

LEGISLATIVE COUNCIL

Wednesday 11 October 1978

The **PRESIDENT (Hon. A. M. Whyte)** took the Chair at 2.15 p.m. and read prayers.

PUBLIC WORKS COMMITTEE REPORTS

The **PRESIDENT** laid on the table the following reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:
Richmond Primary School Replacement
Sheidow Park Primary School.

QUESTIONS

FLINDERS MEDICAL CENTRE

The **Hon. C. M. HILL**: I seek leave to make a short statement before asking the Minister of Health a question about Flinders Medical Centre.

Leave granted.

The **Hon. C. M. HILL**: Recently I was present at the opening of phases 2 and 3 of Flinders Medical Centre. After the opening ceremony, I took part in the inspection of the accommodation provided in those phases. The Auditor-General's Report states that the total cost so far at Flinders Medical Centre is \$67 107 000, the net cost to the State being \$56 728 000. During the inspection several of the senior employees at Flinders Medical Centre sought information concerning the Government's plans for the final phase, phase 4, of the centre, which phase, of course, was deferred, as I recall, some time last year.

The Auditor-General's Report also states that the expected cost of phase 4 is \$23 261 000. Despite the inquiries from those employees at the centre, comments have been made throughout the State by people involved in other hospitals that further expenditure for phase 4 might mean that urgently needed hospital accommodation elsewhere would have to be deferred. Will the Minister state the exact position regarding the Government's plans for phase 4 of the Flinders Medical Centre?

The **Hon. D. H. L. BANFIELD**: The honourable member will recall that I have told this Council that there has been a big cut-back in funds from the Federal Government. True, when planning regarding various hospital building projects and redevelopment of other hospitals was taking place, we were assured that we would receive funds from the Federal Government, and we planned accordingly. However, as a result of the cut-back by the present Federal Government, we have had to reappraise the position. The plan for Flinders has been deferred: it is only a deferment at this stage. The honourable member knows very well that we cannot build without funds and that, if we do build but cannot staff the centre, it is no use building it.

We can get no definite data about when phase 4 will be commenced. We hope that there will be either a change of heart on the part of the Federal Government or a new Federal Government. If there is a change in the Federal Government, we may have available to us funds promised by previous Australian Labor Governments but not made available by the present Government.

NEW SOUTH WALES ELECTIONS

The **Hon. D. H. LAIDLAW**: I seek leave to make a brief statement before asking a question of the Minister of

Health, as Leader of the Government in this Council, regarding the New South Wales elections.

Leave granted.

The **Hon. D. H. LAIDLAW**: During the past few weeks, the Minister several times has spoken with admiration of Mr. Wran's policies and his prospects for success at the New South Wales elections. On 9 October, the *Sydney Morning Herald* reported a conversation between Mr. Wran and the political correspondent of that newspaper. Mr. Wran said that his Government wished to continue sound, moderate and responsible policies. When questioned about the electoral redistribution in New South Wales due on or before 11 May 1979, Mr. Wran said:

I do not wish to introduce one vote one value, because that would reduce the voting strength of people in rural areas. I am not out to start knocking people about because we have had a big win. My Government would be more interested in revising boundaries within the existing quota system.

Mr. Wran was referring to the Parliamentary Electorates and Elections Act of 1973, which provided that, for electoral redistribution purposes, the State would be divided into two areas. The central area, taking in Sydney, Newcastle and Wollongong, was allocated 66 districts in the Legislative Assembly, and the remainder of the State, described as the country area, was allocated 33 districts. In New South Wales quotas are determined by dividing the number of electors by the number of districts in each area, and each district must be within 20 per cent of quota. The present quota for central area districts is 29 531 and that for the country area is 21 606. That means that the quota for country districts is 27 per cent below that for districts in the central area, which Mr. Wran advocated.

As the Labor Government in South Australia introduced a State-wide electoral system for the House of Assembly based on one vote one value and by so doing created the District of Eyre, which covers about 85 per cent of the area of the State and which is far too large, does the Minister, with hindsight, concede that it would have been preferable to adopt the course favoured by Mr. Wran and allocate a fixed number of districts to the Adelaide area and a fixed number to the country area, establishing a different quota for the districts in each area?

The **Hon. D. H. L. BANFIELD**: All that is missing from the question is that the honourable member has forgotten to congratulate the Wran Government on its re-election. There was a swing of about 10 per cent to that Government and the Liberal Party Leader was defeated. Speaking with hindsight, I say that this State has done the right thing. Members of this Parliament represent people, not trees, sheep, or cows, and the electoral boundaries have been drawn on that basis.

RURAL ASSISTANCE BRANCH

The **Hon. M. B. DAWKINS**: I seek leave to make a brief statement before asking the Minister of Lands, representing the Minister of Agriculture, a question about the Rural Assistance Branch.

Leave granted.

The **Hon. M. B. DAWKINS**: Some months ago I inspected the present location of the Rural Assistance Branch in the new Grenfell Centre in relation to applications by people who were then in some financial trouble. Although the accommodation in the building is quite modern, it was quite inadequate at that time because of insufficient storage space and, more important, insufficient partitioning, resulting in a lack of confidentiality when applicants were disclosing private information to investigating officers. The Minister said that he would

investigate the matter. Will the Minister of Lands, representing the Minister of Agriculture, ascertain whether the necessary improvements, particularly in regard to partitioning, have been made?

The Hon. T. M. CASEY: I will obtain a report from the Minister and bring back a reply.

LOCAL GOVERNMENT FINANCE

The Hon. C. W. CREEDON: Has the Minister of Lands a reply to my recent question about local government finance?

The Hon. T. M. CASEY: The statement referred to by the Hon. C. W. Creedon was made by Senator Carrick on 23 June 1978. In the statement it was suggested that, despite the Commonwealth Government decision not to increase for 1978-79 the base percentage of 1.52 per cent for calculating local government tax-sharing entitlements, there would nevertheless be an increase of about 10 per cent or \$18 000 000 over 1977-78 in the total volume of funds to be distributed to local government.

The PRESIDENT: Order! I am amazed that honourable members, who have spent nearly all morning conversing with each other, come into the Chamber and do not give the honourable member or Minister who has the floor the courtesy of being heard. If honourable members wish to continue discussions which undoubtedly were entered into this morning, would they please do so in a much quieter manner?

The Hon. T. M. CASEY: This estimated increase has in fact turned out to be only \$14 100 000, or an increase in money terms of 8.5 per cent over 1977-78.

Senator Carrick suggested further that because of the increase in the total volume of funds there "should be no need for local government bodies to increase their rates in the year ahead" because of the "real increase in spending power" provided for local government by the increase in tax-sharing funds for 1978-79. That is, the increase in tax-sharing grants for the coming year will, according to this argument, enable councils to maintain present levels of services without increasing rates.

It is important first to understand the relative importance of the general revenue grants in the finances of local government in South Australia when discussing, as Senator Carrick does, the significance of these grants for the rating decisions of councils. In 1976-77 in overall terms the tax-sharing grants were 15.7 per cent of the rate revenues of all councils in the State. The average for metropolitan councils was lower than that at 11.9 per cent. More importantly the general revenue grants were only 8.6 per cent of the total revenues of all councils with the proportion being only 7 per cent for metropolitan councils. These figures would indicate that the tax sharing grants are for many councils a relatively small addition to revenues. Their importance in significantly influencing the general level of rates is questionable, particularly in the situation that seems likely for 1978-79 with a negligible real increase in the total level of these tax-sharing grants to councils.

Forecasts of inflation rates which are specifically applicable to local government are not readily available. It is understood, however, that the Commonwealth Government at the June Premiers' Conference used an estimate of wage increases of 8 per cent for 1978-79 in the formula for determining State Government tax-sharing entitlements. On that basis any real increase in tax-sharing entitlements for local government will be negligible.

In these circumstances it is clear that local councils in South Australia will need to increase rates at least in line

with rising costs in order to maintain present levels of works and services and levels of council employment. General rates levied by local councils in South Australia increased at an average rate of 13.2 per cent for 1976-77 and 1977-78. This is less than the average of the three previous years of 27.6 per cent but it does reflect that fact that local government must increase its rate collections in line with the rising costs of government services if it is to maintain present standards of the services and works which are demanded of them by the community.

It is important also to place the trends in tax-sharing grants in the broader context of levels of overall Commonwealth assistance to local government. The assessment of levels of financial assistance in real terms is made in 1974-75 dollars by reference to the implicit deflator of Government gross fixed capital expenditure by State and local authorities. The differences between this deflator and the Government final consumption expenditure deflator are not marked for recent years.

The Federal Labor Government in the years 1973-74 to 1975-76 was responsible for the commencement of the programme of general revenue assistance to local government through the Australian Grants Commission and was also responsible for the initiation and development of a wide range of programmes of specific purpose assistance to local government. In 1975-76 a total of \$343 800 000 was distributed by the Federal Government to local government. This included grants passed on to local government for roads. Data is not readily available on Federal Government grants to local government for roads in the years prior to 1973-74 and the analysis will be restricted to the two years from 1973-74 to 1975-76. Over this two-year period total grants increased by 149 per cent in real terms.

