LEGISLATIVE COUNCIL

Wednesday, November 24, 1976

The PRESIDENT (Hon. F. J. Potter) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS

FISHERMEN'S WHARF

The Hon. R. C. DeGARIS: I seek leave to make a statement before asking a question of the Minister of Lands, representing the Minister responsible for development.

Leave granted.

The Hon. R. C. DeGARIS: In many parts of the world a pleasant attraction not only for tourists but also for the people living in the cities involved is the establishment of a fishermen's wharf, which is associated with the direct selling of fish and with seafood restaurants. People who have been to San Francisco will recall the fishermen's wharf there. Will the Government consider the develop- of such a project at Port Adelaide not only as a tourist attraction but also as a very attractive area for the people of this State?

The Hon. T. M. CASEY: The Leader directed the question to the Minister responsible for development. This matter has been examined on numerous occasions, but it is not as simple as it may seem on the surface to be. Nevertheless, I will obtain a report for the Leader and ascertain exactly what is the present situation. Many strings will have to be tied before such a move can be contemplated.

MARGARINE

The Hon. J. A. CARNIE: I seek leave to make a statement before asking the Minister of Agriculture a question.

Leave granted.

The Hon. J. A. CARNIE: The Minister will know that, under section 22 of the Dairy Industry Act, 1928-1974, it is not permissible for butter and margarine to be manufactured on the same premises. I believe that that section provides that premises manufacturing these products must be 90 metres apart. The 1974 amendment to the Act allowed for vegetable oils to be brought into butter factories to make what is known as Dairy Blend. However, this has not been made because of certain international complications. Since January, 1976, when margarine quotas were abolished, butter sales have dropped by 20 per cent. Further, the Prices Justification Tribunal has increased the price of butter to 88c for a 500 gram pack, which will increase consumer resistance. As I understand it, there is a need for butter producers to be allowed to produce margarine in the off-season. Will the Minister consider amending the Act (which as I see it would involve the deletion of section 22) to enable butter manufacturers to manufacture margarine in the off-season?

The Hon. B. A. CHATTERTON: I am prepared to consider this matter, which has been mentioned to me by other honourable members, of whether there is not now an anomaly because of the abolition of margarine quotas. I am prepared to see if there are any other reasons why this clause should be retained.

JUSTICES OF THE PEACE

The Hon. A. M. WHYTE: I seek leave to make a short statement prior to asking a question of the Chief Secretary, representing the Attorney-General.

Leave granted.

The Hon. A. M. WHYTE: It is a long time since I first believed that the Government would listen to requests of the Aboriginal people and make genuine attempts to assist them when the requests were valid. I suggested to the Council at that time that Aborigines should be granted the status of justices of the peace and allowed to administer this office within their own reserves. That request was ignored at that time and I make the request again. Will the Chief Secretary take up with his colleague the possibility of creating justices of the peace on reserves for that purpose?

The Hon. D. H. L. BANFIELD: I will take the matter up with the Attorney-General.

SCHOOL COUNCIL REGULATIONS

Order of the Day No. 2: The Hon. J. C. Burdett to move:

That regulation 201 of the general regulations under the Education Act, 1972-1975, relating to constitution of school councils, made on August, 26, 1976, and laid on the table of this Council on September 21, 1976, be disallowed.

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

That this Order of the Day be discharged.

The regulation dealt with student representatives on high school councils. The previous position had been that student representatives should be allowed where the high school council so decided and in such a case they were appointed on the council for the full year. This regulation provides that there shall be student representatives on high school councils and not simply that the council have a discretion to appoint them, and also where there is a student body within the school (such as a Student Representative Council, or something of that nature) that the student body may appoint student representatives to the council for each meeting. That was the point that particularly disturbed me.

I know those high school councils which have appointed student representatives have been happy with what has happened and have thought the students have contributed much. They have been able to do that because of the continuity and because they have in general (unless there has been a resignation) been there throughout the whole year. As with the other members of the high school council, there has been some continuity in what has happened from meeting to meeting, and what disturbed me most about the new regulation was that there might be different students at each meeting, which seemed to me to be entirely unsatisfactory.

I made considerable inquiries of parent bodies, including at State level, and of high school principals, and the reaction I got was unanimous, that they wanted continuity. They felt that the students were very useful and beneficial but that there should be continuity: the same students should be on the council unless, say, one resigned and someone else had to be appointed in his place. That was the main reason why I moved this motion.

The second reason was that in every school there are three important groups: first, the students, who are of course the most important, because that is what schools are all about, and there are various student bodies;

secondly, the staff, who are necessary to teach the students, obviously, and they have their own body; and, thirdly, the parents, who obviously are necessary because otherwise there would not be any students. It seems to me that traditionally the school councils, both primary and secondary (they used to be called school committees) have been regarded as being a parent body. I also thought it was arguable that the question whether or not there should be student representation on school councils was properly, as it was before, a matter for the high school council to decide. But the main thing certainly was continuity, and I was perturbed that, with this new regulation, different students might be appointed by the student body at each meeting, which would destroy the whole concept of student representation on high school councils.

The motion I have moved was moved also in another place, where it was fully debated and then defeated. The Minister in the other place acknowledged the difficulty of the lack of continuity. It would be a fair summary of what he said to say that he said the Government would keep an eye on the matter and he would look at it. He acknowledged it was possible under this regulation that there could be different students at every meeting, and he acknowledged that that was undesirable; he thought that that generally would not happen (it was likely that there would be the same students, as a rule) and he considered that the new regulation was devised with the thought that some students might be on the council and might have to resign because of examinations, or something like that. In that case, those who resigned could be replaced. From reading the report of the debate in another place, the Minister gave what I understood to be an undertaking to keep this matter under review. He did not say he would change it or that he would alter the regulation but he undertook, as I understood it, to keep the matter under review. I accept that undertaking. Whilst I thought that the matter of continuity in particular was important, I do not intend to debate the issue any further in the Council.

Order of the Day discharged.

BURNSIDE TRAFFIC REGULATIONS

The Hon. R. C. DeGARIS (Leader of the Opposition): I move:

That the regulations made under the Road Traffic Act, 1961-1975, relating to traffic prohibition in the city of Burnside, made on May 6, 1976, and June 3, 1976, and laid on the table of this Council on June 8, 1976, be disallowed.

Much concern was expressed in the Burnside area that, when these regulations were made, the residents did not understand that they were regulations made under the Road Traffic Act and thought that they were made under a council by-law. That is understandable, and the question has been raised, as you know, Mr. President, of how people can be made aware that regulations are before Parliament and how they can be certain that they can give evidence in relation to those regulations. I point out to the Government that I consider that there should be a new method of informing people about what regulations are laid on the table. The residents of Burnside approached the Subordinate Legislation Committee but, as the committee had reported no action, it would not re-open the case on this matter.

Secondly, since the regulations came in, the Burnside council has applied for variation of them. I believe that that application has gone to the Road Traffic Board, which will make a decision on that matter. The point is that the Burnside council has no real influence on what will happen in its area. The determination will be made by the Road Traffic Board and Cabinet on whether the regulations will be varied. The idea that the Burnside council controls its own destiny cannot be substantiated.

I will be moving for a vote on disallowance of these regulations unless they are rescinded and a new set is made, related to the change of mind of the Burnside council and the recommendations of the Road Traffic Board. I cannot support the idea, in regard to a regulation such as this, that this Parliament should be in the position of never being able to determine what the people of Burnside may require. If the variation is made, we will be faced with the problem that Parliament may have a choice only between roadblocks in certain areas, as opposed to other areas, of the Burnside council. Therefore, I consider that the correct procedure is for the Government to rescind these regulations and immediately make a new set, having regard to the resolution passed by the Burnside council by eight votes to seven on the cutting of road closures by about 50 per cent.

This will enable the new regulations to be given a trial for about six months and it will give Parliament some control so that, through it, people can express their opinions on road closures. I will be seeking a resolution on this matter before December 9, but I should like the Government to rescind the regulations and make a new set to enable the people of Burnside and this Parliament to exercise a reasonable right. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

EMU WINE COMPANIES (TRANSFER OF INCORPORATION) BILL

The Hon. B. A. CHATTERTON (Minister of Agriculture) obtained leave and introduced a Bill for an Act to provide that conditionally upon Emu Wine Holdings Limited, The Emu Wine Company Limited, P. J. Howes Limited and Stephen Smith and Company Limited, companies incorporated in the United Kingdom, being authorised under the law of the United Kingdom to become companies incorporated under the law of this State, they may become companies so incorporated; and for purposes incidental and ancillary thereto. Read a first time.

The Hon. B. A. CHATTERTON: I move:

That this Bill be now read a second time.

It is intended to facilitate a change of domicile of certain companies, incorporated in the United Kingdom, being companies that have been taken over by Thomas Hardy and Sons Proprietary Limited, a winemaking company established and well known in this State. Early this year, Thomas Hardy and Sons Proprietary Limited were successful in acquiring the interests of a group of companies incorporated in the United Kingdom that, for convenience, may be referred to as the Emu group, comprising Emu Wine Holdings Limited and its subsidiaries, the Emu Wine Company Limited, P. J. Howes Limited and Stephen Smith and Company Limited. Thomas Hardy and Sons now wish to move the "legal residence" of these companies to this State with which they have a long-standing and close connection.

In this State this transfer of domicile can be achieved only by the enactment of a special Act of the Parliament of the United Kingdom supported by a law of this State that will permit of such a transfer. This proposed measure represents such a law. Honourable members will no doubt

recall a not dissimilar exercise that was undertaken in this Parliament in the matter of the enactment of the D. and J. Fowler (Transfer of Incorporation) Act, 1970.

The preamble is commended to members' attention since it sets out in some detail the background against which this measure is proposed. Clauses 1 and 2 are formal and clause 3 sets out the necessary steps to be complied with for the companies to divest themselves of their United Kingdom incorporation and become incorporated in this State. It is suggested that this clause is self-explanatory. Since this measure is a hybrid Bill within the terms of the relevant Joint Standing Orders, it will be referred to a Select Committee of this Council.

The Hon. R. C. DeGARIS (Leader of the Opposition): I see no reason why the second reading of the Bill should be delayed. It is necessary to have a Select Committee established as soon as possible to make recommendations on the legislation and, as the Minister said, the Bill is necessary because Thomas Hardy and Sons has acquired the interests of a group of companies, incorporated in the United Kingdom, known as the Emu group, a group of wine marketers well known not only in Australia but also in Great Britain. For that reason I support the second reading and the appointment of a Select Committee, which will be appointed as soon as possible and which will investigate the matter dealt with in this hybrid Bill.

Bill read a second time and referred to a Select Committee consisting of the Hons. J. A. Carnie, B. A. Chatterton, C. W. Creedon, D. H. Laidlaw, C. J. Sumner, and A. M. Whyte; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on the first day of next session.

The Hon. B. A. CHATTERTON moved:

That Standing Order 389 be so far suspended as to enable the Chairman of the Select Committee to have a deliberative vote only.

Motion carried.

UNITING CHURCH IN AUSTRALIA BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to facilitate the union of various Christian churches and the formation by that union of a single church to be known as the "Uniting Church in Australia"; to constitute the Uniting Church in Australia Property Trust (S.A.); to define its powers, authorities, duties and functions; and to provide for the vesting of certain property in the Uniting Church in Australia Property Trust (S.A.) and for purposes connected therewith. Read a first time.

The Hon. D. H. L. BANFIELD: I move:

That this Bill be now read a second time.

Its object is to make the necessary alterations to State law to enable the union of the Congregational, Methodist and Presbyterian Churches (other than Continuing Congregations) to be fully effective from the inauguration day at present planned, namely, June 22, 1977. This Bill, being a hybrid Bill, will in the ordinary course of events be referred to a Select Committee of this Council. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

REMAINDER OF EXPLANATION

The Bill contains provision to make clear that both the Methodist Church and the Congregational Church have the necessary statutory authority to unite. Provision for union is already contained for the Presbyterian Church in the Presbyterian Trusts Act, 1971. At the same time, it is made clear by the Bill that the Uniting Church can change and develop in the future without property questions arising and can also enter into union with other branches of the Christian church. The Bill establishes a property trust which in principle will hold all the property of the Uniting Church in South Australia. This trust will be a "dry trust". Its activities will be entirely under the control of the Synod of the Uniting Church within South Australia.

The Bill contains the necessary provisions for vesting property of the uniting churches in the property trust as from inauguration. These provisions will be explained in detail later. Provision is made for future gifts to vest in the property trust, and provision is also made for future gifts in favour of the Methodist Church or the Congregational Church to take effect in favour of the Uniting Church.

The Bill makes alterations to the legislation affecting various bodies such as Methodist Ladies College (now to be called Annesley College) and Prince Alfred College, the Parkin Mission and the Parkin Trust, and the opportunity has also been taken to bring into the trust the property of the R. H. White Settlement and at the same time to modernise the trusts of that settlement. Necessary alterations are also proposed to the will of the late John Henry Champness. This will be explained in more detail later. I should refer to the fact that one of the parties involved in the proceedings still has a few problems in relation to this Bill. However, I believe that such matters will be resolved during the passage of the Bill. Part I of the Bill (clauses 1 to 5) contains formal or preliminary provisions and does not call for comment. Part II deals with the inauguration of the Uniting Church.

Clause 6 formally empowers the Uniting Churches to unite. Clauses 7 to 10 are of a confirmatory or enabling nature designed to avoid legal argument in the future. Clause 10 in particular gives the Assembly of the Uniting Church the necessary authority to change and develop in future and to enter into union.

Part III (clauses 11 to 18) provides for the constitution of the Uniting Church in Australia Property Trust (S.A.), an incorporated body which is to hold the property of the Uniting Church in South Australia. It is to be noted that clause 12 authorises the trust to deal with or dispose of property notwithstanding provisions of any trust subject to which the trust holds property.

Part IV (clauses 19 to 32) deals with the vesting of property in the trust and makes the necessary alterations to the trust's affecting property. Clause 19 provides that the Bill is not to divest an incorporated association from being a prescribed association unless it voluntarily brings in its property later on.

Prescribed associations are listed in the fourth schedule to the Bill. Mostly they are incorporated congregations, but certain other incorporated associations have been added to the lists of prescribed associations so that property from these associations which the Uniting Church is to have will vest in the property trust. Thus the Congregational Union of South Australia Incorporated is listed as a prescribed association and so also is the Congregational Chapel Building Society of South Australia Incorporated. All the property of these associations will vest in the property trust.

The General Assembly of the Presbyterian Church of South Australia Incorporated and the two incorporated Presbyterian Development Funds together with the Presbyterian Fellowship of Australia in South Australia Incorporated are also listed as prescribed associations. This is not to say

that the Uniting Church will necessarily receive all the property of these Presbyterian associations or, indeed, any of it. This will depend on the Presbyterian Trusts Act, 1971, which provides for a division of property. The effect of the Bill is only to vest in the trust the property of a prescribed Presbyterian association that comes to the Uniting Church under the Presbyterian Trusts Act, 1971.

Except where an association is a prescribed association, all the property will stay with the incorporated association. Thus it is contemplated that all the property of the numerous Methodist incorporated associations will remain with the associations and that the property of various other bodies such as the Spicer Cottages Trust, the Trustees of the Payneham and Dudley Park Cemeteries Trust, Scotch College, Adelaide, Annesley College and Prince Alfred College will remain with those bodies, subject nevertheless, where money is held on trust, to any necessary change to Uniting Church purposes.

Clause 20 provides for property to vest in the trust on inauguration and for necessary changes in trusts. Subclause (1) provides for all the property of the Methodist Church to be vested in the property trust. Subclause (2) similarly provides for property held by the Congregational Union, any other prescribed Congregational association, or any other person in trust for the Congregational Church, to vest in the property trust. Provision is made for the vesting of land in Torrensville Congregational Church Incorporated and also vesting of land in Waitpinga Congregational Church Incorporated. These congregations are the two continuing Congregational congregations.

Specific provision is made for a house at Victor Harbor held in trust as a holiday home for ministers of the Congregational Church, and also land in the name of The Goolwa Congregational Church Incorporated, an incorporated association dissolved in July, 1938, to vest in the trust free from their former trusts. The opportunity has been taken to divest Methodist and Congregational trustees of land forming part of Parkin Wesley College and to vest that land in the property trust free from any trusts. Subclause (3) provides for the vesting of Presbyterian property in the property trust. Provision is also made for property belonging to the Uniting Church under section 22 of the Presbyterian Trusts Act, 1971 (which provides for the splitting up of gifts after inauguration), to vest in the trust.

The provisions are designed so as not to affect the division of property between the congregations of the Presbyterian Church continuing to function after inauguration and those going into union. The whole of subclause (3) comes into operation by special proclamation on a date to be fixed. Subclause (4) frees property vested in the trust from prior statutory and general trusts and also frees churches, manses and halls vested in the trust from the trusts relating thereto. Subclause (4) also converts references to any of the Uniting Churches in a trust in existence at inauguration into a reference to the Uniting Church.

Clause 21 provides for the property comprised in the R. H. White Settlement to vest in the property trust and modernises and simplifies the trusts of the R. H. White Settlement which at the moment are set out in a deed dated May 6, 1927. The provisions are not intended to affect proceedings at present pending in the Supreme Court brought by and against trustees of the R. H. White Settlement. Clause 22 alters the trusts of the will of the late John Henry Champness. Under his will he directed $10 000 to be set aside for the income to be applied in the support of students at the Methodist Brighton College.

The Bill provides for the income to be applied for the support of theological students in such manner as the Moderator of the Synod of the Uniting Church in Australia within South Australia thinks fit. Clause 23 deals with gifts taking effect in the future. Subclause (1) provides for gifts to the Uniting Church to vest in the Property Trust and subclauses (2) and (3) provide for references to the Methodist and Congregational Churches to be read as references to the Uniting Church with some special provisions in relation to the continuing congregations of the Congregational Church.

Clause 24 authorises the synod to resolve any ambiguity or obscurity where a reference to one of the Uniting Churches is by the Bill to be read as a reference to the church. Clause 25 provides for an incorporated association voluntarily to hand over all or any part of its property to the synod. Clause 26 provides for the dissolution of an incorporated association where by virtue of the Bill or by virtue of the Bill and the Presbyterian Trusts Act, 1971, it ceases to have any property. Clause 27 authorises an incorporated association to alter references in its rules to any of the Uniting Churches to references to the Uniting Church.

Clause 28 provides for the Bill to have extra-territorial operation in respect of property outside the State to which the trustee of a trust situated in the State or the trust is entitled. Clause 29 relieves property of the Uniting Church from forfeiture for breach of a condition in the Crown grant. This clause is one of a series of clauses sought as standard provisions throughout Australia. Clause 30 contains an evidentiary provision to facilitate proof that property is held by the trust for the church.

Clause 31 provides for the trust to be subject to liabilities attaching to property vested in it and also to have the same rights as the former owner. Clause 32 provides for the Registrar-General to register the trust as proprietor of an interest in land on application by the trust suggested by a certificate given by the trust and documents of title. No stamp duties or registration fees are to be payable.

Part V of the Bill (clauses 33 to 45) deals with miscellaneous matters which in the main do not call for comment. Clause 37 authorises the trust to apply for probate or letters of administration where the church has a beneficial interest and also authorises the trust to act as trustee. Clause 39 makes provision for the Assembly, the national body of the Uniting Church, to make regulations relating to trust property.

Section 38 of the Acts Interpretation Act will not apply to such regulations. Clause 40 facilitates schemes of co-operation with other churches. Clause 42 authorises the synod to declare new trusts where it has in the opinion of the synod become impossible or inexpedient to carry out trusts.

Clause 44 authorises the trust to invest in a mixed fund. Clause 45 authorises investment in any form of investment authorised by statute or the Assembly. The first schedule to the Bill sets out the basis of union, the document on which the Uniting Church is based. The second schedule sets out the Acts to be repealed by the Bill. It will be noted that no Presbyterian legislation is to be repealed.

The third schedule amends the legislation relating to Prince Alfred College, Methodist Ladies College (now to be called Annesley College), the Parkin Congregational Mission of South Australia Incorporated (now to be called the Parkin Mission of South Australia Incorporated), and the Parkin Trust. The amendments in each case primarily make the alterations to the relevant legislation necessitated by union.

The opportunity has also been taken to bring the relevant legislation up to date and to make the administration of the bodies concerned more flexible. Prince Alfred College is incorporated under Prince Alfred College Incorporation Act, 1878. The Act as it now stands provides for the college to be run by a committee appointed annually by the Methodist Conference. The college for some time past has in fact been run by a subcommittee of that committee called the Council.

The Bill provides in lieu of these arrangements that the college is to be governed by a council which is to be appointed as set out in a constitution. The constitution to apply from the commencement of the Bill, until altered with the approval of synod in accordance with provisions contained in the Bill, is set out in a new schedule to Part II of the principal Act. Synod will have the choice only of accepting or rejecting variations submitted to it. (Under the present Act rules may be made by the committee but are subject to disallowance or modification by the Methodist Conference.)

Under the new constitution the synod appoints the President, Secretary and Treasurer of the college and a body of electors who in turn appoint 16 ordinary members of the Council. The Headmaster is a member of the Council *ex officio* and the Council itself may appoint up to four additional members.

The remainder of the constitution sets out provisions relating to the council and its procedure. The Bill amends section 12 of the principal Act to delete a limitation on the application of surplus funds which is no longer of any practical effect. The Bill gives the college an unlimited power to borrow and give security in place of the existing limited power contained in section 13 of the principal Act. Section 14 of the principal Act is amended to confer a wider power of investment.

The Bill alters the name of Methodist Ladies College to Annesley College. The Bill also makes other alterations necessitated by union and generally brings the Methodist Ladies College Incorporation Act (which will now be called the Annesley College Act) up to date. The Bill repeals and re-enacts section 13 of the principal Act to give the council a wider power to deal with the college estate as defined in the principal Act and also to give a wider power to mortgage the college estate. In addition to the powers contained in section 13 of the principal Act at present the College is to be authorised to raise moneys by way of mortgage for the purpose of purchasing land or for any other purpose approved by the synod.

It is to be noted that the college is, by new section 4, given a general power to borrow. The Bill repeals section 14 of the principal Act and enacts a new section 14 giving the college a wider power of investment. The Bill repeals the whole of Part IV (which deals with management) and substitutes therefor a number of provisions based on the provisions of sections 15 to 31 other than those dealing with the details of the constitution of the governing body (formerly known as the Committee of Methodist Ladies College). The detail is set out in the constitution to appear in Part II of the schedule to the principal Act.

The new sections and constitution do not call for any detailed comment. It is to be noted that new section 19 gives the council power to alter the constitution with the approval of the synod. Section 38 of the Acts Interpretation Act will not apply to rules made by the council under this section. Whereas under the Act as it now stands the Methodist Conference could disallow or modify rules made by the college, under the Bill the synod will have the choice only of either accepting or rejecting the rules submitted to it.

New section 21 gives the standing committee of the synod authority to act on behalf of the synod for the purposes of the Act, except where the particular act is to be done at the annual meeting of the synod. A certificate of the moderator of the synod is evidence of an act of synod.

The Parkin Congregational Mission of South Australia Incorporated is an association incorporated under the Associations Incorporation Act, 1956-1975. The Parkin Congregational Mission of South Australia Incorporated Act, 1968, sets out in a schedule provisions substituted for the deed (as amended previously) regulating the affairs of the mission.

The Bill amends the Parkin Congregational Mission of South Australia Incorporated Act, 1968, to change the name of the association to the "Parkin Mission of South Australia Incorporated", to make alterations to the deed in the schedule necessitated or rendered desirable by union, and to enlarge the powers of the governor. The Bill deletes entirely the provisions contained in the deed for the appointment of electors who, in turn, at present elect the governors of the mission.

