LEGISLATIVE COUNCIL

Wednesday 27 February 1980

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

QUESTIONS

SOUTHERN VALES CO-OPERATIVE WINERY

The Hon. B. A. CHATTERTON: I seek leave to make a short explanation before asking the Attorney-General, representing the Treasurer, a question about the Southern Vales Co-operative Winery.

Leave granted.

The Hon. B. A. CHATTERTON: Yesterday, I asked the Attorney-General whether the report in the *Advertiser* was correct and whether the Government had directed the State Bank to make a loan to the Southern Vales Co-operative Winery. The Minister assured me that that was not correct and that the Government had only requested the bank to review the application. I also asked the Minister whether the Government had approved a Treasury guarantee for the bank and whether the loan would proceed on that basis, which is normal when the Government wants to provide funds in an emergency such as this.

The Attorney-General assured me that the normal procedures had been complied with and that the Government had done this, but there seems to be some considerable confusion in this matter. The statements of the Minister of Agriculture to the press do not make any reference to the Cabinet approval for a Treasury guarantee; in fact, it seems from his statements that all the Government has done is to request the State Bank to take another look at this loan application, which I fail to see will make much difference. The State Bank has already looked at the application and turned it down.

Unless there are new factors brought in for the bank to assess, there is no real reason why it should come to a different decision from the one it has already made. I asked the Attorney-General what Cabinet actually decided in the case of this winery. Did it decide that Treasury would provide a guarantee for a State Bank loan which, as I said before, is the normal circumstance when the State Government wishes to make available emergency finance in situations such as this? It was the procedure that was adopted when an emergency pool was created for surplus wine grapes, and it was the procedure adopted also when there was a surplus of citrus juice. I ask the Attorney-General to clear up this confusion about whether that was actually done as he indicated, or whether the Government merely asked the bank to look at the application again.

The Hon. K. T. GRIFFIN: The honourable member is not correct in saying that he asked yesterday whether or not the Government had approved the Treasury guarantee. He asked the following question:

> Has the Government changed the normal procedure, which is to provide a Treasury guarantee to the State Bank to enable it to make this loan without in any way affecting its normal lending procedures, or has the Government in fact directed the State Bank, as reported in this morning's *Advertiser*?

Yesterday, in answer to the early part of the honourable member's question I said that the Government had not directed the State Bank to make an advance, but had requested the State Bank to make an advance under the Loans to Producers Act; it was now in the hands of the State Bank to reassess the position regarding Southern Vales, in the light of the fresh request under the Loans to Producers Act. At no stage did the honourable member ask whether the Government had approved a Treasury guarantee. It is premature for that decision to be made until the State Bank has had an opportunity to reassess the position. The Government has not yet made a decision about a Treasury guarantee: it will make that decision only when the State Bank has had an opportunity to further review the matter.

The Hon. B. A. CHATTERTON: Will the Attorney-General say whether the first application made by Southern Vales Co-operative to the State Bank was also made under the Loans to Producers Act?

The Hon. K. T. GRIFFIN: I am not aware of the basis upon which the first application for a loan was made. I will make some inquiries and bring down a reply on that part of the question.

THE QUEEN

The Hon. M. B. DAWKINS: I seek leave to ask the Attorney-General, representing the Premier, a question about the proper recognition of Her Majesty the Queen, and Her Majesty's Government in this State.

Leave granted.

The Hon. M. B. DAWKINS: This Government, as I am sure all honourable members—on this side at least—will agree, is known as Her Majesty's South Australian Government. Will the Premier give further consideration to substituting the letters O.H.M.S. (or the words "On Her Majesty's Service") on Government stationery for the words "South Australian Government" which appear at present and which in recent years have tended to ignore our position in relation to Her Majesty as Queen of this nation?

Members interjecting:

The PRESIDENT: Order!

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Premier and bring down a reply.

VEGETATION CLEARANCE

The Hon. J. R. CORNWALL: I seek leave to make a brief statement before asking the Attorney-General a question about vegetation clearance.

Leave granted.

The Hon. J. R. CORNWALL: In this morning's *Advertiser* there was a report headed "$150 000 Government scheme to preserve bushland", and stating that the South Australian Government would provide incentives to landholders to try to retain significant areas of native vegetation on private land. In response to that article, this morning I issued a statement welcoming this proposal by the State Government to provide incentives to landholders to encourage them to retain areas of native vegetation on private land. I was very pleased to see that the Government had taken this initiative, and I am always one to give credit where credit is due, as members opposite would know.

These initiatives clearly arise out of the recommendations of the report on vegetation clearance which, when it was released, shocked many South Australians with its revelation on how little original vegetation had been left uncleared. I am very pleased to see that the proposals of the committee that compiled that historic and devastating

report will be implemented by incentives and voluntary co-operation, rather than coercion through punitive legislation.

When in Government, my Party believed, as it still believes quite strongly, that in this particular case—as in so many environmental matters—co-operation and education are far more effective and far more desirable than coercion. However, having said that, I have to qualify my pleasure at the fact that the Government has implemented the first stage of that report. I believe now that it is essential that the second stage of the recommendations should proceed as soon as possible.

The Hon. M. B. Cameron: It will take 10 years.

The Hon. J. R. CORNWALL: I was there for only 4½ months, and it was a matter close to my heart. I wanted to achieve two stages at once.

Members interjecting:

The PRESIDENT: Order!

The Hon. J. R. CORNWALL: This would involve legislation to enable the landholders to designate areas of natural vegetation to be preserved in perpetuity. Under the proposal the areas of natural vegetation which an owner wished to set aside would be defined on the title of the property, and subsequent owners would be obliged to retain them. I think someone asked what I did when I was in office. On at least two occasions that I can recall I had arranged to hold a conference with the then Attorney-General, the Hon. Chris Sumner, and his officers, to take advice as to how we could best proceed with the drafting of legislation which would have enabled us to achieve the designation on the titles. Unfortunately, because of events, that never came to fruition, but I now ask the Attorney-General whether he or his officers have been requested to prepare or examine legislation to give effect to this matter and, if so, can the Attorney-General say when the legislation might be introduced in Parliament?

The Hon. K. T. GRIFFIN: The honourable member's question should have been more appropriately directed to the Minister representing the Minister of Environment, because the announcement this morning was made by the Minister of Environment and, as the honourable member should know, even from his limited experience in Government, proposals for amendments to legislation affecting a Minister's portfolio area are the responsibility initially of that Minister. While they might affect the area of responsibility of the Attorney-General if he becomes involved at a later stage of development of the proposals, such as the one to which the honourable member now refers—

The Hon. J. R. Cornwall: The proposal has been in the pipeline for three or four years.

The Hon. K. T. GRIFFIN: If it has been in the pipeline for three or four years, it is a disgraceful state of affairs that the former Government did not deal with it.

Members interjecting:

The PRESIDENT: Order!

The Hon. K. T. GRIFFIN: I shall refer this matter to the Minister of Environment and bring back a reply as to the principle involved and then I shall be able to take further the other aspects of this question.

ART GALLERY

The Hon. L. H. DAVIS: I should like to make a statement before asking a question of the Minister of Arts concerning the Art Gallery.

Leave granted.

The Hon. L. H. DAVIS: Last Saturday's *Advertiser* carried a report by David Dolan headed "Art Gallery's Future at Stake". The article comments on the implications of the Edwards Report, particularly in relation to two matters. The first is that the report recommended that a State historical centre be established, which would result in the gallery's losing certain of its collections built up over a period. Secondly, the report recommended against the transfer of the Museum to the Hackney site now occupied by the State Transport Authority bus depot. That transfer, of course, would enable the Art Gallery to take over the Museum building on North Terrace. Whilst I appreciate that the Government has invited interested persons and groups to comment on the Edwards Report by the end of March, I think it is important, in view of this recent article, that the Minister should comment on these two matters.

The Hon. C. M. HILL: Dealing with the second point first, in regard to the one-time proposal to develop the South Australian Museum on the Hackney site, the Edwards Report, which has been accepted by the present Government as a basis for development of the Museum, recommends against that suggestion. It was rejected by the first interim report on the grounds of high cost and isolation from the cultural centre of Adelaide. The report estimated that the cost of erecting a new Museum on the Hackney site, coupled with the cost of restoring the vacated building on North Terrace, would be in the vicinity of $60 000 000.

