencement of this Act.

(5) This Act applies to a dispute about an act or omission irrespective of when the act or omission happened.

(6) However, if the act or omission, or latest of a series of acts or omissions, giving rise to the dispute happened more than 6 months before the commencement of this Act, the Magistrates Court has a discretion about whether to hear and decide the dispute.

2
Clause 18
Page 12, line 9—

[Oppose the clause.]

3
Clause 104
Paragraph (1) (b)
Page 51, line 8—

Omit the paragraph.

4
Clause 104
Subclause (6)
Page 51, line 29—

Omit the subclause.

5
Proposed new clause 105A
Page 53, line 12—

After clause 105, insert the following new clause:

105A Preference to be given to existing tenant

(1) If the lessor proposes to re-lease the premises and the tenant wants to renew or extend the term of the lease, the lessor must give preference under this section to the tenant over other possible tenants for the premises, particularly if there is substantial goodwill in relation to the tenant's business at the premises.

(2) The lessor must assume the tenant wants a renewal or extension of the term of the lease unless the tenant has told the lessor in writing (otherwise than in the lease) within 12 months before the end of the term that the tenant does not want a renewal or extension.

(3) Unless the tenant has told the lessor within that 12 months that the tenant does not want to renew or extend the term of the lease, the lessor must begin genuine negotiations with the tenant for a renewal or extension of the lease—

(a) for a lease longer than 1 year—at least 6 months, and not longer than 12 months, before the end of the term of the lease; or

(b) in any other case—at least 3 months, and not longer than 6 months, before the end of the term of the lease.

(4) The lessor must not offer to lease the premises to someone other than the tenant unless it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.

(5) However, the lessor is not obliged to prefer the tenant under this section if—

(a) the lease is for premises in a shopping centre and the lessor reasonably wants to change the tenancy mix within the whole precinct of the shopping centre; or

(b) the tenant has breached the lease substantially or persistently; or

(c) the lessor—

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

(ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).

6
Clause 132
Page 63, line 13—

Omit the clause, substitute the following subclause:

132 Applications that may be made

An application may be made in relation to a dispute to which this Act applies.

Note Section 17 sets out the disputes to which this Act applies.

7
Proposed new clause 132A
Page 63, line 19—

After clause 132, insert the following new clause:

132A Timing of rental applications

(1) An application by a tenant in relation to a rent increase must be made at least 28 days before the increase is proposed to take effect, unless the Magistrates Court waives this requirement.

(2) However, the Magistrates Court may hear an application relating to a proposed rental rate increase made less than 28 days before the day the increase is proposed to take effect, if satisfied that—

(a) the application is late because of special circumstances; and

(b) to hear the application would not place the lessor in a significantly worse position than the lessor would have been had the tenant applied at least 28 days before the day the increase is proposed to take effect.

8
Proposed new clause 132B
Page 63, line 20—

Before clause 133, insert the following new clause:

132B Court to act promptly

If an application is made to the Magistrates Court in relation to a dispute, the court must endeavour to resolve the dispute, or hear and decide the application, within 28 days after the application is made to the court.

9
Clause 135
Paragraph (2) (a)
Page 64, line 21—

Omit the paragraph, substitute the following paragraph:

(a) hearing the dispute as quickly as possible; and

10
Proposed new clause 136A
Page 64, line 27—

After clause 136, insert the following new clause:

136A Interim orders

(1) This section applies if, at any time after an application (the ***original application***) is made to the Magistrates Court for resolution of a dispute, a person who has a direct interest in the dispute (the ***applicant***) applies to the court for an interim order.

(2) If the Magistrates Court is satisfied that, if an interim order were not made, the applicant would suffer detriment, the court may make an appropriate interim order to safeguard the position of the applicant.

(3) If the person against whom the interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

(4) The interim order remains in force until the earlier of the following:

(a) the Magistrates Court revokes the order;

(b) the court makes an order (other than an interim order) on the original application.

(5) On application by the applicant or any other person who has a direct interest in the dispute, the Magistrates Court may vary or revoke the interim order.

11
Proposed new clause 136B
Page 64, line 28—

Before clause 137, insert the following new clause:

136B Power to grant relief

(1) The Magistrates Court may exercise any power to grant relief in relation to a dispute to which this Act applies that would be exercisable by the court under the *Magistrates Court (Civil Jurisdiction) Act 1982* if that Act applied to the dispute, unless this Act expressly states otherwise.