Under the Bill the Governors will be elected by the Synod of the Uniting Church within South Australia. The Bill amends clause 8 (2) of the deed to authorise the governors to fill casual vacancies. At present either the governors or the electors may fill a casual vacancy. A person so appointed will hold office only until the next election and not as now until the term of office of his predecessor would have expired.

The Bill deletes clause 18a of the deed (inserted by an amending deed made July 3, 1973, the validity of which the Bill confirms) which gives a qualified power to borrow and inserts a new clause 18a giving an unfettered power to borrow and give security.

The Parkin Trust Incorporated is, like the Parkin Mission, an association incorporated under the Associations Incorporation Act, 1956-1965. The original deed of settlement has been amended from time to time by indenture and by an Act of Parliament, the Parkin Trust Incorporated Act, 1926-1967. The Bill further amends the original deed of settlement to make alterations necessitated or rendered desirable by union and to enlarge the powers of the governors.

The Bill deletes clause 17 of the deed and inserts a new clause 17 authorising the governors to vary the deed with the approval of the synod. No alteration is to be made that alters the character of the institution as a religious and charitable institution. Clause 20 of the deed is amended to give an unfettered power to borrow and to give security. The fourth schedule to the Bill sets out the prescribed Congregational associations and the prescribed Presbyterian associations. This is a hybrid Bill and will, in the ordinary course of events, be referred to a Select Committee of this House.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

In Committee.

(Continued from November 23. Page 2352.)

Clause 12—"Offences involving sexual intercourse."

The Hon. R. C. DeGARIS: I move:

Page 4, after line 18—Insert subsections as follows:

(5) Notwithstanding the foregoing provisions of this section but subject to subsection 6 of this section a person is not indictable for rape, or

indecent assault upon his spouse, or an attempt to commit, or assult with intent to commit rape or indecent assault upon his spouse (except as an accessory) unless the alleged offence consisted of or was preceded or accompanied by—

(i) assault occasioning actual bodily harm to the spouse; or

(ii) the threat of actual bodily harm to the spouse; or

(iii) the threat of the commission of a criminal act against a child or relative of the spouse.

(6) Subsection (5) of this section does not apply in any case where the element of sexual intercourse in the alleged rape was constituted by the introduction of the penis of one person into the anus of another or the introduction of the penis of one person into the mouth of another.

I do not intend to repeat all the arguments that have been put regarding this matter. However, anyone who watched the recent *Monday Conference* programme which involved six people directly concerned with this matter would know that it became obvious at the end of the programme that even those who took the most radical viewpoint thereon came down strongly with the opinion that, unless there was violence or a threat of violence or of a criminal act, no allegation of rape should be made by a wife against her husband.

The Hon. Anne Levy: They said it would be unlikely to be proven. That is very different.

The Hon. R. C. DeGARIS: I remember this extremely clearly.

The Hon. Anne Levy: So do I.

The Hon. R. C. DeGARIS: Susan Brownmiller's last words on this matter were, "Yes, there would have to be proof", and that is tantamount to exactly what I am saying. It picks up the point, although not as strongly, made by the Hon. Mr. Burdett and others that the real crime in marriage, where there is a consensual arrangement, is not the actual rape but the violence that precedes it. That is the real crux of the argument.

Although this amendment does not go as far as the Hon. Mr. Burdett's amendment, which I supported, at least it affords some protection in relation to what has been referred to in this Chamber and by the New South Wales Attorney-General, as reported in yesterday's *News*, as the vindictive wife. Although vindictiveness can occur either way in marriage, in this context a vindictive wife would be able to make an allegation against her husband that could make it extremely difficult for him. This is a reasonable amendment, which has wide support from all sections of the community, including the support of Susan Brownmiller, who appeared on *Monday Conference* recently.

The Hon. C. M. HILL: Since indicating my reasons for supporting this measure during the second reading debate, I have had an opportunity to study this amendment. The amendment defines the circumstances to which rape in marriage will be deemed to have occurred. It deals with the cruelty and brutality about which I spoke during the second reading debate.

I believe that the amendment covers all the examples referred to by honourable members during the second reading debate, as well as the examples of violence and threatened violence that have been brought to my notice by constituents who have made representations to me about this matter in the last few weeks. As I said during the second reading debate, no rapist should escape punishment for his crime, whether or not that crime is committed within marriage. Simply because a man is married does not give him the right to rape his wife.

The amendment suggests that the alleged offence must consist of or be preceded or accompanied by assault occasioning actual bodily harm to the spouse or the threat of actual bodily harm to her. The latter point involving threat covers a wide range of circumstances and, therefore, I believe gives wives the protection which, as I have said previously, I think they should have. I am therefore willing to support the amendment.

The Hon. ANNE LEVY: In speaking against the amendment, I can only say that part of it is one of the most incredible amendments I have ever seen. It will mean that rape in marriage will be criminalised subject to certain conditions. I should like to deal first with proposed new subsection (6), which is even more incredible than proposed new subsection (5). We will have rape in marriage which occurs anally or orally but which will not need to involve the same standards of brutality as rape occurring vaginally before an indictment can be made.

Everyone is talking about the necessity to prevent brutality so that, where brutality occurs, a wife should have a remedy. Apparently, the brutality will have to be proven if it involves vaginal rape, but assault will not have to occur if it involves anal or oral rape.

The CHAIRMAN: Does not proposed new subsection (6) say that that kind of behaviour or, if you like, intercourse must be fully and completely consensual?

The Hon. ANNE LEVY: I fail to see the difference between consenting intercourse vaginally and consenting intercourse anally or orally.

The CHAIRMAN: I think many people would.

The Hon. ANNE LEVY: I cannot see any justification whatsoever for distinguishing between the orifices of the human body in this way. I am almost moved to suggest that the mover of the amendment is concerned with his own orifices but that he adopts a different standard in relation to orifices that are common to females. Whatever can be the logic behind this distinction between orifices?

Those who oppose the rape in marriage clause do so on the ground that marriage *per se* implies consent to sexual intercourse. Consenting sexual intercourse in marriage, as we know, can be oral and anal as well as vaginal. We all agree with the definition of "rape", which was established in this Bill and which includes penetration by the penis into either the mouth or the anus as well as the vagina. I presume we all agree with the definition of rape because no-one has spoken against this part of the Bill or suggested any amendments to it. I presume it has common consent. The definition of rape does not distinguish between orifices, yet at this late stage, when rape in marriage has been considered, we suddenly get a distinction occurring in the orifices used in rape.

The CHAIRMAN: I think I have had a long experience in matrimonial matters and in advising people, and it seems to me that I have met many women who are prepared to go along with or submit to what might be called vaginal intercourse, but they are very unprepared for and hostile about suggestions including other orifices.

The Hon. ANNE LEVY: That is their right surely.

The CHAIRMAN: Does this not say that it must be consensual?

The Hon. ANNE LEVY: Should it not all be consensual? Either it all is or it is not. I cannot see why in law we should start distinguishing between orifices in this way.

The CHAIRMAN: I think the situation is that on the matter of strict logic I am entirely with the honourable member, but Parliament does not work in the high, ethereal spheres of logic. It seems to me that it works on the basis of common sense, much as a jury works. As a practical issue, there is something to be said for it.

The Hon. ANNE LEVY: I will not accept that we do not attempt to work on logic. We may not always achieve that but surely we aim for it. I see no point in having a Parliament if we do not accept that as a principle. I can see no logic at all in subdividing the orifices in this way in defining what is or is not rape. It is not done regarding rape outside marriage: why should we do it regarding rape inside marriage?

The Hon. R. C. DeGaris: I am prepared to withdraw that part of the amendment.

The Hon. ANNE LEVY: Well, do so. It is incomprehensible to me that we must have this subdivision between the orifices.

The Hon. R. C. DeGARIS: I am prepared to put it into two sections: new subsection (5) first, and then consider the definition of "orifice" afterwards.

The CHAIRMAN: That may be helpful. Let us confine the discussion to new subsection (5).

The Hon. ANNE LEVY: Will we come back to the other argument? If new subsection (5) were passed and new subsection (6) were not—

The CHAIRMAN: Either one or the other has to be passed. They are quite separate issues. They will be put separately.

The Hon. ANNE LEVY: If they are going to be put separately the wording in new subsection (5) referring to new subsection (6) will presumably have to be removed if new subsection (6) is withdrawn or defeated.

The CHAIRMAN: If new subsection (5) fails, it seems to me that new subsection (6) fails with it. If new subsection (5) is passed, debate can continue on new subsection (6).

The Hon. ANNE LEVY: And, if new subsection (6) is then withdrawn or defeated, new subsection (5) would have to be reworded, because it discusses new subsection (6).

The CHAIRMAN: Yes, it involves that minor matter of amending new subsection (5).

The Hon. ANNE LEVY: Are we going to deal only with new subsection (5) at this stage?

The CHAIRMAN: It seems to me that we have got into a bit of difficulty here. The Hon. Miss Levy suggested that perhaps the amendment in question should be withdrawn, and the Hon. Mr. DeGaris said that he would withdraw it temporarily or at least leave it for discussion later. However, it does appear that originally the two provisions were tied together and, if there is going to be any difficulty in debating the matter, I do not see why we should discuss them separately. I think we can discuss them together, as we were doing originally. I ask the Hon. Mr. DeGaris what he would like to do.

The Hon. R. C. DeGARIS: I am in the hands of the Council. To expedite the matter, I suggest that the new subsection (5) be dealt with first. If, then, new subsection (6) is put and passed, there is no need to come back and recommit clause 12 in regard to new subsection (5). If, however, new subsection (6) does not pass, we will have to recommit clause 12 to deal with the removal of certain words.

The CHAIRMAN: I think the Hon. Miss Levy has made the point about the two provisions that one involves violence and the other does not. It is difficult to separate them, and I suggest that we continue as we have been doing and treat them as one amendment.

The Hon. ANNE LEVY: I think my comments on new subsection (6) so far would indicate my attitude to the amendment as a whole if we are considering it as one amendment. New subsection (6) just leaves me so appalled. I believe it is sick to suggest this differentiation between orifices. People have different attitudes within and without marriage. We all realise this, but I do not see why in law we should start imposing on other people one set of attitudes to intercourse. New subsection (5) proposes that rape in marriage will be criminalised where assault has occurred or been threatened. I oppose this amendment on two main gounds.

First, I would agree, in any case, that the onus of proof is always on the prosecution to establish the guilt of an accused person.

I would also agree that, where a cohabiting wife brings a charge of rape against her husband, the proof of rape will be very hard to establish in a court unless there is evidence of actual or threatened assault. However, I do not think it is for us as legislators to tell the courts the standards of proof that they should accept concerning rape. We can surely trust our courts to insist that there be adequate proof of rape before finding a man guilty of this offence.

Such evidence is likely to be that actual or threatened assault has occurred, but I strongly believe that we do not need to write into the law what the courts shall take into account in deciding the guilt of an accused husband. The court is most unlikely to convict without evidence of assault, but we do not need to tell the court that in one particular type of rape it must have this evidence, whereas in other types of rape it will not need to have that evidence.

The CHAIRMAN: I think the honourable member is talking about the court's duty, but the amendment does not refer to that: it says that a person shall not be indictable for rape, which means that he shall not face a charge without these elements being proved.

The Hon. ANNE LEVY: In many ways that is worse, because it means that not the courts, which are there to decide what is and what is not evidence, but the police or Crown Prosecutor's office will be making these decisions. The proper decision with regard to proof and deciding whether or not an assault has occurred is made in a court of law; it is not made by police officers, who may believe that there is a case of assault to answer so they bring it to court. Whether or not assault has occurred is a matter for the courts to decide, not for non-judicial officials to decide.

The CHAIRMAN: An indictment is authorised by the Attorney-General at a stage in almost every case after there has been a preliminary hearing by a magistrate. There is a court hearing. The indictment is only the stage where a person is charged before the Supreme Court by the Attorney-General; it is procedure.

The Hon. ANNE LEVY: Yes, procedure.

The CHAIRMAN: But not the procedure at first instance; there is always a court hearing first.

The Hon. ANNE LEVY: But, even before that, obviously the police must believe there is a case to answer before they charge a person. This happens in every rape case.

The CHAIRMAN: In every criminal case.

The Hon. ANNE LEVY: Yes, and particularly in cases of rape, the police will be looking to see whether there is evidence of assault as well as of rape or corroborative evidence of rape; but it seems to me there is a difference between looking for evidence of assault, for corroborative evidence, and, as stated in this amendment, evidence of assault *per se* and not just as corroborative evidence. We should not be making this distinction in principle between different types of rape. In any rape charge the police will look for corroborative evidence of assault within or without marriage, and we should not make a distinction in principle between different types of rape before judging the matter. If there is evidence of assault, whether or not assault has occurred is a matter for the courts to decide.

The CHAIRMAN: Under this amendment, the court at first instance would have to look for that; it would have to look for assault or threatened assault before it could act.

The Hon. ANNE LEVY: Can you imagine any preliminary hearing concerning rape not looking for that?

The CHAIRMAN: Frankly, no. They will be required to look for it.

The Hon. ANNE LEVY: I should think they would look for it, anyway. The amendment is going back on the principle really behind the whole Bill, and certainly behind this clause. Rape in marriage should be treated in exactly the same way as any other kind of rape. The court proceedings, the evidence of assault, and the need of corroboration should be the same in all cases where a charge of rape has been laid.

The CHAIRMAN: That is the essence of the Bill.

The Hon. ANNE LEVY: Exactly. It is one of the essences of the Bill that every woman should have exactly the same protection in law and the same procedures should be followed regardless of her marital status. If we pass new subsection (5), with or without new subsection (6), we are going back on that principle that every woman should have the same rights in law with regard to rape. The procedures in any rape trial are not trivial. The court is careful to ensure that no innocent person is convicted and that every person charged with rape has a fair trial, corroborative evidence being needed and the most searching procedures gone through, and I see no reason why we cannot trust the court to demand exactly the same evidence of rape inside marriage as of rape outside marriage. I ask the Committee to oppose the amendment.

The Hon. J. C. BURDETT: I support the amendment; I think it will bring some sanity back into clause 12. During the course of the debate on this Bill, and particularly on this clause, both at the second reading stage and in the Committee stage yesterday, much was said by honourable members opposite about some honourable members on this side of the Chamber supporting the treating of wives as chattels. That was nowhere said. It was not said by any member on this side of the Chamber, by me or by any other honourable member on either side. We do not accept it, and we are not voting for it. We are voting on an amendment to the criminal law, and I challenge any honourable member to look at what I said (not at what he imagined or hoped I said) or to look at what any honourable member said on this issue and to find where we said that we supported treating wives as chattels, or anything that could reasonably be interpreted as meaning that.

The Hon. D. H. L. Banfield: Oh, come on; you said it.

The Hon. J. C. BURDETT: The Minister has said I said it; let him point to the place in *Hansard* and draw his conclusion.

The Hon. D. H. L. Banfield: You said the wife had a duty.

The Hon. J. C. BURDETT: I did not use the word "chattel". This is the whole point. Such a lot has been made out of what I did not say, but I should like someone to look at what I did say, because I did not use the expression that wives are chattels; I did not use those words. I challenge any honourable member to quote what I did say and to refer to what I did say and not what I did not say or to what he imagined I said or what he hoped I said, because I have not said anything on which that interpretation could reasonably be placed. If anyone in the future is going to say in this debate that I or any honourable member on this side of the Chamber said that, I shall ask him to quote what I said and to painfully try to extract that interpretation—because it will be very painful. Here, we have an allegation that some members have said that wives should be treated as chattels. There is nothing to justify that in what has been said.

Turning to another matter, there is something which I think can be extracted from what has been said in the debate by every member who has spoken, and that is the question of violence, in the ordinary accepted sense of the word. As I recall, every honourable member who has spoken has expressed concern about the fact that too often many men who are married become guilty of violence against their wives for sexual reasons. This is something that has been said by every member who has expressed any point of view in this debate. When I moved the amendment I moved yesterday, I gave my reasons fully, and they are in line with what I am about to say: it is not not possible to establish rape without also being able to establish assault, and, particularly in those grievous cases where there was actually bodily harm, the charge of assault occasioning actual bodily harm could be proved, and that seems to me to be the proper criminal remedy.

The Hon. C. J. Sumner: Then why draw the distinction?

The Hon. J. C. BURDETT: I respect the view of those who have asked, "Why draw a distinction?" but I disagree with them. The Hon. Mr. Hill, the Hon. Mr. Laidlaw, the Hon. Mr. Cameron, and the Hon. Mr. Sumner in particular expressed their concern about wives who were subjected to brutal treatment, where it was not simply a case of intercourse without real consent or without full consent or where the consent was in doubt, but cases of real brutality or some shocking threat. The threat that has been given as an example in this debate several times has been along the lines of, "It is either you or the daughter." Those cases were cited by those four honourable gentlemen in particular. That is the kind of brutal rape that is shocking to everyone. It seems to me that in such cases assault, or probably assault occasioning actual bodily harm, could be proved and would be a proper remedy. However, the members to whom I referred said they thought that, in such circumstances, the accused person ought to be able to be charged with rape. Although I disagree. I respect their views.

That is what this amendment does. It establishes two degrees of rape. One is the brutal and violent rape, where there is some shocking threat, real injury, or violence. In that case, the perpetrator may be indicted, notwithstanding that he is the victim's husband. That seems to me to answer the point taken by the main speakers who have opposed the concept of the amendment I foreshadowed in my second reading speech. The role of the criminal law is to establish

criminal sanctions, and the maximum penalty for rape is imprisonment for life. The role of the criminal law is not to set out philosophies of life, and I believe that, if this amendment is passed, it should satisfy the consciences of all honourable members who have spoken in this debate. The Hon. Anne Levy raised a matter regarding new subsection (6). It would not worry me much, and probably it would not worry the Hon. Mr. DeGaris much, if that new subsection was deleted.

The Hon. F. T. Blevins: Why did you put the silly thing in, then?

The Hon. Anne Levy: If it is not forcing your philosophy of life on someone, I do not know what is.

The CHAIRMAN: If I may interrupt on that point, it seems to me that new subsection (6) must go in because new subsection (5) is there, relating back to the new definition of rape, which is significantly different and which is set out in subsection (3). New subsection (6) is really close to the original provision. It is only because new subsection (5) is there that one must stipulate that, in the circumstances of new subsection (6), which relates back to subsection (3), the act has to be purely consensual.

The Anne Levy: Why should it be purely consensual for some orifices and not for others?

The CHAIRMAN: Surely that is a matter of philosophy.

The Hon. ANNE LEVY: Exactly. The Hon. Mr. Burdett has said that the criminal law is not there to impose philosophy of life on people.

The Hon. J. C. BURDETT: On a point of order, Mr. Chairman, I thought I had the floor. I sat down out of defence to you. On the question of orifices, it is not merely a matter of philosophy: it is a matter of actual practical difference. If someone told me that the orifices in my body were not different, I would say that they were, in fact, different. They have entirely different purposes, and it is entirely logical to distinguish between them. Earlier in this debate the question of public acceptance of this measure was mentioned, and the only poll that there has been has indicated that the people were opposed to rape in marriage, but I put the point that, if the Hon. Anne Levy asks the people to accept that there is no difference in the consensual matter of intercourse per vagina, per anus, or per mouth, I do not think the people would agree.

The CHAIRMAN: My point on that is that we are dealing throughout with the question of consenting. My experience has been that a person may consent to one thing and not to another.

The Hon. Anne Levy: If people want to object to anal or oral intercourse, they have every right to refuse it.

The Hon. J. C. BURDETT: That would be covered by new subsection (6).

The Hon. Anne Levy: Quite, but, by passing the whole thing, with new subsection (5), we are saying that they have not the right to reject vaginal intercourse. They should have the right to refuse them all, or to consent to them all.

The Hon. F. T. BLEVINS: I oppose the amendment and am appalled that it has received any support. I should like assistance from the lawyers in the Council on some questions. As I am not a lawyer, I may have some things wrong. If I am wrong, I am sure that you, Mr. Chairman, or the Hon. Mr. Burdett or the Hon. Mr. Sumner can put me right. My main reason for opposing the amendment is that it completely disregards the principle of equality that we have been trying to achieve for all women on the question of rape. It makes a clear distinction between married women and *de facto* wives, and so on. To me, that is wrong, and on that basis alone the amendment should be thrown out.

However, the amendment refers to assault occasioning actual bodily harm to a spouse or the threat of that sort of bodily harm to a spouse. What about a case where there is no actual threat of bodily harm, where the husband walks in and says, "I want sexual intercourse"? Incidentally, we know that these nice pleasant phrases in the legislation are not often the phrases that are actually used. In the case I have mentioned, there would be no threat, but the woman might be terrified of the husband and might have been so for 15 years. That husband would not have to grab her and throw her on the floor. If this amendment is passed, the man cannot be charged with rape, because there will be no threat. However, that man would have raped that woman as clearly as would have been the case if he had knocked her down.

I find that part of the amendment incredible. Such a man would have raped a woman but could not be charged with rape if the amendment was passed. I hope that members opposite who have supported the Government will see that, if they pass this amendment, they will still be allowing rape within marriage that is not a criminal offence. Concerning the threat of the commission of a criminal act against a child or relative of the spouse, why is there a restriction applying only to a child or relative of the spouse? A wife may be at home having a cup of tea with a neighbour and when the husband walks in the same situation applies as in the case of a wife and the daughter—it is either the wife or her friend, with her husband saying, "I do not care which".

A list would have to be enormous to include all the people who could be threatened. I cannot see why there should be such a restriction, because not all rapes in marriage are accompanied by direct threats, assault, or bodily harm. In many cases the economic circumstances and the circumstances of the family mean that when a man has intercourse with his wife it is clearly rape. If this amendment is carried, he could not be charged with rape. In his second reading speech, the Hon. D. H. Laidlaw stated:

> I am pleased that this issue is subject to a free vote by honourable members on this side of the Council, because I have decided, after due consideration, to support clause 12 . . . I have been in favour of this provision since it was first mooted by the Government . . . It has been argued that by giving a wife the legal right to charge her husband with rape we shall destroy the sanctity of marriage. I repudiate that argument. Women are no longer chattels who must submit to every whim and fancy of their husbands. Clause 12 merely gives to a woman, who enters into a contract of marriage, the same protection from sexual brutality that she enjoyed when she was single.

I say to the Hon. Mr. Laidlaw that, if this amendment is carried, that will not be the case. Rape can occur, and the husband in certain circumstances will not be able to be charged with rape. The Hon. C. M. Hill stated:

> I will vote for the measure and I give my reasons briefly for finally deciding to support the clause in question . . . I cannot escape the force of the underlying principle that no woman should be in a situation in which she is raped, and the rapist be free or exempt from punishment for that crime.

I was intensely disappointed to hear the honourable member speak on this amendment, because what he supported in the second reading debate will no longer be the case if this amendment is passed.

The CHAIRMAN: I do not believe that the Hon. Mr. Hill or any honourable member can be blamed for

making a decision at one stage and making a different decision at a later stage. Amendments cannot be considered until a Bill reaches the Committee stage.

The Hon. F. T. BLEVINS: I refer to the following statement made by the Hon. Mr. Hill:

It is the duty of the law, no matter how cumbersome the criminal law may be in the eyes of some people and no matter how few instances of this kind occur, to rectify such injustice provided, of course, that community interest is not adversely affected.

If this amendment is passed, in certain circumstances a man can rape his wife and not be charged with rape.

The CHAIRMAN: People often do hurtful things to other people, but it is not cognizable by the law.

The Hon. F. T. BLEVINS: But we are in a position to make it a criminal act, and that is exactly what we are trying to do. The Hon. Mr. Hill, the Hon. Mr. Laidlaw and the Hon. Mr. Cameron supported the view that in all circumstances this should be a criminal act.

The Hon. J. C. Burdett: They did not say that.

The Hon. F. T. BLEVINS: Let them speak for themselves. The Hon. Mr. Cameron stated:

To me, the moment a married man rapes his wife, he has abrogated the marriage contract. He has stepped outside it and it is cancelled from that time.