On that aspect of cost alone, the Government accepted the recommendation within that report. It is the Government's intention, now that it has accepted the first report, to proceed stage by stage and endeavour to develop the present Museum site as envisaged by the Edwards Report, or as near as possible to that vision. That report has now been made public, and Mr. Edwards is receiving submissions from interested parties, particularly those from the various cultural institutions on North Terrace, and from the public at large. Submissions have been invited through the press, and I understand that many representations have been made already. The Government is looking forward with great interest and enthusiasm to the final report, submissions for which are due on 31 March this year.

Dealing with the first point raised, which flowed from comments made by Mr. David Dolan in the *Advertiser* on 23 February, the first interim report does include (and I emphasise "does include") the proposal to establish a State historical centre. This does not necessarily mean transferring the Art Gallery's historical collection to the Museum. The report recommended that the State Historical Centre Working Party be established from the representatives of the three institutions involved, namely, the Art Gallery, the Museum and the State Library. That working party is in the course of being formed, so I believe it is proper that I should place emphasis on the point that Mr. David Dolan's article in that respect is not entirely correct.

HOUSING TRUST CONTRACTS

The Hon. M. B. CAMERON: I seek leave to make a brief explanation prior to asking the Minister of Housing a question about Housing Trust contracts.

Leave granted.

The Hon. M. B. CAMERON: I have a copy of a South Australian Housing Trust contract for sale and purchase dated 18 January 1979. This contract deals with the sale of a house from the Housing Trust to two individuals. In the contract it is made clear that the two individuals paid over half the sum required in cash as amortised rent. At the

date of the contract, they owed just under half the amount. The contract sets out a number of clauses up to clause 13, or what was clause 13; it has been deleted and renumbered clause 14. Clause 13, which is important not only to these people but possibly also to others, states:

> If at any time within the period of five years—

the "five" has been crossed out and replaced by "10"—

> after the day for final settlement hereinbefore referred to the purchaser shall desire to sell transfer assign or otherwise dispose of the land improvements thereon hereby sold the trust shall have the option subject to the rights of any mortgagee's charges or encumbrances purchasing the same from the purchaser at the price and upon the terms and conditions hereinafter set forth.

The contract goes on to make clear that the owner has no right to sell to anyone but the trust for that period of 10 years, and at the same price as that for which it was originally sold. If in 9½ years time these two persons wish to sell the house, they must sell to the trust at the original price, plus the cost of any improvements. I suggest that that is quite a punitive clause and one that certainly does not leave the owners of this house with much option if they shift owing to a job change, because they are in a small country town and they cannot sell the house. If any problem occurs within the family and it is desired to sell because of that, the people concerned cannot sell, because the capital gain or the loss of value in that period must be returned to the trust. Will the Minister consider redrawing this contract, particularly clause 13, which is new and not normal, to put the contract on a reasonable basis, giving these people a reasonable basis of ownership of their land? Further, will he find out how other contracts were drawn up during the term of office of the previous Government to see whether they were drawn properly, so as to give people their proper rights?

The Hon. C. M. HILL: If the member gives me the details, which I understand deal with one of his constituents in the South-East of this State, I shall be pleased to look into the matter fully and bring back a specific reply to his question. I recall questions being asked about this matter some years ago, relative to the principle that the Hon. Mr. Cameron has raised. I am pleased to tell the Council that the present Government has stopped dealing in this form of rental purchase, because it has many disadvantages, and people who are of very moderate means and have low deposits can now be satisfied by our increased concessional loans from the State Bank, so that in future they can become immediate purchasers of homes and do not have to enter into this rental arrangement before becoming the purchasers of the property in question. The Government has taken care of the position as it will apply from this point on. However, as I have told the Hon. Mr. Cameron, I shall be pleased to look into the case history of this whole matter.

HOUSING FUNDS

The Hon. M. B. DAWKINS: I seek leave to make a statement prior to asking a question of the Minister of Housing with reference to housing matters.

Leave granted.

The Hon. M. B. DAWKINS: I understand that the Minister of Housing attended the Ministerial conference on housing in New Zealand last week. I am aware that South Australia has always enjoyed a high percentage of Commonwealth funds for housing, as it did in other fields, especially in the time of the Hon. Sir. Thomas Playford, when this State enjoyed this high percentage compared to the other States. Can the Minister tell the Council whether the favourable distribution that previously obtained is to continue for the coming financial year?

The Hon. C. M. HILL: True, on a population basis, South Australia has enjoyed a higher proportion of Commonwealth funds for housing in recent years than the other States.

It is true also, however, that the other States are somewhat concerned that they should be obtaining a larger piece of the cake, and of course this would be to South Australia's disadvantage. No final decision was made on this matter last week, but the States did agree to set up a working party with representation from each State, so that the whole question of needs could be examined to see whether the sharing arrangements were fair and equitable.

That working party is to be convened by the Commonwealth, and I would expect that, after a further meeting in June, I will be able to bring back more definite information about how the future division of the Commonwealth-State housing money is going to be divided between the States. South Australia has every right to believe that it ought to maintain its present advantage in this area. The reason for that is that before 1973, when the housing allocations were joined with the works allocations in the one amount from the Commonwealth, under the Commonwealth Loan Council arrangements, South Australia on its own initiative spent more money on housing and less on works than did the other States on a percentage basis.

Of course, our works basis under those arrangements was naturally not as great as that enjoyed by other States but, at the same time, we put more money into housing. After 1973 the Commonwealth accepted that same principle and continued granting to South Australia a proportion equivalent to that one which South Australia itself had decided in its own arrangements prior to 1973. That situation has been maintained ever since but, if a change does come, it means that we will have to live with that somewhat unfavourable works base. It would mean also that we would unfortunately then receive a less favourable allocation for housing purposes in comparison with the other States.

Therefore, we believe that the 15 per cent ought to remain in South Australia's favour, because of those historical circumstances. Getting back to the question, I point out that a final decision was not made on this matter last week. It will be examined more closely by a committee to be set up and, towards the middle of this year, we will know more definitely what the situation is going to be.

VEHICLE INSURANCE

The Hon. C. W. CREEDON: I seek leave to make a brief statement before asking the Minister representing the Minister of Transport a question about third party vehicle property damage insurance.

Leave granted.

The Hon. C. W. CREEDON: There have been many complaints recently about motor vehicles involved in accidents that are not comprehensively insured. I have had several cases referred to me in which the drivers involved, as they are not insured, leave the brunt of the repair damage to the drivers on the receiving end of the accident. The vehicle causing the damage often has no insurance cover at all, either third party property insurance or comprehensive insurance. I consider this situation to be quite wrong, because many people are acting irresponsibly, and it is obvious that some legislative action must be taken by the Government to provide protection to those

citizens of this State who are prepared to pay their way and insure their vehicles accordingly.

I know that there are certain legal means whereby one may attempt to recover some of the repair costs, but the problem is that some offenders will not or cannot pay. Therefore, I suggest there is only one reasonable course to adopt; that is, to require all persons seeking to register a vehicle to hold comprehensive or third party property insurance in the same way as all vehicle owners are forced to hold third party insurance before registering their vehicles. I ask the Minister to take action in the near future and, as this matter is urgent, to correct a serious anomaly.

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Minister of Transport and bring down a reply.

MR. M. A. KINNAIRD

The Hon. FRANK BLEVINS: Can the Minister of Community Welfare, representing the Minister of Agriculture, say whether Mr. Malcolm Kinnaird has resigned as Chairman of the Samcor Board? If he has, can the Minister tell the Council when Mr. Kinnaird's resignation took effect, why Mr. Kinnaird resigned, and whether Mr. Kinnaird will remain as a member of the board?

The Hon. J. C. BURDETT: I will refer the honourable member's question to my colleague and bring down a reply.

HOUSING TRUST

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Minister of Local Government a question about the Housing Trust plan referred to in this morning's *Advertiser*.

Leave granted.

The Hon. ANNE LEVY: On the front page of this morning's *Advertiser* are details of a new Housing Trust plan whereby the trust will lease properties from landlords and allocate them to tenants on the trust's waiting list. The trust will subsidise the difference between what trust rentals should be and the market value of the property. The *Advertiser* report states:

> All negotiations on properties will be made by a firm known as Ronald R. Sutton and Associates Pty. Ltd.

It indicates that landlords and agents wishing to participate in the scheme should contact that firm and not the trust. No details are given in that report about why this firm was chosen to act as agent or intermediary for the trust in this regard. How was that firm chosen to undertake such work for the trust? Was it by tender or was it part of the old-boy network? What commission or payment will the firm receive, and what financial arrangements have been made between the firm and the trust?