In 1977-78 a total of \$317 100 000 was distributed to local government by the present Commonwealth Government. This was a decrease in real terms of 23 per cent over the two years from 1975-76 to 1977-78. South Australian local councils in 1975-76 received \$22 500 000 or an increase of 123 per cent in real terms over the two-year period. A total of \$21 700 000 was received in 1977-78 or a decrease in real terms of 19.5 per cent over the two-year period since 1975-76. It is often argued by the present Commonwealth Government that payments to local government in recent years under the Regional Employment Development Scheme and other employment grants programmes should be excluded from the analysis of local government assistance because they were non-recurring in nature and were not primarily for local government as such.

This is a debatable proposition but, if these grants are removed, then total grants to local government increased by 102 per cent in real terms for the two years to end 1975-76, and for the years 1976-77 and 1977-78 the comparable increase was only 12.2 per cent. Local councils in South Australia received an increase of 201 per cent in real terms in 1974-75 and 1975-76 and the comparable increase was 25.6 per cent over the two years 1976-77 and 1977-78.

It is evident that the real increase in general purpose tax-sharing grants over the two years 1976-77 and 1977-78 cited by Senator Carrick has been offset to a significant extent by a fall in real terms in the level of specific purpose payments being made to local government. In fact, these specific purpose grants excluding the unemployment relief moneys in real terms increased in total by 33.3 per cent in 1974-75 and 1975-76 and fell in real terms by 18.5 per cent in 1976-77 and 1977-78. In South Australia the comparable figures were a real increase of 58.8 per cent in 1974-75 and 1975-76 and a real fall of 17.6 per cent over 1976-77 and 1977-78.

Estimates are available in the Commonwealth Budget paper No. 7 of the expected levels of financial assistance for local government authorities for 1978-79. The data does not, however, include estimates of national estate and roads grants to be passed on to local government in the course of the year. If it is assumed that levels of assistance for both remain static in real terms in 1978-79 with a national increase in costs of 8 per cent, total tax-sharing and specific purpose grants to local government will increase by only 7 per cent in the course of the year, which is less than the expected rate of inflation. Total tax-sharing and specific purpose grants to local councils in South Australia would increase by about 9.7 per cent, which would again see a negligible increase in real terms.

Senator Carrick's statement reiterates the Commonwealth Government's undertaking to increase local government's share of the tax collections to 2 per cent "during the life of this Parliament". He does, however, state that the increase to 2 per cent will "be considered in the light of prevailing budgetary circumstances". There is clearly no absolute commitment by the Commonwealth Government to increase the base percentage in any particular year.

It is important to understand the implications of delays by the Commonwealth in meeting this commitment in terms of the volume and flow of funds to local government in South Australia over the next two years. It is evident that the effects of both tax indexation and the state of the economy have reduced the growth of personal income tax collections. As a result, if both continue to affect those collections in the next two years, the greater the delay in introducing the 2 per cent the smaller will be the total of funds received by local government.

If 2 per cent had been introduced in 1978-79, an estimated \$20 000 000 (or an extra \$4 600 000) would have come to South Australian local government authorities for the coming year. Over three years to 1980-81, an estimated \$65 800 000 would have come to South Australia. If the Commonwealth waits until 1980-81 to introduce 2 per cent, an estimated total of \$55 800 000 (or \$10 000 000 less than with 2 per cent introduced in 1978-79) will have come to South Australia over the three-year period. Both the Premier and the Minister of Local Government have emphasised the urgency for the immediate introduction of the 2 per cent. It is evident that, the longer the Commonwealth delays, the smaller will be the total volume of funds allocated to councils in South Australia over the next two years.

HOSPITAL BEDS

The Hon. J. R. CORNWALL: I seek leave to make a short statement before asking the Minister of Health a question regarding hospital beds.

Leave granted.

The Hon. J. R. CORNWALL: In the 7 October issue of the *Advertiser*, Mr. Hunt, the Federal Minister for Health, was reported as saying that more than half of Australia's major hospitals were operating at only 60 per cent capacity or less. It seems that the gentleman described as the South Australian Opposition spokesman on health matters, Mr. Hill, jumped on the band wagon and said the State Government in South Australia had to face the fact that there were too many hospital beds here. The Hon. Mr. Hill was also reported as saying:

Hospital buildings now being completed were part of a lavish programme begun by the Whitlam Government between 1972 and 1975.

Yet again, the poor old Whitlam Government is blamed. Will the Minister of Health say what is the position regarding hospital beds in Government and teaching hospitals in South Australia?

The Hon. D. H. L. BANFIELD: I thought the Hon. Mr. Hill must have forgotten that he had made that statement, as he asked me just now when the Government was going to push ahead with Flinders Medical Centre. When I read that report, I was disturbed. As the Hon. Mr. Cornwall has said, the Hon. Mr. Hill jumped on the band wagon because the Federal Health Minister, Mr. Hunt, had said something. The average bed occupancy at Royal Adelaide Hospital in July was 83.9 per cent, compared to 83.8 per cent in August; at Queen Elizabeth Hospital, the average occupancy was 72 per cent in July and 75 per cent in August; at Flinders Medical Centre the occupancies were 84.5 per cent and 84.2 per cent respectively; and at Modbury they were 83 per cent and 81.2 per cent respectively.

The Hon. R. A. Geddes: What period?

The Hon. D. H. L. BANFIELD: July and August of this year. It was this year that the Hon. Mr. Hill was agreeing with Mr. Hunt while at the same time he was trying to kick me because he claimed that I was not proceeding with the programme for Flinders Medical Centre. Because the major teaching hospitals are required to maintain emergency treatment facilities and hospital accommodation to meet all unforeseen accidents and disasters and because no elective treatment is carried out on public holidays and weekends, it is considered that a daily average occupancy of 88 per cent is the maximum practicable, and we have maintained that pretty well. We are averaging an occupancy of 80 or 81. During the recent and present economic recession, there has been a significant decline in the demand for health services and for elective hospital treatment. This has been commented on by private hospitals, medical practitioners, and our own Government hospitals. Taking this into account, 7.88 per cent of surplus beds is a fairly fine margin of safety, and I do not think we should get below that. Whom is the Hon. Mr. Hill going to support? Will he support Mr. Hunt, who says there is a great surplus of beds, or does he want us to push on with work at Flinders Medical Centre?

NURSING HOME ACCOMMODATION

The Hon. C. M. HILL: I seek leave to make a short statement before asking the Minister of Health a question about nursing home accommodation and accommodation at Lyell McEwin Hospital.

Leave granted.

The Hon. C. M. HILL: An article in the local paper at Elizabeth on 27 September states that an Elizabeth councillor has been calling for nursing home facilities to be provided at Lyell McEwin Hospital. He based his request on the low occupancy rate at Lyell McEwin Hospital; the Minister should be interested in that point, in view of his earlier comments. The article states that, for the hospital's 184 beds for the year ended 30 June 1978, the occupancy rate was 127.97, or 69.6 per cent. The councillor stated that there was a lack of nursing home accommodation in the Elizabeth area and that there was an ever-increasing demand by elderly folk for such accommodation. Knowing the Minister's deep knowledge of these things, I ask him whether it is a fact that there is a lack of nursing home accommodation in the Elizabeth area. If there is, will the Minister take the initiative to alleviate this problem? Regarding the councillor's call reported in the Elizabeth paper, would the Government be prepared to confer with

the Lyell McEwin Hospital Board in connection with this proposal?

The Hon. D. H. L. BANFIELD: The honourable member knows very well that the question of nursing home beds is the Federal Government's responsibility.

The Hon. C. M. Hill: What has that got to do with the question?

The Hon. D. H. L. BANFIELD: I am telling the honourable member where the responsibility for nursing home beds lies—squarely with the Federal Government.

The Hon. C. M. Hill: Your answer is nothing.

The Hon. D. H. L. BANFIELD: It is something. I have already asked the Federal Minister to do something about nursing home beds in this State. There is not so much a shortage of beds as an unsatisfactory distribution of beds, particularly in the Salisbury-Elizabeth area. Again, this gets back to the cut-back in Federal funding for hospital buildings. The honourable member knows that it was on our programme to proceed with the new Para hospital at Salisbury. Had we been able to do that, Lyell McEwin Hospital could have been made available for nursing home patients, because its layout is more suitable for use as a nursing home than as a hospital. So, the Federal Government is not only failing to provide nursing home beds but also cutting back the allocation for hospital buildings, with the result that we cannot make Lyell McEwin Hospital available as a nursing home. The honourable member should take up the question of nursing home beds with the Federal Minister, who is responsible for them.

The Hon. N. K. FOSTER: I seek leave to make a short statement before asking the Minister of Health a question about nursing homes.

Leave granted.

The Hon. N. K. FOSTER: Again today we have heard a typical question from a member who was at one time a Minister in a Liberal Government. He should bear in mind what happened under the Gorton Government and the McMahon Government.