His last words were:

No man should have the right to rape any woman, whether or not she be his wife. I support the Bill.

The Hon. Mr. Cameron, the Hon. Mr. Laidlaw, and the Hon. Mr. Hill clearly stated throughout the second reading debate that they agreed with the principle that a woman did not have to submit unwillingly to sexual intercourse—she did not have to be raped. Those honourable members then said that, if she were raped, the charge of rape should apply. However, if this amendment is passed, circumstances arise under which that charge of rape will not apply because of the lack of a direct threat or violence.

This amendment is designed to decriminalise rape in marriage. In no way should any human being be treated differently merely because that human being is married. Every person is entitled to the full protection of the law. This amendment, if carried, negates that principle of equality. Therefore, I oppose it.

The Hon. D. H. LAIDLAW: I support the amendment. I remind the Hon. Mr. Blevins that in my second reading speech, when I said I supported the Bill, I focused my attention on the brutality of some husbands.

The Hon. F. T. Blevins: You said you supported clause 12.

The Hon. D. H. LAIDLAW: Yes, I supported that because of my experience as a manager of factories, having seen some of the extraordinary cases. I said that from my experience I could refer to cases that matched the examples advanced by the Hon. Anne Levy. One man who was working for us tied his wife behind his car and dragged her along the road before he raped her. I call that rape. I want to give a wife more protection than she currently enjoys in her sexual relations with her husband.

I admit that this amendment negates the principle that the lawful wife should be in exactly the same position as a separated wife, a *de facto* wife or a single woman. However, in practice, I do not believe that a lawful wife would be able to establish a charge of rape without being able to show some physical violence or threat to herself or others.

The Hon. C. J. Sumner: Why worry about the amendment at all?

The Hon. D. H. LAIDLAW: I will come to that. I expressed concern in my speech that, if this Bill passed, it could lead to a spate of spurious litigation. I said that it might be necessary to amend the Act if that position obtained. Some females who could see greener pastures elsewhere might like to get rid of a redundant husband and would see this legislation as a way of doing so. The amendment could provide the safeguard that I had in mind when I contributed to the second reading debate, and I support it.

The Hon. C. J. SUMNER: I oppose the amendment for the reasons canvassed during the second reading debate. The amendment places an important and destructive qualification on the original principle of clause 12. The Hon. Miss Levy and the Hon. Mr. Blevins have said that the principle is that no distinction should be drawn, because of a marital situation, in matters of this kind. It has been claimed that the amendment would be a disincentive to a wife's making spurious claims about her husband's actions, but I do not really believe that the provision will lead to what the Hon. Mr. Laidlaw has called a spate of spurious litigation or that it will really give the so-called vindictive wife any greater power than she has at present.

When any complaint comes before the police in any criminal matter, particularly matters involving the family, the police investigate it very thoroughly, and they do not take it before the courts unless they have grounds for believing that there is some chance of obtaining a conviction. So, obviously, any complaints that a wife makes will have to be assessed by the police at the beginning. They will search for corroborative evidence, and it will not be in every case that the police decide to prosecute.

Further, there may be a case outside the strict qualifications of this amendment where the police are satisfied that the wife is a credible witness and that there is a case to answer in connection with rape. But that does not mean that the police will automatically prosecute on every spurious story that a wife may tell. The police are careful where matrimonial situations are involved; the lawyers in this Chamber will agree with me on that point.

I congratulate the Leader of the Opposition on quoting a feminist as an authority for his argument in support of the amendment. At least I suppose it is a step in the right direction that he believes that a feminist of the stature of Susan Brownmiller carries some weight in this matter. Of course, the Leader quoted her incorrectly; he has not accurately conveyed her views to this Council. An article by Tony Baker in the *News* of November 18 states:

Miss Brownmiller is total in her support for the Bill. Told passage seemed likely she said: "I am so happy South Australia is going to take the lead in passing rape in marriage legislation. It's high time women had the principle of equality in marriage. And there's no way to have equality in marriage unless it is clearly understood any act of sex in marriage must always be by consent—not a husband's 'right' and a wife's 'duty'."

The important point there is that Susan Brownmiller is total in her support of the Bill.

The CHAIRMAN: Even with this amendment, South Australia will still be taking the lead.

The Hon. C. J. SUMNER: That may be true, but I am drawing attention to the way in which the Hon. Mr. DeGaris used the remarks of Susan Brownmiller. In the second reading debate the Hon. Mr. Hill said:

If the institution of marriage requires a right by a husband to rape his wife to ensure its sanctity, then the real virtues of, and reasons for, a happy and successful marriage are overlooked in the extreme.

I thought that that summed up the matter very well. I am therefore disappointed that the honourable member now

believes that he has to resile from what I thought were the principles he stated exceptionally well. I appeal to him to reconsider his attitude to the amendment, which is an unnecessary and important qualification to the general principle that the honourable member supported during the second reading debate. I should like clarification of the effect of the word "indictable" in the amendment. I oppose the amendment.

The Hon. M. B. DAWKINS: I support the amendment, although I do not believe it is as good as the Hon. Mr. Burdett's amendment, which would have brought the clause back to the reasonable conclusions of the Mitchell report. I compliment the Hon. Mr. DeGaris on this amendment, which overcomes many objections of some honourable members. It should overcome the objections of all honourable members. The Hon. Mr. Burdett said that it brought sanity back into clause 12. I completely agree with that, and support the amendment.

The Hon. ANNE LEVY: I appeal to honourable members to consider, when voting on this amendment, that proposed new subsection (6) is being voted on as well as proposed new subsection (5). Proposed new subsection (6) is clearly a most offensive provision to many people. To distinguish between orifices in this way is insulting to many women. Many feminists, including Susan Brownmiller, have said that our society has often regarded women merely as being a vagina and a uterus. One would hope that we have passed that stage, however true it may have been in the past.

Proposed new subsection (6) implies that rape is to become a criminal offence if it involves anal or oral rape, but not if it involves vaginal rape, unless there is also a concomitant assault. A woman has complete control regarding what happens to her anus and mouth, but apparently she has not that same control or ability to consent or not to consent regarding her vagina. It really is a case of, "It is all right upstairs and downstairs, but not in my lady's chamber." I suggest, on the grounds of proposed new subsection (6), that this amendment should be opposed.

The Hon. R. C. DeGARIS: I should like again to quote the view of the New South Wales Attorney-General, an Attorney in a Labor Government, which is further evidence to support my amendment.

The Hon. F. T. Blevins: Rubbish!

The Hon. R. C. DeGARIS: I think it is reasonable evidence when the Attorney-General of the largest State, a person belonging to an A.L.P. Government, makes such a statement. A report in last evening's *News* states:

> But Mr. Walker has reservations about legislating to give women the right to charge their husband with rape. "Anyone who has practised in the matrimonial field—

which Mr. Walker has—

> would realise the viciousness associated with the break-up of some relationships," he said. "Both sides are prepared almost to say and do anything. It really concerns me that women would be given a weapon that could put a man behind bars for 14 years. I think some would use it."

The report continues:

> Mr. Walker said he accepted a woman should be able to charge her husband with rape in cases where there had been a reasonable period of separation. But he was concerned about the practicalities of it when two people were living together.

The Hon. Mr. Burdett's amendment interpreted the New South Wales Attorney-General's viewpoint. My amendment does not go as far as the point made by the New South Wales Attorney. The amendment is reasonable, and should be accepted.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, D. H. Laidlaw, and A. M. Whyte.

Noes (9)—The Hon. F. T. Blevins, T. M. Casey (teller), B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. Jessie Cooper. No—The Hon. D. H. L. Banfield.

The CHAIRMAN: There are 9 Ayes and 9 Noes. To enable this matter to be further considered by the House of Assembly, I give my casting vote for the Ayes.

Amendment thus carried; clause as amended passed.

Remaining clauses (13 to 19) and title passed.

Bill read a third time and passed.

CITY OF ADELAIDE DEVELOPMENT CONTROL BILL

Adjourned debate on second reading.

(Continued from November 23. Page 2344.)

The Hon. C. M. HILL: This Bill is a long-awaited measure, for two reasons. First, as honourable members know, the City of Adelaide Development Committee has been operating as an interim measure in the planning process within the City of Adelaide for about three years. All honourable members knew that ultimately that form of control would be superseded by more permanent legislation. It is also a long-awaited measure from my personal point of view because I have watched over the past six years a gradual control being exercised to an ever-increasing extent by the State Government over the affairs of the city of Adelaide, and I have been wondering during that period what kind of permanent legislation will be insisted upon by the State Government when it ultimately introduces machinery to give permanency to planning within the city of Adelaide area.

I might say that I am very disappointed indeed by what I see when I read the measure before us in that particular regard. The Bill, as honourable members no doubt have noted, consists of seven Parts. It deals with clauses under the heading of "Preliminary" and then it deals with a unique approach to planning (as we have known it in this State) by establishing guidelines that are now within the Bill under the heading "Principles". The Bill then establishes a commission which will be known as the City of Adelaide Planning Commission. Part IV of the measure lays down provisions for development control within the city of Adelaide. Part V deals with appeals and then there are miscellaneous clauses and procedure for the transition from the present scheme to the new legislation.

First, I want to stress what I believe to be the very excellent record of the city of Adelaide as a local government body in the management of its affairs and, in particular, in its ability to control its own planning processes. The city of Adelaide, I believe, has always been a very responsible body and it has been rewarded in its abilities in this area by enjoying a certain amount of independence from other legislation. This was evident when we passed, for example, the Planning and Development Act in 1965 (it was proclaimed in 1966). In that measure the whole Part dealing with subdivisions excluded the city of Adelaide and, generally speaking, I suppose to a certain degree

because of its size and resources and ability to employ its own skilled staff, it has been in this unique position of having some independence.

Enjoying this situation, together with its own ability to manage its own affairs very well indeed, it has had a history that I think the State Parliament should respect and it should evidence that respect by maintaining some autonomy for the city of Adelaide in the total planning process as it applies to the State. The Bill before us is a town planning measure which this Council must consider and approve, try to improve or reject. I can recall, as I said back in 1965, talking on what was then a very important measure when the Government of the day introduced the Planning and Development Bill, that the best way for legislators to review legislation dealing with town planning is to go back to principles which have to be considered, and the merits of such legislation must be considered against such principles.

Unless this Bill before us stands up to some criteria which comprise principles in both the art and science of town planning, then, in simple words, it is not a good Bill. What are these principles that one should bear in mind when one passes judgment upon this legislation? The first one that comes to my mind is that local government should be given the maximum opportunity to control its own affairs: that applies as far as town planning is concerned. After all, the ratepayers of the city (both residential and commercial) have their interests within the City of Adelaide boundaries. Those interests are very closely allied to the general planning process within the city, and the local government body, being representative of those ratepayers, ought to be given by the State Government the maximum opportunity to administer and control its own affairs.

The corollary to that is that there should be minimum interference or control by either State or Federal Governments over such a local government body. On that principle this Bill fails dismally. There is no doubt about that, and I will deal with it when I come to a more detailed consideration of the clauses in the Bill. It is quite apparent that the power and control that the State Government intends to hold over the City of Adelaide is such that the opportunity for the City of Adelaide to administer its own town planning has been completely taken out of the hands of that body by this State Government. I make no apology for putting that particular principle as the most important one that we ought to bear in mind.

There is continuous encroachment by State Governments, and by Federal Governments to a more limited degree, over the power of local government, and I think Parliament has a responsibility to strive to uphold the rights of local government and to ensure that councils are allowed maximum play within their area of administration. We should allow them the opportunity to develop their own initiatives and to utilise their own resources, and unless Parliament is aware of that continuous pressure which endeavours to restrict this situation, then it is very easy for Parliament to lapse into an approach of accepting the situation and the inevitability of the State Government controlling local government more and more. We have an opportunity in the consideration of this Bill to bring that principle back to the forefront. If we apply that criteria, as I have said, as far as this Bill is concerned, it fails dismally.

The next principle that I think we ought to consider when we pass judgment as to whether town planning legislation is good or bad is that there must be a maximum public participation and involvement in the planning process. Surely we have reached the stage in the last decade where there is acceptance of that without question. I repeat, there must be maximum public involvement and participation in the planning process.

The machinery which has led up to this Bill has been in motion for I would think about five years now while the City of Adelaide has been carrying out its investigations, having employed its consultants and been in constant contact with its ratepayers about its future town planning arrangements. This principle has been met by the City of Adelaide by involving its ratepayers and the public in the processes so far. Because of the way in which the City Council has invited the ratepayers to meetings and has provided an opportunity for them to state their views publicly to the council, I think it should be congratulated.

However, there is some unwillingness, apparently, by the Government to continue the process of public participation in this measure as far as the regulations are concerned. Honourable members will no doubt be aware, if they have had much experience with their own council and the planning control measures affecting their areas, that the regulations under the Planning and Development Act are on display at the council offices—for example, in the suburbs of Adelaide. The public have the opportunity, in those situations, to make their wants known and to raise their voices before the regulations pass through that stage within the local government machinery. But the regulations, as I read this Bill, proposed within this measure will not be displayed by councils; that is a criticism I make of the matter. It is a point that should be looked at in this Council and I propose to look at it further in the Committee stage, because it is important.

I was pleased to see in the Bill that the principles, when they are to be amended, must run the gauntlet of public scrutiny. It is evident that the architects of this Bill have considered this principle, that it is necessary for the public to be involved. So, whilst that principle is met, in the main, in this Bill, there is a need for the regulations to be available for public scrutiny before they are gazetted and come to Parliament for us to look at them and decide whether or not we will allow them. If that provision can be written into the Bill, the principle of public involvement is completed.

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

A quorum having been formed:

The Hon. C. M. HILL: The Council should bear in mind the principles at issue when it comes to pass judgment on this Bill. The third principle is that, in my view, those people who are in positions of power and control on controlling authorities dealing with town planning should either be qualified or be representative of certain sectional interests within the planning process. I recall that in the State Planning Authority the positions are filled by people who must meet certain criteria. For example, certain departmental senior officers, and so forth, are appointed, but in this Bill, where the Government is trying to nominate four nominees for this new commission, no criteria are laid down.

I am not saying that this Government would resort to such a practice, but it would be possible for some Governments to use these positions as "jobs for the boys". Is it right that we should pass legislation permitting such a practice? I do not think it is. I should like the Government representatives on the commission to be appointed on a basis of certain criteria laid down in the legislation. If it was possible to amend this Bill along these lines (it is certainly practicable so to do), Parliament would be assured that the people who Parliament thought would

be the best Government appointees would be those finally appointed. That is an important point that should be borne in mind, and it surprises me that the Government has brought this Bill forward, has overlooked this detail and is expecting us to pass legislation allowing for such a wide power to be exercised by any State Government, either now or in the future.

The Hon. B. A. Chatterton: And how about the council representatives?

The Hon. C. M. HILL: I have thought about that situation. I am not sure how that might apply, but that principle should be looked into. I wondered, for example, whether the council was going perhaps to prefer to have elected members in totality or whether it might agree to its Chief Planning Officer being one of its nominees; or perhaps it might like to give some guidelines on the basis that at least one should be an alderman and at least one a councillor. That is something I am happy to debate further; it merits being investigated in the interests of the best possible legislation.

The next principle I want to discuss briefly is the vexed question whether third parties should have rights in the planning process. I know it is arguable whether that is good or bad. As I recall, when the principal State planning legislation was passed in 1965, the rights of third parties, or of appeals by third parties, were not included in that Bill. I think I am right in saying that, by amendment in 1972 or thereabouts, third party appeals were permitted in the State legislation, and I think it was towards the end of 1973 that by amendment the Government of the day took those rights out of that legislation. So that is some evidence of the various views that can be held in regard to this rather controversial issue. There is no doubt in my mind that, if we, for example, consider some of the residential streets in the city of Adelaide, no matter where a resident lives in a street, if a major development was mooted for that street and if an application was before the council for approval of that development, in those circumstances third parties should have a right to make their opinions known.

I come down on the side of looking at this town planning process in totality; we cannot restrict applications simply to appellants, on the one hand, and the city, on the other. Some people will say that, if we allow third-party appeals, there will be delays, red herrings will be dragged across the trail, and insincerity will enter into the matter because some people will use the machinery to obtain benefit or promote their own self-interest.

Nevertheless, on the whole subject, in principle we should not overlook the rights of third parties in town planning. Some councils, to their credit, on their own initiative, tell parties that they believe would be third parties of proposals that are under consideration, but that procedure may not be sufficient to cover the whole situation. I think that, before the Bill passes, the Council ought to examine whether third-party appeals should be permitted, because this is an important aspect of town planning.

The next provision that we should examine is the need for the appeal provisions to be adequate and fair. I think the Hon. Mr. DeGaris said yesterday that the appeals aspect does not go far enough, and I would agree. I understand that endeavours will be made to grant further appeal rights, and I will support a reasonable amendment on that. I do not believe that the machinery should be such that it would bog down planning by cumbersome proceedings. We have a classic example in the State's planning legislation, where the whole system has gone wrong. The planning appeal procedure has taken the centre of the stage. the tail is wagging the dog, and the Planning Appeal Board has grown completely out of proportion.

In this, the officers are not at fault in any way, but the legislation was not good from the start and the Labor Party has not kept it up to date since 1970. In the past five or six years, there has been much change in town planning throughout the world and, unless the State Government updates its legislation, before long these delays will build up problems. We see that situation with planning in South Australia at present. I do not want this legislation passed in such a way that those problems can occur, and we must strike a balance in the appeal machinery so that it is fair to the people and to the commission. At the moment, I do not think the balance is fair to the ratepayers.

The next principle that I should like adhered to in the legislation is that there must be adequate flexibility and an opportunity to update legislation, with the commission and the council having the right to move with the times. From looking at the Bill, I believe that there has been an attempt to do this. The matter will depend somewhat on what is in the regulations when they are introduced, but the guidelines for flexibility are in the Bill. Such flexibility does not exist now in the Planning and Development Act.

The last principle to which I refer involves those people directly affected, those who require help with continuing use arrangements, those who will live in this new environment of planning control (and I am speaking of the ratepayers of the city). These people must be the final masters of the situation. This has been fundamental not only in planning but in Government generally for centuries, and about 200 years ago Edmund Burke said, "The people are the masters". We should try to achieve this goal, and the only barrier against it in the Bill is the power that the State Government is seeking, the imbalance, and the control that it can exercise, compared to the power of the council which comprises the elected representatives of the ratepayers.

Members of councils are on the councils only at the will of their ratepayers, under our democratic system, and those ratepayers are not only close to their municipal body at local level but they are also sensitive to planning measures, as shown by the residents' associations and other associations and groups in the city, as well as by some institutions representing the commercial interests. Through such representative bodies and liaison with the municipal body, there is this closeness. If a council does not bow to the will of the people, the people will exercise their rights and soon show that they are the masters of the situation.

Looking at the Bill in more detail, I criticise the Government for its obvious ambition to control the Adelaide City Council and to dominate its affairs. To me, that is serious. If one reads the Bill closely, one cannot help being disappointed and astounded by the State Government's intrusion. The Government casts a permanent shadow over the council. I may be biased on this matter, because I was a member of the Adelaide City Council and have had other involvement with local government. However, over the past five or six years I have watched this gradual process by which the State Government has been influencing and controlling the affairs of the council.

From time to time, there has been evidence to justify the claims that I am making. I can recall a few years ago the Minister of Local Government reminding the City of Adelaide of who wields the power, when he refused the Adelaide City Council the right to carry on with its parking-station programme and build the next station in its overall plan. That project had been properly researched and the programme had been continuing for about 10 years.

With much regret I saw the manner in which the State Government started to involve itself in the City of Adelaide in respect of the Adelaide Georgetown relationship. Basically, that was a city to sister city association, and simply a local government matter, but the State Government got into the act and all honourable members know that that culminated in the extravagant plan in which an aircraft was hired for a flight to Penang. I believe that the State Government should not have got itself involved in that matter. That was a local government matter, but it is evidence to me of how the State Government was setting its eyes on the Town Hall. Rundle Mall has caused much recent conjecture. Honourable members opposite may not agree with me, but the decision to proceed and the decision concerning the planning of the mall should have been purely a local government decision.

The Hon. J. E. Dunford: We would not have had it for 10 years, otherwise. We are a progressive Government, and you cannot get away from that.

The Hon. C. M. HILL: The honourable member has said we may not have got it, but I am saying—

The Hon. J. E. Dunford: You probably think that local government is elected. You are happy with local government only because it is crook—all you business people run it.

The Hon. C. M. HILL: I am willing to examine any possibility to improve local government, and I refute the honourable member's charge that, if the matter concerning the mall had been left with local government, it would not have come to fruition for 10 years. It may have taken longer to achieve, but it would have been achieved more democratically. The honourable member knows how the mall ultimately was achieved: it was achieved by a Minister, again showing his lust for power, wielding the big stick over Rundle Street ratepayers. Honourable members opposite should be proud of that, because he is. Just as the Government exercised power in that matter so it is trying to grasp power through this Bill. The decision about Rundle Mall should have been a local government matter in its entirety, but it was not, because the State Government has its eye on the Town Hall. The culmination of that plan is dealt with in this Bill. The Adelaide City Council must rely on some finance from the State Government.

The Hon. J. E. Dunford: That's right.

The Hon. C. M. HILL: The honourable member agrees with me. What rights does that give the State Government to place conditions and restrictions on such funds? Only two weeks ago the Minister of Local Government screamed loudly because the local government allocation to South Australia by the Federal Government had strings on it. Members opposite said about that, "You should never have conditions on funds coming from the Federal Government to local government."

The Hon. T. M. Casey: Fraser went back on the word he gave when he first allocated the funds.

The Hon. C. M. HILL: That is how Federal and State Governments should work and allow local government to undertake its own initiatives when finance is required by allowing block grants. Such grants can be watched carefully in respect of wasteful or improper spending. There is no excuse for the State's involvement in Rundle Mall in any way.

The Hon. J. E. DUNFORD: Will the honourable member give way?

The Hon. C. M. HILL: Yes.

The Hon. J. E. DUNFORD: I have always tried to ascertain from the honourable member whether or not he believes in democracy. I could never tell from his speeches. In the recently mooted taxation proposals, everyone in the community will pay part of their income tax to local government. Does the Hon. Mr. Hill believe that everyone who pays income tax should be able to vote for local government, whether it be the Adelaide City Council or Kadina council?

Members interjecting:

The Hon. C. M. HILL: I do not want to go into a long explanation about the reasons for the present system of local government voting. Traditionally, there was a property franchise.

The Hon. J. E. Dunford: You're not answering my question. Do not tell me something I already know.

The Hon. C. M. HILL: At least we have common ground on which to start. It has been people with interests, not only as landlords, but as lessees, who have had the right to elect representatives to local government, but the people who pay taxes to the State Government have a right to elect members to State Parliament.

The Hon. J. E. Dunford: A person in a hostel does not have a vote at local government level, yet he still pays rates and taxes.

The Hon. C. M. HILL: What taxes does such a person pay to local government?

Members interjecting:

The Hon. B. A. Chatterton: It has been suggested that there will be three columns on the income tax form, one for the Federal Government, one for the State Government and one for local government.

The Hon. C. M. HILL: I am hopeful that Governments at all levels will give financial aid to local government, as has not been the case before. Funds will be used by local government for social welfare purposes and the like, as the situation comes about.

Members interjecting:

The Hon. C. M. HILL: All people pay taxes, but they do not all pay taxes to local government. Local government will get some finance through grants from the Federal Government. When that situation comes about—

The Hon. F. T. Blevins: It is already here.

The Hon. C. M. HILL: It is not.

The Hon. F. T. Blevins: The Whitlam Government gave millions of dollars.

The Hon. C. M. HILL: That Government started it. In many cases local government does not know what its rights are in connection with the delivery of welfare services and social services.

The Hon. J. E. Dunford: You have not answered my question.

The Hon. J. R. Cornwall: You are equivocating.