The Hon. C. M. HILL: I must say that I have not heard about the old-boy network since—

Members interjecting:

The Hon. C. M. HILL: I think it was in the late 1940's that I first learnt of an arrangement between the South Australian Housing Trust and the firm of Charles R. Sutton. The trust found it advisable to work through that particular licensed land agent with respect to some of its dealings, particularly regarding the purchase of land for subdivisional and development purposes. Throughout the term of the original Playford Liberal Government, throughout the years of the Labor Government, as well as the short term, as I recall, when the Hall Government was in office, the trust, which is of course an independent statutory authority, had that arrangement with this firm.

Ronald Sutton is a son of Charles Sutton, and that family arrangement has continued within the firm. As I understand the position, that is simply the system that the trust still employs. Therefore, the choice of that firm had nothing whatever to do with me; it is entirely a matter for the trust. For that reason the name has been mentioned in the press. I do not know whether the honourable member wanted to know anything further or more positive about the scheme, but I would be pleased to obtain any further information.

The Hon. Anne Levy: I asked what commission or payment it was getting.

The Hon. C. M. HILL: I will have to ascertain the basis of the financial arrangements. They have nothing to do with the Government or with me, but I will find out for the honourable member.

ASBESTOS IN SCHOOLS

The Hon. G. L. BRUCE: My question is directed to the Minister of Local Government, representing the Minister of Education, and relates to the use of asbestos by students and tutors in schools. Is the Minister aware that asbestos sheets in a frayed and worn condition are still being used by students and tutors in schools? These sheets are being used in Laboratories with bunsen burners, as protective mats. In view of the known effects of asbestosis, could the Minister have this matter checked as a matter of urgency to assure the public that a suitable substitute will be used, because this substance is still being used in schools?

The Hon. C. M. HILL: I will refer the honourable member's question to the Minister of Education and bring down a reply.

OLYMPIC ATHLETES

The Hon. J. E. DUNFORD: I seek leave to ask the Attorney-General, representing the Minister of Recreation and Sport, a question about Olympic athletes.

Leave granted.

The Hon. J. E. DUNFORD: Does the South Australian Liberal Government support the Prime Minister, Mr. Fraser, in boycotting the Olympic Games in Moscow? Secondly, will the South Australian Liberal Government support the prevention of Australian athletes from travelling to Moscow to participate in the Olympic Games?

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Minister of Recreation and Sport and bring down a reply.

TELEPHONE COSTS

The Hon. N. K. FOSTER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier, a question about telephones for members of Parliament, where the rental of such telephones and the cost of telephone calls are met by the people of this State.

Leave granted.

The Hon. N. K. FOSTER: If I may, I will deal with a matter of gross, malicious and vicious misrepresentation later. That matter arose in another place yesterday and relates to several simple straight-forward questions that I asked in this place yesterday.

I am not sure whether I should move to have the telephone directory incorporated in *Hansard* Mr. President; I do not suppose you would permit that, because it would present something of a problem. However, I hope you will allow me to freely quote from it those things that are relevant to the questions I wish to put.

Members interjecting:

The Hon. N. K. FOSTER: Mr. President, shut them up, because I have not said anything at all today, but they are at me already.

The PRESIDENT: Order!

Members interjecting:

The Hon. N. K. FOSTER: Shut up!

The PRESIDENT: Order! This Council went through a pantomime yesterday, and the Hon. Mr. Foster was one of the stars. I do not want a vaudeville show today. Honourable members will listen to the question.

The Hon. J. E. Dunford interjecting:

The PRESIDENT: Order! The Hon. Mr. Dunford will listen while the Hon. Mr. Foster asks his question.

The Hon. L. H. Davis interjecting:

The Hon. N. K. FOSTER: You go outside and say that and I will give you one where you deserve it. Mr. President, you did not hear what he said. He puts his head down and insults me.

The PRESIDENT: Order! I cannot hear you asking your question, either.

The Hon. N. K. FOSTER: Last night on *Nationwide* Mr. Evans, M.P., member for Fisher at the moment, was questioned about a coincidence that appears in the telephone directory. At page 218 of that directory there appears his name and a telephone number. Preceding that entry on page 217 there appears the name of a company in which he has continually said that he has no association, financial or otherwise. The latter entry appears under the name "Evans, F. S. & Sons Pty. Ltd, General Contractors, Old Mount Barker Road, Aldgate, 339-1163". On page 218 there appears, "Evans, Stan (M.P.) Electorate Office, 198 Main Road, Blackwood, 278-5844". Immediately beneath that entry appears, "Evans, Stan (M.P.), Old Mount Barker Road, Aldgate, 339-1163". That last number is the same as the number given by the firm with which he claims he has no association. In fact, he took umbrage when I truthfully said in this Council that he transferred hundreds of shares to his wife's name some few short years ago. Can the Attorney-General say whether or not those two telephone numbers are correctly designated in the telephone directory from which I have quoted? Can he also say whether or not the telephone number designated against the name of the company is the same as the telephone number that is used by the member for Fisher, and whether it is the subject of any form of payment, for rental or telephone calls, by the people of this State through the Parliamentary process? That gentleman has occupied the dual position of Party Whip; he was Opposition Whip when his Party was in Opposition, and Government Whip now that his Party is in Government. I do not wish to ask any further questions about this particular gentleman. However, following Question Time I will seek to make an explanation, because Mr. Evans grossly misrepresented me yesterday.

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Premier and bring down a reply.

PERSONALISED NOTEPAPER

The Hon. B. A. CHATTERTON: I seek leave to make a short explanation before asking the Attorney-General, representing the Premier, a question about personalised notepaper.

Leave granted.

The Hon. B. A. CHATTERTON: I am sure that all honourable members are aware that some Ministers have now introduced a system of personalised notepaper, on which appears not only their Ministerial title but also their own name. I am also aware that in some cases (for example, the Minister of Agriculture) large quantities of the Ministerial paper used by the previous Government were scrapped when the new personalised notepaper was introduced.

Members interjecting:

The PRESIDENT: Order!

The Hon. B. A. CHATTERTON: It is rather ironic that the Government has called on the Education Department to economise in its use of paper, because the Department of Agriculture scrapped a lot of very serviceable notepaper that could have been used by the Minister. Which Ministers now use personalised notepaper? Which Ministers, besides the Minister of Agriculture, decided to scrap perfectly serviceable notepaper? What was the cost of this unjustified wastage?

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Premier and bring down a reply. In so doing, I indicate that there has been no scrapping of paper as far as I am aware, and certainly not in my department, where departmental notepaper is still used for many letters as well as notepaper which I personally use. All of that paper will be used in due course. I am sure that there is no scrapping and no wastage of paper in my department. I will refer the other aspects of the honourable member's question to the Premier and bring down a reply.

DEPARTMENTAL BRIEFINGS

The Hon. J. R. CORNWALL: I have a note from the Minister of Community Welfare, indicating that he has a reply to a question I asked on 30 October last year. Since that is now four months ago, I think perhaps I should refresh the memories of honourable members present by restating the questions. They concerned departmental briefings and Roxby Downs, and were as follows: Will the Minister give a firm undertaking that any briefings will be given openly, without compromise, and without any restrictions regarding confidentiality? Will the Minister make available to me immediately (and this is now four months ago) all details of the department's activities and involvement in Roxby Downs exploration and proposed development?

The Hon. J. C. BURDETT: In answer to the honourable member's questions, a letter has been sent to him explaining the Cabinet approval of guidelines covering the access by members of Parliament to public servants and other public officials. The Chairman, Public Service Board, has issued a memorandum to Permanent Heads setting out conditions applicable to requests for information by members of Parliament.

In answer to the second part of the question, normal assessment procedures appropriate to mineral exploration licences have been undertaken for Roxby Downs. Such assessment will continue when developments beyond the exploration programme are prepared.

ETHNIC AFFAIRS BRANCH

The Hon. C. J. SUMNER: I seek leave to make a brief explanation prior to directing to the Minister Assisting the

Premier in Ethnic Affairs a question on the matter of ethnic affairs offices.

Leave granted.