The PRESIDENT: Order! The honourable member will resume his seat. We had some sort of a gentlemen's agreement that explanations would be kept within the bounds of explaining a question. I remind the honourable member that that is what is intended. I believe that, if anyone has breached the agreement, the honourable member did so yesterday. I intend that honourable members will keep their explanations within the bounds of the question to be asked.

The Hon. N. K. FOSTER: It was in the period to which I have referred that the State Government had to pick up the tab from State finances in connection with what the Federal Government was denying nursing homes. When the State Government sought reimbursement from the then Federal Government, the Federal Government would not come to the party. It therefore ill behoves the honourable member to criticise the attitudes of the State Government and a previous Federal Labor Government toward this matter. Were the Minister tomorrow to wave a magic wand and meet the Hon. Mr. Hill's wishes, would there be any guarantee that the Federal Government would reimburse the State Government or that the Federal Government would facilitate accommodating aged people in nursing home beds at Lyell McEwin Hospital?

The Hon. D. H. L. BANFIELD: There is no way in the world that such guarantees could be given, because the Federal Government has gone back on promise after promise in this connection. I could not give a guarantee in relation to the Federal Government for even one day in the future.

FALSE ADVERTISING

The Hon. J. R. CORNWALL: I seek leave to make a short statement before asking the Minister representing the Attorney-General a question about false advertising.

Leave granted.

The Hon. J. R. CORNWALL: Yesterday the Hon. Norm Foster referred to the bulldozing at West Lakes of some of the last remaining dunes on the Adelaide coastline. I understand that that work is continuing. The honourable member said that the dunes area had been acquired "on the cheap" and that the company concerned had now made clear that it was prepared to negotiate for not less than \$1 500 000 for the area. As a resident of West Lakes, I should like to take the matter further today and extend it to the whole West Lakes group of companies, because it is clear that the group has seduced successive State Governments and has proceeded to rape the residents. The companies have advertised the place as a magnificent area in which to live, work and play. They have stated that, within a few years, people would say that they had got the land for a song. They promised that there would be all sorts of things, such as recreation facilities and schools, all around the area. However, there are no recreation facilities, not one public tennis court, no squash courts, no hall in which the residents—

The Hon. C. M. Hill: What about Football Park?

The Hon. J. R. CORNWALL: The less we say about that the better. There are no youth facilities at West Lakes, and the whole story has been one of broken promises and broken encumbrances, culminating in the recent boat factory, which is a rowing shed made of asbestos. Will the Minister ask the Attorney-General to consider the whole question of the advertising that has been taking place to promote West Lakes?

The Hon. D. H. L. BANFIELD: I will take the matter up with my colleague and get a reply.

CHIROPRACTORS

The Hon. C. M. HILL: Will the Minister of Health state the present position regarding the Government's plans to register chiropractors in this State and can he say whether he still expects that the necessary legislation will be introduced this year?

The Hon. D. H. L. BANFIELD: As I have said earlier in this session, a working party which includes representatives of various chiropractor associations has been appointed. As yet, that working party has not made a report, but I understand that the report is almost complete and I hope that a Bill will be introduced this session.

PRESIDENT'S STATEMENT

The Hon. N. K. FOSTER: Mr. President, will you make available to this Council an explanatory note regarding the type of gentlemen's agreement you have just said exists? It exists without my knowledge. I do not claim to be a gentleman (and there are none here), but I would hate to think that I had transgressed an agreement in ignorance of the existence of it. If there is any such agreement or understanding which binds members on this side in any way in this Council and which inhibits the asking of questions or places any undue restriction in regard to trying to acquaint other members of the Council of a question when the member has sought and been granted leave to do so, I should like to know about it. I hope that you, Sir, will not for a moment entertain any thought that

boundaries exist between States on the one hand and the Federal sphere on the other, having in mind that every person in South Australia is a constituent of members of this Council in the same way as there are members of Federal and State Parliaments.

The PRESIDENT: I am not clear about the latter part of the question. Regarding the gentlemen's agreement, as I have said, I thought that we had some such sort of agreement. I believe that you purposely transgressed that yesterday, and I have mentioned the matter today.

The Hon. N. K. Foster: As I don't know what the agreement is, I didn't know I transgressed.

The PRESIDENT: There is no question in my mind but that while I am in the Chair every member of this Council will have as much freedom as possible to ask questions or to debate matters. I will adhere to that policy and see that it is carried out. However, I consider that, if members wish to move away in their explanation after having been granted leave of the Council to explain, they are taking advantage of the privileges that have been granted to them.

The Hon. N. K. Foster: It's not an agreement. That's what I'm concerned about.

The PRESIDENT: It is not an agreement, but I will adhere to what I have said.

COMPUTER INVESTIGATION

The Hon. C. M. HILL: Can the Minister of Health say whether any progress has been made regarding the committee's investigation of the computer problems at Flinders Medical Centre and other institutions, and can he give accurately the date when he expects the committee to tender its report?

The Hon. D. H. L. BANFIELD: The committee has not been bound to bring down a report by a certain date. It has been considering the matter, and I am not aware of how far it has progressed. I cannot give a date, and I am sure that the Hon. Mr. Hill would not want the investigation to be cut short as a result of a time limit being imposed. I am sure that the honourable member would want a thorough investigation to be carried out.

LEAVE OF ABSENCE: HON. B. A. CHATTERTON

The Hon. C. W. CREEDON moved:

That two weeks leave of absence be granted to the Hon. B. A. Chatterton on account of absence on Government business.

The Hon. C. M. HILL: I do not oppose the motion, but it is most unusual for a Minister to travel overseas on Government business while a House of Parliament is sitting, and I wonder whether any specific reasons have necessitated what seems to be an urgent trip. It is in the best interests of the people if overseas and other trips outside the State are made when Parliament is not sitting. I think members on both sides accept that. However, if other reasons cause a Minister to travel interstate or overseas during a Parliamentary session, I do not think it unreasonable for those reasons to be given to the Council. In the passing of a motion of this kind (and I again stress that I am not opposing it)—

The Hon. F. T. Blevins: You're merely trying to get publicity.

The Hon. C. M. HILL: I am not. I am referring only to

proper Parliamentary practice and procedure. If there are reasons why it is necessary, from the Government's point of view, for the Minister to travel at this time, perhaps the Leader of the Government would be kind enough to tell the Council of them.

Motion carried.

CROWN LANDS ACT: FEES

Order of the Day: Private Business No. 4: The Hon. C. J. Sumner to move:

That the regulations made on 15 June 1978 under the Crown Lands Act, 1920-1978, in respect of fees, and laid on the table of this Council on 13 July 1978, be disallowed.

The Hon. C. J. SUMNER: As the Joint Committee on Subordinate Legislation is taking no further action to disallow this regulation, as shown in the minute dated 28 September, I move:

That this Order of the Day be read and discharged.

Order of the Day read and discharged.

DEBTS REPAYMENT BILL

Third reading.

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

That this Bill be now read a third time.

The Hon. J. C. BURDETT: In supporting the third reading, I wish to say a few words about the state in which it has come out of the Committee stage. This Bill is one of a bracket of five Bills, which deal with a common subject and can be referred to together. I do not seek leave to speak on the other Bills at the same time as I speak on the Debts Repayment Bill, but I seek some indulgence in being allowed to refer to the other Bills. Regarding the Debts Repayment Bill, the main doubt of many people was that it set at naught the effect of security. When a creditor advanced money and took security over real or personal property, this security was rendered almost worthless by the Bill in its original form. Many credit providers operate on a national basis, and it was feared (with some justification) that, if the Bill had passed in its original form, it would have led to a drying up of credit being provided in South Australia and people who were credit-worthy and entitled to credit would have not received it because their security would have been almost worthless to the credit providers.

This has been corrected by amendments, which were recommended by the Select Committee and which have been passed. As a result of the recommendations of the Select Committee, many amendments were agreed to. They were large in number, extent, and importance. About 23 amendments were moved as a result of the Select Committee recommendations and were passed by the Council. The amendments have been numerous, especially those recommended by the Select Committee and passed unanimously by this Council. Other essential amendments were moved by me, and were passed.

However, because so many were agreed on after the Select Committee hearings it demonstrates that the Bill in its original form was hastily conceived, and that there was inadequate consultation with people in the community who had something to contribute and who had genuine interest in these Bills. Legislation will not cure any evils in our society or solve any problems unless it is good legislation. The fact that these Bills were introduced towards the end of the last session and that there have been so many amendments agreed on after hearings of the

Select Committee indicates that there were defects in the Bills in the first instance.

The hearings of the Select Committee which has produced so many amendments support the proposition of the Liberal Party that there should be a permanent Law Reform Commission in South Australia, a proposition that was supported by me and the Hon. Trevor Griffin. Such a commission would not replace all Select Committees, but these Bills were not adequately prepared or researched. A Law Reform Commission would have been able to do this. The time of Parliament has been wasted to some extent by the need for long sittings of the Select Committee. In the circumstances, the Council was justified in calling for a Select Committee, because amendments have been made to the Bill, which has been much improved.