The Hon. C. M. HILL: The honourable member uses big words. In this Bill, not only is the shadow of Goliath cast over the city but also clause 5 provides:

This Act does not bind the Crown.

The power that the Government will have over the city's affairs is bad enough but, in adddition, the Government is not willing to be bound in connection with any of its developments or activities associated with developments. I cannot see how the Government can refute the claim that that is unjust. If the State Government had the respect for the City of Adelaide that it ought to have and if it had the faith in the council that it ought to have, surely the Government ought to be willing to be bound

by this Bill. We tend to accept, without enough questioning, this kind of provision in legislation that is introduced from time to time. That Parliament acquiesces in this matter from time to time does not necessarily mean that that kind of provision is justified. The people ought to be assured that any development within the city of Adelaide, whether a Government development or a private development, must conform to the same rules. I therefore do not intend to vote for clause 5. The Government proposes to have a majority on the controlling body established by the Bill. What sort of respect does this proposal show for the City of Adelaide? The Government is saying, "We will allow you to have a commission but, of course, the State Government will intrude into your affairs, and we will have a majority on the commission." That is totally unfair. Actually, the State Government ought to have a minority on the commission.

The Hon. J. E. Dunford: You are anti-Government.

The Hon. C. M. HILL: No.

The Hon. J. E. Dunford: In every speech you make, you attack the Government.

The Hon. C. M. HILL: I do so only when an attack is justified. The man in the street is critical of the State Government and, in my criticisms of the Government, I am simply reflecting the views of the people at large. This Government wants to wield permanent power over the city of Adelaide while not being itself bound by the legislation.

The Hon. J. E. Dunford: The Liberal Party has run the city for decades.

The Hon. C. M. HILL: Politics have never entered into the city's affairs.

The Hon. J. E. Dunford: That is hypocritical.

The Hon. C. M. HILL: Can the honourable member bring forward decisions that have been made in the Adelaide City Council that he claims justify his statement that there is political influence in that council?

The Hon. J. R. CORNWALL: Will the honourable member give way? Would it be appropriate to have recorded in *Hansard* that the honourable member was smiling as he made his remarks about politics never entering into the Adelaide City Council?

The Hon. C. M. HILL: As the Hon. Mr. Cameron walked past me, he made one of his complimentary remarks; it was this that caused me to smile. However, my smile was immediately interpreted by the Hon. Mr. Cornwall as evidence that I was laughing at the matter under discussion. I say seriously that the influence of politics has never affected the decisions of the Adelaide City Council.

The Hon. J. E. Dunford: You won't be upset if we don't believe you? I am not calling you a liar.

The Hon. C. M. HILL: It is the height of effrontery for the Government to set up a commission to administer affairs associated with the City of Adelaide and for the Government to appoint to the commission a majority of members; it ought to be the other way round. If there is a commission of seven members there ought to be four members from the City Council and three from the Government; that would be a fair balance. Clause 19, which indicates the power that the Minister will wield if this Bill is passed in its present form, provides:

(2) Where the Minister is satisfied that the Government of the State has a substantial interest in the result of an application to the council under Part IV of this Act, he may request (by writing setting out the grounds upon which the request is based) the council to refer the application to the commission for determination.

In other words, if the Government has a substantial interest in any application that goes to the Adelaide City Council, the Minister has the power to say that that application must go not to the council but to the commission, and I repeat that the commission will have a majority of Government appointees on it. Clause 19 (3) provides:

Upon receipt of a request referred to in subsection (2) of this section the council shall refer that application to the commission together with such advice or recommendation as it thinks fit but shall thereafter take no further action on that application.

I refer to the principles as set out in the Bill. Clause 7(2) provides:

The council may, and shall—

and I emphasise "shall"—

if requested by the Minister, from time to time, prepare amendments to the principles.

In other words, if the Minister, in complete control, says to the Adelaide City Council, "I want you to amend the principles," the council must act. I do not like legislation that gives power to the Government to that extent. As the appeal provisions of the Bill read at present, the Minister has complete and final control. Surely, this is further evidence of the power being sought by the Minister and the Government in this Bill.

I refer now to clause 11, which deals with a subject that I raised briefly earlier. The qualifications, skills or sectional interests of those involved ought to be referred to in the Bill, and it should be from such criteria that the Government appoints members to the commission. Much greater detail regarding the qualifications of such appointees should be stated. I ask the Council to consider this important point.

It is obvious from a reading of the Bill that the State Government's involvement in this legislation is too great. The need to give local government maximum independence has been disregarded, and I ask the Government further to consider this important point. Amendments ought to be debated in Committee so that we can establish a fair balance between the City of Adelaide and the Government regarding legislation under which the planning of the city will be administered.

I intend briefly to touch on one or two other matters that I think are important. I refer to clause 40. I repeat that there is a need for the regulations to be put on display to ensure participation and public involvement. Clause 27, which relates to third party rights, provides that the person who is aggrieved must be the applicant. I should like to ask certain questions regarding the important aspect of discretionary power involved in the approval of applications. This discretionary power is essential if we are to have the flexibility that I believe modern-day planners agree is necessary for legislation to be the best possible legislation. Although there is some flexibility within the Bill, it is certainly not laid down therein what percentage adjustments might be permitted in relation to special consents. Will the Minister say, when replying to the debate, whether the Government intends to cover this point by the regulations? I think it should be covered, because it is an important matter.

On the mater of flexibility and discretion, I am interested in the rights of ratepayers who wish to continue with an existing use in areas that are zoned for other purposes. Representations have been made to me by at least one concerned ratepayer, who said that his business had been established in a certain locality for many years. Will the Minister say, in circumstances such as that, although the Bill gives the person involved an opportunity to remain

in continuing use, what opportunity that person will have to expand in a limited way not only over a greater area of land but also, for example, upwards? Will that person be limited to the size of his existing premises? On my interpretation, there is a discretionary power in the Bill. To what degree will such discretion be used?

Will this sort of matter be covered in the regulations, or will it be necessary for us in Committee to write such a provision into the Bill? This is an important matter because, although I said that one ratepayer had contacted me on this point, I have heard on good authority that other ratepayers are concerned about it, and it is the interests of those ratepayers that this Council should consider in great detail at this stage.

If this Bill leaves the Council with the maximum amount of fairness and justice being afforded to everyone, including the individuals concerned, it will be the best possible legislation. I may refer to other clauses in Committee, as there are many parts of the Bill that ought to be examined a little more closely. I have been asked to ascertain whether it is possible to ensure that there is a time limit within which the council or the commission should deal with matters that are before it. I do not think, from a ratepayer's point of view, that that request is unreasonable. I do not know whether the Government intends to cover this point in the regulations. I should think it does not intend to do so. However, it may be better legislation if the council or the commission is bound within a reasonable time to consider applications and if that reasonable time is stipulated. I refer also to clause 23, subclause (5) of which provides:

> Where a person is convicted of an offence that is a contravention of subsection (4) of this section that person shall be liable to a penalty not exceeding three times the amount certified under subsection (6) of this section as being the monetary benefit accruing to the person as a consequence of undertaking the development in relation to which the order was made or one thousand dollars whichever is the greater amount.

It was pointed out to me in correspondence that that assessment of value ought to be made by a qualified person, and that it might well be necessary to amend the Bill to take that aspect into account. The same correspondent indicated, regarding clause 17, that the delegation of certain powers and functions by the commission should be limited to minor matters only. It may not be easy to define "minor matters", but matters which we might deem to be important or large issues ought to be faced up to by the commission and that aspect ought to be looked at in the Committee stages.

The Bill is the culmination of the interim planning to which the city has been subject to for many years. We have a clear duty now that this legislation is before us, which might be described as permanent legislation, to ensure that the best possible Act must ultimately be proclaimed. I think the striking feature about the legislation is that the State Government intends to control far too strongly the affairs of the City of Adelaide in future. I believe that that is wrong in principle. I think it can be corrected with amendments to this Bill but I hope that the Government itself, now that the legislation is in this Council, will give this aspect some further consideration and that it might initiate some changes so that greater justice is given to the City of Adelaide in the future.

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

SUCCESSION DUTIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 23. Page 2345.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the second reading of the Bill and am pleased to see that after 100 years of the operation of succession duties legislation in South Australia we have finally come to the point where there will be no duty payable on estates passed between spouses (husbands and wives, and wives and husbands). I have on previous occasions talked to the Council on this question of capital taxation, and I do not intend today to repeat the views that I have expressed except to emphasise once again the fact that I believe that, as society has changed greatly from the time when these types of capital taxation were introduced 100 years ago, it is time we examined a total change in our taxation system.

Having produced a roughly equipollent society it is now untenable for local government, State Government, and the Federal Government to be forced to rely so heavily on the imposition of a capital-type taxation. Very often it is not based on any ability to pay but based on the fact that an estate happens to be in someone's name. I referred to one anomaly concerning this Bill last week. Whilst the Bill removes the payment of duty on estates passing between husband and wife and wife and husband, at the same time we still have gift duty applying to gifts between spouses. This appears to me to be clearly an anomaly that the Government should take immediate action to remedy.

Can there be any case for the removal of a gift passing between a deceased spouse and a surviving spouse when, if the spouse is living and makes that gift, duty must be paid to the Treasury? That to me is clearly an anomaly and should be rectified and I would urge the Government in this particular session to take action to remedy that anomaly now that this Bill is going through. The proposed amendment concerning the removal of death duties to possible surviving spouses is backdated to July 1, 1976, when the promise was made.

Once again I remind the Council that with the moratorium that the Government granted on the transfer of a matrimonial home to joint names, and with this legislation following immediately afterwards, many people who have taken that action, trusting the Government would make some concession, are now finding themselves in a slightly worse position than if they had done nothing in the first place. Indeed, with the transfer of the matrimonial home to joint tenancy there is a strong possibility that they would have been better off had they not done anything concerning that transfer.

I think that it is also tragic that of the 1 700 transfers made of property to joint names under that moratorium practically all of them were to joint tenancy and, as anyone knows, joint tenancy in relation to a property can only pass to the surviving joint tenant. One can have the position where an estate of a husband is not correctly organised to attract the minimum duty if there happens to be a joint tenancy on the property involved in that estate. I think it is also tragic that the Government got great publicity out of that particular moratorium because in the long term, in most cases, it is going to be detrimental to people.

Once again I make the claim that this Bill does not go far enough and, contingently on the Bill passing the second reading, I intend moving to exempt other classes of transaction in the principal Act. I would mention that my

contingency notice of motion will look at such things as brother-sister relationships, the question of quick successions and the question of rural rebates related to tenancy in common and to tenancy holdings on rural lands. This matter will be dealt with at the appropriate time. In the Bill there are other amendments not of very great moment. Some of them are machinery clauses that improve the general administration of the Act concerning valuations and rates of interest paid on refunded duty under the section that deals with that particular matter.

Other amendments also provide that all gifts for the advancement of religion, science or education, and all gifts to benevolent societies and institutions are exempt from succession duties. As will be appreciated, at present there are exemptions from duty on money passing to institutions of a certain type but with others the exemptions do not apply, and under the provisions of the Bill this exemption from the payment of duty is extended to concerned organisations that are not receiving the exemption.

The Bill is not a very long one. It makes certain other machinery changes to the Act which I think are satisfactory, but the main part deals with the question of the removal of the payment of duty by the surviving spouse. I entirely agree with that principle but I am only sorry it has taken 100 years to reach this position. At the same time I think there are other important amendments that the Government should consider and so that the Government may consider them I intend moving amendments in this particular field. I support the second reading.

Bill read a second time.

The Hon. R. C. DeGARIS (Leader of the Opposition) moved:

That it be an instruction to the Committee of the Whole that it have power to consider new suggested clauses relating to rural rebates, brother/sister relationships and quick successions.

Motion carried.

In Committee.

Clause 1 passed.

Clause 2—"Commencement."

Progress reported; Committee to sit again.

Later:

Clause 2—"Commencement".

The Hon. R. C. DeGARIS (Leader of the Opposition): I have supported the second reading of the Bill and I have dealt with its principles. I stated that I believed that there are other areas that urgently need amendment in the principal Act. Although I have congratulated the Government on removing the payment of duty to a surviving spouse, there are three other matters I mentioned that I believe assume some importance. The first one deals with the question of the rural rebate in relation to land held in tenancy in common or joint tenancy.

I believe very firmly that there is no case that can be made by any Government or any honourable member to forbid the application of the rural rebate to land simply because it is held in tenancy in common or in joint tenancy with another person or persons. There can be no argument that can substantiate the reduction of the rural rebate in those circumstances. There is in most cases a family farm in which very often a father and son or the father and mother own land in tenancy in common or as joint tenants. At the death of one, in the passage of that land the rural rebate does not apply in full. The only reason is that the land is held jointly with other people. If anyone here can justify that situation I would ask them to speak. There is no justification for it whatsoever.

The reason I sought an instruction was to introduce an amendment to overcome this existing anomaly. Owing to pressure of work, it has been difficult to instruct Parliamentary Counsel to draft those amendments. I do not wish to hold up the Bill, but if the Government would consider the amendments I am proposing I would ask the Chief Secretary to report progress so that I could get the amendments drawn and move them tomorrow. If the Government says it will not consider them, I do not believe I am justified in holding up the Bill any longer. Even if all members on this side of the Chamber agreed with the amendments and they went to the House of Assembly, the Government could resist the amendments and it would not be possible for this Bill to be dropped. If the Government would consider an amendment to remove that glaring anomaly, which I do not think anyone can justify, I ask the Chief Secretary to report progress to allow me to draft an amendment and present it tomorrow.

My second point (this was raised before and was rejected by the House of Assembly in circumstances similar to those obtaining in this Bill; there is a benefit in the Bill) concerns quick succession. The illogical position can occur that, where there are two deaths in a family in a period of 5½ years, two full amounts of death duties are payable on that estate. The Hon. Mr. Cornwall, who has some figures that he told us about, in his rural experience must have seen this happen to a family, where a farming estate may be worth $100 000, two deaths occur in a period of about 5½ years, and that estate is ruined; it has no chance of survival. I ask the Government to consider an extension of the quick succession provision from five years to 10 years. That is a reasonable request and it would be a reasonable amendment. Other States have done this. I believe that Western Australia may have moved to a 20-year period, although I am not sure about that.

The Hon. D. H. L. Banfield: Ten years.

The Hon. R. C. DeGARIS: That may be right. The Government should consider this matter urgently. My third point is the brother and sister relationship. Under this Bill, an estate can pass to a surviving spouse without the payment of duty, and I agree with that principle; but there are a few cases (perhaps more than one thinks) where there are a brother and sister, the sister acting as his housekeeper and looking after him for the whole of his lifetime. At the death of one of them, full duty is extracted from what is virtually a family group— a far more important group, to my mind, than a *de facto* relationship, and it should be regarded in that way. There is no justification in this Bill that, with regard to that estate, the sister is treated purely as a blood relation and not as being in the same position as a spouse or a *de facto* relation. I suggest that in that case the Government should consider an amendment.

The Hon. F. T. Blevins: You are upholding the *de facto* relationship as some kind of model?

The Hon. R. C. DeGARIS: The Hon. Mr. Blevins has a remarkable capacity for not understanding and for twisting things around to his own way. I am talking of the brother and sister relationship, which exists in many instances. I have had an example in the last two or three days where a sister all her life has acted as housekeeper in that home, and the brother has been the breadwinner for that group. In that situation, all I am saying is that the brother and sister relationship should be viewed in the same way at least as a *de facto* relationship in regard to death duties.

The Hon. F. T. Blevins: So you are holding up the *de facto* relationship as something to be achieved as a model for a brother and sister relationship?

The Hon. R. C. DeGARIS: No. As I say, I can never understand the Hon. Mr. Blevins's turn of logic.

The CHAIRMAN: Order! It could happen with sister and sister.

The Hon. R. C. DeGARIS: Certainly, but more so with the brother and sister relationship. It could happen with sister and sister but, the Government having made this change in regard to the surviving spouse, that relationship of brother and sister that exists in our community should be recognised in the Statutes. If the Government says, "No; we shall not consider these amendments", I am prepared to allow the Bill to go through as it is but, if the Government agrees with me that these matters I have raised are glaring anomalies, or that one of them is, and it says, "This is a glaring anomaly and we are prepared to rectify it", I ask the Chief Secretary to report progress to allow me to draft those amendments.

The Hon. D. H. L. BANFIELD (Chief Secretary): I am grateful to the Hon. Mr. DeGaris for not delaying this Bill by bringing forward amendments to it. I anticipated what the amendments might have been, but the Government has made considerable concessions in succession duties over the last two years and at this stage we cannot go any further with this Bill; but we continually have the matter under revision, as is proved by the bringing down of this Bill, which indicates it is continually under revision. Where there is a problem with brother and sister estates in paying duty on property derived from a deceased brother or sister, which would cause hardship, the survivor can apply to the Commissioner of Succession Duties for payment of duty by instalments or for payment of duty to be deferred. These requests are considered sympathetically by the Commissioner and a decision is made in each case on the particular circumstances applying. This, of course, does not measure up to what the Hon. Mr. DeGaris asked for, but we are not very strict about the paying of succession duties, because each case is decided on its merits. The duty can be paid by instalments. In relation to the rural rebate, this matter has been before Parliament on many occasions, and this duty has been on the Statute Book for some time. There have been Liberal Governments from time to time, and they have never provided for rebate of this duty.

The Hon. R. C. DeGaris: Yes, they have.

The Hon. D. H. L. BANFIELD: But you did not exclude it, and we have made remissions of duty in respect of rural property. We did it only last year, so we have again improved the position in this area; but the Liberal Government could have had it off the Statute Book before 1965; it could have had it off the Statute Book between 1968 and 1970, but it did nothing about it until we came into Government and members opposite went out of office. It was still on the Statute Book under the Liberal Government, and it is still on the Statute Book under a Labor Government, but we have already introduced generous remissions in this regard. In relation to duty on successive deaths, this matter was raised last year by the Hon. Mr. DeGaris, and the main reason advanced was that the Western Australian provision allowed a rebate on succession duty up to 10 years. Western Australia has not changed that. I understand Queensland is about to do something about succession duty; but we do not want to be influenced by Queensland. We would not want to be like them.

The Hon. R. C. DeGaris: The people up there are happy at the moment.

The Hon. D. H. L. BANFIELD: Yes; all hill-billies are happy because they know no better; that is as easy as that. The Government constantly has kept succession duties under review. We made amendments last year and we have made them again this year. However, the Government will not accept any amendment to this Bill.

The Hon. J. C. BURDETT: The Minister has criticised former Liberal Governments for not allowing the rural rebate in the case of joint tenancies and tenancies in common. I refer to joint tenancies, because during the whole time Liberal Governments were in office and when the rural rebate was not available in the case of joint tenancies, the joint tenancy was a separate estate. The increase in the benefit in the case of a joint tenant was dutiable as a separate estate.

The Labor Government changed that and aggregated it in the hands of one successor. From then on, there was no excuse for denying a joint tenant, in particular, the rural rebate in the case of property held in joint tenancy. The Minister was inaccurate in criticising Liberal Governments, because while they were in office there was the separate dutiability.

The Hon. D. H. L. Banfield: Why did you not abolish it altogether?

The Hon. J. C. BURDETT: It was not necessary, because there was already one benefit and the principle was that there should not be two. The Labor Government aggregated all benefits in the hands of one successor and, from then on, there was no justification for denying a joint tenant the rural rebate.

The Hon. R. C. DeGARIS: I am sorry that the Minister will not be co-operative and accept these three amendments, because there are glaring anomalies. Before the amendment of the Act, under great pressure from the Government in 1971, there was an existing benefit for joint tenants. That was removed. I can see the headline in the newspaper now. It was "Loophole closed." That is how the Government described it, yet the joint tenancy provision had been humanitarian. It allowed people to hold property together in joint names and it could be treated as a separate estate. The reason why the rural rebate did not apply was that, if it had applied, a person could have two benefits on the same estate, and that could not be justified. As the provision regarding joint tenancy has been removed, it cannot be said that the rural rebate should not apply where rural land is concerned.

The CHAIRMAN: Are there any further amendments? Does any other honourable member wish to speak to any clause in the Bill? If not, I put the question: That clauses 2 to 21 stand as printed.

Clauses 2 to 21 passed.

Title passed.

Bill read a third time and passed.

WORKMEN'S COMPENSATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from November 23. Page 2339.)

The Hon. J. C. BURDETT: I support the second reading of the Bill, to which I shall speak briefly. The explanation given by the Minister was very long and very interesting stating, as it did in detail, things about the Minister's oversea trips.

The Hon. N. K. Foster: What has that to do with the Bill?

The Hon. J. C. BURDETT: I am just saying what the Minister said in his second reading explanation, where he spoke about his oversea trips.

The Hon. F. T. Blevins: Take it easy.

The Hon. J. C. BURDETT: The explanation was very long and very interesting but it did not have anything to do with the provisions of the Bill. If the Government had been interested in tackling the problems associated with workmen's compensation, it would have allowed the Hon. Mr. Laidlaw's Bill, passed by this Council, to proceed in the other place. The Hon. Mr. Laidlaw's Bill really did tackle the problems. The Minister says that clause 7 has the effect that a workman will be no worse off and no better off than if he had not been incapacitated. The Hon. Mr. Laidlaw has pointed out that under the clause he may still be better off through not working because of the various expenses he will not incur.

The Hon. N. K. Foster: You reckon that is a bad thing?

The Hon. J. C. BURDETT: I am just making the point.

The Hon. N. K. Foster: I am merely asking for an opinion; you don't have to give it.

The Hon. J. C. BURDETT: The Minister claims that under the Bill a workman would be no better off and no worse off because of incapacity. If that had been achieved, that would have been an entirely good thing. It is what should have been achieved.

The Hon. J. E. Dunford: But you cannot support the Hon. Mr. Laidlaw's Bill if you are talking like that.

The Hon. J. C. BURDETT: That Bill has already been passed in this Chamber.

The Hon. J. E. Dunford: You are talking about the Minister's Bill.

The Hon. J. C. BURDETT: It would not disadvantage the workman at all. I am talking about this Bill. The Minister says it would achieve the effect that the workman would be no better off and no worse off than if he had not been incapacitated. I agree that he should be no better or worse off.

The Hon. J. E. Dunford: Under the Hon. Mr. Laidlaw's Bill, he would be worse off.

The Hon. J. C. BURDETT: Under this Bill, the workman would be better off through not going back to work due to his incapacity, because of various expenses he would not incur, and that is what the Hon. Mr. Laidlaw pointed out. In any event, the vital thing (which is not covered in this Bill) is that there must be some incentive for the incapacitated workman to return to work. Human nature being what it is, there is no doubt that an unnecessary amount of abuse will occur where there is no financial incentive to return to work.

The Hon. N. K. FOSTER: Will the honourable member give way?

The Hon. J. C. BURDETT: No, I will not.

The Hon. N. K. Foster: You are going the wrong way.

The Hon. J. C. BURDETT: I do not object to interjections but at least they should be made at the end of a sentence.

The Hon. N. K. Foster: You are making statements that discredit Standing Orders; it is against Standing Orders to interject.

The Hon. J. C. BURDETT: I am not doing anything against Standing Orders; I am trying to make a second reading speech that is already becoming longer than it should be through interjections from the opposite side of the Chamber. I will not give way or answer interjections until I have at least finished the sentence I started. Human nature being what it is, there is no doubt that an unnecessary amount of abuse will occur where there is no financial incentive to return to work and, in fact, on the contrary, a financial incentive not to return to work. That is the present situation. I do not need authority for that statement: I do not think anyone will deny it.

The Hon. N. K. Foster: I will.

The Hon. J. C. BURDETT: Human nature is such that, where there is no financial incentive to work and when a person can get just as much money by staying at home and doing no work at all, abuses will occur. Everyone knows that; honourable members opposite know perfectly well that at present these things do occur.