The Hon. C. J. SUMNER: Shortly before the election, as part of the previous Labor Government's policy of expanding the services available to ethnic groups in South Australia, particularly services for interpreting and assistance to members of ethnic communities whose knowledge of the English language was not good, the Government, in addition to establishing the Ethnic Affairs Branch and an information service in the centre of the city, established an office at Campbelltown, at the Glynde corner. I was invited to the opening of that office, although I understand that, by some oversight in the Ethnic Affairs Branch, the Hon. Mr. Hill was left off the list.

Members interjecting:

The Hon. C. J. SUMNER: Honourable members will recall that the Hon. Mr. Hill got into a huff because he had not been invited to the opening of this office, and he then over-reached himself by acting illegally in transferring certain officers of the Ethnic Affairs Branch who he, somehow or other, and without inquiry, thought were responsible for leaving him off the invitation list. I think one would expect a Minister of the Crown to be a little more generous about having been overlooked when invitations were issued for the opening of such an office, but the important point is that the previous Government wished to provide, on a decentralised and co-ordinated basis, services for members of ethnic communities, not only in the central city area, but also in the suburbs where there are large concentrations of migrants. It is well known that the Campbelltown area contains a large number of Italian citizens. My questions to the Minister are these: Is the Campbelltown office still open, and, if so, who mans it? If the office has been closed or is not manned, what are the reasons for that? Further, if a transfer has been made from the Campbelltown office, to where has that transfer been made, and for what reason?

The Hon. C. M. HILL: First, let me say that I was not upset because I thought I was overlooked when the invitations were sent out for the opening of the Campbelltown office of the Ethnic Affairs Branch. I was upset that the Government had decreed that only members of its own Party were to be invited to the opening.

Members interjecting:

The Hon. C. M. HILL: That was a fact of life. It happened. I quoted that as an example of how members of the staff of the Ethnic Affairs Branch saw their Government acting in such a blatantly political way and then, unfortunately and quite understandably, were influenced by that poor example. The second point was that the honourable member said that the new Government or I had acted illegally in regard to the transfer of staff. He knows that that was not illegal, because he has made representations to the Premier since we last met. The matter has been referred to the Public Service Board. Everyone involved has had a laugh about the whole thing, and the antics of the Hon. Mr. Sumner in the matter, and he has been advised that it was in no way illegal.

The Hon. C. J. Sumner: I haven't finished with him yet.

The Hon. C. M. HILL: Let us get down to what the question was about, and that was the office at Campbelltown. I have not had a report on this, nor have I checked on it for some time. I have not given any instructions in regard to change but, to the best of my knowledge, exactly the same arrangements exist now as existed when the honourable member's Party went out of Government. There was, I believe, a young lady based there, employed by the branch, although it was not a full-time task. I believe, from memory, that it was either so many days a week or so many half-days a week that the office was open, and to the best of my knowledge that position still remains. To the best of my knowledge also, the same employee who was involved is still there. If there have been changes to what I believe to be the position, I shall most certainly bring back a report on them; if there have not been changes, that is the situation.

PERSONAL EXPLANATION: HILLS FIRES

The Hon. N. K. FOSTER: I rise to make a personal explanation, because I claim to have been misrepresented.

The PRESIDENT: Is the honourable member seeking leave to make a personal explanation?

The Hon. N. K. FOSTER: Yes.

Leave granted.

The Hon. N. K. FOSTER: Quoting from yesterday afternoon's proceedings in this Chamber, you may recall, Sir, that I asked a question because I thought it was a matter of public duty to pursue the point following allegations made regarding a fire in the Adelaide Hills last week. I have refrained from asking further questions on that today, but a great bulk of information has come to me, and people have come to me prepared to swear affidavits. I shall deal with that matter in more detail when I am satisfied of their *bona fides* and when I can put the matter before the Council in proper fashion. I quote, from the report of yesterday's proceedings in the House of Assembly, a speech made by Mr. Evans, the member for Fisher, as follows:

> One honourable member in another place used Parliamentary privilege today to say some malicious things that I believe he knew were untrue, and for a man who claims to have fought in the armed forces for democracy and to have some principles to take that sort of course shows him as he really is.

He goes on to say that I accused him of lying and that in fact I attacked his wife. I wish to make it quite clear that I do not "claim" to have served in the forces. I served in six war zones from 1939 to 1946. I have never yet sought to impose patriotism on one side of the House or the other. I do not think any one of us in this place has a monopoly on patriotism, but I am forced to draw to the attention of the Council that Mr. Evans is 48 years of age. He could have involved himself in the Korean War when the Labor Party was in office and because of the Prime Ministership of the day; he could have served in Malaysia when the Liberal Government was in office in the Federal House; or he could have gone to Vietnam instead of allowing his vote to be used to force other young people into a barrel, with the possibility that they would end up in a military coffin, buried in faraway lands or local cemeteries.

The Hon. J. C. BURDETT: I rise on a point of order. I cannot see that this is a personal explanation by the honourable member.

The PRESIDENT: I was about to draw the Hon. Mr. Foster's attention to the fact that he should not reflect upon the character or integrity of a member in another place. The Hon. Mr. Foster is moving away from the relevance of his explanation.

The Hon. N. K. FOSTER: I am not reflecting on the honourable member's character. I admire the man for not wanting to go to wars such as those I mentioned, but I abhor the action of sending others to do the work that he is not prepared to do. I did not make any such attack on his wife. I merely stated that he had transferred certain

shares. Another member of this Council informed the Council of transference of shares that he considered to be legal and honourable in reply to questions earlier in the life of this Parliament. If Mr. Evans has any honour, he will rise and apologise for what he has said in misrepresentation of myself in this regard.

I accuse him of lying. I believe he has done so on a number of occasions, and I do not withdraw that remark. I will not pursue that line as it does not come under the leave that I was granted. The day will come when the person to whom I refer will be dissociated by all of his colleagues.

SEX DISCRIMINATION ACT

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Attorney-General a question on the Sex Discrimination Act.

Leave granted.

The Hon. ANNE LEVY: On 24 October last year I asked the Attorney-General whether he would implement the three recommendations made by the Commissioner of Equal Opportunity in her annual report. These related to extending the provisions of the Sex Discrimination Act to cover cases of pregnancy in employment, sexual proclivity, and availability of services offered by sporting and other clubs.

At the time, the Attorney-General told me that he had not had time to examine these recommendations but that he would let me know when he had done so. As it is now four months later, I presume that he has had time to study the annual report from the Commissioner of Equal Opportunity. Will the Attorney-General indicate whether the Government will implement any or all of these recommendations?

The Hon. K. T. GRIFFIN: The Government has not taken a decision as to whether or not it will implement the recommendations.

SALVATION JANE

The Hon. B. A. CHATTERTON: I seek leave to make a brief explanation before asking the Minister of Community Welfare, representing the Minister of Agriculture, a question on salvation jane.

Leave granted.

The Hon. B. A. CHATTERTON: Last year, in the first part of this session, the Minister of Agriculture made a statement in the House of Assembly regarding the biological control of salvation jane. In that statement he claimed that the control offered by biological agents would be best in an area south of a line drawn east and west through Adelaide and it would be poorer north of that line. He also advised that this information had come from the C.S.I.R.O. It seemed rather strange because, from my own observations of biological agents, the effects seem to be much greater in areas where the plant is very dense.

I noticed that spotted alfalfa aphid did not attack plants along the roadside. I asked the Minister of Agriculture to provide me with the scientific work on which this claim was based. I received a reply during the Christmas break from the Minister saying that there was no scientific work done by the C.S.I.R.O. to prove this claim. I therefore ask the Minister on what basis he made this claim in his statement in the House of Assembly and whether he was in fact misrepresenting the C.S.I.R.O. by claiming that it supported this view.

The Hon. J. C. BURDETT: I will refer the honourable member's question to my colleague and bring back a reply.

RETAIL DEVELOPMENT PLANNING

The Hon. C. J. SUMNER (Leader of the Opposition): I move:

That a Select Committee be appointed to inquire into and report upon all aspects of retail development planning in South Australia and the problems associated with the proliferation of large retail shopping centres with particular reference to—

(*a*) the role of factors such as traffic flow problems, energy impact and environmental assessment procedures in planning approval; and

(*b*) the problems encountered by small businesses in retail development and the proliferation of retail shopping centres including assessment techniques for the profitability and viability of proposals, the effects of new developments on the viability of existing small businesses and the nature and fairness of shop leasing agreements in the developments.

The Hon. J. R. CORNWALL seconded the motion.