I congratulate quite sincerely the Chairman and other members of the Select Committee. The committee operated successfully, and people with much experience in this area gave evidence, which was sifted successfully by members of the committee and satisfactory recommendations were made. I should like to thank Miss Philippa Kelly, an officer of the Attorney-General's Department, who sat in on deliberations of the committee and assisted greatly, particularly in preparing the report and with her summaries of submissions and evidence. This Bill, and the other Bills, have been greatly improved by the amendments, and it is for that reason that I support the third reading.

The Hon. K. T. GRIFFIN: When I spoke on the second reading I raised four matters of concern. The first was the modification of contractual rights and liabilities that could be provided for in any scheme. The second was the prejudice that a secured creditor could suffer if the scheme was approved. The third was the involvement of the Credit Tribunal, and the fourth was the conflict with Federal bankruptcy laws.

I also said that several other matters needed more detailed consideration. Most of the amendments that have been made in this Chamber were those agreed to and suggested by the Select Committee. As the Hon. Mr. Burdett has indicated, before the Bills were presented to this Council, there was inadequate research, preparation and consideration of the principles involved with the scheme that was envisaged by those Bills.

I am much happier with the scheme of the five Bills as they now are. The four major concerns to which I have referred seem to have been adequately covered by the amendments. The modification of contractual rights and liabilities, in the event of a scheme being approved, is now much limited in both scope and duration. The rights of secured creditors have largely been preserved, and there are no longer the dramatic consequences affecting security that were embodied in the original Bill.

The involvement of the Credit Tribunal has been more specifically spelt out, and the rights of creditors and debtors with respect to the involvement of the Credit Tribunal have been substantially clarified.

The conflict with the Federal bankruptcy laws is, I believe, less likely to be apparent because of the amendments that have been made. Because of those amendments, it is less likely that disgruntled secured creditors will need to avail themselves of the bankruptcy laws to protect their security. In any event, because of the amendments, it is less likely that the remedies available under the Bankruptcy Act will be available in the circumstances envisaged by the Bills.

The form of the five Bills now makes the objects envisaged by the original Bills much more likely to be achieved, and will resolve many of the earlier doubts

expressed both in this House and before the Select Committee. I share the Hon. Mr. Burdett's view that the Select Committee has proved to be a most valuable exercise in improving considerably the five Bills. Also, the Select Committee work has proved again the value of this Council. I support the third reading.

Bill read a third time and passed.

ENFORCEMENT OF JUDGMENTS BILL

Read a third time and passed.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

Read a third time and passed.

SHERIFF'S BILL

Read a third time and passed.

SUPREME COURT ACT AMENDMENT BILL

Read a third time and passed.

BOATING ACT AMENDMENT BILL

Read a third time and passed.

JURIES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 10 October. Page 1282.)

The Hon. R. A. GEDDES: I wish to refer to the problems that have been created by the introduction of this Bill. The principle of the jury system is one of the oldest traditions of the judicial system of the British way of life and one about which honourable members on this side of the Council have tried to alert the Government of the need for care in the amendments to the Act which provide that, if one or two jurors should become incapacitated whilst serving on a jury, the hearing may proceed and the process of law will be considered to be satisfactory on the decision of 10 jurors instead of 12 jurors.

I have been fortunate in studying in *The Australian Law Journal* (Vol. 10, 15 October 1936) an article by the Hon. Mr. Justice H. V. Evatt, who was then a judge of the High Court of Australia, on the total jury system within all the States, including the High Court. He refers to Lord John Russell, the then Lord Chief Justice of Great Britain, who held:

... that it was to trial by jury that the Government of England owed the attachment of its people to the laws. He thought that even a defiance of the law by juries represent the protest of the people against the undue severity of the law so strongly illustrated in the cases of the prosecutions for forgery of bank notes when that was a capital felony. There, acquittals in the teeth of the evidence led to a change of the law. Russell thought the jury's power to refuse to put the law in force was "the cause of amending many bad laws which the Judges would have administered with professional bigotry".

I have gone back a little into the history of the British system of justice. Obviously, as happened in the case to

which I have referred, people were brought to court for forgery of banknotes. Apparently the law was then considered to be inadequate, and juries refused to accept arguments advanced by the Crown, to such an extent that the then Government had to amend the law. This happened because jurors, people who came from the masses, were able to protest. Although I am getting away from the aim of this Bill, I wish to portray some of the opinions about the jury system and the obvious pressure that juries have been able to apply.

Another interesting case occurred in South Australia. In 1927, the Houses of this Parliament objected to several decisions that had been made by courts. The House of Assembly appointed a Select Committee to make recommendations, with a view to introducing "law reform in South Australia".

This curiously worded proposal regarded law reform as some form of nostrum whose introduction into the State would immediately cure all the ills of the body politic. The report asserted that during 1922 the verdicts in two or three notable cases brought the jury system into strong public criticism. Later in his report Mr. Justice Evatt said:

Trial by jury in criminal cases is such an integral part of the British system of jurisprudence, it is so strongly supported by the judges themselves, and it is so firmly established in public opinion as a safeguard against the arbitrary exercise of authority, that the commission cannot agree with those who say it has served its purpose and should be abolished. There is no doubt the system has its defects, and the aim of the commission has been to suggest the removal of these so far as possible. If these defects are not removed there is likely to be continued agitation for the abolition of the system.

It is interesting to note the three grounds on which the commission recommended that a majority verdict of 10 out of 12 jurors in criminal cases should be accepted. They were (and I am now quoting from the 1923 South Australian Law Reform Commission report) as follows:

(a) The British principle of giving a prisoner the benefit of a reasonable doubt will not be violated by assuming that the carefully considered opinion (the recommendation provides for three hours' consideration) of 10 men is more correct than the opinion of two men.

(b) A few persons who served on juries are determined for a variety of reasons not to convict, no matter what the evidence may be.

(c) Majority verdicts will make jury squaring or embracery difficult, if not impossible.

Unfortunately, Mr. Justice Evatt does not say what "majority verdicts will make jury squaring or embracery difficult" means. The fact that this State's Parliament was worried in 1923 about the decisions of juries and the number of jurors that should make decisions indeed makes interesting reading, as one can see from the *Australian Law Journal* to which I have referred.

We have before us a Bill which clearly provides that, in a murder trial, a judge may allow a person, because of sickness or for reasons best known to him, to be excused from the jury, and enable the remainder of the jury to decide the matter.

An amendment to be moved by the Hon. Mr. Burdett provides that there should be an additional, thirteenth juror, who should form part of the jury and whose decision could be considered should another juror, because of illness or for other reasons, fail to be present when a decision must be made in murder or treason cases.

This whole matter is a vexing and worrying one. It is easy to say that 12 "good men and true" shall judge whether or not a man is guilty. It is difficult for me, as a layman, to contemplate how the thirteenth juror will fit into the system. However, the salutary thing in my mind is

that this State's criminal lawyers have made this recommendation. Also, Justice Mitchell herself made a similar recommendation in one of the many reports that she has made over the years: that is, that this may be a way of solving a vexing problem, particularly in these days of high costs, and, I suppose, with the more scientific types of evidence that must be presented to courts in an attempt to convict people for murder or offences of a treasonable nature.

I speak as a layman who is concerned about the need to change, and as one who is more keen to support the idea of an additional juror rather than having one less juror deciding a case. I have in mind the complexities that can occur, as Mr. Justice Evatt suggested, when a few persons who serve on juries are determined, for a variety of reasons, not to convict, no matter what the evidence may be. Indeed, His Honour suggests that this does happen. This makes one realise how carefully the whole principle and system must be examined.

I therefore will support the Hon. Mr. Burdett's suggested amendment when it is moved, and would like to hear arguments from the Government about any flaws, if any, that exist in that amendment. As a report has already been made to the Government suggesting an additional jury member, I support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

New clause 1a—"Balloting at trial."

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

After clause 1 insert new clause as follows:

1a. Section 46 of the principal Act is amended—

- (a) by inserting after the passage "required to constitute the jury" the passage "(including any reserve juror to be empanelled in pursuance of the direction of the Court)"; and
- (b) by inserting after the present contents thereof, as amended by this section (which are hereby designated as subsection (1) thereof), the following subsection:

(2) Where the Court considers that an inquest for murder or treason is likely to extend over a considerable period, the Court may direct that a reserve juror be empanelled in relation to that inquest.

Honourable members will recall that this Bill arises from the fear that some long murder and treason trials may be aborted because of the illness or death of a juror. This is more likely to happen nowadays than it was formerly because, with advances in forensic science, some murder trials have become very long indeed. The Bill provides that, if one or two jurors die or become ill, the remaining 11 or 10 jurors can carry on; in murder and treason trials the verdict of the remaining jurors must be unanimous. Of course, nowadays murder and treason are not capital offences, but they are the only two offences for which life imprisonment is mandatory. I pointed out during the second reading debate that the reserve juror system is a viable alternative, and yesterday the Hon. Mr. DeGaris canvassed this suggestion by referring, quite properly, to a letter from the President of the Law Society to the Attorney-General proposing an amendment.