The Hon. F. T. Blevins: Where? Give me one example.

The Hon. J. C. BURDETT: That has been one of the major problems of the workmen's compensation system since the recent major amendment when the amount of compensation was made equal to the average weekly earnings, and of course there was enacted the definition of average weekly earnings that we know at present. I shall support the amendment to clause 7 foreshadowed by the Hon. Mr. Laidlaw. As has been explained in the second reading explanation, this amendment is carefully thought out to be just to workmen but to provide the incentive to return to work. The other amendments foreshadowed by the Hon. Mr. Laidlaw seem to me to be reasonable and helpful to the whole workmen's compensation system. It is essential that the system survives in a spirit which is reasonable and equitable to both sides. I support the second reading.

The Hon. J. E. DUNFORD: I support the Bill. At the outset, I say I have always believed (I have said this many times in this Chamber) that the most important unit in our society is the worker.

The Hon. N. K. Foster: And the most maligned by the Liberals.

The Hon. J. E. DUNFORD: Where Governments have a responsibility to bring in legislation to protect that worker, it should be in the interests of the worker and of the whole community. By introducing a Bill like this, the Government is carrying out its share of the bargain. I believe that the Australian Labor Party (including the whole of the Parliamentary section of that Party) in supporting this Bill has shown its concern for the workers and the welfare of their families. On the other hand, since I have been a member of this Council, I have been convinced, and this Bill has convinced me further. Doubtless, the Liberal Party members who intend to support the second reading and give their support to the amendments are concerned only with big business and insurance companies. They are their lifeblood and they provide them with election funds unbeknown to many shareholders.

We hear members opposite talking about the Labor Party and the unions, but the unions support the Labor Party only because that Party carries out its franchise regarding the workers. Regarding workmen's compensation, I refer back to a person who was attacked by members opposite and their supporters. He was attacked by the ruling class and the capitalist class for many years, but when he died, he was lauded as having been a great leader. Many Liberals who had vilified him had nothing but praise for him when he died.

The Hon. R. C. DeGaris: Tom Playford?

The Hon. J. E. DUNFORD: Tom Playford was the greatest enemy of the workers that we ever had. He said regarding union workers, that he would not have one on his property. He was paying fruitpickers a shilling

an hour, and he said that union workers were agitators. I could not say anything good about Tom Playford so far as the workers were concerned. The most outstanding progress in the field of workmen's compensation was made by the redoubtable J. T. Lang, when he was Premier of New South Wales. Under Lang's measure of 1926, it became compulsory for every employer to insure his workmen against injury, and all insurers in the field were compelled to deposit $20 000 with the Government. Perhaps the most important action taken was to cover a workman for insurance while travelling to and from his place of employment. We know how members opposite oppose that principle, and I am referring to what Lang did in 1926.

The Hon. M. B. Cameron: Lang was the one who was expelled, was he?

The Hon. J. E. DUNFORD: I am talking about the good things that he did. He did not desert the Labor movement, yet the Hon. Mr. Cameron deserted the people who put him in this Council. I am talking about what Lang did in 1926. When I first came to this Council, I apologised for calling some members the best-ever troglodytes, but I make no apology to members opposite who support the Hon. Mr. Laidlaw's Bill for saying that they are not only troglodytes but hypocritical as well. I know that the Hon. Mr. Cameron does not want to hear what I am saying. Lang's measures met with bitter opposition. His opponents, the troglodytes in the Liberal Party—

The Hon. M. B. Cameron: Not the troglodytes in the Labor Party?

The Hon. J. E. DUNFORD: The Labor Party did not oppose the Bill to which I am referring. Lang's opponents charged that he had made a vicious assault on the capitalist system that would wreck industry. He has a mate in South Australia, who has said the same thing 40 years later. He is K. D. Williams, President of the Chamber and Commerce and Industry. He has said the same thing as the capitalists said 40 years ago.

The Hon. J. R. Cornwall: Fifty years ago!

The Hon. J. E. DUNFORD: That makes it worse. Perhaps the most revolutionary of Lang's measures was the extension of compensation to workmen injured while travelling to or from their places of employment; this was a radical departure from the concept of injury by accident arising out of or in the course of employment. Lang's measures met with bitter opposition. Is that not true? Now they just get the Hon. Mr. DeGaris and their stooges in this Council to do this for them. Lang's opponents charged that he had made a vicious assault on the capitalistic system which would wreck industry. He was labelled a Bolshevik and an industrial anarchist. These charges were remarkably similar to the cries of anguish and protest which greeted proposals to introduce improvements in our own State's scheme in the middle and late 1960's. The insurance companies tried to force Lang to rescind these measures by setting impossibly high premium rates. He refused to be coerced and indeed it was the insurance companies which capitulated when Lang set up his own Government insurance office.

The Hon. R. C. DeGaris: I would not like you to write my biography?

The Hon. J. E. DUNFORD: I would not like to write the honourable member's biography, because I would not be so cruel as to say, in writing, some of the things that I think he is capable of doing in future, irrespective of what he has done in the past. Referring again to Lang, it was the insurance companies that capitulated when Lang set up his own Government insurance office, and set premiums at a level that these companies had to match. It is interesting to note that some of these companies that so bitterly fought Lang are still writing workmen's compensation insurance and are presumably profiting by it, because otherwise they would not do it. They are still writing insurance business under the 1971 South Australian Act.

Lang's foes did succeed in 1929 in removing the provisions covering journey accidents, and it was not until 1942 that these were reinstated. But there was no coverage of journey accidents in South Australia until 1953. An even more radical development of the compensation scheme than Lang's provision for journey accidents was the introduction of a table of fixed amounts of compensation for loss of limbs and of the faculties of sight and hearing.

The Hon. M. B. Cameron: What was that?

The Hon. J. E. DUNFORD: I said, "the faculties of sight and hearing".

The Hon. M. B. Cameron: I could not understand you.

The Hon. J. E. DUNFORD: The honourable member could not understand anything. He is a goose. Because the Hon. Mr. Cameron has not objected to my calling him a goose, I will withdraw the statement. Compensation under Lang's table was not tied to the concept of incapacity, and thus a workman who, after amputation of an arm, resumes his normal work, could still receive compensation.

I now refer to something that all honourable members should remember, and it is something about which the public should know. In 1965 the Labor Government succeeded in abolishing the original definition of injury, substituting for it a new formula in respect of injury arising out of or in the course of the employment. A workman had to prove either a temporal or causal connection between his employment and the injury and not both, and he did not have to prove the occurrence of an accident. However, the Legislative Council, as a price for allowing this change, forced the insertion of a provision which permitted an employer to defeat a claim for compensation by proving that a workman's work was not a causative factor in his injury. It was not until 1971 that this defence was abolished so that a workman could succeed by proving that his injury arose out of or in the course of his employment. Again, the Labor Government's 1971 Workmen's Compensation Act represented the most serious attempt to overhaul the workmen's compensation system in South Australia since its adoption at the beginning of the century.

I will not dwell on this section, because following speakers will have the opportunity to criticise what I am saying, but I briefly refer to some of its features. "Injury" now includes disease and recurrence, aggravation and exacerbation of pre-existing condition. Weekly payments of compensation were increased to 85 per cent of pre-accident earnings of $65 in the case of a married man and $43 in the case of a single man. From 1963 until 1969 the maximum weekly payment was a miserable pittance of $32·50 for a married man and this was increased marginally to $40 a week in 1969.

The Hon. F. T. Blevins: It was a disgrace.

The Hon. J. E. DUNFORD: Yes. At every attempt all these changes were opposed by members opposite. Employers must make payments of compensation within two weeks of receiving claims unless relieved from doing so by court order and employers cannot unilaterally discontinue payments until the workman has resumed work or is fit to do suitable work which is available. In regard to the brief history of workmen's compensation legislation in this State and other States, improvements have been gained and achieved only in the face of strong and bitter opposition from insurance

and employer interests and Liberal political representatives. If proof is needed, one has only to consider that in 1965 these forces were partially successful in preventing the extension of the definition of compensable injury to that which had been accepted elsewhere years before, and in New South Wales, in particular, in 1942. At every attempt to increase the amount of weekly compensation payable, the old bogey that a workman's incentive to return to work would be destroyed by increased benefits is resurrected. This is the Hon. Mr. Burdett's argument.

This proposition is remarkable for its antiquity and, if it contains any element of truth, one would have expected its proponents to have by now gathered some evidence to support it. In the second reading debate the Hon. Mr. Burdett advanced the same arguments that have been put up for 40 years. In effect, the Hon. Mr. Burdett and the Hon. Mr. Laidlaw said that, if you give workers nothing they will return to work but, if they received the same as what they received at work, they would be too well off to go back to work. The troglodytes and the hypocrites with whom I have had to associate in my career in this Chamber should examine *Compensation and Rehabilitation* by Harold Luntz. In his book Harold Luntz tells us, to some extent, what we should do. He was directed by a Labor Government to undertake his survey of a national inquiry, and he states:

. . . having been in office only a matter of weeks, the Australian Labor Government—

The Hon. M. B. Cameron: What did it do?

The Hon. J. E. DUNFORD: It brought back our boys from Vietnam, where the honourable member would not go, and it stopped conscription—

Members interjecting:

The Hon. J. E. DUNFORD: Honourable members opposite are always vocal if a progressive Government wants to introduce a measure that will cost the boss anything. They say it will wreck business, wreck insurance companies, and they say, "It will wreck our friends". Members opposite forget about the sick and injured people in our society. Harold Luntz wrote:

> Early in 1973, having been in office only a matter of weeks, the Australian Labor Government established a committee to consider the scope, form and administration of a national rehabilitation and compensation scheme.

It seems to me that we must consider abandoning entirely our present system of workmen's compensation and look to a system administered by a Government agency or non-profit making insurer. That is what the Labor Government is all about. We believe that insurance companies and the big monopolies, which are supported by members opposite, want to make profit and short pay workers who are injured through no fault of their own, sometimes in unsafe working conditions. Workers should be looked after by a responsible insurer, and there can be nothing more responsible than a democratically-elected Government. In the present scheme the need to earn profits leads insurers strenuously to resist advances and to resist claims which the traditional adversary system of administering justice encourages. The Hon. Mr. Burdett knows that, but he will not say it. He knows that is the case, as all honourable members know it.

The Hon. J. C. Burdett: I do not acknowledge it to be true.

The Hon. J. E. DUNFORD: The honourable member has not been in court enough, but I have seen this repeatedly.

The Hon. J. C. Burdett: You're talking a lot of rubbish.

The Hon. J. E. DUNFORD: I am not. A man who knows more about the law than the honourable member is my source. The Hon. Mr. Burdett does not like interjections when he is speaking. When that happens, his hair falls down, he trembles and gets into a state of disarray. The defeat of a workman's claim represents a victory for the insurance company and a saving to its shareholders. I have seen the look of glee on the face of lawyers after they have defeated a workman, and if members opposite do not believe that, they should not be here. That is the absolute truth.

Members interjecting:

The Hon. J. E. DUNFORD: The Hon. Mr. Laidlaw said that the Minister did not say anything about rehabilitation.

The Hon. D. H. Laidlaw: No.

The Hon. J. E. DUNFORD: It is here, unless the honourable member has changed the proofs, as he normally does. At page 145, Harold Luntz states:

> The committee recommends that compensation benefits should continue to be paid throughout the period of rehabilitation.

If honourable members opposite go back to the people who sent them here and make a suggestion along the lines of that recommendation, those honourable members will be sacked by those who sent them here. The members of that committee have much more compassion than does the Hon. Mr. Burdett.

The Hon. R. C. DeGaris: Who are they?

The Hon. J. E. DUNFORD: The committee comprised Sir Owen Woodhouse as Chairman, Mr. Justice C. L. D. Meares, and Professor P. S. Atiyah.

The Hon. M. B. Cameron: Do you believe that the recommendations are proper?

The Hon. J. E. DUNFORD: The recommendations provide for the sick and injured to a greater extent than do the people who assisted the Hon. Mr. Laidlaw in his contribution to the debate.

The Hon. D. H. LAIDLAW: Will the honourable member give way?

The Hon. J. E. DUNFORD: No. If we gave any credence to the Opposition's attitude, we ought to be lined up against the wall. I have not read all the report.

The Hon. M. B. Cameron: You are commenting on it without having read it.

The Hon. J. E. DUNFORD: I have read it, but not all of it.

The Hon. M. B. Cameron: Before you quote it, you ought to read all of it.

The Hon. J. E. DUNFORD: There are a few basic principles that the Liberal Party and its supporters, the insurance companies, have never lived up to. Harold Luntz says:

> Nearly 7 000 Australians die each year by accident. Over half of these are killed in motor accidents. Injury statistics are not so easy to obtain and figures for incapacitating illness are still more difficult to find. (One product of the implementation of the report will be the keeping of uniform statistics so that henceforth we shall know the true extent of the problem.) We do know that about 90 000 people annually suffer bodily injury requiring medical or surgical treatment as a result of road accidents. Although non-road work-accident statistics are kept and published, the method is not uniform in the various States.

The Hon. M. B. Cameron: Is this the report that you have not read?

The Hon. J. E. DUNFORD: Yes.

The Hon. D. H. Laidlaw: There is nothing in the Bill about rehabilitation.

The Hon. J. E. DUNFORD: There is.

The Hon. D. H. Laidlaw: In the Minister's speech, but not in the Bill.

The Hon. J. E. DUNFORD: I draw the honourable member's attention to the Minister's oversea trip. In his speech the Minister referred to the question of a working party to deal with rehabilitation. Until the Minister mentioned rehabilitation, honourable members opposite did not mention it.

The Hon. M. B. Cameron: It was not in the Bill.

The Hon. D. H. Laidlaw: We talked to the Bill.

The Hon. J. E. DUNFORD: It was not in the Bill in the form of a clause, but it was mentioned. The Minister is trying to make the Bill more acceptable to everyone concerned, but the Opposition is trying to destroy the Bill. The Labor Party makes clear its attitude to rehabilitation. Will honourable members opposite state their policy on compensation benefits during the period of rehabilitation?

The Hon. D. H. Laidlaw: The question of rehabilitation is not in the Bill.

The Hon. J. E. DUNFORD: Here is something in which the Labor Party and the trade union movement have always been interested. The mates of honourable members opposite have made huge profits while their employees have done risky work with risky machinery. Some employees of the Broken Hill Proprietary Company Limited have had to be picked up and practically carried on stretchers. Of course, if accidents are prevented, compensation and rehabilitation are unnecessary. Once insurance companies and employers take cognisance of this point and come to grips with the problem, we will get somewhere.

The Hon. J. C. Burdett: The Minister said many irrelevant things.

The Hon. J. E. DUNFORD: I read the whole of the Minister's contribution to the debate. After reading speeches made by honourable members opposite, it is easy to see that opponents of the Bill have never been workers on compensation and have never been deprived. The Hon. Mr. Burdett says, "Pay them less money and get them back to work more quickly." He, as a shadow Minister, echoes the beliefs of honourable members opposite, and he ought to be ashamed of himself. The newspaper proprietors, the great supporters of honourable members opposite, say that there will be more accidents and more people on compensation. Rehabilitation is associated with the question of money. To say that there is no mention of rehabilitation in the Bill is a joke, because the Bill refers to giving people money. What does the Hon. Mr. Laidlaw suggest in connection with rehabilitating workers? I seek leave to conclude my remarks.

Leave granted; debate adjourned.

[*Sitting suspended from* 5.44 *to* 7.45 *p.m.*]

Later:

The Hon. J. E. DUNFORD: Before the dinner adjournment, I tried to dispel some of the worries that the Opposition, as backers of the insurance companies and employers, has regarding this Bill. I pointed out that the number of claims lodged had decreased over the last three years. In 1973-74, 87 000 claims were made; in 1974-75 there were 84 000 claims; and in 1975-76 there were 78 000 claims. This is inconsistent with the press reports that one reads and with the impression that the Liberal Opposition tries to convey: that, by increasing benefits for and giving security to workers in relation to workmen's compensation, they will not be encouraged to return to work. These figures prove that workers are honest and that they wish not to stay at home but to return to work.

In 1973-74, 207 workers out of each 1 000 workers on compensation; in 1974-75, the figure was 176 workers; and in 1975-76 it was 171 workers. Because of the Government's attitude to workmen's compensation and the unions' refusal to accept that what the employers are saying is correct, union officials generally encourage people to return to work. In this respect, I can speak personally, as I was Secretary of the second-largest union in South Australia, without amalgamation, for many years. That union had 13 000 members.

One would have to be involved with workers to know the trauma associated with workmen's compensation and the worker's need to receive a decent payment for and some sort of security in his employment, and for rehabilitation. Not all employers are crooked: some are concerned about the safety of their employees. Also, a few people associated with insurance are concerned about workers. Although I never like to use speeches made by other persons, I should like to refer to what the Minister of Labour and Industry (Hon. J. D. Wright) said (p 1763 of *Hansard*), as follows:

The fact is that the disparities between South Australia and other States are nowhere near as great as is suggested, and there is no evidence that our Act has placed us at a disadvantage. I would go further and say that a lot of the talk about inflated benefits and "bludgers" is sheer nonsense, and a smokescreen for the insufficient attention paid to safety and rehabilitation.

It was interesting to hear the Hon. Mr. Burdett support the second reading of the Bill. However, it was no wonder that he did not speak for long. He obviously did not read the second reading explanation, in which the Minister did not stop referring to rehabilitation.

The Hon. J. C. Burdett: But he didn't put it in the Bill.

The Hon. R. C. DeGaris: Quote what the Premier said about it.

The Hon. J. E. DUNFORD: If you will give me time. I never tell you how to make your speeches. If you want to quote the Premier, you can. I am quoting the Minister and am supporting the Bill. I want the Council and the public to know about it. Do you want me to leave it out?

The Hon. R. C. DeGaris: I want you to quote the Premier about the over-payment to people.

The Hon. J. E. DUNFORD: I do not want to quote the Premier, but if you want me to, I will quote him in Committee. I will find out what he said. The Hon. Mr. Wright continued:

I would go further and say that a lot of the talk about inflated benefits and "bludgers" is sheer nonsense, and a smokescreen for the insufficient attention paid to safety and rehabilitation by many employers and the insufficient competition between insurers in quoting premiums and relating them to claims experience. In support of this, the options of the manager of C. E. Heath Underwriting Agencies Limited, one of the largest single workmen's compensation insurers in South Australia, are interesting. He has told me that quite often bad claims records are brought about by poor accident prevention principles and lack of interest in the problems of injured workmen.

While he acknowledges that increasing premium rates are a serious problem, he considers the present legislation is effective, equitable, workable, and not unduly expensive, provided that proper emphasis is placed on rehabilitation, prompt settlement of claims, and efficient administration. An important issue often overlooked, he contends, is rehabilitation of the injured employee and, as a consequence, his speedy return to the work force, and he has no doubt that rehabilitation and prompt settlement of claims are two important features in the controlling of costs of compensation. Quite rightly, he puts his finger on the essential fact which has made his business so successful and to which increasing numbers of employers are waking up: instead of passing a compensation case over to an insurance company, it is good business as well as socially responsible to consider the injury victim and his needs and try to get him back into the work force.

One cannot say that the Minister is not interested in rehabilitation.

The Hon. J. C. Burdett: We haven't said that: it's not in the Bill.

The Hon. J. E. DUNFORD: You can put it in the Bill. I hope if it is in the Bill it is in conformity with rehabilitation. You want to give the worker a lesser job that does not suit him and on less pay. You want to rehabilitate workmen back into the work force on the cheap. You cannot get away from that. I hope these proposed amendments go out of circulation. If anyone reads them, they would say it is the rehabilitation of an injured workman on the cheap.

The Hon. J. C. Burdett: What do you have there?

The Hon. J. E. DUNFORD: Your Bill.

The Hon. D. H. Laidlaw: Who do you think wrote it? I did.

The Hon. J. E. DUNFORD: You ought to be ashamed to admit it. The Minister continued:

Surveys were made of those victims of industrial accidents who have been off work for three months or more. It has been found that the effects of such accidents have wide ramifications on many areas of life, in addition to their effect on their working life. In cases already studied 83 per cent of those who had returned to their previous job experienced a deterioration in their work performance. However, the repercussions in human terms must also be assessed, if we are to appreciate the full cost of industrial accidents. The survey has revealed that 73 per cent of those interviewed had undergone a change in their leisure activities; 68 per cent experienced a curtailment of their sporting activities; 68 per cent found that their participation in their home life had altered; and 51 per cent experienced a change in their sex life.

If one reads the contribution made by the Hon. Mr. Laidlaw, one will see that he said that he has made a survey and that a workman under the present Act could get $8 a week more, or in some cases up to $20 a week more.

The Hon. D. H. Laidlaw: I didn't say that.

The Hon. J. E. DUNFORD: I have read it all.

The Hon. J. C. Burdett: Read it closely.

The Hon. J. E. DUNFORD: You people want to give people less than they are now earning. You want to take away overtime. Do you think that that person is entitled to his average weekly earnings over the 12 months and his average overtime after four weeks, or at a rate at which his job classification has increased in overtime, and that he should have the right of application to an industrial tribunal? Not to us, and not to you. He would never go to the Liberal side, anyway. He should have the right, with all these disabilities outlined in the survey to an increase in his take-home pay. Would that help his rehabilitation? Is that the sort of rehabilitation you must think of when you talk of rehabilitation?

The Hon. M. B. Cameron: We will give him what your Federal colleagues wanted to do.

The Hon. J. E. DUNFORD: The Hon. Mr. Cameron, ever since I have been in this Council, delights in interjecting and interrupting, and does not want to hear anything that will support this Bill.

The Hon. M. B. Cameron: That is not true.

The Hon. J. E. DUNFORD: He has changed dramatically since he rejoined the Liberal Party: everyone knows he has changed. They are astonished, and are waiting for him to bolt. We are waiting for him to bolt. His only contribution now is to attack Bills and he does not want to listen.

The Hon. R. A. Geddes: Don't you think he has improved for the better?

The Hon. J. E. DUNFORD: No. I do not think he should interfere with the business of the Council in the way he does. I am new to this caper.

The Hon. M. B. Cameron: That is fairly obvious.

The Hon. J. E. DUNFORD: With his experience, limited as it may be, he should give me some help instead of continually interrupting me.

The Hon. M. B. Cameron: Tell us what your Federal colleagues did.

The Hon. J. E. DUNFORD: The Minister continued:

The evidence suggested that employers take little interest in accident victims, and organised community assistance seemed to be largely non-existent. Very few persons had received retraining on re-entry to the work force. In the light of the psychological traumas that follow industrial accidents, the report stresses the need for rehabilitation to be more than an afterthought. Mr. Scott, in his survey report, states that without the aim of complete re-establishment for the accident victim as a full contributory member of society being realised, the victim remains an economic charge on the community, an emotional charge on his family, a social charge on his workmates, and a psychological charge of himself. Although the payment of average weekly earnings to workmen temporarily incapacitated serves to cushion the blow of economic trauma, there is still much to be done to assess the full impact of industrial accidents.

The Hon. Mr. Whyte has not stopped laughing, because he has never suffered economic trauma, and he has his Parliamentary allowances. I am not getting personal: I am talking about people who are on workmen's compensation. The Hon. Mr. Burdett was right for once when he quoted what the Minister had said, and supported it, that workers should be no worse off or no better off. That is the guts of the Bill. The honourable member said that the Minister went overseas and that the visit had nothing to do with the Bill.

The Hon. M. B. Cameron: What did the Minister say?

The Hon. J. E. DUNFORD: He said:

Earlier this year—

The Hon. M. B. Cameron: Whom are you quoting this time?