The Hon. C. J. SUMNER: Need exists for this Select Committee, as I believe Parliament should play a role in the development of policy and the solutions of problems that the community is currently faced with in the question of retail shopping development and in particular the proliferation of large shopping centres, particularly in the metropolitan area. On this issue we have another example of a matter on which the Government has been indecisive. It illustrates how this Government just bumbles along as best it can.

We have had the example of Moore's, where the Government was elected on a policy of supporting and encouraging free enterprise. It has now allowed free enterprise in that area to languish in favour of a State project. We had the Government's promise over the West Lakes lights. The Government fell down on its election promises. We then saw a number of about-turns over that issue until the Government finally decided to accept the Royal Commission's report that had been ordered by a Labor Government and prepared under a Labor Government.

The Hon. M. B. Cameron: Weren't the lights brought down a bit in intensity?

The Hon. C. J. SUMNER: Marginally. On the question of opening Select Committees, the Government was virtually instructed by the Council to open up the Select Committee on Uranium Resources. Government members ignored the request until I wrote to them and gave them notice of my intention to move a motion in this Council forcing the Select Committee to open to the public. They then did an about-turn.

On the question of Aboriginal land rights, the Government promised last year to consult with the Pitjantjatjara over Aboriginal land rights. However, the Government went ahead and set up committees without any consultation. Regarding the Bank of Adelaide, before the election the Government promised that it would be saved. The Premier dithered around for six weeks or so after the election, and eventually the Bank of Adelaide went under. That indicates that the Government has difficulty in making up its mind and, when it makes it up, it usually makes it up the wrong way.

The question of retail shopping developments is yet another example of the Government's dithering and

indecision. Honourable members will recall that in 1978 the Labor Government presented a Bill to Parliament which enacted section 36c in the Planning and Development Act and placed some control on shopping centre development.

It provided that the planning authority, local government or the planning authority, could not deal with applications for shopping centre approval if the area concerned was greater than 2 000 square metres or the proposed development was within 100 metres of the boundary of an allotment that already contained a shop. In those circumstances, the application had to be referred to the Minister if it was made between 16 March 1978 (more or less when the Bill was passed) and 31 December 1979.

Under that new section 36c, the Minister could authorise an application to proceed and be considered by the planning authority, but he had to be satisfied that the proposal conformed to the purposes of the development for that particular area, that traffic matters were properly taken into account, that transport and traffic works were taken into account, and that the proposal was not likely to have a detrimental effect on development of, or result in diminution of use by the public of, shops or community facilities.

This provided the Government, at a centralised level, at governmental level, with some form of control over the development of shopping centres. The present Government must have decided last year that it did not wish those controls to be extended. The legislation was in force until 31 December last year and, if the Government wished to extend it, obviously it should have introduced legislation during the Budget session last year, but it did not do that.

In other words, it took the decision that this control whereby the Minister had to have referred to him certain shopping centre development proposals should not continue. The Government intended the matter to go back to the local planning authorities for consideration. Following that, during January, after the Government had decided to opt out of any centralised or State-wide community planning in this area, there were demands from the Local Government Association, various retail groups, and residents for a statement of some coherent policy from the Government.

They also called for a moratorium on shopping centre development until the Government could produce a policy that was acceptable to the Parliament and to the community. The Government did nothing about that matter. Having given up all its controls and having had community demands that some form of planning controls be reintroduced, the Government did nothing during January. When my colleague the Hon. Mr. Cornwall raised the issue during January, the present Minister (Mr. Wotton) criticised him heavily.

The Government did nothing until it was forced by two factors to do something. One factor was that there was a Norwood by-election coming on and the Norwood Parade traders particularly were upset about the fact that the Government had opted out of its responsibilities in his area. In the last stage of the Norwood by-election campaign, I heard some funny stories about members opposite running up and down Norwood Parade trying to placate the traders about the Government's lack of action. I am sure the Hon. Mr. Cameron will remember that. The Premier deputised him to go out and keep those people quiet, to tell them that the Government had not really forgotten them and that it was going to do something to help them. It is clear that the Hon. Mr. Cameron's tramping up and down Norwood Parade was futile in terms of the Government's winning the by-election.

The other factor was that during the week before 16 February I gave notice of my intention to proceed with this motion in this Council. It was then, after the Government had received electoral pressure from the Norwood traders and realised that the Opposition was going to make a move in Parliament on the issue, that it decided that it had to do something. Its grand plan was announced, I believe, late on the Thursday before the by-election and was published in the press on Friday 15 February.

At the last moment, the death knock as it were, before the by-election the Government finally came out with a policy in this area. It was forced into doing that by the fact that there was a by-election coming up and also the fact that the Opposition had taken action to have the matter resolved in Parliament. It is another example of a Government that is indecisive and does not know where it is going. On one hand, it removed control effectively at the end of December by not re-enacting the legislation. Then it tried to bluff its way through January when the retailers, particularly the small ones, and resident groups were concerned.

It tried to bluster its way through January to try to solve the problems emanating from those quarters. Then, when faced with the problem of a by-election, the Government did an about-turn and introduced a policy that would placate those groups that were dissatisfied with the Government's action. It is another example of dithering. It is extraordinary that, when the Minister of Planning (Mr. Wotton) announced the new policy on the day before the by-election, the report stated:

> Mr. Wotton said last night the decision to implement the legislation was made at a Cabinet meeting on Monday. "I want to make it clear that it was not as a result of the telegram from the Norwood Traders' Association," he said.

He tried to give the impression that it had nothing to do with the Norwood by-election. I do not know why the decision was made in Cabinet on Monday if it was not until Thursday that it was announced. I suspect that the Government realised that the Opposition's action had beaten it to the gun on the issue. It realised that it was in electoral difficulties because of the Norwood by-election and wanted to placate the traders, so Cabinet got together in the last day or two before the election and announced the decision to the community.

In our view, that policy does not resolve the issue, and we consider that there is still considerable need to proceed with a thorough Parliamentary investigation of the problem. We do not believe that the proposal introduced at the Norwood by-election meets the situation. In essence (and the Hon. Mr. Cornwall will deal with this in greater detail) the proposal by the Government, which we have not seen in legislative form in this Council yet, was that there should be controls of shopping centres outside shopping zones by introducing a floor area limit of 450 metres for new development.

The problem is that it says nothing about development in shopping zones, and many of the large developments occur within areas that are already appropriately zoned. It does give a considerable leeway for development outside shopping zones.

I will leave the Hon. Mr. Cornwall to deal in detail with the specifics of the problems and the gaps existing in the Government's current proposals. The simple fact is that the Government's proposal does not take into account any of the problems of small businesses. It has been recently indicated that the number of bankruptcies in South Australia has increased, especially involving small businesses. The Government's proposal does not deal with the problems in the specific terms of reference proposed for the committee. It does not deal with matters such as environmental problems, energy impact or travel-flow

problems, and it does not deal with the procedures for ascertaining whether the proposals are viable; nor does it deal with the effect of proposals on existing businesses.

I know that the Government will say that it has a discussion paper on this matter, and that it is waiting for comments from community groups before it makes a decision, but that paper is inadequate: it does not deal with the sorts of problem that I have mentioned, involving existing businesses, energy consumption, the environment and the long-term viability and profitability of businesses. Neither does it deal (and this should be an important part of the committee's deliberations) with the employment effect, either in a particular locality or *vis-a-vis* the difference between large shopping centres and smaller localised businesses. The committee would also undertake investigations in that area.

The Government has got itself into trouble over this issue because, in its commitment to its free-enterprise philosophy, which it got a bit carried away with during the recent election campaign, it decided that market forces and free-for-all open commercial competition should be the only criteria in that area. It decided that the sorts of extra social factors that I have mentioned really do not matter much. The Government has a political philosophy based upon the efficacy and desirability of allowing market forces to operate. In this day and age it is a political philosophy that I believe is not appropriate to a modern, complex industrial community; it is a philosophy that really has no substantial or solid moral base in it, either, because it is based upon the philosophy of dog eat dog, a situation of winner take all, and it claims that those people who have the economic strength—the large economic conglomerations and corporations in our community—whether or not they be South Australian companies, ought to win the day. That is the political philosophy to which the Government is wedded. It is the philosophy that has led it to claim that it will (at least before the Norwood by-election) remove planning controls.

The Government believes this matter should be left to the flow of market forces but subject to some minor controls at local government level. The Labor Party philosophy in this area is that there is a need for community planning, and a need for a co-operative approach in this area. It is too simple to say that we should allow the market forces to operate, and it is too simple to say that we should allow uncontrolled development by large shopping companies.