The criminal law committee of the Law Society was unanimous in opposing the Bill. It would not countenance a reduction in the number of jurors below 12 in murder and treason trials. Practitioners to whom I have spoken who practise in murder trials are unanimous in not countenancing any reduction in the number of jurors below 12. The practitioners were suspicious of any tampering with the jury system, fearing that such

tampering may be the thin end of the wedge, leading to a whittling away of the jury system. The majority of members of the criminal law committee of the Law Society favour a reserve juror, while the minority do not want to change the law at all. I stress that all members of that committee were agreed that they did not want the Bill as it was. I have found that the opinion of the criminal law committee is reflected in the views of practitioners at the bar at large, and I am therefore promoting my amendment as a reasonable compromise. It retains 12 jurors in murder and treason trials, but it does not constitute any whittling away of the system. The Hon. Mr. Geddes is clearly concerned that the system should not be tampered with.

My amendment goes along with the spirit of the Bill in that it attempts, by providing for a reserve juror, to overcome the problem of a lengthy murder trial being aborted. One of South Australia's leading criminal barristers has told me that in 30 years practice he has never been involved in a murder trial where a juror has become ill. So, the situation that the Bill seeks to overcome is unlikely to happen often. My amendment and a later amendment that I shall move provide that, where the judge certifies that the trial is likely to be long, a reserve juror is to be empanelled. That juror will form part of the panel from the outset. An amendment that I shall move later provides that if, before the jury retires, it appears that the 12 members are able to carry on, the reserve juror will be discharged.

The Hon. K. T. GRIFFIN: At the second reading stage I stated that I did not really think the spare juror system would prove to be more valuable than the principle embodied in the Bill, but at that stage I was referring to the concept of the spare juror in the context in which the Mitchell Committee made its recommendation in its third report in 1975. That committee recommended that the court should be empowered to order that up to two spare jurors be selected in any trial for a capital offence. The Mitchell Committee was dealing with the matter in the context that spare jurors would sit in the body of the court and would not be empanelled; nor would they be privy to the discussions of the jury prior to its retirement to reach a verdict. In that context the spare juror system has little merit. However, in the context in which the spare juror is empanelled with the jury, sits with the jury, meets with the jury, and deliberates with the jury, the spare juror is then in a position no different from that of the other 12 jurors, and he suffers no disadvantage from being the spare juror.

The spare juror sitting with and deliberating with the jury seems to have more to commend it than reducing the number of jurors in the circumstances envisaged by the Bill. I appreciate the concern of ordinary people who have had no contact with the law, and other people who practise in the criminal jurisdiction, that any reduction in the number of jurors, even by one, could disadvantage the defendant. In those circumstances, it is preferable to move towards the spare juror's being empanelled with the jury than to allow a reduction in the number of jurors.

It has been pointed out that the offences of murder and treason carry a mandatory life sentence and to that extent they can be distinguished from other offences that are tried by jury. The defendant bears a heavier stigma if he is convicted of murder or treason than if he is convicted of other offences. I support the amendment, which embodies a commendable concept and maintains provision for a jury of 12 for the offences of murder and treason.

The Hon. D. H. L. BANFIELD (Minister of Health): The Government opposes the amendment. It would be most difficult for the court to decide whether a trial would extend over a considerable period. It is not unknown for some defence counsel to extend the time for reasons of

their own and not necessarily in the interests of the accused.

The Hon. C. M. Hill: That's a slur on the profession.

The Hon. D. H. L. BANFIELD: Of course it is, but the honourable member knows as well as I do that these things have happened and will continue to happen. Whilst 99 per cent of the people in the profession are all right, some will take advantage of the situation, for personal gain. How can the court decide whether a trial will extend over a considerable period?

The length of a trial is often dictated by the tactics of the defence counsel and there could well be cases which would develop into lengthy trials although at first seeming to be matters that may involve only a short trial. If the amendments in question are included in the Bill, there could still be lengthy trials that would have to be re-heard because of illness of a juror. There is, of course, always a possibility of more than one juror taking sick during a trial, and the amendments proposed by the Government cover the contingency of one or two jurors becoming ill.

At present, in empanelling a jury of 12, each counsel has a right to challenge up to three jurors without being required to show a reason for doing so. If the panel for some trials is increased to 13, the question would arise as to whether the number of challenges should be increased. If more challenges are to be permitted, it would be necessary to increase the number of jurors to be brought before the court for the empanelling procedures.

There is also the question of counsels' attitude to the reserve juror. They may not bother to save any challenges for the last juror because of that juror's reduced chance of contributing to the verdict, yet he may be the person sitting on the case from the start, and so counsel may have lost the opportunity to challenge a man whom they would have challenged had he been on the panel when the original 12 were empanelled. To be a really effective juror, it is necessary to be involved not only in listening to the judge, counsel and the evidence, but also to be involved in discussions with the other jurors during the trial in the jury room during recesses.

What is the position in relation to the reserve juror? Is he to take part in all these discussions? If he is, the defendant is being judged by 13 people and the thirteenth may influence the others, placing the accused at a disadvantage.

The Hon. C. M. Hill: He may be safer, too.

The Hon. D. H. L. BANFIELD: He may be, but there is a position of having effectively 13 jurors. Members opposite expect that this will take place. If the juror has not been at the discussions during part of the trial, he is at a disadvantage. If the reserve juror were excluded from discussions with the other jurors, he could not properly get involved in his role of juror, and I suggest the tendency would be for him to lose interest in proceedings and regard himself merely as a bystander, with very little chance of becoming a juror. This situation would be unjust not only on the reserve juror himself but also on the possible verdict if the reserve juror were required to become an effective juror towards the end of a trial.

The reserve juror would no doubt be required to sit quite apart from the other jurors and would no doubt be the odd man out, and, as I have suggested, may well lose interest in proceedings. Another point to be made is that all courts are at present geared for juries of 12—the number of seats in the jury box, seating in jury rooms, and so on.

With the abolition of the death penalty, the maximum penalty is of course life imprisonment, and such a penalty is provided for offences other than murder and treason, such as rape. Whilst the Criminal Law and Penal Methods

Reform Committee did recommend a system of providing for reserve jurors in capital offences, when that committee made its recommendations the death penalty had not been abolished.

I think the most significant point about the Government's proposal is that, whilst a verdict by 10 or 11 jurors is acceptable, there must still be a unanimous verdict. The Act has not been amended to provide for a majority verdict, but merely to provide that in special and unusual circumstances, such as illness of jurors, a unanimous verdict of 10 or 11 jurors is acceptable. Apart from any other considerations, the amendments proposed by the honourable member would still be ineffective in cases where a juror became ill after the reserve juror had been discharged and while the jury was considering its verdict.

The amendment makes the position one of saying, "You have gone so far and now we will dispense with the services of the reserve juror," only to find that then a juror becomes ill and the whole case has to be re-heard. I oppose the proposed amendments and consider that the Government's Bill is a fair and just way of dealing with the occasional situation where a juror becomes ill during a trial.

The Hon. J. C. BURDETT: I suggest that the court is just as well acquainted with the tendency of some practitioners to prolong a trial as is the Minister, and I also suggest that the court is capable of conducting its business and deciding whether a trial is likely to be extended. The amendment is a compromise. Many of the problems raised by the Minister are overcome simply by pointing out that the amendment directs that the reserve juror be empanelled at the same time as the remainder of the jury is empanelled and therefore is a juror until discharged. This takes care of most of the objections that have been raised. The Minister has not referred to the fact that the President of the Law Society wrote to the Attorney-General on 5 October, recommending that the Bill be amended in this way, and I accept that advice and that of the Criminal Law Committee. My amendment was drafted so as to carry out the committee's recommendation.

I am not suggesting that the opinions of that committee, the Law Society or its President are sacrosanct and that the Government has to accept them in all cases. However, based on the recommendations of the President of the Council and of the Criminal Law Committee of the Law Society, I am surprised that the Government is opposing this amendment, ignoring these recommendations altogether. The Minister said that the maximum penalty for murder and treason is life imprisonment, but that is not correct: the only penalty for murder and treason is life imprisonment; it is mandatory. For offences such as rape, life imprisonment is the maximum penalty. Murder and treason remain the only two offences where life imprisonment is the only penalty and is mandatory.

The Hon. D. H. L. BANFIELD: What happens when a juror falls ill after the reserve juror has been discharged? What is the difference? Do we then have a retrial?

The Hon. J. C. BURDETT: That is perfectly clear; there would have to be a retrial in such a case. Even under the Government's Bill, if more than two jurors became ill, there would have to be a retrial. Trying to overcome this problem may lead to a retrial. Under the amendment, the chances of a trial being thwarted are lessened, whilst not tampering with the system or allowing any possibility of a person charged with murder or treason being judged by fewer than 12 jurors. This was the unanimous opinion of members of the Criminal Law Committee and all criminal barristers to whom I spoke.

The Hon. D. H. L. BANFIELD: The decision of the Mitchell Committee was made before the death sentence

was abolished.