(2) In addition to any other order the Magistrates Court may make, the court may do any or all of the following:

(a) reopen a lease and take whatever action it considers appropriate in the circumstances, including—

(i) varying the lease, whether by inserting new terms or otherwise; and

(ii) setting the lease aside, in part or whole;

(b) make any order required to enforce this Act;

(c) restrain a person from breaching a lease or contravening this Act;

(d) require performance of the terms of a lease or a provision of this Act;

(e) require the payment of compensation for loss caused by or resulting from a breach of a term of a lease or a contravention of a provision of this Act;

(f) restore a lease to a person and give the person possession of the premises—

(i) from which the person was evicted in contravention of this Act; or

(ii) that are vacated because of the misleading behaviour of the lessor, including giving a notice that purports to be a notice to vacate that is invalid;

(g) require payment of all or part of the rent payable under the lease to the court until the court orders otherwise;

(h) direct payment to be made out of amounts paid to the court;

(i) terminate a lease and give vacant possession of the premises to the owner.

(3) In addition, the Magistrates Court may make any other order it considers appropriate.

(4) However, the Magistrates Court may not make an order under this section that would be inconsistent with this Act.

(5) The Magistrates Court is not limited in any amount it may order to be paid.

12
Clause 141
Subclause (1)
Page 66, line 3—

Omit "or fact".

13
Clause 150
Page 69, line 18—

[Oppose the clause.]

PART 3 – Mr Rugendyke

1
Clause 51
Subclause (1) (a)
Page 25, line 23—

Omit the paragraph, substitute the following paragraph:

(a) either—

(i) the lessor proposes to renew the lease and makes an offer to the tenant to renew the lease in response to a request under section 107 (Lessor's intentions about renewal); or

(ii) the lessor gives the tenant preference under section 107A (Rules of conduct at end of lease term for shopping centre leases) by making an offer to the tenant to renew the lease; or

2
Clause 52
Subparagraph (3) (a) (i)
Page 26, line 13—

Omit the subparagraph, substitute the following subparagraph:

(i) either—

(A) proposes to renew the lease and makes an offer to renew the lease in response to a request under section 107 (Lessor's intentions about renewal); or

(B) gives the tenant preference under section 107A (Rules of conduct at end of lease term for shopping centre leases) by making an offer to the tenant to renew the lease; or

3
Division 12.1
Heading
Page 51, line 3—

Omit the heading, substitute the following heading:

Division 12.1 Extension

4
Clauses 106 and 107
Page 53, line 13—

Omit the clauses, substitute the following division:

Division 12.1A Renewal

106 Objects of div 12.1A

(1) The Legislative Assembly recognises that conflicts sometimes happen between a lessor's expectation that the lessor will be able to deal with the leased premises subject only to the terms of the lease and a tenant's expectations of reasonable security of tenure.

(2) The objects of this division are to achieve an appropriate balance between reasonable but conflicting expectations and to ensure fair dealing, as far as practicable, between lessor and tenant in relation to the renewal or extension of premises.

107 Lessor's intentions about renewal

(1) This section applies to all leases.

(2) The tenant may, in writing, ask the lessor to tell the tenant whether the lessor intends to renew the lease if—

(a) for a lease for longer than 1 year—the lease is due to end in not less than 6 months and not longer than 1 year; or

(b) in any other case—the lease is due to end in not less than 3 months and not longer than 6 months.

(3) If the lessor receives a request under subsection (2) on a day (the ***request day***), the lessor must tell the tenant, in writing within 1 month after the request day, either that—

(i) the lessor proposes to renew the lease; or

(b) the lessor does not propose to renew the lease.

(4) If the lessor fails to notify the tenant under subsection (3), the lease is extended by a period equal to the period starting 1 month after the request day and ending when the lessor gives the tenant a notice that, apart from being late, complies with subsection (3).

107A Rules of conduct at end of lease term for shopping centre leases

(1) This section applies to a lease for premises in the retail area of a shopping centre if the lessor proposes to re-lease the premises and the tenant wants to renew or extend the lease.

(2) The lessor must allow the tenant to renew or extend the lease in preference to allowing other possible tenants to lease the premises.

(3) The lessor must assume that the tenant wants to renew or extend the lease unless the tenant has told the lessor, in writing within 12 months before the end of the lease, that the tenant does not want to renew or extend the lease.

(4) The lessor may offer to lease the premises to someone other than the tenant only if it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.

(5) However, the lessor is not obliged to prefer the tenant under this section if—

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

(b) the tenant has breached the lease substantially or persistently; or

(c) the lessor—

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

(ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).