There are significant social, economic and environmental factors that have to be considered to decide what approach the community should adopt. We do not have a free-for-all survival-of-the-fittest mentality which, as the Government will find, produces economic and social problems of enormous proportions. This matter demonstrates the difference between the political philosophies of the two Parties. On the one hand the Liberal Party is committed to free enterprise and market forces; it is committed to a survival-of-the-fittest mentality in economic terms, whilst the Labor Party believes in a co-operative view of society and in everyone co-operating to produce the best results for the community and not just for a particular large corporation economically strong within the community.

The Labor Party believes in planning; it believes that the community should plan to enable the various factors to which I have referred to be taken properly into account. This is a complex issue and Parliament should play some part in producing a coherent policy that will take into account and balance the varying interests that must be considered. The establishment of a committee is tied in with a proposal that the Labor Party has for a moratorium on the development of shopping centres until the issue has been properly discussed and until the results of the committee are known. The Hon. Mr. Cornwall will introduce a Bill later today to give effect to that policy while this matter is being investigated. There should be such a moratorium.

During Question Time I gave notice of a motion with respect to this Select Committee to have the same effect as the instructions that this Council gave to the Select Committee on Uranium Resources, that is, that the committee comprise six members, that the Chairman have a deliberative but not a casting vote, and that it be within the power of the committee to publish its evidence before finally reporting to the Council. In view of the discussions which have been held in the past week, I hope the committee can admit strangers to its hearings and allow publication of its evidence. I would hope that if the committee is established it would abide by the spirit of those motions, open its hearings to the public and allow the publication of evidence. If it did not, the Council would need to have another look at the matter as it had to do in the case of the Select Committee on Uranium Resources. Finally, the necessity for this committee is based primarily on the complex nature of the issue.

It is an issue about which everyone in the community should feel that they have had the opportunity of putting their point of view to the Government, and to Parliament. As I have said, a Select Committee is a way of achieving that. A Select Committee is important, because the Government's approach to this matter seems to be too narrow. The discussion paper that was prepared does not take into account the broader social, economic and environmental matters that I believe should be considered before the community can develop an overall policy on this issue. I commend this motion to the Council and I believe that the Government will benefit from the views that a Parliamentary Select Committee could give it on this issue. I feel sure that a Select Committee could go some way to producing an overall policy that is acceptable to the community.

The Hon. J. R. CORNWALL: I second the motion moved by my colleague the Hon. Mr. Sumner in his usual elegant and eloquent way. It does not give me a great deal of pleasure to be on my feet seconding the establishment of this Select Committee, because I have made it clear for some time that I believe this type of inquiry could have been conducted far more effectively and far more efficiently by a Government sponsored technical advisory committee. As the Opposition spokesman on planning, I have consistently called for such a committee to be established. However, in this as in so many other things, the Government has not proved to be responsive or responsible. I do not need to tell the Council just what a chaotic situation is developing in Adelaide and some provincial cities. Anyone who is able to read—

The Hon. L. H. Davis: In the last four months!

The Hon. J. R. CORNWALL: If the honourable member listens, he will learn. I must say that the honourable member has a hell of a lot to learn, but if he listens he may learn. All members would know that no subject has been more widely canvassed in the community than the retail planning and development fiasco. It has received a very comprehensive coverage in the news and editorial columns of our press. However, it is worth while briefly summarising some of the more significant statements that have been made. On 26 December last, the Opposition called for an inquiry into the needs of retail business in the metropolitan and country areas of South Australia. The *Advertiser* of that date stated:

> The South Australian Government should establish a committee to inquire into the needs of retail businesses in metropolitan and country areas, a Labor M.L.C. said yesterday. The Opposition spokesman on planning, Dr. Cornwall, said he had received many complaints from small businesses at shopping centres about the large number of additional retail outlets which had opened recently and about some of the practices of landlords.

I was quoted in that article as follows:

> Most of the planning work done in the past has confirmed such things as traffic and pedestrian flow, visual amenity and accessibility. There is very little information available, however, about the needs or economic viability of small retail businesses in South Australia.
>
> Because of the large number of additional retail outlets opened recently the situation is now critical and, in some cases, desperate. The impact of new centres on existing businesses and communities should be an important aspect for the inquiry.
>
> It should be as broadly based as possible and include representation of small business, consumer organisations, the trade union movement, the large retailers and regional shopping-centre operators.

The only response to that was a personal and ill informed attack on me by the Minister of Planning, Mr. Wotton. I refuted the Minister's remarks through a letter to the Editor on 5 January. I repeated my call for an inquiry and went on to say:

> The discussion paper recently released by the Department of Urban and Regional Affairs does not cover profitability or viability of retail businesses. This is hardly surprising, since it was not within the terms of reference of the investigation.

On 8 January, the *News* referred to a statement made by the Secretary of the Local Government Association, Mr. Jim Hullick, as follows:

> Developers of shopping centres should have to make an impact study on effects of new shops, local councils say. Such a study should be necessary before lodging a planning application. And small businessmen are urging a Government study for each new shopping centre application. The Local Government Association believes shopping centres will become a serious community and political issue of the 1980's.

On 9 January the Deputy President of the Elizabeth Chamber of Commerce and Industry, Mark Mau, summed up a very important aspect of the problem in a letter to the Editor by saying:

> The task of stopping the over-shopping plight cannot be left to the market forces. Big business greed will do to the retail businesses exactly what happened to service stations. The testimony of the big business greed is the number of service stations closed down, in a lot of cases at the cost of the small businessman's life savings.

In the meantime, reports of further applications for retail developments kept pouring in. In the *News* on 14 January, I again warned of the serious consequences for small business in South Australia arising from the Tonkin Government's policy. I stated that the policy of uncontrolled expansion would see the demise of small suburban businesses. On that same day the *Advertiser* ran a feature article by Ray Folley, entitled "The shop front battle", stating, among other things:

> Metropolitan Adelaide is the scene of a major retailing battle. It is not about the price of soap suds or breakfast cereal. It is about domination of the total market.
>
> And the prize is the opportunity for profit from the hundreds of millions of dollars consumers spend in shops each year. On the one side are the big powers, the handful of sophisticated developers, owners and operators of the major supermarkets and shopping centres. On the other are the people who own and run the numerous small centres and individual shops scattered throughout the suburbs.

Still the Liberal Government was not moving. The silence from the champions of the small businessman was quite deafening. The next day the *Advertiser* ran a further feature article by David Moncrief, headed "Blueprint for conflict". That article revealed the depth and strength of the residents and traders action groups in Adelaide and their vehement opposition to what was going on.

In the *News* of 18 January I called for a moratorium on further development approvals, pending a Government inquiry. On 29 January this was taken up by the Local Government Association's Secretary-General, Jim Hullick, who was supported by the Executive Director of the Mixed Business Association, Mr. R. E. J. Paddick.

The same morning, the *Advertiser* estimated that there were probably more than 10 000 shops serving the Adelaide statistical division. The *Advertiser*, again following this up, ran an editorial the next morning strongly supporting a moratorium. That editorial said:

> The Local Government Association's call for a moratorium on shopping centre development in South Australia is eminently sensible.

Presumably, by implication, so was the Opposition's call 11 days earlier. That editorial concluded by saying:

> If competition is good for us, then financial casualties are a lesser consideration, perhaps, but the trend is causing environmental casualties as well. A moratorium now would allow time for a searching appraisal.

Through all this mounting irrefutable evidence of a major crisis the Government persisted with its three wise monkeys act. However, eventually the Planning Minister, Mr. Wotton, was moved to say that a moratorium would be a "drastic action" which the Government would not want to implement.

Despite overwhelming evidence of a major crisis, cries of anguish from small businessmen, and angry cries from thousands of concerned residents, the Government wanted to sit it out. On 6 February I again made a statement in which I described the Government's decision to relinquish its co-ordinating role in retail development as "grossly irresponsible". The press report summarised the Opposition's policy, as follows:

> The State Government should take an active role in planning decisions on future shopping development according to the Opposition spokesman on planning, Dr. Cornwall.

Later in that article I was quoted as saying:

> Experience both interstate and overseas has shown that the allocation of resources in the retail sector cannot be left to developers and local government alone.
>
> The complete revision of the Planning and Development Act which was begun by the previous Government should proceed as a matter of urgency. In addition a technical advisory committee, on which all interested parties are represented, should be established to report on the profitability and long-term viability of existing and proposed centres . . .
>
> Urgent attention should be given to the effect which new shopping centres have on the environment and local communities. Applications should be assessed for their impact on adjacent centres, local employment and overall energy consumption.