The Hon. J. E. DUNFORD: I am quoting the Minister, and I am doing so in reply to the Hon. Mr. Burdett. I know that the honourable member is annoyed because credence has been given to what the Minister said. I do not normally quote statements by Ministers, but, because the Minister has been ostracised by the Hon. Mr. Burdett, I think the Minister's statement ought to be read. The Minister of Labour and Industry said:

Earlier this year both the Director of the Labour and Industry Department and the Minister made study tours overseas to assess, amongst other things, developments in the workmen's compensation field in Europe and Canada. From the observations they made, it seems clear that South Australia, and Australia as a whole, is behind many other Western countries in its attitude to workers who are injured in the course of their employment. Although Australian Workmen's Compensation Acts are, in general, more generous in the benefits payable to persons incapacitated for short periods, and in respect of a wider range of injuries, through compensation being paid also in respect of journey accidents and industrial diseases, we give far more attention to those who are absent for short periods than to workers who have some permanent incapacity.

We have not given any real consideration, as part of our workers compensation system, to the rehabilitation of injured workers, nor is there any relationship between the prevention of accidents at work and the compensation system. In several oversea countries, particularly Canada, West Germany, Austria and Switzerland, the rehabilitation of injured workers is regarded as being an integral part of the workmen's compensation arrangements.

In fact in many instances the Workmen's Compensation Authority has built and operates very efficient and comprehensive rehabilitation centres for the vocational rehabilitation of persons injured at work. These rehabilitation centres are completely financed by the Workmen's Compensation Authority, that is, by contributions from employers. Also, in some cases, the Workmen's Compensation Authority allocates part of its funds for accident prevention purposes and for safety education and training.

Members opposite have said that in this Bill the Minister has done nothing about rehabilitation, but I have read his reference to rehabilitation, and I have told the Council that he is appointing a working party to find out how we can bring about a rehabilitation scheme for employees. It would be wrong for the Minister to provide in this Bill new details of a scheme to solve the problem of the rehabilitation of workers, before he receives the report of the working party or anything substantive to give Parliament. It is unfair to suggest the Minister has not done his homework and has not done his job regarding rehabilitation.

I have referred to the Hon. Mr. Burdett's speech, and that honourable member did not say much more. I have pointed out that he said that be believed that a worker on compensation should be no better off and no worse off than a worker who remained in industry. I will refer to the amendments that the Hon. Mr. Laidlaw proposes, because, as I have said, one thing more than anything else that would encourage and rehabilitate me, if I were an unemployed worker, would be the knowledge that I have sufficient money in my house to meet my commitments and to keep my family.

The Hon. D. H. LAIDLAW: Will the honourable member give way?

The Hon. J. E. DUNFORD: No. I felt like giving way to the Hon. Mr. Laidlaw this afternoon, but, during the dinner adjournment, I have had another look at his amendments, and I just could not give way. His amendments will be in conformity with the provisions of his Bill. Members opposite, except the Hon. Mr. Laidlaw, have not had much experience in heavy industry. The Hon. Mr. Cameron has been a farmer; the Hon. Mr. Carnie has been a pharmacist; the Hon. Mr. Whyte is a successful and prosperous farmer; the Hon. Mr. Burdett is a part-time lawyer at Mannum; the Hon. Mr. DeGaris has been a member of a wealthy farming family; and the Hon. Mr. Geddes has so many irons in the fire that it is not a joke. I am speaking from experience.

The Hon. R. C. DeGaris: You are not speaking from knowledge.

The Hon. J. E. DUNFORD: I am speaking from knowledge and experience. I have represented thousands of persons who have been involved in workmen's compensation cases, and I have spoken to people. I have spent 15 years as a full-time officer of a union with employees at Broken Hill Proprietary Company Limited, Broken Hill Associated Smelters Proprietary Limited, Adelaide Cement Company Limited, and in all the quarries. I know that these people rely not on their minimum award wages only but also on incentive payments, disability allowances, bonuses, overtime, shift allowances, industry allowances, weekend penalty rates, public holiday penalty rates, travelling allowances, clothing and meal allowances, and payments for all other sorts of disabilities.

The Hon. Mr. Laidlaw wants to take those payments out of the average weekly earnings. He has said that he supports the second reading, but has said that his proposals will be moved as amendments later and that the payments to which I have referred should not be included. Many people get, from overtime alone, an amount that is more than their award rate, but the Hon. Mr. Laidlaw, other Opposition members, insurance companies, and employers want to put these people back on half pay when they are on workmen's compensation.

The Hon. D. H. Laidlaw: We are offering the award rate and over-award rates.

The Hon. J. E. DUNFORD: Do you know what you are taking out?

The Hon. D. H. Laidlaw: We are offering more than the Whitlam Government gave the A.C.T.U. last year.

The Hon. J. E. DUNFORD: If all these payments are taken out, the take-home pay is reduced by about 50 per cent.

The Hon. J. A. Carnie: Justify that, and prove it!

The Hon. J. E. DUNFORD: The award rate of a trades assistant employee at Perry Engineering Company Limited is about $105 a week.

The Hon. D. H. Laidlaw: And his over-award payments?

The Hon. J. E. DUNFORD: I am not talking about over-award payments. I am referring to the deductions that the Hon. Mr. Laidlaw suggests in his amendments. If these deductions were made, it could halve the average pay of a worker of B.H.P. in Whyalla.

The Hon. D. H. Laidlaw: You have not read the amendments properly.

The Hon. J. E. DUNFORD: I have. Workers at B.H.P. get double their award wages as a result of overtime alone. They are working 12-hour shifts, and they cannot get a job unless they do so. The bonus is about $30, and there are also shift allowances, industry allowances, and other allowances to which I have referred, yet the honourable member wants to exempt them from average earnings. The Hon. Mr. Burdett said that workers should not be worse off but, by taking all those component parts out of the calculation of average weekly earnings, about half the earnings of a worker are lost. It is the most scandalous proposition I have ever heard.

If industry heard of what has been suggested it would be shocked. I will be interested to hear the Hon. Mr. Laidlaw speak in Committee, because then my colleagues will learn that he is here for one purpose only, to represent big industry. All the honourable member's colleagues are kowtowing to insurance companies and other interests, yet they should be thinking of the dependents of workers who keep the lights on in this State. Until members opposite do this, there will be further changes in this Council after the next election, as a result of this Bill.

The Hon. N. K. FOSTER: In 1973 the Leader said little about workmen's compensation and much about the suffering of insurance companies, but he was placed in a most invidious position when this august Chamber decided to fall back on the old three-card trick and take the matter to a conference. The Hon. Mr. DeGaris hoodwinked you, Mr. President, into taking part in the conference along with the unfortunate Hon. Mr. Geddes. After the conference you, Sir, in the debate that followed, said:

I support the motion.

That was supporting the decisions made by the conference, and you went on, Sir, to say:

In other words, the major matter that occupied the attention of the conference, namely, that overtime payments should not be taken into reckoning for the purpose of calculating average weekly earnings, could not be sustained.

You, Sir, said that the arguments advanced by you and your colleagues during the debate of the amendments moved and carried in this place, because of the undemocratic manner in which members were then returned, could in no way sustain your arguments against the inclusion of overtime payments. Therefore, Mr. President, when this Bill reaches the Committee stage and we deal with the foreshadowed amendments, in your capacity as Chairman of the Committee, you should bear in mind that in finality you must uphold the position taken, although you did not foresee in 1973 that you would now be in this position.

You, Mr. President, must agree that no minutes of what transpired at the conference are available. Therefore I have no way of knowing what you, Sir, or the Hon. Mr. Banfield said at the conference. The only indication anyone has of what transpired is by what managers at the conference say on returning to their respective Chambers.

Mr. President, I have been amazed to see that you acceded to the spirit and tradition of the conference by saying that, although you were unsuccessful in the conference, you accepted the situation. Indeed, Mr. President, you went further and were good and wise enough to recognise that, before the 1973 elections, the Government had a commitment to the people. Certainly, I am sure the Hon. Mr. DeGaris will squawk about that tomorrow. Not only did you say that the matter was beyond question; you said, Sir, in finality it was right.

True, much was said that the country was going to ruin, and I am sure that the Leader went to the library on North Terrace and researched English newspapers published in the early 1880's and discovered that workmen's compensation provisions were first introduced at that time. Doubtless, the Hon. Mr. DeGaris was surprised to find that 100 years earlier the English were thinking just the same as he was thinking and they said it would cause ruin. Was the Leader surprised to find such provisions introduced in Germany in the early 1880's?

If there are any shortcomings within the Workmen's Compensation Act experienced since 1973, let the guilt be upon the heads of members opposite. For so many dreary, dull, long and doleful years people in South Australia witnessed under the Playford Government the establishment of a committee year after year, with an offer being extended to the Trades and Labor Council for a representative to be on the committee. That representative was completely outnumbered. His voice was not worth a cracker. Members of the trade union movement and the political movement (we were then in Opposition) thought that was fair. However, it was totally inadequate and resulted from the stupidity of previous Liberal Governments and a definite and deliberate denial of justice in accident and workmen's compensation that led to much public agitation seeking improvement of the then prevailing conditions in South Australia.

Honourable members may recall that there was a hard fight on the part of trade unions and clear-thinking people to make clear the risks taken by employees while working and while going to and from work. The press came to the assistance of honourable members opposite and accused the trade unions of stirring emotions following the death of a worker at the siding adjacent to the Kelvinator plant at Finsbury. I refer to the occasion when a migrant worker was crushed to death as he got off the train. His widow had no home, no relatives, no money, and in those days no hope. At that time there was no way under the Workmen's Compensation Act whereby that man's widow could go before a court on the basis that his death resulted from the fact that he was on his way to work.

The Hon. D. H. Laidlaw: Why don't you get up to date, as we are?

The Hon. N. K. FOSTER: Honourable members opposite ought to bear that case in mind. While I was involved in the trade union movement I had to visit about 10 homes over a period of between 10 years and 12 years to inform widows that their husbands had been killed on the job. As a result of that experience, I have some understanding of the problems experienced by families whose breadwinner has been killed on the job. While I have a voice within and without this Chamber, I want to ensure that we do not return to that kind of situation. At one time the Hon. Mr. DeGaris received a visit from a person who will not be named. A person came to see me when I was the Federal member for Sturt; he said that he had to shoot two people in this State. I sat in a 4 metre by 3 metre office for five hours with that bloke and finished up by driving him home. He wanted to shoot an insurance man in this State and also a member of Parliament, who also happened to be a lawyer. That man had all sorts of references from his employer, who had told me on the telephone that he had nothing against the worker, whose injury put him off work for the rest of his life. He is on a pension and is not now in this State. He had sold everything to keep going and to buy food, but he was denied even a penny payment for 12 weeks by an insurance company.

The Hon. D. H. Laidlaw: We are not suggesting that in our amendment in any way.

The Hon. N. K. FOSTER: That is bloody gracious of you.

The PRESIDENT: Order!

The Hon. N. K. FOSTER: It is the sort of thing I expected the honourable member to say. We are not going back to that kind of situation. Honourable members opposite did not accept their responsibilities. It was not necessarily the employer who was always at fault: those who come under the strongest attack are the insurance companies. The popular tactic today is to refer injured workers continually to doctors who are willing to say, "This bloke's back is all right; his trouble is psychosomatic. Send him to a head shrinker." The Hon. Mr. Laidlaw knows full well that, when an insurance company gets such a certificate, it will act on it, to deny workers their rightful compensation. I now refer to the question of reducing the figure to less than 100 per cent. Why should over-award payments not be in it? Someone opposite mumbled something about overtime.

The Hon. D. H. Laidlaw: We haven't got overtime in it. We've got over-award payments in it.

The Hon. N. K. FOSTER: The Opposition should not move its amendment if it is sincere. In addition to the question of loss in monetary terms, we must bear in mind that injured workers and their families suffer loss in 101 other ways about which honourable members opposite are not concerned. There have been privately negotiated areas of agreement to provide for 100 per cent payments where a person is on workmen's compensation; in other words; a person should not be disadvantaged. That has been agreed to by previous Commonwealth Governments. The maritime industry has had it. The amendment will reduce the amount of compensation, no matter what terms honourable members opposite like to use.

The Hon. M. B. Cameron: You don't want to hear about what happened at the Federal level.

The Hon. N. K. FOSTER: I am not saying that the Whitlam proposal—

The Hon. M. B. Cameron: It was a Federal Labor proposal.

The Hon. N. K. FOSTER: I accept that.

The Hon. M. B. Cameron: Don't smear your Federal Leader.

The Hon. N. K. FOSTER: I am not doing that. The Hon. Mr. Laidlaw referred to the question of rehabilitation and asked why the Minister had gone overseas. It could well be that, during the lifetime of this Government or of the next Government (which certainly will not be a Liberal Government), we could see some really revolutionary moves being made in relation to workmen's compensation. I hold the strong view that workers ought to be entitled to a no-loss concept. I also hold dear the view

that no-one in a modern society should be disadvantaged, as people are being disadvantaged at present, depending on when and where they have their accidents. A family's breadwinner, whether he is knocked over by a motor car or injured at work, should not suffer any loss. We have seen a terrific escalation in costs and the rip-off regarding bodily injury resulting from motor vehicle accidents, let alone the damage caused to motor vehicles. It would be well worth while honourable members recalling that third party compulsory insurance was introduced by a Federal Government in the mid-1930's. Therefore, members opposite should not sneer about the possibility of the Federal Government's acting in this regard. If members opposite examined what was provided regarding compulsory insurance in the 1930's, they would see that that figure was only a shadow of that which obtains at present. So, they are not on good ground in this respect.

Members opposite seem to think that industry in this State can survive only if workmen's compensation is reduced. Members opposite pay scant regard to what they inflict on the unfortunate workers of this State. I refer now to the rip-off in third party to which members opposite so often refer. If the exorbitant claims that are made in this respect were, in fact, 100 times the figures to which the Hon. Mr. Burdett has referred, he, as a member of the legal profession, would consider it a real achievement by his profession. One reads in this evening's press that a woman in a wheel chair has been awarded hundreds of thousands of dollars. The Hon. Mr. Burdett would undoubtedly consider that to be a feather in the cap of those in his profession. It is a real achievement for them to obtain that sort of award from the courts. Am I not correct in saying that? Would the Hon. Mr. Burdett place an advertisement in, say, the Riverland press, stating that his Murray Bridge and Mannum offices would limit the type of claim that they would process on behalf of clients? Of course, he would not do that, and the honourable member knows it. The Hon. Mr. Burdett may think that that is an odd way of looking at the matter. However, I think that it is the correct way of doing so, as what is good for one is good for the other until we get a national scheme. Under the present Act, no-one can bludge.

The Hon. J. C. Burdett: What about what Mr. Dunstan has said?

The Hon. N. K. FOSTER: I do not care what Mr. Dunstan has said. I will take the responsibility for what I say. A worker who goes on compensation is required to have a piece of paper signed by a medical practitioner.

The Hon. D. H. Laidlaw: Whom are you kidding?

The Hon. N. K. FOSTER: A worker must have that piece of paper. Is that correct?

The Hon. D. H. Laidlaw: Yes.

The Hon. N. K. FOSTER: So, who is in collusion with whom? Who gives the worker a certificate that enables the Act to work on his behalf? He must get that certificate from a professional.

The Hon. D. H. Laidlaw: And how can you judge a bad back or a bad wrist? Which doctor can do that?

The Hon. N. K. FOSTER: It seems that the Hon. Mr. Laidlaw is reflecting on the medical profession.

The Hon. D. H. Laidlaw: I am not.

The Hon. N. K. FOSTER: I think that some persons in the medical profession are not even capable of pronouncing a person dead. The medical profession is more ambiguous than any other profession. Members opposite say that no doctor can state accurately that a person has a bad back. Therefore, any doctor who says that a person has a bad back must have doubts about it. If a doctor sends a person to a specialist, that specialist can obtain two, three, or even four opinions. I suggest that all doctors do not necessarily agree with what the Hon. Mr. Laidlaw is saying. I am putting his argument in the opposite way. He asks what doctor knows whether a person has a crook back.

The Hon. D. H. Laidlaw: In the early stages.

The Hon. N. K. FOSTER: Now, the Hon. Mr. Laidlaw relates it to the early stages.

The Hon. D. H. LAIDLAW: Will the honourable member give way?

The Hon. N. K. FOSTER: No.

The Hon. R. C. DeGaris: You're on too dangerous ground to give way.

The Hon. N. K. FOSTER: No, I am not. The Act provides that a person must have a piece of paper signed by a doctor, and he cannot obtain that from any source other than the profession. At the other end of the scale, doctors give certificates when a person thinks he is ill and, in fact, is ill. I will not say anything more about the amendments.

The Hon. D. H. Laidlaw: They are very good ones, too.

The Hon. N. K. FOSTER: Members opposite sit in this place and ensure that they are absolutely protected. Certainly, the Hon. Mr. DeGaris does this. He did not ever raise this in debate. He wants to deny people their rights. He does not provide a service for the public. The Hon. Mr. DeGaris said on television that he earned $16 000 but, in fact, he earns $26 000. I told him he did not earn his salary.

The Hon. J. E. Dunford: You won that debate by a mile.

The Hon. N. K. FOSTER: The Leader has not been on television since. He gets $26 000 a year. Members opposite are attempting to deny people outside privileges that they themselves receive as members. I point out that the Hon. Mr. Laidlaw, the Hon. Mr. Burdett, the Hon. Mr. Hill, the Hon. Mr. Carnie and the Hon. Mr. Whyte all have separate incomes. The Hon. Mr. DeGaris got out of his business of dispatch messenger vans around Adelaide. He should be known as "Speedy Gonzales". All members opposite have more than one income and, if they are sincere, they will not be so false as to stand in this Chamber—

The Hon. D. H. Laidlaw: That has nothing to do with it.

The Hon. N. K. FOSTER: Yes it has. You tell me of any person who is Chairman of a board and who is deprived of his money if he is sick. He gets all the sympathy in the world. Even if he has an accident in his car, he is just given a new one, for which he does not pay. I remind the honourable gentleman who is presently occupying the Chair, another one of those disadvantaged by the Hon. Mr. DeGaris and pushed into the position of being one of the managers at the conference in 1973—

The ACTING PRESIDENT (The Hon. R. A. Geddes): Order! It would be appreciated if the honourable member were a little more accurate with his observations.

The Hon. N. K. FOSTER: Were you not a manager at the managers' conference?

The ACTING PRESIDENT: I was. I was not forced into it, though; neither was the Hon. Mr. DeGaris.

The Hon. N. K. FOSTER: You should not admit that, Mr. Acting President. You also came back into this Chamber and applauded the legislation on the basis that the conference had ultimately made a decision and had accepted the will of the people and also the Government's mandate

concerning the matter. Indeed, anyone who says that a mandate lasts only for the lifetime of a Government is on shaky ground. I commend the Bill to the House, and I hope that those members who are possibly being over-lobbied by interested parties outside this Chamber will realise that they have a responsibility to the people who do not necessarily have the wherewithal and the advantages that members of this Chamber, as well as members of the Chamber of Manufactures and other employer organisations in this State, have.

The Hon. M. B. CAMERON secured the adjournment of the debate.

INDUSTRIAL SAFETY, HEALTH AND WELFARE ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

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

Leave granted.

EXPLANATION OF BILL

This Bill, which amends the principal Act, the Industrial Safety, Health and Welfare Act, 1972, is introduced following a departmental examination of the workings of that measure since it came into operation. The amendments are somewhat disparate; they can perhaps be dealt with by an examination of the clauses of the measure.

Clauses 1 and 2 are formal. Clause 3 amends section 7 of the principal Act by: (*a*) correcting a typographical error in the definition of "building work"; (*b*) somewhat clarifying the meaning of the term "employer" in the context of this measure; (*c*) extending the same clarification to the definition of "work injury"; and (*d*) recasting the definition of "worker" to ensure that "independent contractors" are, to an appropriate extent, included within the meaning of the expression "worker".

Clause 4 amends section 8 of the principal Act by enlarging the membership of the board from seven members to 10 members, the new members being the Chief Inspector of Industrial Safety, who is to be a member *ex officio*, a nominee of the Metal Industries Association, South Australia, and a further nominee of the United Trades and Labor Council. Clause 5 is consequential on the increase in membership. Clause 6 re-enacts section 12 of the principal Act and provides that, in the absence of the Chairman or his deputy, the Chief Inspector can preside at the meeting of the board.

Clauses 7 and 8 increase the penalties under sections 16 and 19 of the principal Act from $200 to $500. Clause 9 amends section 20 of the principal Act by increasing the penalty in this section from $500 to $1 000. Clauses 10 and 11 make an appropriate increase in penalties under sections 21 and 23 respectively. Clause 12 amends section 24 of the principal Act by providing for the expiry of the registration upon an occupier ceasing to occupy registered premises. Clause 13 repeals section 25 of the principal Act, which is now redundant in the light of the amendment effected by clause 12.

Clause 14 appropriately increases the penalties under section 26 of the principal Act. Clause 15 amends section 27 of the principal Act, which deals with reporting of "work injuries" by providing that this section may be applied to work injuries occurring in "declared industries", as to which I refer honourable members to new subsection (1a). Clause 16 amends section 28 of the principal Act, which deals with reporting of certain accidents where equipment critical to safety is involved, by somewhat extending the scope of this section both as to industries to which it can apply as well as to equipment.

Clause 17 amends section 29 of the principal Act by raising the penalty for an offence against this section. Clause 18 inserts a new section 29a in the principal Act and is in aid of "safety education". Clause 19 increases the penalty under section 30 of the principal Act. Clause 20 provides somewhat more flexibility in granting exemptions from the requirement for the appointment of workers' safety representatives in circumstances where the aim of the section is clearly achieved in a different manner.

Clause 21 amends section 32 of the principal Act, which relates to the sale of machinery. The most significant amendment made by this clause is the removal of subsection (2), which was of the nature of a transitional provision. Clause 22 amends section 35 of the principal Act and, in effect, extends by six months the time within which proceedings may be brought under the Act. Clause 23 increases the penalties under section 36 of the principal Act. Clause 24 makes certain amendments to the schedule to the principal Act which are self-explanatory.

The Hon. D. H. LAIDLAW secured the adjournment of the debate.

SOUTH AUSTRALIAN HEALTH COMMISSION BILL

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

ROAD TRAFFIC ACT AMENDMENT BILL (No. 3)

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

The Hon. T. M. CASEY (Minister of Lands): I move:

That this Bill be now read a second time.

The purpose of these amendments is three-fold. First, and perhaps most importantly, the penalties prescribed in the Act are increased, with particular attention being given to the penalties for drink-driving offences. The majority of the present penalties in the Act were set 15 years ago, and the penalties for the drink-driving offences have not been increased since 1967. It is obvious that we must, at the very least, keep abreast of inflation in relation to the imposition of monetary penalties; from this point of view the proposed increases are long overdue. In addition, the penalties for the drink-driving offences are to be made more stringent, particularly with respect to the penalty of disqualification from holding a driver's licence. The proposed amendments follow the recommendation of the Road Safety Committee. I think all of us agree that the increasing problem of drinking drivers must be attacked with courage and firm resolve.

Secondly, the proposed amendments deal with the substitution of the notion of "mass" for the existing notion of "weight" wherever it appears in the Act. The metric experts hold that "mass" is technically the correct expression and so this Act is accordingly amended. Thirdly, sundry substantive amendments are proposed. This Act is under

constant review as to its effectiveness and so these amendments propose the solution to several minor problems. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clause 1 is formal. Clause 2 provides for the commencement of the Bill. Clause 3 is consequential. Clause 4 places the definitions relating to the mass of vehicles in this main interpretation section. Clause 5 provides for an increased membership of the Road Traffic Board. Two further members are added, bringing the total membership to five. One member will be well versed in road safety and the other in vehicle safety. Clause 6 is consequential upon the increased board membership. Clause 7 deletes an obsolete reference.

Clauses 8 and 9 delete penalty clauses. (A general penalty of $300 is proposed for all offences against the Act, except for special offences where the penalty will still be provided for in the individual sections.) Clause 10 provides a new section in relation to instruments for determining mass. All determinations of mass for the purposes of this Act must be made in accordance with the regulations. Clauses 11 to 18 inclusive delete penalty provisions.