(6) Also, this section does not apply in relation to the lease if—

(a) section 107B applies in relation to the lease; or

(b) if the lease is a sublease—the sublease is as long as the term of the head lease allows; or

(c) the lease arises when the tenant holds over after the end of an earlier lease with the consent of the lessor and the holding over is for 6 months or less; or

(d) the lease is excluded from this section under the regulations.

Note This Act does not apply to leases with a term of less than 6 months unless they are continuous occupation leases (see s 12 (2) (c)).

107B Certified exclusionary clauses

(1) Section 107A may be excluded in relation to a lease by a certified exclusionary clause.

(2) A ***certified exclusionary clause*** is a provision of a lease in relation to which a certificate signed by an independent lawyer is endorsed on the lease to the effect that—

(a) before the lease was signed and at the tenant's request, the lawyer explained the effect of the provision and how section 107A would apply in relation to the lease if the lease did not include the provision; and

(b) the tenant gave the lawyer apparently credible assurances that the tenant was not acting under coercion or undue influence in asking for or agreeing to the inclusion of the provision in the lease.

(3) For this section, an ***independent lawyer*** is a lawyer who is not acting for the lessor.

107C Fair dealing between lessor and tenant about renewal of shopping centre lease

(1) If the lessor fails to comply with section 107A (Rules of conduct at end of lease term for shopping centre leases) in relation to premises in the retail area of a shopping centre and the tenant is prejudiced by the failure, the tenant may apply to the Magistrates Court.

Note Under s 52 (Market rent—rent reviews, options and renewals) the lessor or tenant may ask the Magistrates Court to refer a dispute about the rent to be paid under a renewal to mediation.

(2) On application under this section, the Magistrates Court may make any order it considers appropriate.

(3) Without limiting subsection (2), the Magistrates Court may—

(a) order the lessor to renew or extend the lease, or to enter into a new lease with the tenant, on terms approved by the court (but not to the prejudice of the rights of a third-

party who has honestly acquired an interest in the premises); or

(b) order the lessor to pay compensation (not more than 6 months rent under the lease) to the tenant.

5
Dictionary
Proposed new definition of *certified exclusionary clause*
Page 77, line 8—

Insert the following new definition:

certified exclusionary clause—see section 107B.

PART 4 – Mr Rugendyke

Proposed new clause 148A
Page 69, line 8—

After clause 148, insert the following new clause:

148A Preference to existing tenants

Section 107A (Rules of conduct at end of lease term for shopping centre leases) only applies to a lease entered into after the commencement of this Act.

Schedule 4

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Leader of the Opposition

PART 1

1
Clause 17
Table, item 7, column 1
Page 11—

Omit "or 105", substitute ", 105, 114B or 114E".

2
Clause 17
Note for item 7
Page 12, line 8—

At the end of the note, insert the following new dot points:

- section 114B—an application for a termination order
- section 114E—an application for a warrant for eviction.

3
Clause 30
Subclause (3)
Page 18, line 21—

Omit "1 month", substitute "3 months".

4
Clause 39
Proposed new subclause (2)
Page 22, line 5—

At the end of the clause, insert the following new subclause:

(2) If the lessor requires payment of more than 3 months rent in advance, any advance payment over 3 months rent is taken, for this section, to be bond.

5
Clause 51
Paragraph (1) (b)
Page 25, line 26—

Omit "3 months", substitute "12 months".

6
Clause 52
Subparagraph (3) (a) (ii)
Page 26, line 18—

Omit “3 months”, substitute “12 months”.

7
Clause 52
Paragraph (3) (b)
Page 26, line 19—

Omit the paragraph, substitute the following paragraph:

(b) the tenant accepts the lessor’s offer to renew the lease subject to the rent for the lease being market rent.

8
Clause 59
Heading
Page 29, line 1—

Omit “**rent**”.

9
Clause 59
Subclause (1)
Page 29, line 3—

Omit “rent concession”, substitute “concession”.

10
Clause 70
Proposed new subclause (4)
Page 35, line 23—

At the end of the clause, insert the following new subclause:

(4) Further, subsection (1) (a) (ii) does not allow the lessor to recover from the tenant an outgoing in relation to premises that are usually leased but are currently unleased.

11
Clause 73
Paragraph (2) (a)
Page 37, line 7—

Omit “specifying minimum standards”, substitute “specifying reasonable minimum standards”.