All that the Government has been able to do during these various discussions and calls from interested groups is to refer again to the discussion paper put out by the Department of Urban and Regional Affairs before Christmas. That paper made no reference to long-term viability or profitability, as my colleague the Hon. Mr. Sumner has already pointed out. It said nothing about the impact on existing employment, nothing about the impact

on the adjacent environment. Certainly, it made no mention of the very important point of energy consumption, because these large shopping centres are air-conditioned 365 days a year, and they use an inordinate quantity of natural gas and electricity. Who knows what the future holds? Clearly, we cannot go on building these mausoleums, not only because they will not be profitable in the long term and we will be left with acres of bitumen desert, but because it will not be possible to air-condition them and, in the way they are built, without air-conditioning they will be monuments to the folly of the Government.

Through all this, the Government was still refusing to budge, despite enormous pressure from the full spectrum of the community, particularly residents and traders. At this stage, in consultation with my colleagues, it was decided that we should use all of the forms of this Council available to us—the establishment of a Select Committee to inquire as broadly as possible into the many problems of retail trading, planning and development, and the introduction of a private member's Bill establishing a six-month moratorium. Both of these commitments will be honoured today.

On 15 February, the day before the Norwood by-election, the Government, with a "far too little, far too late" approach, announced that it would introduce interim legislation to restrict the development of shops greater than 450 square metres outside zoned shopping centres. I do not know whether this was a prime example of the incompetence and bungling to which my colleague referred, or whether it was intended as an attempt to deceive the public. If it was an attempt to deceive the public in the pre-by-election atmosphere, it was singularly unsuccessful. On the Friday night immediately prior to the by-election, the Minister attended a public meeting at Norwood, where angry retailers and representatives of residents action groups from all over Adelaide nailed him to the wall. One could hardly blame them, because the application of interim control outside shopping zones was estimated variously to control somewhere between 5 per cent and 10 per cent of total applications.

I deeply regret that the Government has not set up a widely representative committee of inquiry to investigate all aspects of this debacle. However, I believe that a Select Committee will perform a useful role, and I strongly support the motion.

The Hon. K. T. GRIFFIN secured the adjournment of the debate.

PLANNING AND DEVELOPMENT ACT AMENDMENT BILL

The Hon. J. R. CORNWALL obtained leave and introduced a Bill for an Act to amend the Planning and Development Act, 1966-1978. Read a first time.

The Hon. J. R. CORNWALL: I move:

That this Bill be now read a second time.

It is a simple but comprehensive measure designed to prevent planning approval for construction or extension of shops both in and outside zoned shopping centres for a period of six months. It does not interfere with the upgrading or refurbishing of existing shops. It is an interim measure, intended to genuinely preserve the *status quo* until more information is gathered to enable detailed, simplified and effective policies governing retail development to be formulated and drafted into legislation.

It implements a policy which has been developed by the Opposition as a response to the obvious chaos which has recently arisen in retail trading, planning and development. The period of the moratorium is considered to be the minimum time required to collect and collate all the necessary information. It is a natural corollary to the motion to appoint a Select Committee on shopping centres introduced in the Legislative Council today.

In introducing the Bill, I want to reiterate that the Opposition has no wish to see initiative stifled. However, when a handful of large and opportunistic developers threaten small business and suburban environments, some control is essential.

The Opposition is also acutely aware that, in the last 12 to 18 months, shopping centre construction has provided the majority of employment for building and construction workers. The overall unemployment rate among these workers remains distressingly and destructively high. We do not believe, however, that the solution to this problem lies in destroying all rational planning control or in discarding environmental considerations. One of the principal considerations should surely be to divert some or all of the development capital into construction areas of greatest need. Certainly, on the evidence which is available, that is not the building of more and more retail outlets.

The Opposition regrets that it has to take the action proposed in the Bill. This is more conventionally and properly an initiative which should be taken by the Government. However, repeated calls by the Opposition, the Mixed Business Association, the Local Government Association, large numbers of local retail traders groups, and thousands of residents through residents action groups, have produced no realistic or responsible action. The Government seems prepared to continue to abdicate its legitimate responsibility in this area. It persists with a totally unrealistic and blind adherence to a free market forces ideology.

Less than two weeks ago, when confronted by residents and traders action groups at a public meeting at Norwood, the Minister of Planning responded by saying it was all really a matter for local government. Local government generally does not possess the legislative control, the expertise or the manpower to handle the present situation. Nor are local councils able, within the existing framework, to co-ordinate or rationalise retail developments on a regional basis. This legislation will allow time for a more realistic role to be defined for them.

The Hon. K. T. GRIFFIN secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

(Second reading debate adjourned on 19 February. Page 997.)

Bill read a second time.

In Committee.

Clause 1—"Short titles."

The CHAIRMAN: In clause 1 there is a clerical error: "1979" will be altered to "1980".

Clause 1 passed.

Clause 2 passed.

New clause 2a—"Delegation of certain powers by the Attorney-General."

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

After clause 2 insert new clause as follows:

2a. The following section is enacted and inserted in the principal Act after section 348:

348a. (1) The Attorney-General may, by instrument in writing delegate any of his powers under this Part—

(a) to apply for the reservation of a question of law; or

(b) to appeal against sentence,

to any legal practitioner in the service of the Crown.

(2) A delegation under this section is revocable at will.

(3) An apparently genuine document purporting to be an instrument of delegation under subsection (1) of this section shall, in the absence of proof to the contrary, be accepted in any legal proceedings as proof that the powers referred to in the instrument have been delegated to the legal practitioner referred to in the instrument.

This new clause seeks to provide that the Attorney-General may, by instrument in writing, delegate any of his powers under the Part in which this section appears. That delegation can extend to an application to the Supreme Court for the reservation of the question of law in those circumstances where a defendant has been acquitted, or to appeal against a sentence imposed on indictment. The Mitchell Committee, in its report, indicated that there would be some value in appeals against sentences, in particular, being able to be taken by the prosecutors as a matter of course without each one being treated as a special case. That committee believed that there was no merit in each one having to receive the personal approval of the Attorney-General before the appeal against sentence could be made. There was a possible qualification that this was certainly appropriate in the early days of the operation of such amendments as are embodied in this Bill and could be subject to review at a later stage.

In practice, in the early stages I would imagine that the Crown Prosecutor would refer all these matters to the Attorney-General, not necessarily for the purpose of obtaining his approval but for the purpose of informing him as to the way in which the Crown Prosecutor's staff is exercising its opportunities under this legislation. The delegation is to be irrevocable at will, and for the purpose of facilitating proof of a delegation there is, included in a new subsection (3), a provision which will enable the certificate under the hand of the Attorney-General to be taken as evidence of delegation in the absence of proof to the contrary.

I ask the Committee to accept the new clause, and in so doing I reiterate the comments I made at the second reading stage of the Bill: I and the Government generally support the concept embodied in the whole Bill and believe that it is an important matter to have embodied in our criminal law.

The Hon. C. J. SUMNER: Through the Committee I would like to apologise to the Council for not having formally replied to the second reading debate on the Bill. According to my Notice Paper, the Hon. L. H. Davis was down to speak on the second reading, and apparently he declined to do so.

The Hon. M. B. Dawkins: He didn't have to.

The Hon. C. J. SUMNER: I am not suggesting that he had to but he was down to do so and declined. Therefore, I did not get the opportunity to reply. Nevertheless, all that I would have done was thank honourable members and the Attorney-General for the attention they had given to the Bill. I am pleased to see that Government members opposite are going to support it. In fact, the Attorney-General said in his second reading speech that he agreed with all the aspects of the Bill except the one which required the personal attention of the Attorney-General to institute an appeal against a sentence which the Crown thought was too lenient.

In my second reading explanation I had not been absolutely definite that every appeal that is taken under this new section should receive the personal attention of the Attorney-General. I raised the possibility that, under the powers of delegation that already exist in the Supreme Court Act, the Crown Prosecutor could possibly institute the appeal without personal reference to the Attorney-General, such as is done now with the laying of an information, where the Attorney-General generally gives a delegation to the Crown Prosecutor to lay informations on his behalf.