Clause 19 provides a new scale of penalties for reckless and dangerous driving. A mandatory period of disqualification is provided. The court may only reduce this period of disqualification in the case of a first offence that is trifling. Clause 20 provides a new scale of penalties for the offence of driving under the influence. Again, the minimum penalties may not be reduced except that the period of disqualification may be reduced in the case of a trifling first offence. Clause 21 provides a new scale of penalties for the offence of driving "over ·08". Stiffer penalties are provided where the prescribed concentration of alcohol exceeds ·15 grams. A provision is inserted in this section as to the reduction of minimum penalties similar to that provided in section 47.

Clause 22 provides a new scale of penalties for failure to give a breath test. Again, a provision is inserted as to the reduction of minimum penalties. Clause 23 provides for a similar scale of penalties where the driver of a vehicle involved in an accident refuses to permit a blood sample to be taken. The same provision as to the reduction of minimum penalties is inserted. Thus the four drink-driving offences are brought more into line with one another. Clauses 24 to 36 inclusive delete penalties. Clause 37 makes clear that the driver of a vehicle must also give way to a tram that is in an intersection. Clauses 38 to 53 inclusive delete penalties. Clause 54 makes clear that the driver of a vehicle must also give way to trains that are on a level crossing. Clauses 55 to 62 inclusive delete penalties.

Clause 63 similarly provides that a pedestrian must give way to a train that is on a level crossing. Clause 64 deletes a penalty. Clause 65 repeals the now redundant definition of "laden weight". Clauses 66 to 85 inclusive delete penalties. Clause 86 is a consequential amendment. Clauses 87 to 91 inclusive delete penalties. Clause 92 tightens the prohibition against left-hand drive vehicles. By deleting these words, such a vehicle will no longer be able to be driven indefinitely on trader's plates.

Clause 93 deletes a penalty. Clause 94 is a consequential amendment. Clause 95 repeals two sections of the principal Act that relate to the mass of vehicles. The provisions of these sections are incorporated in section 147 as amended by this Bill. Clause 96 is a consequential amendment. Clause 97 amends section 147 of the principal Act in such a way that this section now contains all the provisions relating to maximum masses. All exemptions from this section will be handled by the Road Traffic Board (whereas now the Minister also has power to grant permits in certain circumstances). A steeper monetary penalty is provided.

Clause 98 is a consequential amendment. Clause 99 repeals a section which is now superfluous. Clauses 100 and 101 effect consequential amendments. Clause 102 deletes a penalty. Clause 103 repeals a now superfluous section of the Act. Technical requirements for weigh-bridges, and so on, will be set out in the regulations. Clause 104 effects consequential amendments. Clauses 105 to 113 inclusive delete penalties. Clause 114 provides that certain trailers must also be marked with the required information. The Act as it now stands does not make clear that trailers are included in this section. In future, regulations may be made if further information is desired, or if a further class of vehicle should come within the ambit of this section.

Clause 115 provides that Central Inspection Authority inspectors may be appointed by the Minister. The need has arisen to appoint inspectors otherwise than under the Public Service Act. Clause 116 deletes a penalty. Clause 117 provides that the Central Inspection Authority is under an obligation (it now has a discretion in the matter) to refuse to issue an inspection certificate where it has any doubts as to the safety of a vehicle. Clause 118 deletes a penalty. Clause 119 inserts two new sections. The Central Inspection Authority is given the power to recognise certificates of inspection issued in other States. Immunity from civil or criminal liability is given to persons who act in good faith and with reasonable care under Part IVA of the Act, that is, the inspection provisions.

Clause 120 provides that a person who contravenes a provision of the Act or a condition of a permit granted under the Act is guilty of an offence. Where no other penalty is specifically provided in the Act, a person is liable to a penalty not exceeding $300. Clauses 121, 122 and 123 all effect consequential amendments. Clause 124 gives the court power to postpone disqualification for a period. This power presently exists in the Act in relation to disqualification under some sections but not under others. This new section makes clear that a court, whether it is acting under this Act or any other Act, may postpone the disqualification where, for example, the convicted person needs to drive his car away from the court.

Clause 125 repeals a section of the Act that now gives the Commissioner of Police and the Registrar of Motor Vehicles power to lay a complaint if either of them is satisfied that a person is likely to cause danger to the public by reason of "intemperance in the consumption of alcoholic liquor". This power is never used and in any event there are adequate similar powers under the Motor Vehicles Act. Clause 126 effects consequential amendments. Clause 127 effects consequential amendments and also deletes a provision which provides for the making of regulations for the purpose of prescribing a lower maximum mass in relation to motor vehicles. It is considered that if at any time a lower maximum should be provided then a direct amendment to section 147 of the Act should be effected. The penalty for a breach of the regulations is increased from $50 to $100.

The Hon. C. M. HILL secured the adjournment of the debate.

LOCAL GOVERNMENT ACT AMENDMENT BILL

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

RAILWAYS ACT AMENDMENT BILL

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

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 23. Page 2343.)

The Hon. J. C. BURDETT: I support the second reading. I had considerable doubt about the principle behind the Act. In my view, long service leave is leave for long service to an employer. The principal Act was justified in acknowledging that, in the building industry, there was long service to an industry. It was pointed out that, in that industry, work often was seasonal and many workers worked for one employer while there was a job with him and then went to another.

However, I am not entirely convinced. The employer, not the industry, pays the workman, and it is likely that the principle will be extended and we will have Bills to provide for portability, as it is called, of long service leave in other industries and, perhaps, professions. The Bill seeks to provide that, if a workman is dismissed for serious and wilful misconduct between the seventh and tenth year of service, he is still entitled to pro rata long service leave.

I cannot understand why this is being done, because, as the Hon. Mr. Laidlaw has said, the Bill for the principle Act was passed only in February and the provision in the principle Act for an exception in the case of serious and wilful misconduct was inserted after a conference between the Houses. That was agreed to by the Houses. The Act was not in operation. There was a conference and an agreement was reached. The Bill was amended but, before it came into force, the Government changed it. That seems strange to me. It has been said that the Act is being changed because of current industrial thinking, and I ask the Minister to say what current industrial thinking that is, because it is contrary to the thinking in a recent Federal Industrial Court decision. Also, as the Hon. Mr. Laidlaw has said, it is contrary to the form of legislation in every other State.

The only other point I make is regarding clause 12, which inserts a new part IVA, relating to appeals. The point that I make here is a small one. The appeals have become necessary because of clause 8, which, amongst other things, inserts a new section 24c, providing for a default assessment. That new section provides:

(1) Where—

(*a*) any employer fails or neglects to furnish any return as and when required by this Act or the Commissioner;

(*b*) the Commissioner is not satisfied with the return made by any employer;

or

(*c*) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to make contributions under this Act,

the Commissioner may cause an assessment to be made . . .

New Part IVA proposes an appeal to a tribunal when such a default assessment has been made by the Commissioner. The tribunal is to be comprised of one person, but no requirement in relation to his expertise is set out. Obviously, this is a position for an accountant, because this matter involves what wages were paid by the employer. The tribunal should be effective and we should be certain that the job of the person comprising the tribunal is not a sinecure, and is not something he may know nothing about and have no ability properly to carry out his function. Therefore, it is important that this person has the necessary expertise and in the Committee stage I intend to move a simple amendment that the tribunal shall be comprised of a person who the Minister is satisfied has expertise in this field. I support the second reading.

The Hon. D. H. L. BANFIELD (Minister of Health): I thank honourable members for the way they have considered this Bill. The Hon. Mr. Laidlaw said that the Minister of Labour and Industry had reneged on this matter in another place in February, 1976. However, what the Hon. Mr. Laidlaw has said is incorrect. On February 17, 1976 (*Hansard*, page 2439), the report states:

I admit that the present legislation still contains a misconduct provision, but it has caused much trouble over the years and it is intended to delete it from the Long Service Leave Act when it is amended later in the year. It seems futile to place a misconduct provision in this Bill when it is intended to delete it from the principal legislation.

Mr. Coumbe: The Committee does not know that.

The Hon. J. D. WRIGHT: I am telling members now. I do not believe there is an argument to refrain from paying long service leave, after it has been approved, because of misconduct because I believe the man has earned it, is entitled to it and should be paid it.

The Hon. F. T. Blevins: Who said that?

The Hon. D. H. L. BANFIELD: The Minister of Labour and Industry in another place. The Hon. Mr. Laidlaw said that the Minister had reneged on an undertaking, but that is not true. In relation to whether or not a man should be deprived of something he earns, that is what the Bill is all about. A man has a right to long service leave provisions after seven years, and State industrial thinking applies to annual leave as a result of a decision given about a man dismissed in certain circumstances. The court upheld that he was entitled to annual leave and had earned it up to that period. That is the present industrial thinking about annual leave, and the principle must be followed through.

If a man has earned something, how can members opposite take it away? True, they will take it away because they have the numbers, but how can they morally take it away from him, when a man can be punished in other ways. Yesterday, the example was given of a man who had embezzled money from his employer. The employer still has the right to dismiss him, take him to court and have punishment inflicted through the court. That is what the court is there for. In the position illustrated yesterday, that man would have been punished three times. It was said by an honourable member opposite yesterday that because the employee had embezzled money from his employer, or as a result of some minor misdemeanor, that was sufficient for the man to be dismissed.

The Hon. R. C. DeGaris: There has to be serious and wilful misconduct.

The Hon. D. H. L. BANFIELD: In the case of embezzlement the man is punished by the court. That employee is punished by the boss and can be dismissed instantly. Now members opposite seek a provision that employers can take away something the employee had earned. Next, honourable members opposite will be saying that if such an incident occurred at the end of the week, the employee would not be entitled to his week's wages. That is their argument carried through to its logical conclusion: strip the employee of everything he has earned to that time.

The court has determined that an employee cannot be stripped of annual leave earned up to that time. Members opposite are saying that they want to take away the benefit an employee has earned over seven years in relation to long service leave, and the Government cannot accept that argument. What an employee has rightfully earned is his, and what he has not earned he should not receive. That is the Government's attitude; indeed, it is modern industrial thinking in relation to annual leave and, if the principle is good enough in that area, it must be good enough in other areas.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—"Repeal of section 23 of principal Act."

The Hon. R. C. DeGARIS (Leader of the Opposition): I oppose this clause for the reasons given during the second reading debate. An employee has a right of appeal if he is dissatisfied with his dismissal on the grounds of serious and wilful misconduct. If the dismissal is justified, I do not believe that such an employee should receive pro rata long service leave entitlements.

The Hon. D. H. LAIDLAW: I oppose the clause. Mr. Justice Coldham, the presiding judge of the Full Bench of the Federal Conciliation and Arbitration Commission, gave judgment recently in the test case to amend the long service leave provisions in the Federal Metal Trades Award. I point out that more than 50 per cent of South Australian workers are employed under Federal awards. The Full Bench on October 21 last decided to retain wilful misconduct as a reason for forfeiting pro rata long service leave entitlements. In the State Acts in Victoria and New South Wales serious and wilful misconduct has been retained as a cause for forfeiting pro rata long service leave entitlements. In Western Australia, serious misconduct applies not only as regards pro rata entitlements but also as regards full entitlements.

The Minister criticised my example relating to embezzlement, but I was quoting from the transcript, in which Mr. Justice Coldham raised the matter of an employee, with more than seven years service, who embezzled $1 000 of funds and, after being found out, could demand long service leave payments of $1 000 from his employer before leaving.

The Hon. F. T. Blevins: Isn't that a ridiculous example? Couldn't the court order restitution?

The Hon. J. C. Burdett: The restitution would amount to nothing.

The Hon. D. H. L. Banfield: The employee has done seven years hard labour.

The Hon. J. C. Burdett: And he has been paid for it.

The CHAIRMAN: The employee might have been embezzling for the whole seven years.

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr. Laidlaw.

The Hon. D. H. LAIDLAW: For the benefit of the Hon. Mr. Blevins I point out that I did not think up that example myself.

The Hon. F. T. Blevins: Judges can be as silly as bloody wheels, the same as others.

The Hon. D. H. LAIDLAW: It was a unanimous decision of the Full Bench to retain wilful misconduct as a reason for forfeiting pro rata long service leave entitlements. I oppose clause 6 also because what was inserted in February in the principal Act was a result of a conference chaired by the Minister of Labour and Industry. There was a compromise on two points, the first being the date of the operation of the legislation—April 1, 1977. The second point was the retention of serious and wilful misconduct in this connection, so long as an employee who had been dismissed had a right of appeal. However, before the legislation has come into force, the Government is seeking to strike out the provision that was inserted as a result of the conference—a very unusual thing to do, and I could use other words.

The Hon. D. H. L. BANFIELD (Minister of Health): While the honourable member was called to the telephone earlier this evening, I referred to *Hansard* of February 17, 1976, where the Minister of Labour and Industry is reported as saying:

I admit that the present legislation still contains a misconduct provision, but it has caused much trouble over the years and it is intended to delete it from the Long Service Act when it is amended later in the year.

The Hon. D. H. Laidlaw: During the conference it was agreed that it should go in; that is why I object to having it removed.

The Hon. D. H. L. BANFIELD: Honourable members opposite are happy to jump from Federal court to State court, whichever suits their argument. This principle has been adopted in the State Industrial Court in relation to annual leave.

The Hon. D. H. LAIDLAW: I remind honourable members that the Federal jurisdiction applies to more than half the workers in South Australia. It is bad to have divisive benefits. We have to strive for uniformity in wage structures and in fringe benefits.

The Committee divided on the clause:

Ayes (10)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Noes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, C. M. Hill, D. H. Laidlaw (teller), and A. M. Whyte.

The CHAIRMAN: There are 10 Ayes and 10 Noes. I give my casting vote to the Noes.

Clause thus negatived.

Clauses 7 to 11 passed.

Clause 12—"The appeal tribunal."

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

Page 4, line 35—After "of a person" insert "having professional qualifications in accountancy".

I referred to this amendment during the second reading debate. Because the obvious qualification of the person constituting the tribunal will be that of accountancy, this amendment should be carried. I trust that it will be acceptable to the Government.

The Hon. D. H. L. BANFIELD: I am willing to accept the amendment.

Amendment carried; clause as amended passed.

Clause 13 and title passed.

Bill read a third time and passed.

DEFECTIVE PREMISES BILL

In Committee.

(Continued from November 17. Page 2236.)

Clause 4—"Implied warranties."

The Hon. J. C. BURDETT: When the Committee adjourned previously, you, Mr. Chairman, suggested that those honourable members who had amendments on file should explain but not move them. You then suggested

that progress be reported and that there be an unofficial conference between the various honourable members who had amendments on file and the Government's advisers. I thank you for that suggestion, as it proved to be a fruitful conference. I spoke to the Minister, who was co-operative in ensuring that such a conference was arranged. I met some of the Government's advisers, and we were able quickly to come to an agreement. As a result, one lot of amendments that I had on file has been removed and others have been substituted.

Agreement was readily reached. One of the amendments that I had on file was removed and another inserted in its place. The new amendment achieves the same thing in principle as the old amendment. I thank the Government's advisers, particularly the Parliamentary Counsel, who was able to see what I was trying to achieve and that the Government could not accept my amendment's going as far as it went initially. At your suggestion, Sir, when the Committee last met, I outlined the reason for all my amendments. Except when I come to the one amendment that has been substantially changed, I do not intend to explain my amendments in detail again.

The CHAIRMAN: I think that, if the Minister indicates that the amendments are acceptable to the Government, they could all be moved *en bloc*.

The Hon. D. H. L. BANFIELD (Minister of Health): The Government is willing to accept all amendments to this clause, and to clause 3, to be moved by the Hon. Mr. Burdett and the Hon. Mr. Hill.

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

Page 1, lines 14 and 15—Leave out "a person who proposed to occupy the house as a place of residence" and insert "a prospective occupier of the house".

Page 2, lines 1 and 2—Leave out "(being a contract to which a person who proposes to occupy the house as a place of residence is a party)" and insert in lieu thereof the passage "(being a contract to which a prospective occupier of the house is a party)".

Line 15—Leave out "warranties under this section" and insert "statutory warranties".

Line 17—Leave out "proves" and insert "alleges".

Line 26—After "result" insert ", wholly or in part,"

Line 28—Leave out "shall" and insert "may".

Line 30—After "may" insert ", upon proof of the allegation,"

After line 31—Insert subclauses as follows:

(4a) In any proceedings against a builder for breach of a statutory warranty it shall be a defence for the builder to prove—

(*a*) that the deficiencies alleged by the plaintiff do not result from any failure on the part of the builder—

(i) to carry out building work, or to supply materials, in accordance with the express terms of the contract; or

(ii) to exercise due care in carrying out the building work stipulated by the express terms of the contract;

(*b*) that before completion of the building work stipulated in the contract the builder, by notice in writing, recommended to the prospective occupier for whom he undertook to build the house that—

(i) building work should be carried out, or materials supplied, otherwise than as stipulated in the contract; or

(ii) building work should be carried out, or materials supplied, in addition to the building work or materials stipulated in the contract;

and

(*c*) that if the recommendation of the builder had been carried into effect the deficiencies alleged by the plaintiff would not have existed;

unless the court is satisfied—

(*d*) that the builder was in fact instructed to carry the relevant recommendation into effect; and

(*c*) that it was, in all the circumstances of the case reasonable that the builder should carry the recommendation into effect.

Page 3, line 1—Leave out "The" and insert "Subject to subsection (7a) of this Act, the".

After line 2—Insert subclause as follows:

(7a) A builder is entitled to exclude or limit by contract his liability under this Act for deficiencies in the construction of a house where—

(*a*) those deficiencies result from reliance upon advice (not being gratuitous advice) tendered to the builder by a person holding himself out as being qualified or competent to give the advice;

(*b*) by virtue of an agreement or waiver made or granted before the commencement of this Act the builder has no right to indemnify himself in respect of that liability by action against the person by whom the advice was tendered.

I think I should explain one amendment and, if honourable members wish any information about the other amendments, I should be pleased to give it to them. I refer to the amendment inserting new subclause (7a). Previously, I had sought to postpone the proclamation of the Bill. I gave as the reason for that that contracting out by the builder is prohibited by the Bill, although there are some cases in which various experts have given advice to the builder, who has contracted out. In such cases, the builder would be left out on a limb and be caught by the Bill, having no imdemnity against anyone. The Government objected to delaying the Bill's proclamation. Under my amendment, which I have moved in lieu of the previous amendment, the proclamation of the Bill will not be delayed. Indeed, the Bill can be proclaimed whenever the Government sees fit to do so.

That takes care of the situation I was worried about. I was worried about the case where a builder has received advice and where a person who has been tendered advice has contracted out: the Bill is proclaimed, the contract has been signed, and the builder has been caught, and he cannot contract out. He is caught in the middle because he has no right against the person who tendered the advice. This amendment will give a builder the right to contract out in regard to the owner in those limited cases where he has been tendered advice prior to the commencement of the Act and where he has no right of indemnity.

The Hon. D. H. L. BANFIELD: In a spirit of compromise we accept the amendments, and I hope the Opposition will reciprocate in due course.

Amendments carried.

The Hon. D. H. LAIDLAW: I move:

Page 2, line 13—Leave out "five" and insert "two".

This amendment deals with the case where a person who purchases a house within five years after the date on which it was first occupied shall have the rights, whether he be the first, second or a subsequent owner, to sue the real estate developer, the builder or (if such people are involved) the soil consultant or architect in one action.

One organisation, the Housing Industry Association, has estimated that this could increase the cost of an average house by $1 000. I cannot verify that, but I believe it will undoubtedly increase the cost of houses. I reiterate to honourable members that the consultant has an obligation over his head not just for five years but for another six years under the Limitation of Actions Act. An owner is able to bring an action for up to 11 years, and that is a very long time. I believe the consultants who are engaged will undoubtedly become ultra-cautious.

I have said before that I think the measure is a good one. I wish to reduce the time, because we are concerned at present about the cost of single houses and home units.

In my experience in manufacturing I have found that defects nearly always occur within the first few months of use.

The Hon. Mr. Foster pointed out that he knew of a case where cracks occurred after two and a half years, and I have no doubt about that. I do not think the amendment in any way destroys the purpose of the Bill. It will, however, help to reduce the undoubted increase in the cost of houses.

The Hon. D. H. L. BANFIELD: The Government does not support the amendment. Latent defects in houses may not become apparent until some years after construction has been completed. Such defects may be attributable to poor materials and workmanship. It might be argued that the provision of a five-year period will substantially increase the cost of housing, the Hon. Mr. Laidlaw suggesting an increase of about $1 000, but that cannot be substantiated. Such an argument is based on a misconception of the Bill, as statutory warranties under it will be implied indefinitely as long as the original occupier of the house remains in occupation.

Of course, liability under the Bill will be more difficult to establish as years pass. Clause 4 (3) simply provides that should the original occupier sell the house after five years occupation his rights under this Bill will not be subrogated to the new owner. It is thought by the Government that most defects due to poor materials or workmanship will become apparent before the expiration of this five-year period. I ask honourable members not to agree to the amendment.

The Hon. J. C. BURDETT: I can understand the motives of the Hon. Mr. Laidlaw and I support them. The five-year period is a long time, and it could be 11 years with the Limitation of Actions Act. That Act was amended last year, and as I recall the period can be further extended; there can be a very long time indeed. Certainly the defects are likely to show up relatively early in the piece, and as the five-year period progresses it is going to be hard for the owner to establish against the builder, anyway, that there was bad workmanship or bad materials or that the house, when it was completed was not reasonably fit for habitation. I wonder whether there is an area of compromise here. The period of two years seems a bit short. The Hon. Mr. Foster mentioned a period of two and a half years, and I wonder whether the Minister would accept a period of three years.

The Hon. D. H. L. BANFIELD: No. We believe that the five-year period is the most appropriate one in this area, and the Government believes it cannot accept a compromise. Accordingly, I ask honourable members not to support the amendment.

The Committee divided on the amendment:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, C. M. Hill, D. H. Laidlaw (teller), and A. M. Whyte.

Noes (10)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

The CHAIRMAN: There are 10 Ayes and 10 Noes. To enable the amendment to be considered by the House of Assembly, I give my casting vote in favour of the Ayes.

Amendment thus carried.

The Hon. D. H. LAIDLAW: I move:

Page 2, line 18—After "(*a*)" insert "not more than two years".

When a builder or developer has engaged a soil consultant or an architect to do a design, the soil consultant may give advice and the civil engineer may have designed the foundations, but the project may not go ahead then and the plans and specifications may not be used for years. These consultants could still be joined in the first action. It may be argued that the court would consider that in apportioning responsibility, but why get one more person involved in litigation who has to get legal representation? It would be fairer if the builder or developer realised that advice given more than two years earlier would be updated.

The Hon. D. H. L. BANFIELD: I oppose the amendment. Although it is appreciated that such an amendment will encourage builders to get up-to-date professional advice, the Government considers that the time at which the advice that the builder seeks to rely upon to exculpate himself is received by him will be one matter for consideration by the court when determining the proceedings. This view is strengthened by the Hon. Mr. Burdett's amendment, which the Government has accepted.

The Committee divided on the amendment:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, C. M. Hill, D. H. Laidlaw (teller), and A. M. Whyte.

Noes (10)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

The CHAIRMAN: There are 10 Ayes and 10 Noes. I give my casting vote for the Ayes, to enable the amendment to be considered by the House of Assembly.

Amendment thus carried.

The Hon. C. M. HILL moved:

Page 2, lines 38 and 39—Leave out paragraph "(*b*)" and insert paragraph as follows:

(*b*) offered him a reasonable opportunity—

(i) to inspect the premises to which the proceedings are to relate;

and

(ii) to make good any deficiencies in those premises.

The Hon. D. H. L. BANFIELD: The Government accepts the amendment.

Amendment carried; clause as amended passed.

Clause 2 passed.