The Hon. J. C. BURDETT: I did not rely on the Mitchell Committee recommendations at all.

The Hon. D. H. L. BANFIELD: I know you didn't; I am just saying it was beforehand.

The Committee divided on the new clause:

Ayes (8)—The Hons. J. C. Burdett (teller), J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and R. C. DeGaris. Noes—The Hons. B. A. Chatterton and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes. After listening to the Minister of Health, I realise that this provision needs much further discussion, and I give my casting vote accordingly for the Ayes.

New clause thus inserted.

New clause 1b—"Jury to try inquest."

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

After new clause 1a, insert new clause as follows:

1b. Section 47 of the principal Act is amended by inserting after the word "shall" the passage, "subject to this Act."

This is consequential on the previous new clause.

The Hon. D. H. L. BANFIELD: I oppose the new clause, and my argument for doing so is the same as the one I previously advanced.

New clause inserted.

Clause 2 passed.

Clause 3—"Trial may be continued notwithstanding that jury may be reduced in number."

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

Page 1, lines 11 to 15—Leave out all words in these lines and insert:

(a) by striking out the word "except" in subsection (1) and inserting in lieu thereof the words "not being an inquest";

and

(b) by inserting after subsection (2) the following subsection:

(3) Where a reserve juror has been empanelled in relation to an inquest for murder or treason and immediately before the jury retires to consider its verdict, it is apparent that the reserve juror is not required to complete the number of the jury, the court shall discharge the reserve juror from the jury.

The Hon. D. H. L. BANFIELD: I oppose the amendment on the same ground as mentioned previously. Amendment carried.

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

Page 1, line 15—Insert paragraph as follows:

and

(c) by inserting after subsection (2) the following subsection:

(3) Notwithstanding the amendment of this section by the Juries Act Amendment Act, 1978, the provisions of this section, as in force before the commencement of that amending Act, shall continue to apply in respect of any inquest commenced before the commencement of that amending Act.

If this Bill is passed it should apply only to those inquests that commence after the amendment comes into force. Otherwise, there is likely to be some prejudice to defendants on trial if the amendment takes effect during the course of a trial.

The Hon. D. H. L. BANFIELD: Unlike members opposite who, as a result of their previous actions, will

prejudice some defendants, we do not want to prejudice defendants in any case that has commenced before the amendment comes into force, and we are willing to accept this amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments. Committee's report adopted.

HARBORS ACT AMENDMENT BILL

In Committee.

(Continued from 10 October. Page 1283.)

Clause 7—"Power to acquire wharves and water frontages and other properties."

The Hon. M. B. DAWKINS: I move:

Page 2, lines 14 and 15—Leave out paragraph (a).

I believe in Ministerial responsibility, but I also believe in the responsibility of Cabinet as a whole. I cannot see any real reason why the Act should be amended. Presently, changes go before Executive Council and are dealt with by the Governor, which means the Government. I believe the present situation should continue to obtain.

The Hon. D. H. L. BANFIELD (Minister of Health): The Government is opposed to the amendment. The intention of the Bill is to consolidate into one the provisions relating to land and vest the responsibility in the Minister. The Hon. Mr. Dawkins's amendment proposes that all responsibility be vested in the Governor. Vesting of the power in the Minister rather than the Governor is proposed for the following reasons.

First, under the existing provisions of the Act, powers relating to land under Part II (acquisition of wharves and water frontages) are vested in the Governor while powers relating to land under Part III (management and control of harbors) are vested in the Minister. As the majority of land dealings are now in respect to Part III land, it is considered that this power should rest with the Minister.

Secondly, it is considered that adequate safeguards exist in that the type of land which can be acquired is defined in the Act and all acquisitions are subject to the Land Acquisition Act. Thirdly, having it all vested in the Minister, instead of in both the Minister and the Government, is much more administratively convenient. Therefore, I oppose the amendment.

The Committee divided on the amendment:

Ayes (8)—The Hons. J. C. Burdett, J. A. Carnie, Jessie Cooper, M. B. Dawkins (teller), R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and R. C. DeGaris. Noes—The Hons. B. A. Chatterton and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes. There being an equality of votes, I give my casting vote for the Ayes.

Amendment thus carried.

The Hon. C. M. HILL: I move:

Page 2—

Line 18—Leave out "in the opinion of the Minister,"

Line 21—Leave out "in the opinion of the Minister,"

As the Bill stands, any land that is, in the opinion of the Minister, reasonably required for commercial or industrial development related to a port or wharf can be acquired for that purpose. It is grossly unfair that "in the opinion of the Minister" should be included, because it does not enable a

person to appeal to a court that can decide whether or not the property was needed for the purpose. Defending his action, the Minister could say, "I was of the opinion that the property was needed for this purpose," and a court would have to decide in the Minister's favour because the Act would be clear. However, the Minister should have to justify his claim that the land being compulsorily acquired was being sought for such purposes. If the Minister is to be made to justify his actions, the words to which I have referred should be deleted.

The Hon. D. H. L. BANFIELD: The Government is willing to accept the amendments.

Amendments carried; clause as amended passed.

Clauses 8 and 9 passed.

Clause 10—"Repeal of sections 34, 35, 36, 37 and 40 of principal Act and enactment of section in their place."

The Hon. M. B. DAWKINS: I move:

Page 3, line 1—After "may" insert "with the approval of the Governor,"

New section 34, to be inserted by this clause, provides:

Subject to this Act, the Minister may deal with, or dispose of, property acquired, or vested in him, under this Act as he thinks fit.

Although I believe in Ministerial responsibility, I also believe that a Minister should be responsible to the Government as a whole. My reasons for moving this amendment are not dissimilar to those to which I referred previously: a matter should go to Executive Council before it is finalised.

The Hon. D. H. L. BANFIELD: Clause 7 relates to the acquisition of land, but this clause relates to the disposal thereof. Although the arguments regarding both clauses are similar, if this amendment was carried it would mean that all leases entered into would have to go to the Governor. As that would be a most unusual procedure, I ask the Committee to reject the amendment.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12—"Repeal of sections 44 and 45 of principal Act and enactment of section in their place."

The Hon. M. B. DAWKINS: I move:

Page 4, line 12—Leave out "proclamation" and insert "regulation".

I have no complaints about subsections (1) and (2) of new section 44. However, I do not believe that the procedure referred to in subsection (3) should be adopted by proclamation. I foreshadowed in my second reading speech that I would move this amendment.

The Hon. D. H. L. BANFIELD: Honourable members opposite boast about being consistent, and I ask for consistency in this regard. Power to transfer the care, control and management of foreshores, jetties, etc., by proclamation rather than regulation is sought for the following reasons. First, because it is consistent with and supersedes the existing provisions contained in section 476(1) and (2) of the Local Government Act, which is repealed by this Bill.

Secondly, it is consistent with and supersedes the existing provisions contained in section 45(3) of the Harbors Act, which is repealed by this Bill. Thirdly, various reserves concerned have been dedicated by way of proclamation under the Crown Lands Act.

Fourthly, the transfer of jetties involves both transfer of ownership and transfer of care, control and management. As transfer of ownership can be made without reference to Parliament, transfer of the care, control and management would not seem a matter for Parliament. Rejection of a transfer of the care, control and management in a case where ownership had been transferred could result in serious legal implications. I therefore ask honourable

members to reject the amendment.

The Hon. C. M. HILL: Although I appreciated the Minister's arguments and his reference to consistency, this clause has some important implications. For example, if the Marine and Harbors Department decided to transfer certain foreshore land into the care, control and management of any other Minister of the Crown, or to the Coast Protection Board, and the local council involved objected, that council, if the amendment was carried, could appeal to Parliament to act as adjudicator in the matter and Parliament could disallow the regulation. However, if this process could take place by proclamation (for which the Bill provides), the council would have no redress whatsoever. For that reason, I support the amendment.

The Hon. D. H. L. BANFIELD: Provision already exists by way of proclamation. Section 476 of the Local Government Act provides:

(1) Wherever any part of the foreshore of the sea, not being within a harbor within the meaning of Part III of the Harbors Act, 1936, is within an area, that part of the foreshore shall be under the care, control, and management, of the council of the area: Provided that the Governor may, by proclamation, reserve the whole or any part of any such part of the foreshore for any purpose or purposes which the Governor deems expedient, and thereupon the part of the foreshore so reserved shall cease to be under the care, control, and management of the council, and the council shall not on account thereof have any claim for compensation.

This provision has applied since 1936, and no problems have arisen. I therefore suggest that there will be no problems if the amendment is rejected.

The Hon. C. M. HILL: The existence of section 476 of the Local Government Act does not mean that that provision is right. Further, I point out that the Coast Protection Board was not dreamed of when that provision was enacted. We should take this opportunity of improving the legislation.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Hill has not given one instance where a problem has arisen in connection with section 476. The Coast Protection Act has been operating for several years and has worked well. I therefore believe that the amendment does not improve the legislation.