12
Clause 84
Subclause (1)
Page 40, line 17—

Omit the subclause, substitute the following subclause:

(1) This section applies if—

(a) leased premises are, or the building containing the premises is, damaged; and

(b) the premises cannot be used for their normal purpose because of the damage.

13
Clause 84
Paragraph (3) (a)
Page 40, line 26—

After "premises", insert "or building".

14
Clause 84
Subclause (4)
Page 40, line 32—

After "premises are", insert ", or the building is,".

15
Clause 85
Paragraph (1) (a)
Page 41, line 3—

Omit the paragraph, substitute the following paragraph:

(a) leased premises are, or the building containing the premises is, damaged; and

16
Clause 85
Subclause (2)
Page 41, line 7—

After "premises are", insert ", or the building is,".

17
Clause 85
Subclause (4)
Page 41, line 13—

After "premises are", insert ", or the building is,".

18
Clause 87
Subclause (1)
Page 41, line 23—

Omit the subclause, substitute the following subclause:

(1) If there is a dispute about whether leased premises have been damaged, or the building containing the premises has been damaged, so that the leased premises cannot be used for their normal purpose, a party to the lease may apply to the Magistrates Court for a declaration about whether the premises can or cannot be used for their normal purpose because of the damage.

19
Clause 97
Proposed new subclause (6)
Page 47, line 15—

At the end of the clause, insert the following new subclause:

(6) The lessor's mortgagee or head lessor is taken to have consented to the tenant's request if the mortgagee or head lessor fails to give the lessor and tenant written notice of consent or refusal to consent to the request by the latest of the following:

(a) 14 days after being told of the request;

(b) if the mortgagee or head lessor asked for information or a document under section 96—14 days after receiving the information or document;

(c) if a further period has been agreed under subsection (4)—the end of that further period.

20
Proposed new division 12.2
Page 54, line 14—

After division 12.1, insert the following new division:

Division 12.2 Termination generally

107A Other rights etc unaffected by termination

(1) The termination of a lease under division 12.3 (Termination by tenant) or 12.4 (Termination by lessor) does not affect a right, privilege or liability existing under, or because of, the lease immediately before its termination.

(2) Unless the parties otherwise agree (otherwise than by a provision of the lease), subsection (1) is not affected by—

(a) the lessor not contesting a termination notice under division 12.3; or

(b) the tenant agreeing to a termination under division 12.4 or not contesting a termination under that division; or

(c) the termination of the lease by agreement between the parties (otherwise than by a provision of the lease).

107B Termination by agreement

Divisions 12.3 and 12.4 do not prevent the termination of the lease by agreement between the parties (otherwise than by a provision of the lease).

21
Division 12.2
Heading
Page 54, line 15—

Omit the heading, substitute the following heading:

Division 12.3 Termination by tenant

22
Clause 111
Page 55, line 12—

[Oppose the clause.]

23
Proposed new division 12.4
Page 56, line 8—

After clause 114, insert the following new division:

Division 12.4 Termination by lessor

114A Procedure for termination of lease by lessor etc

(1) If the lessor has a right to terminate the lease, the lessor may give written notice of termination to the tenant (the ***termination notice***).

(2) Within 14 days after being given the termination notice (the ***allowed period***), the tenant may—

(a) contest the termination by application to the Magistrates Court; or

(b) agree to the termination by written notice to the lessor.

(3) The termination takes effect in accordance with the terms of the termination notice if, within the allowed period, the tenant—

(a) does not contest the termination by application to the Magistrates Court; or

(b) agrees to the termination by written notice to the lessor.

(4) If the tenant contests the termination by application to the Magistrates Court within the allowed period—

(a) the termination does not have effect unless it is confirmed by the Magistrates Court; and

(b) if the termination is confirmed—it has effect on the day ordered by the court.

(5) The lease may be terminated by the lessor only in accordance with this section.

(6) If the tenant is in possession of the premises, the lessor may enter the premises to recover possession of the premises only—

(a) under a court order or warrant; or

(b) if the lease has been terminated in accordance with this section.

114B Confirmation of contested termination

(1) If the tenant applies to the Magistrates Court under section 114A to contest the termination of the lease by the lessor, the court may confirm the termination if satisfied that—

(a) a ground (the ***termination ground***) exists for the lessor to terminate the lease; and

(b) the act or omission that gave rise to the termination ground (the ***breach***) is an act or omission of the tenant or a subtenant; and

(c) the lessor had given the tenant notice of the breach and a reasonable opportunity to remedy it; and

(d) the termination ground justifies confirming the termination.