Clause 3—"Interpretation"—reconsidered.

The Hon. J. C. BURDETT moved:

Page 1, after line 11—Insert definition as follows:

"prospective occupier" in relation to a house means a person who proposes to occupy the house as a place of residence:

Amendment carried; clause as amended passed.

Title passed.

The Hon. D. H. L. BANFIELD (Minister of Health) moved:

That this Bill be now read a third time.

The Hon. R. C. DeGARIS (Leader of the Opposition): I should like to comment on this Bill, which has been in this Council for some time and which now has been almost totally redrafted. Only two amendments have been disagreed to by the Government. I should like to congratulate those honourable members who have given the Bill much consideration. I refer to the work they have done on it, and I congratulate the Government on examining the suggestions made. With the exception of the two amendments

on which there have been divisions, the remainder of the amendments have been accepted by the Government.

This Bill demonstrates the need for close examination of legislation and drafting, especially when completely new legislation comes before the Council. Such legislation needs examination and work done on it. It is important to ensure that all areas on which the Bill impinges are not unduly affected. I again congratulate those honourable members who have worked on the Bill and the Government for its co-operation.

Bill read a third time and passed.

EVIDENCE ACT AMENDMENT BILL

In Committee.

(Continued from November 17. Page 2231.)

Clause 3—"Evidence given by accused persons."

The Hon. B. A. CHATTERTON (Minister of Agriculture): The Hon. Mr. Burdett previously indicated that he opposed this clause and the Government accepts its deletion.

Clause negatived.

Clauses 4 and 5 passed.

Title passed.

The Hon. B. A. CHATTERTON moved:

That this Bill be now read a third time.

The Hon. C. J. SUMNER: I should like to refer to the Government's reasons for accepting the deletion of clause 3. It arose from recommendations of the Mitchell committee under the heading "Recommendations with respect to unsworn statement." Recommendation (*a*) provides that the right of an accused person to make an unsworn statement to a jury be abolished. That recommendation was made not only in the third report but also in the second report. It would require the defendant or the accused person to give evidence under oath if he wanted to give evidence at all. The provision contained in clause 3 relates to that recommendation. The Government's acceptance of this amendment should not be taken, at least in the future, as an indication that an amendment to the general law may not come again before the Council. In all probability it will come forward in conjunction with the recommendation relating to the unsworn statement. I make that point clear to avoid any misunderstanding of the position.

Bill read a third time and passed.

THE STATE OPERA OF SOUTH AUSTRALIA BILL

Adjourned debate on second reading.

(Continued from November 23. Page 2342.)

The Hon. J. A. CARNIE: I support the Bill, but I cannot support it without expressing some reservations about it. Having said that, I do not intend to reflect on the State Opera or on any of its personnel. Moreover, I accept that this Bill has been the subject of an investigation by a Select Committee, where the opportunity was available for evidence to be taken, and no evidence was presented against the establishment of the State Opera.

Most honourable members accept the fact that the arts must receive some support from the Government, but we must be careful how we interpret "support". I take it to mean assistance, but I do not accept that it means full support. All companies must be encouraged to generate their own income, but I fear that too many companies rely on the fact that the Government will prop them up where necessary. The Treasury cannot be regarded as an ever-available source of funds for this purpose. Somewhere the reins must be pulled in.

It is easy to say that only a small amount is involved in respect of each case, but in total a substantial sum is involved, and this has a long-term impact on the State's finances. For example, in 1975-76 grants and provisions to the arts were made in two sections, the first being major and continuing grants. I do not intend to refer to the individual amounts allocated, but the total sum provided was a little over $1 500 000. Some of the organisations receiving such funds included the Adelaide Festival of Arts, the Adelaide Symphony Orchestra, the Arts Council of South Australia, the Australian Dance Theatre, Australian Elizabethan Theatre Trust, Australian Ballet, Australian Opera, and Carclew Arts Centre; there were two fellowships; and New Opera, which under another name is the subject of this Bill, last year receiving $226 000. Grants were made to regional arts centres, and almost $500 000 was granted to the South Australian Theatre Company.

Grants made under the second section are minor grants, and the list of recipient organisations covers three or four pages, but the total allocation made was about $185 000. In addition to grants and provisions, totalling $1 700 000, I refer to the following separate grants made to statutory authorities: Adelaide Festival Centre Trust, $2 600 000, of which $500 000 was an advance grant for 1976-77; South Australian Film Corporation, $1 200 000; South Australian Craft Industry Authority, $239 000; and the Art Gallery Department, $668 000. In total, with the grants and provisions previously referred to and these separate grants for statutory authorities, the Government is spending more than $6 500 000 annually in support of the arts. This amount does not include capital expenditure, which over the years has been substantial. For example, the total money spent, as at June 30, 1976, by the Government on the Festival Theatre is $5 200 000. Of course, further capital expenditure will be necessary.

We must accept that the Festival Centre will continue to lose money, as Mr. Anthony Steele has pointed out; the loss for 1974-75 was more than $800 000. Earlier this session I asked why it took 13 months for the Festival Centre's report to reach Parliament. In reply, I was told that the 1975-76 report would not be unduly delayed. It is now five months since the end of the last financial year. So, the time has almost expired when we should have that report before us. Her Majesty's Theatre was recently bought for $440 000 as the home for the State Opera.

The Hon. C. J. Sumner: Do you agree with that?

The Hon. J. A. CARNIE: I am not disagreeing with anything: I am saying that the Treasury is not a bottomless well. We must watch these matters. I agree with the purchase of Her Majesty's Theatre because, at that figure, it was a very good buy. However, we must bear in mind that an unspecified additional sum must be spent on upgrading the stage lighting system and refurbishing the front-of-house area. I turn now to the question of the South Australian Film Corporation's headquarters. The research officer who prepared some of this material for me was unable to ascertain the amount spent on this property. He telephoned the Premier's Department but he ran up against a brick wall.

The Hon. C. M. Hill: I am under the impression that those premises have been leased.

The Hon. J. A. CARNIE: Perhaps that is the case, but the research officer was not told that: he was simply told that the information was not available. One wonders

whether it was because of the Premier's recent outburst. The Government has also spent money on the restoration of Ayers House. A report in the *Advertiser* of August 4, 1976, states that the sum spent for this purpose was $480 000. So, the Dunstan Government has spent about $6 000 000 on arts centres and restaurants. We must also take into account the sum spent in purchasing the old A.N.Z. Bank building, now called Edmund Wright House. I believe the figure was more than $1 000 000.

The Hon. C. J. Sumner: That has nothing to do with the arts.

The Hon. J. A. CARNIE: I realise that. The building was purchased so that it would be preserved.

The Hon. C. J. Sumner: Stop lumping it in with the arts.

The Hon. J. A. CARNIE: One gets the impression that the honourable member wants to hide these things.

The Hon. C. J. Sumner: Don't misrepresent what the expenditure was for. You are trying to include things that have nothing to do with the arts.

The Hon. J. A. CARNIE: I am referring to expenditure on things that perhaps may not be productive. Probably Edmund Wright House is self-generating, because Government departments are housed there. The Government recently purchased Cummins House for $190 000; I do not know why the Government bought it, but it will certainly need an annual allocation to maintain it. As members of Parliament, we must watch sums spent for purposes like this. While I accept that the Government must support the arts, we must also realise that, in supporting the arts, we are supporting a minority group. While I accept that the arts must be maintained, I do not accept that they must be maintained at any cost.

If the Government intends to give money to State Opera, or any similar organisation, the Government and this Parliament must accept responsibility to watch over the management of such organisations. I am therefore pleased that clause 23 provides that the Auditor-General will keep an eye on the financial administration of the State Opera. In setting up statutory authorities such as this, there is no doubt that losses will be sustained, because opera is an extremely expensive art form, as shown by the serious losses incurred by the Australian Opera and the New South Wales Opera. Generally speaking, audiences are comparatively small, but I do not mean that we should not have opera at all. I stress that "support" should not mean "wholly sustain". Clause 6 (4) provides:

An appointed member shall, subject to this Act, hold office for a term, not exceeding three years, specified in the instrument of appointment.

It would be better if a definite term were specified, and I intend to move an amendment along those lines. I hope that what I have been saying will not be taken as a criticism of State Opera or any organisation that receives funds from the Government. I am criticising those people who believe that the Government will always provide unlimited funds for any art project that may happen to take its fancy at the time. This Parliament has a responsibility carefully to examine any such project that is put before it, and honourable members have a continuing responsibility to examine the administration of all organisations receiving Government assistance. Also, the Opposition has a duty to point out to the Government any areas in which it believes that money may be being wasted.

I was pleased to hear the Hon. Mr. Hill say yesterday that the State Opera is receiving funds from the private sector, both from business firms and from the Friends of the Opera organisation. The community must be involved in this sort of thing, and I hope that this will continue.

The State Opera could be successful. If honourable members read today's press, they would see that New Opera, as it is currently called, received a good critique for its current production. It was also announced that New Opera has been engaged for next year's Perth Festival. I wish the State Opera well, and look forward to attending many of its productions. I support the Bill.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments.

STATUTES AMENDMENT (CAPITAL PUNISHMENT ABOLITION) BILL

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

The Hon. T. M. CASEY (Minister of Lands): I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation delivered in another place by the Hon. Peter Duncan inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF BILL

This Bill seeks to abolish capital punishment in South Australia. It is in substantially the same terms as that which failed to pass this Parliament in 1971. Dr. Max Charlesworth has said:

The debate over capital punishment has aroused the most violent passions on both sides. Many who advocate the abolition of capital punishment look on their opponents as vengeful sadists demanding a life for a life, while those who favour the retention of punishment by death tend to view the abolitionists as irresponsible sentimentalists who have no concern for justice or for the peace and order of society.

Neither side is willing to admit that the other has a rational case based on principle: the abolitionist just cannot see how any intelligent and honest man who realises the value of human life could possibly favour capital punishment, and equally the retentionist cannot see how anyone with any sense of justice at all could deny that the gravest crime, murder, should be punished by the ultimate sanction, death. And so the debate drags on.

There is no doubt that the death penalty arouses the passions and emotions of most members of our society, and it is not without justification that most, if not all, people have a committed view one way or the other. In fact, it may be said that it is the one remaining issue on which even the most phlegmatic citizen has a committed view. Accordingly, this Bill deserves and requires careful consideration by this Parliament.

As a member of the Australian Labor Party, as Attorney-General, and, perhaps most importantly, as a member of society, I favour the abolition of the death penalty without reservation. I recognise, however, that there are members of society and of this House who have equally strong views in favour of its retention. I recognise also that it is quite possible for retentionists to be both intelligent and honest, and I respect their right to hold their views. I consider only that their views are wrong. I would be unrealistic if I thought that anything I might say today would make retentionists realise that they are wrong in the views they hold. I shall be content if I can

demonstrate to them that they may be wrong. "Capital Punishment" is defined by Koestler and Rolph as:

dislocating a man's neck by tying a six-foot rope around it and suddenly dropping him through a trap-door with his arms and legs tied. If his neck happened not to break—it is certain at least to dislocate—then he would strangle, which takes longer and turns his face dark blue. In either case he often defecates, since people usually want to do this when they are frightened, and the huge shock to his nervous system when the rope tightens removes the last vestige of self-control, together with the social need for it.

It will be said that I have chosen this definition to suit my own purposes, and there is, of course, some truth to such a claim. There can be no dispute, however, that such a definition is factually accurate. Such a definition affords me good opportunity to inform the House of my over-riding reason, and perhaps the only reason an abolitionist need have, for wishing to see capital punishment abolished in this State. In a civilised society such as ours, capital punishment offends against (or at least is not consistent with) human dignity. As much as I abhor murder, I have greater abhorrence for the taking of life by the State, as the State is not subject to the pressures under which human beings live their daily lives and does not have the human frailties and imperfections that exist in all of us.

The debate over capital punishment is fraught with confusion, inconsistencies, and what purports to be scientific evidence. The confusion exists because of the inability or the refusal of both sides to answer the basic question, "Are there any circumstances, or could there be any circumstances, where society (represented by the State) is justified in taking the life of one of its citizens?" This, of course, is a moral question and can and should be answered without recourse to what may be called the pragmatic or scientific arguments that are faithfully and endlessly trotted out whenever this issue is debated. The usefulness and effectiveness of the death penalty are quite irrelevant to the basic question, and this confusion will not be dissipated unless the fundamental moral arguments are debated clearly and unequivocally. The chief fundamental arguments for and against capital punishment have remained unaltered since the debate began more than 200 years ago. In 1764, which is said to be the beginning of the debate, Cesare Beccaria said:

The punishment of death is pernicious to society, from the example of barbarity it affords. If the passions have taught men to shed the blood of their fellow creatures, the laws, which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, made more horrible by the formal pageantry of execution. Is it not absurd, that the laws which detest and punish homicide, should, in order to prevent murder, publicly commit murder themselves?

This view, although expressed in a variety of ways in the last two centuries, remains today as the reason for the abolition of the death penalty and, as I have said, can and perhaps should be properly advanced by abolitionists without reference to the more pragmatic arguments that are habitually adverted to.

The fundamental moral argument which is advanced by those who favour the retention of capital punishment is based on a principle of strict justice, which requires "retribution for wrongdoing by some proportionate punishment". In its strongest form this principle is expressed by the phrase "an eye for an eye"—the *lex talionis* of Moses. Before examining the moral arguments of both sides in more detail, it is useful to consider evidence given to the United Kingdom Royal Commission on Capital Punishment by Professor Thorsten Sellin. Professor Sellin concluded:

The question of whether the death penalty is to be dropped, retained or instituted is not dependent on the evidence as to its utilitarian effects, but on the strength of popular beliefs and sentiments not easily influenced by such evidence. These beliefs and sentiments have their roots in a people's culture. They are conditioned by a multitude of factors, such as the character of social institutions, social, economic and political ideas, etc. If at any given time such beliefs and sentiments become so oriented that they favour the abolition of the death penalty, (scientific) facts will be acceptable as evidence, but are likely to be as quickly ignored if social changes provoke resurgence of the old sentiments. When a people no longer likes the death penalty for murderers it will be removed no matter what may happen to the homicide rate.

I agree with Professor Sellin and argue that our social institutions and our sociological and moral principles are such that capital punishment so fundamentally offends against them that its retention cannot be tolerated. It is argued that justice demands that he who takes life must have his life taken from him, as this is the only just retribution for murder. If such an argument is valid, then our concepts of justice and morality have changed dramatically in the last 200 years. We no longer permit torture. We have abolished corporal punishment. We would regard the burning of an arsonist's house as immoral. Legalised castration of rapists is abhorrent to us, and we do not consider that justice demands that the mother who drowns her child should be immersed in water until she dies.

Furthermore, we have gone to great pains in the past to substitute other sentences for the death penalty, and have considered ways to make executions as quick and painless as possible. We have also been most anxious to hide executions from public view and to give them as little official publicity as possible, thus defeating, or at least diminishing, one of the main arguments of those who favour the death penalty, that it is a general deterrent to murder. The fundamental moral case against capital punishment has found expression in a number of ways. Mr. Galbally of the Victorian Legislative Council has called it an "obscene futility". Albert Camus, the French novelist and dramatist, has said:

The death penalty is to the body politic what cancer is to the individual body, with perhaps the single difference that no-one has ever spoken of the necessity of cancer. . . . Retaliation belongs to the order of nature, of instinct, not to the order of law. The law by definition cannot abide by the same rules as nature. . . . Neither in the hearts of men nor in the manners of society will there be a lasting peace until we outlaw death.

Sir Eugene Gorman has said that many thinking members of the community:

regard the official neck-breaking as intolerable to the imagination and discreditable to the State, and for this they must not be branded as mere sentimentalists. . . . Few men have ever witnessed an execution without becoming instantaneous converts to the abolition of the death penalty. The supreme act of justice nauseates the citizen it is supposed to protect. The official murder, so far from offering a redress for the offence committed against society, adds instead a second defilement to the first.

I do not suggest that there have not been equally authoritative statements favouring the retention of capital punishment. I do consider, however, that the arguments for retention are unpersuasive. The argument that the death penalty is the only just punishment for murder relies on the principle that such a person must be visited with a punishment that is proportionate to his crime. "Proportionate punishment" does not mean punishment exactly resembling the crime. We would all agree, I hope, that this would be both unjust and immoral. It is my view that life imprisonment is a proportionate punishment for murder, and that

the death penalty is a disproportionate one. Life imprisonment is consistent with human and social dignity and allows for a flexibility that is essential having regard to the present state of the law of murder. The English Royal Commission stated as the first of its summary of conclusions and recommendations that:

The outstanding defect of the law of murder is that it provides a single punishment for a crime widely varying in culpability.

This is no less true today than it was in 1953. Our law and social attitudes on the felony-murder rule, the resisting lawful arrest rule, the rules relating to the defence of insanity, abortion, euthanasia, provocation, self defence, duress, necessity, and so on, are such that justice can be achieved only if there is a flexible punishment for murder. It has been said that the existence of the death penalty renders criminal justice uncertain and falsifies criminal proceedings that take on the character of a sinister tragicomedy. The existence of capital punishment can have the effect of bringing the criminal justice system into disrepute as juries will not convict of murder accused persons with whom they have some sympathy.

Furthermore, many jurors fear the death penalty, as was evidenced in Victoria when seven jurors who tried Ronald Ryan stated publicly that they would have brought in a different verdict if they had realised that Ryan might be hanged. An eye for an eye was, in its time, a great advance in human morality, as it replaced a code that allowed acts of physical and mental torture and degradation. In the 1948 debate in England, the Archbishop of Canterbury said:

It is well to remember that in its origin it was a restraint upon vengeance. It does not require that equivalent punishment, but it says that no punishment should go beyond that limit: no more than one eye for one eye, and no more than one tooth for one tooth.

Notwithstanding these comments of the Archbishop of Canterbury, and notwithstanding the fact that it is a text that has expressly been condemned in the New Testament, the principle of an eye for an eye settles the argument for many people and, although I respect their right to hold such a view, it is not, in my opinion, a text upon which our social morality should be based. The case for the retention of capital punishment is often put in the form that society owes it to the victim that his murderer be put to death. The question is asked of the abolitionist why he directs his sympathy to the murderer instead of his victim. It is contemptible to suggest that those who wish to abolish capital punishment do not have as much sympathy with victims of crime than those who wish to retain the death penalty. I have great sympathy for victims of murder and their families, as I do for victims of all crime. I have no sympathy for murderers and none for persons who suggest that I have. Torture was not abolished out of sympathy for felons, and nowhere has capital punishment been abolished for this reason. The case for the abolition of the death penalty rests on the principle that a civilised society offends against the dignity of man, the sanctity of life, and its own self respect when it kills one of its citizens.

As I have said, great confusion exists in the debate on capital punishment because the moral issues have not been debated in isolation from the pragmatic arguments. The pragmatic arguments are used by both sides to bolster their respective cases, perhaps because it is thought that scientific argument is more respectable than arguments based on morality and emotion. My comments so far have been confined to the moral questions involved, and I now mention the pragmatic arguments solely on the ground that there may be some people who will be persuaded against capital punishment if they can be satisfied that the death penalty has no significant deterrent effect over and above alternative sentences.

The main argument relied on by both sides relates to capital punishment as a deterrent. The retentionist argues that the death penalty is necessary because it effectively deters people from committing murder. Abolitionists argue that the deterrent effect of the death penalty is, to say the least, not demonstrated, the abolition or reintroduction of the use of the death penalty has no immediate effect on the murder rate, and that if there are any desirable consequences of the death penalty, these can be achieved equally by some other punishment.

It would be impossible and futile to examine all the material written and all the research which has been undertaken on the deterrent effect of capital punishment. Some such research has purported to find that the death penalty is a deterrent to murder and some such research has purported to conclude that the existence of capital punishment may even act as an incitement to murder. Scientific evidence appears to be available to support any view which one might wish to adopt on capital punishment. It would, however, be fair to say that the preponderance of evidence supports the conclusion of the British Royal Commission to the effect that:

There is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its reintroduction led to a fall.

It will be argued of course that it is only those who wish to abolish capital punishment who undertake such research but in reply it can be said that it is inconceivable that all such studies are either wrong or biased. I adopt the view of the Joint Committee of the Senate and the House of Commons on capital punishment which said in its report of 1956 that capital punishment is not an effective deterrent; it has no unique deterrent effect which would not become accomplished by imprisonment; a considerable proportion of murders are committed in circumstances of sudden passion where consequence is not a deterrent; on the other hand, persons who deliberately plan to avoid detection are not influenced by the death penalty, and the only person likely to be deterred is the normal law-abiding citizen who will not commit murder anyway. The prospect of life imprisonment is as good a deterrent to the potential murderer in those rare cases in which he actually takes into account the consequences of his action.

Other pragmatic arguments advanced by those who wish to see the death penalty abolished are the danger of executing an innocent person; that the death penalty brands the family of the person executed; that persons have been led to commit murder for the purpose of being executed, that the murderer sentenced to life imprisonment is not a danger to the prison community nor to society when he is released, that the administration of justice in capital cases is too dependent upon skills of counsel, the composition of juries, the court, and the emotional climate of the community; that the death penalty exerts a disruptive influence on the administration of justice; and that the death penalty cannot be administered with equality as no man with money or influence is ever hanged. For each of these arguments there appears to be a corresponding argument in favour of the death penalty. The arguments I have outlined are, however, compelling ones.

It may be said in this House and elsewhere that we might as well keep the death penalty in the Criminal Law Consolidation Act so it is there if we ever need it. Such a view both begs the question and is an

abrogation of our responsibility in this matter. It begs the question because the question is—are there, or could there ever be, circumstances where the death penalty should be used? Depending on the answer to this question we either retain capital punishment and execute murderers or we abolish it altogether. Furthermore society condones the death penalty by its retention in our law. It is an abdication of responsibility since members of this Parliament, as the State's legislators, have the moral responsibility for sending a man to his death. The official "buck-passing" from the jury, Judge, Cabinet, Governor and hangman must stop at this Parliament.

Clause 1 of the Bill is formal.

Part II amends the Criminal Law Consolidation Act as follows:

Clause 2 is formal. Clause 3 amends the arrangement of the Act. Clause 4 inserts a new section in the Act, providing for the abolition of capital punishment. Subsection (1) provides that a sentence of death cannot be imposed or carried into execution after the commencement of this new Act. Subsection (2) provides that a court shall sentence a person to life imprisonment where any Act or law may still require the imposition of the death penalty. Subsections (3) and (4) deal with the case of a person who, at the commencement of this new Act, is under sentence of death or has had such a sentence commuted to life imprisonment. In these cases the sentence of death is deemed to be a sentence of life imprisonment imposed by a court of competent jurisdiction.

Clause 5 inserts a new section providing for the imprisonment for life of any person convicted of treason. Under the law as it now stands, treason as common law is punishable only by death. Clause 6 and 7 substitute a mandatory sentence of life imprisonment for the death penalty in relation to murder, and to attempted murder during the course of piracy. Clauses 8 to 14 inclusive effect consequential amendments. The sections and schedules dealing with the execution of a sentence of death are repealed.

Part III amends the Juries Act as follows. Clause 15 is formal. Clause 16 removes from the Act all references to "capital" offences. Clause 17 repeals a now redundant section relating to women under sentence of death.

Part IV amends the Justices Act as follows. Clause 18 is formal. Clauses 19 and 20 delete references to "capital" offences.

Part V amends the Local and District Criminal Courts Act as follows. Clause 21 is formal. Clause 22 deletes a reference to "capital" offences.

Part VI amends the Poor Persons Legal Assistance Act as follows. Clause 23 is formal. Clause 24 deletes a reference to the death penalty.

Part VII amends the Prisons Act as follows. Clause 25 is formal. Clause 26 repeals a now redundant saving provision relating to the execution of death sentences.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

ADJOURNMENT

At 10.29 p.m. the Council adjourned until Thursday, November 25, at 2.15 p.m.