The Hon. R. C. DeGARIS: In the last two or three years honourable members have received complaints about the control of the foreshore. I cannot recall the details of the complaints, but I know that they have been made since the recent legislation was passed.

The Hon. C. M. Hill: An instance occurred at Brighton.

The Hon. R. C. DeGARIS: Yes, and another instance occurred on the West Coast. The real point is that, whilst section 476 has been in the Local Government Act since 1936, many changes have been made in this field since then. I agree with the Minister that we should be consistent but, instead of rejecting this amendment, we should change the Local Government Act to fit in with this legislation.

The Hon. D. H. L. BANFIELD: It is not necessary to do that, because this legislation already fits in with the Local Government Act. The department has received no complaints arising from this matter. The two matters raised by honourable members related to the environment legislation. I still say that no honourable member has instanced a problem.

The Hon. C. M. HILL: I do not think it is a sufficient argument for the Minister simply to ask for examples where the system has gone wrong. The real test is this: what fears have been expressed by local government in regard to the Coast Protection Board, and what can be

done to dispel those fears? Local government has from time to time expressed fears concerning the power of the Coast Protection Board. I do not mean to be over-critical of the board. In many cases local government has co-operated with the board. If it is possible to improve the legislation to dispel those fears, we should improve it. The Marine and Harbors Department is not being criticised; it has had the power to vest foreshore land in the Coast Protection Board, and it has acted properly, but that is no reason why Parliament should not improve the legislation if it is possible to do so.

The Hon. D. H. L. BANFIELD: I have previously referred to the serious legal implications that could arise if there is a dual method of handling this matter. The Hon. Mr. Hill has suggested that local government would not come to the State Government and complain if a problem arose, but I point out that local government has never been backward in making its complaints public. However, it has not made any complaints since 1936, and I therefore suggest that it has no real problems in this regard.

The Hon. M. B. DAWKINS: For most of the period during which section 476 has applied, it has been a matter for local government and for occasional intervention by the State Government. Only recently has a third authority come into the picture—the Coast Protection Board. The Hon. Mr. Hill has said that councils have expressed concern about the board's activities. We do not intend to criticise the board unduly, but we recognise that misunderstandings have developed. This amendment would improve the legislation.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Dawkins is trying to imply that the Coast Protection Act came into operation only recently. He agrees that the Local Government Act has been in operation for more than 40 years and has worked satisfactorily. However, the Coast Protection Act has been in operation for six years and we have not had a complaint under it. Therefore, why is it necessary to make the amendment?

The Committee divided on the amendment:

Ayes (8)—The Hon. J. C. Burdett, J. A. Carnie, Jessie Cooper, M. B. Dawkins (teller), R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and R. C. DeGaris. Noes—The Hons. B. A. Chatterton and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes, an equality of votes. I give my casting vote for the Ayes. Amendment thus carried.

The Hon. C. M. HILL: The Bill provides that the Governor may place any part of the foreshore of the sea or any water or other reserve, wharf or breakwater situated within any harbor, in the sea, or upon the foreshore of the sea under the care, control and management of any one of any Minister of the Crown, a council, or the Coast Protection Board.

I am concerned about whether there is a need for reference to "any Minister of the Crown", and I should like the Minister to say what the Marine and Harbors Department considers may be a situation in which it would be prepared to vest such property in any Minister. I understand the vesting in a council or in the Coast Protection Board, although by a later amendment I will indicate that I think a council should have priority in that matter. However, the provision I have referred to raises fears, particularly regarding the Minister of Transport. An area may have been a harbor in terms of the Act but old roads could come to the foreshore, near the cliff-top, near

the high-water mark, and this may be used by vehicles. The Minister may seek care and control of that land. I do not think it would be a good precedent if transfer to the Minister of Transport was made. Can the Minister explain why the Government has included that provision?

The Hon. D. H. L. BANFIELD: The very good reason is that sometimes it is necessary for part of the foreshore to be made a national park. It would be under the control of the Minister in those circumstances. Also, we may want to place a jetty under control, and it probably would be under the control of the Minister for the Environment. There are reasons for this wording, although what it provides for would not happen often.

The Hon. C. M. HILL: Can I have the Minister's assurance that this will be implemented only where conservation is involved and that foreshore land will not be transferred to the Minister of Transport for road purposes? I accept the explanation that, if land adjacent to a foreshore was a national park, it would be proper for the foreshore area to be consolidated in one parcel for control. The Minister for the Environment also may be a reasonable party in whom care and control of land may be vested, but those objects seem to be closely related to conservation and to have purposes far removed from roadmaking.

The Hon. D. H. L. BANFIELD: Jetties are different from national parks. A jetty could be under the control of the Minister for the Environment and a national park under the control of some other Minister. I can assure the honourable member that the Government does not intend to build roads unnecessarily. We seek this provision in the interests of conservation.

The Hon. C. M. HILL: I accept the Minister's assurance. I move:

Page 4, after line 23—Insert subsection as follows:

(3a) Land that is within the area of a council shall not, without the consent of that council, be placed under the care, control and management of the Coast Protection Board in pursuance of this section.

The council involved should have prior rights over the Coast Protection Board as to whether it wishes to accept such vesting: the amendment does that. I am not criticising the Coast Protection Board: however, the care and control of land within the area of a council should be under that council's control. To have a separate entity, such as the Coast Protection Board, controlling land immediately adjacent to council land is only justified when, in the opinion of that council, it is necessary for the Coast Protection Board to become involved with preservation of the coastline in the council's area.

If the Bill passes in its present form, the Marine and Harbors Department could vest all land in the Coast Protection Board. Those of us who want to strengthen local government continually want to give it the power to say whether or not the new authorities have sole rights over certain land within that council's boundary. This amendment does not prevent development work by the Coast Protection Board. If, in the opinion of the council, the particular land should be under the control of the Coast Protection Board, the department could vest this land in the board.

The Hon. D. H. L. BANFIELD: The land referred to is Crown land, but the Hon. Mr. Hill is suggesting that the Crown can own the land but another body should be responsible for its care, control, and management. The Government's right regarding care, control and management of its own land would be taken away and given to another body. I cannot see the Hon. Mr. Hill handing over the care, control, and management of his property to someone else.

The Hon. C. M. HILL: The truth is coming out now. Once the Government enjoys power, it does not want to lose it. The Government is prepared to vest the control of foreshore land in one of its statutory bodies. The Government will not give power to the council because the increase in status of the council would show weakness on the part of the Government! The Minister should be able to use up a better argument than that. Accepting that this is Crown land, if the Marine and Harbors Department intended to vest control in any authority, it should first go to the local council for discussion. If the local council indicates that, as part of foreshore development, it wants control, power could be so vested. If the council recognises that there are problems on the coastline, and agrees that the Coast Protection Board should be involved, the land could be vested in the board. However, in the first instance, the decision should be with the local council.

The Hon. D. H. L. BANFIELD: The Government would consult with the council but, if agreement could not be reached, the Government would not be able to proceed. If the amendment suggested some action after consultation with the council, it might be considered. The Government will always consult the council before action is taken, but the amendment goes too far.

The Hon. C. M. HILL: At least the Minister is now saying that the Government will consult with the council, and that he may be prepared to accept an amendment that read "after consultation with the council the Government would make its decision". In practice, this would have no legislative effect. The Coast Protection Board could propose to protect the coastline in such a way that might be completely contrary to what council ratepayers desired.

The council would have no say against having an eyecore in the form of a breakwater or other development going into the sea, on the beach, in sand dunes, or anywhere within the foreshore area. A council should have some say regarding development work that is undertaken. If either local council or the board must have a final say, it should be local government.

The Hon. N. K. Foster: The board doesn't deny access to local government.

The Hon. C. M. HILL: The way the Bill reads, local government might not even hear about a change, yet it need not be consulted at all, according to the Government's intention. Therefore, a council should have a say. It would be in the best interest of protecting the coastline. The Minister claimed how he votes for people and how people are the first consideration. Why does he not let local ratepayers be considered and have a final say if he is so concerned about people?

The Hon. D. H. L. BANFIELD: I agree that people should have a say. The foreshore belongs to all people, not just a few ratepayers. The protection of the coastline is undertaken by the board: it is not the responsibility of a handful of ratepayers to determine whether or not there should be a breakwater. There would be an outcry indeed if the board let the coastline disappear through its inaction. Yet, after it approached a council, which could have received an objection from the owner of a big house overlooking the foreshore and which decided not to give consent to the board, if that situation arose, whom is the Hon. Mr. Hill looking after? Is he looking after the coast, which belongs to the people of South Australia, or is he looking after the people living on the Esplanade? I stand by my position. Unless protection is given to the coastline, it will not even exist for the few ratepayers about whom the Hon. Mr. Hill is talking.

The Hon. N. K. FOSTER: In supporting the Bill, I oppose the amendment. The matters raised by the Hon.