(2) Without limiting what is a reasonable opportunity under subsection (1) (c), the tenant is taken to have been given a reasonable opportunity to remedy the breach of an obligation to pay an amount if the tenant is allowed 14 days to pay the amount.

(3) However, the Magistrates Court may refuse to confirm the termination even if satisfied about the matters mentioned in subsection (1) if—

(a) the breach has been remedied; or

(b) the tenant gives an undertaking that the tenant will remedy the breach within 14 days.

(4) The Magistrates Court may suspend the order confirming the termination for not longer than 21 days if satisfied that—

(a) the immediate operation of the order would cause significant hardship to the tenant; and

(b) the hardship to the tenant would be greater than the hardship that the suspension would cause to the lessor.

(5) The Magistrates Court may suspend the order under subsection (4) only once.

114C Confirmation of uncontested termination

(1) This section applies if—

(a) the lessor has given the tenant a termination notice under section 114A (1) (Procedure for termination of lease by lessor etc); and

(b) the tenant has not contested the termination, or agreed to the termination, under section 114A (2).

Note Under the *Interpretation Act 1967*, s 17A (Service of documents), a document (for example, the termination notice) is taken to have been given to someone (for example, the tenant) if it is sent by prepaid post to the address of the person last-known to the giver.

(2) The lessor may apply to the Magistrates Court for confirmation of the termination.

(3) The Magistrates Court may confirm the termination if it considers that the termination is reasonable in the circumstances.

114D Content of termination orders

(1) An order under section 114B (Confirmation of contested termination) or 114C (Confirmation of uncontested termination) confirming the termination of the lease must state—

(a) the day the lease is or was terminated; and

(b) if the tenant has not already vacated the premises—the following:

(i) that the tenant must vacate the premises on or before that day;

(ii) either—

(A) that, if the tenant does not vacate the premises as required, the lessor may apply to the Magistrates Court for the issue of a warrant for the eviction of the tenant; or

(B) that, if the tenant does not vacate the premises as required, the order will have effect as if it were a warrant for eviction.

(2) If the order states that it will have effect as if it were a warrant for eviction, the order must comply with section 114E as if it were a warrant for eviction under this division.

114E Content of warrants for eviction

(1) A warrant for eviction under this division in relation to a lease must—

(a) authorise a designated officer to take appropriate action to evict the tenant within the time stated in the warrant; and

(b) require the designated officer to give the tenant at least 2 days notice of the proposed eviction.

(2) The designated officer may ask a police officer to take action, or help the designated officer, to enforce the warrant.

(3) For this section:

designated officer means someone responsible for taking action on warrants issued by the Magistrates Court.

114F Issue of warrants for eviction

On application by the lessor, the Magistrates Court must issue a warrant for eviction in relation to the lease if—

(a) the court has made an order under section 114B (Confirmation of contested termination) or 114C (Confirmation of uncontested termination) confirming termination of the lease; and

(b) the order stated that, if the tenant did not vacate the premises as required, the lessor could apply to the Magistrates Court for the issue of a warrant for the eviction of the tenant; and

(c) the tenant did not vacate the premises as required and continues to occupy the premises in contravention of the order.

24
Clause 116
Proposed new subclause (3)
Page 57, line 28—

At the end of the clause, insert the following new subclause:

(3) A person who receives information under this section may only use the information for the purpose for which it was given and may not further disclose the information except with the tenant's consent.

25
Clause 122
Proposed new paragraph (2) (ba)
Page 59, line 30—

After paragraph (b), insert the following new paragraph:

(ba) the lessor distributes a written summary of the proposed redevelopment at or before the meeting; and

26
Clause 122
Subclause (4)
Page 60, line 7—

Omit the subclause.

PART 2 – Leader of Opposition's amendment to Mr Stefaniak's amendment No. 1 (*see* Schedule 1, Part 4) to Mr Rugendyke's amendments

Proposed new clause 107AA, subclause 7, omit the subclause.

PART 3 – Leader of Opposition's amendment to Mr Rugendyke's amendments

Proposed new amendment 1A

After Mr Rugendyke's amendment to clause 51, insert the following new amendment:

1A
Clause 51
Proposed new subclause (1A)
Page 25, line 27—

After subclause (1), insert the following new subclause:

(1A) However, this section does not apply if the tenant has already accepted an offer under section 107A (Rules of conduct at end of lease term for shopping centre leases).