Mr. Hill give a false conception of what is contained in the Bill. By way of a question within the past 24 hours in this Chamber, I have already raised the matter of coast protection being left to local government. I refer to the situation at West Lakes. The honourable member should tell the Committee adequately and precisely of those local government areas ranging from Semaphore to Sealiff where the right of recreational development by the Marine and Harbors Department has been denied. True, there have been arguments about jetties in areas both remote and adjacent to Adelaide, and other areas on the West Coast. I think you, Mr. Chairman, referred to Arno Bay.

The honourable member is reading into this Bill a denial of local government through the existence of the board and is pursuing an amendment without substance. I support the Bill in its present form.

The Hon. C. M. HILL: The Minister claimed that the foreshore belonged to the people and not necessarily to local government ratepayers. If it belongs to the people, let the Marine and Harbors Department keep it. It is not forced to do the vesting, as the Minister thinks. The department can retain the land if it wishes. It is only when the land is to be vested in another authority that it must first go to local government for its say about whether or not it will accept the change in ownership or whether the board should be involved.

The Hon. N. K. FOSTER: If such an amendment were carried, a council in 1978 could accept such a proposal, which it was unable to fund, yet a future incoming council, even in the next year, could want to divest itself of the commitment. The situation could seesaw.

The Hon. R. C. DeGaris: What about Monarto?

The CHAIRMAN: Order! The Hon. Mr. Foster shall not refer to Monarto.

The Hon. N. K. FOSTER: We are not dealing with a Monarto-type project, which has been created by Government during the past four years. The urban Adelaide coastline has been affected by private developers for housing, local government development of recreation areas and similar influences. There have been conflicts of interest between Government departments, private developers, private citizens and local government. If the amendment constructively cured some of the ills that have arisen between the parties over the years, I could give it some credence, but it does not even suggest that. It is a false amendment, which has no concept of the law. It has only a concept of division, and I urge members opposite not to pursue it any further.

The Committee divided on the amendment:

Ayes (8)—The Hons. J. C. Burdett, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. A. Geddes, K. T. Griffin, C. M. Hill (teller), and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and R. C. DeGaris. Noes—The Hons. B. A. Chatterton and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes. I give my casting vote for the Ayes.

Amendment thus carried.

The Hon. M. B. DAWKINS moved:

Page 4, line 30—Leave out "proclamation" and insert "regulation".

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

Amendment carried.

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

Page 4, line 43—Leave out "or".

Page 5, after line 3—Insert paragraph as follows:

or

(f) make any by-law, or seek the making of any regulation, affecting the occupation, management, use or control of the land.

This is a consequential amendment resulting from the repeal of the sixteenth schedule to the Local Government Act, to which clause 37 relates. In drafting the Bill, reference to the sixteenth schedule in section 671(1) of the Local Government Act was overlooked. In order to maintain the present status, it is intended to repeal section 671(1) of the Local Government Act (this is to be moved as an amendment to clause 37) and, in lieu thereof, to insert paragraph (f).

The Hon. C. M. HILL: How generous can the Government be! It is willing to vest foreshore land and improvements such as old jetties in a council, but it then says that that council cannot make any by-law in relation to the use or control of that land or improvement without first obtaining the Minister's consent in writing. One can take, as an example, an old jetty that may have been vested in a council and, to make that jetty safe for tourism or recreation purposes, the council may have to spend money on it. However, that council cannot make any by-laws to keep bicycles off the jetty unless it goes cap in hand to the Minister and asks for his consent. Is this really necessary, or is it yet another example of stupid red tape to be suffered by councils and individuals merely to keep them beholden to the Government?

If the department sees fit to vest land or improvements in a council, surely it can trust that council to make by-laws in relation thereto without having to obtain the department's consent. If such a matter is referred to the department, two or three officers will probably have to peruse it. The application could go from section to section, and within a month or two the council, which has been waiting cap in hand, may get a letter from the Minister. Surely, this is too stupid. I therefore ask the Minister to say why, at such a late hour, not when the Bill was drafted initially, the Government has come forward with this amendment.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Hill is obviously right on his toes again, as this provision has been in the sixteenth schedule since 1934, and it is merely being re-enacted in this clause because clause 37, which the Committee will consider later, repeals this schedule.

The Hon. C. M. HILL: I resort to the argument I used earlier: if legislation can be improved, it ought to be improved.

The Hon. D. H. L. BANFIELD: When the Hon. Mr. Hill was Minister of Local Government he evidently saw no need to amend the legislation in this connection. How forward-looking was he then?

Amendment carried.

The Hon. M. B. DAWKINS: I move:

Page 5, lines 5 and 6—Leave out subsection (5).

I have been advised that, as a result of earlier amendments, new section 44 (5) is redundant.

Amendment carried; clause as amended passed.

Clauses 13 to 15 passed.

Clause 16—"Control and management of navigational aids."

The Hon. C. M. HILL: I move:

Page 5, lines 36 to 42—Leave out subsection (2).

As the Bill stands, if one of the Minister's officers, acting in good faith, positioned a navigational aid improperly and if an accident occurred as a result, no civil liability would attach to the Minister. Nowadays, Governments and their Executives are becoming more and more accountable to the people, and I support this trend, which is quite proper. I fail to see why, if an accident occurs in a harbor as a

result of negligence and if damage is done, the individuals concerned ought not to have a proper claim against the Government for that negligence (and I include in the term "Government" officers of the Government). In the private sector there are the normal questions of professional negligence, but there seems to be one law for the Government and another law for the people.

The Hon. J. E. Dunford: Did you have the same attitude when a Liberal Government was in power?

The Hon. C. M. Hill: Yes. There should not be one law for the Government and another law for the people. If the honourable member agrees with that principle, how can he support a provision stating that no civil liability shall attach to the Minister or his officers? This is one of those instances where Governments must face up to their principles. If Governments agree that they should be accountable to the people, they must be liable for mistakes.

The Hon. D. H. L. Banfield: One wonders how far Liberal philosophies go. Is it Liberal policy for this sort of idea to be in all sorts of Bills?

The Hon. C. M. Hill: It is Liberal philosophy.

The Hon. D. H. L. Banfield: But not to be put in action! A provision in a Commonwealth Act states:

An action or other civil proceeding shall not be maintainable against the Commonwealth or the Minister or any officer of the Commonwealth by reason of any act, default, error, or omission, whether negligent or otherwise, in relation to or by reason of any defect in a marine navigational aid established or maintained by the Commonwealth.

The Hon. C. M. Hill: When was that introduced?

The Hon. D. H. L. Banfield: In 1970. A Liberal Government was in power in Canberra then. So much for Liberal philosophy! I refer the honourable member to legislation enacted by the Western Australian Liberal Government and the Federal Liberal Government.

The Hon. C. M. Hill: What about other States?

The Hon. D. H. L. Banfield: I am talking about Liberal Governments. What about the great Fraser Commonwealth Government? At least we are putting in a proviso about where the omission was made in good faith.

The Hon. C. M. Hill: Does the Commonwealth legislation refer to lighthouses?

The Hon. D. H. L. Banfield: It is the Lighthouses Act.

The Hon. C. M. Hill: We are not talking about lighthouses here.

The Hon. D. H. L. Banfield: Members opposite are talking about liability where the Minister omits to do something, whether negligently or otherwise. Members opposite speak of Liberal philosophy, yet their Government will not put it into operation. The Hon. Mr. Hill has said there should be civil liability where the negligence is

quite obvious. That would apply under the Bill, but the only let out is where the omission is made in good faith. Opposition members would not know what was meant by "good faith".

The Committee divided on the amendment:

Ayes (8)—The Hons. J. C. Burdett, J. A. Carnie, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill (teller), and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, and C. J. Sumner.

Pairs—Ayes—The Hons. M. B. Cameron and Jessie Cooper. Noes—The Hons. B. A. Chatterton and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes. I give my casting vote for the Noes.

Amendment negatived; clause passed.

Clauses 17 to 20 passed.

Clause 21—"Powers of authorization."

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

Page 6, line 24—Leave out this line and insert:

(b) he may board a vessel for the purpose of investigating an offence that he reasonably suspects to have been committed by a person on board the vessel;

This amendment limits the power of a member of the Police Force, a harbormaster, or a person authorised by the Minister, and it is consistent with one made to the Boating Act.

The Hon. D. H. L. Banfield: As that legal argument is much more forceful than anything said by the Hon. Mr. Hill, I accept the amendment.

Amendment carried; clause as amended passed.

Clauses 22 to 36 passed.

Clause 37—"Amendment of Local Government Act."

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

Page 8, after line 27—Insert paragraphs as follows:

(ca) by striking out from subparagraph XXXI of paragraph 8 of subsection (1) of section 667 the passage "Subject to section 671" and inserting in lieu thereof the passage "Subject to the Harbors Act, 1936-1978";

(cb) by striking out subsection (1) of section 671;

This amendment is consequential on the repeal of the sixteenth schedule to the Local Government Act and the amendment to clause 12 that the Committee accepted.

Amendment carried; clause as amended passed.

Remaining clauses (38 and 39) and title passed.

Bill reported with amendments. Committee's report adopted.

ADJOURNMENT

At 5.31 p.m. the Council adjourned until Tuesday 17 October at 2.15 p.m.