The Attorney-General has apparently taken the view that the delegation power that currently exists in section 118a of the Supreme Court Act is insufficient to cover the situation of the Attorney-General delegating his powers under this new section, where the Crown decides to institute an appeal because it believes that a sentence has been too lenient.

I have no objection to the amendment. I think it is the best possible solution of the problem. In our system, it is the responsibility of the Attorney to institute prosecutions. He ultimately has responsibility for the institution of prosecutions and for continuing them in the courts. It is he who can authorise that a prosecution not be proceeded with by instructing counsel to enter a *nolle prosequi.*

He has the ultimate responsibility in prosecutions of all kinds, although in the average run of the mill case he does not intervene. In summary court matters, it is left entirely to the police. In the case of Supreme Court indictable matters, the Attorney has responsibility for laying information, but he delegates that power. In this case, it is proper that the Attorney should retain the ultimate responsibility but on a day-to-day basis he may delegate his powers, presumably to the Crown Prosecutor, to make the day-to-day decisions. We have, of course, always retained his right to overrule that decision or withdraw the delegation. I think that is the most appropriate way to resolve the matter.

New clause inserted.

Remaining clauses (3 to 6) and title passed.

Bill reported with an amendment. Committee's report adopted.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Administration and Probate Act, 1919-1978. Read a first time.

The Hon. J. C. BURDETT (Minister of Community Welfare): I move:

That this Bill be now read a second time.

This short Bill proposes amendments to the principal Act, the Administration and Probate Act, 1919-1978, relating to the appointment of the Public Trustee, Deputy Public Trustees, and other officers. Changes in respect of this matter were proposed by a Bill that was enacted in 1978. However, the amendments relating to the office of Public Trustee contained in that amending Act have not been brought into operation. That Act proposed that the office of Public Trustee be filled by appointment of a person for a term of five years and that the most senior Deputy Public Trustee automatically have all the powers and duties of the Public Trustee while the Public Trustee is absent from his duties.

This Government has reviewed the changes provided for by the 1978 amending Act and concluded that the more usual provision for such offices to be created and filled under the Public Service Act, 1967, as amended, would be

more satisfactory. Furthermore, the provision in that Act for an automatic Acting Public Trustee does not create sufficient administrative flexibility and, accordingly, this Bill proposes that the Public Trustee be empowered to delegate powers and duties to a Deputy Public Trustee or other officer appointed under the principal Act. With respect to temporary absences of the Public Trustee, the ordinary procedure for appointment of a person to act in the office would apply.

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 provides for the substitution of sections 73 and 74 of the principal Act, as enacted by section 9 of the Administration and Probate Act Amendment Act, 1978. It should be noted that section 9 of that Act has not been brought into operation, but if this measure is enacted, it would then be brought into operation and simultaneously amended by the Act presaged by this Bill. New section 73, as proposed by this Bill, provides for appointment, subject to and in accordance with the provisions of the Public Service Act, 1967-1978, of a Public Trustee, one or more Deputy Public Trustees, and such other officers as are required for the purposes of the Act. New section 74 provides for delegation by the Public Trustee to a Deputy Public Trustee or other officer of any of the powers or duties of the Public Trustee.

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

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Local and District Criminal Courts Act, 1926-1978. Read a first time.

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

That this Bill be now read a second time.

It contains amendments to the Local and District Criminal Courts Act upon three separate subjects. First, it amends the provisions dealing with the conduct of proceedings on behalf of persons of unsound mind. The provisions presently use concepts of the Mental Health Act, 1935, which has now been repealed. Consequently, the amending Bill introduces into the principal Act the concepts of mental illness and mental handicap which are the fundamental concepts of the new Mental Health Act. Secondly, the Bill enables students undertaking the Graduate Diploma Course in Legal Practice at the South Australian Institute of Technology to appear in the limited and special jurisdictions of the local court on the instructions of legal practitioners of at least five years standing. Many students now qualify for admission to the Bar by undertaking this course, rather than by serving articles of clerkship. It is felt that they should have the same rights of appearance in the local court as articled clerks. This amendment has been suggested by the Law Society of South Australia. Thirdly, the Bill expands the special equitable jurisdiction of local courts of full jurisdiction to include claims for contribution of up to $20 000. A claim for contribution may arise where a number of persons are subject to the same liability. For example, where a number of persons have separately guaranteed payment of a debt, a guarantor who pays out under his guarantee may have recourse to the other guarantors for a proportionate contribution. Claims for contribution may be brought at common law as well as in equity, but the procedure in equity is more convenient in that all the persons who may be liable to contribution can be brought before the court at the same time. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clauses 2 and 3 introduce into the provisions of the principal Act relating to the conduct of proceedings on behalf of persons of unsound mind the relevant concepts of the new Mental Health Act. Clause 4 authorises a student undertaking the Graduate Diploma Course in Legal Practice at the South Australian Institute of Technology to appear in a local court of limited or special jurisdiction on the instructions of a legal practitioner of at least five years standing. Clause 5 expands the equitable jurisdiction of a local court of full jurisdiction to include claims for contribution not exceeding $20 000.

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

TRUSTEE ACT AMENDMENT BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Trustee Act, 1936-1974. Read a first time.

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

That this Bill be now read a second time.

It amends the Trustee Act on a variety of subjects. It gives effect to the recommendations of the Law Reform Committee relating to reform of the law affecting authorised trustee investments. The range of investments available to a trustee is extended by empowering investment in securities of companies that have an established financial stability, and in various other forms of investment that were previously not authorised by statute. In addition, a trustee is empowered to invest trust funds in the purchase of a dwellinghouse for the use or benefit of beneficiaries of the trust. This new power is analogous to powers contained in the legislation of other States.

Amendments are made to section 35 of the Act to clarify the liability of a trustee where a loss is sustained by the trust estate. The amendments make it clear that a trustee is only liable where the loss arises through a wrongful or negligent act on his part, or through an event that the trustee could reasonably be expected to have foreseen and averted.

Important new provisions are included in the Bill relating to the variation of trusts. As honourable members may be aware, when all the beneficiaries of the trust are *sui juris* they have the right under the principle enunciated in the case of *Saunders v. Vautier* (1841) 4 Beav. 115 to put an end to the trusts or to vary them in any manner that they may mutually agree. Circumstances often arise however where, because the beneficiaries of the trust are infants, or persons whose identity has not yet been ascertained, it is not possible to vary the trust however desirable that may be. The Bill makes amendments that will empower the Supreme Court to agree to a scheme varying or revoking trusts on behalf of infants or other persons who do not possess juristic capacity. The Supreme Court is empowered to approve such an arrangement where it can be shown that the arrangement is for the benefit of the beneficiaries.

New provisions are included in the Bill for the purpose of protecting charitable trusts that would otherwise be held to be invalid by reason of non-charitable provisions that have been included by the testator or settlor. The Bill provides that where a trust contains some provisions that are valid charitable provisions, and other provisions that are non-charitable and invalid, the trust shall be construed as if it provided only for the application of property in accordance with those provisions that are valid.

Another important new provision inserted by the Bill empowers the Supreme Court to approve a scheme altering the purposes for which property may be applied in pursuance of a charitable trust. It frequently happens that effective administration of a charitable trust becomes impossible because the purposes for which the property was settled are no longer consistent with changing social circumstance or the trust property is simply not sufficient to be effectively administered for the purposes on which it was settled. In cases like this, much better effect can usually be given to the spirit of the gift if some minor change is made in the purposes for which the property is settled. A new provision inserted by the Bill is designed to enable this to be done. The Bill also contains a provision making it clear that a trust to provide facilities for the purpose of recreation in the interests of the welfare of the community is a charitable trust.

The Bill enacts new Part VA which will require trustees to keep records relating to their administration of trust property and empowers the Public Trustee, or a trustee or a beneficiary under the trust to inspect those records. The Supreme Court is empowered to appoint an inspector to investigate the administration of the trust. An inspector may require any person to produce documents relevant to the administration of the trust and may require the trustees or other persons to answer questions relevant to the administration of the trust. The inspector is required to report upon his investigation to the Supreme Court and to the Attorney-General and he is otherwise prohibited from divulging information that comes to his notice in the course of an investigation unless the Court authorises him to do so. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 expands the definition of "securities". Clause 4 inserts new sections 5 and 5a into the principal Act. New section 5 expands the powers of trustees to invest trust funds. The provision contains various safeguards designed to ensure that investments are sufficiently diversified and that the trustee will obtain proper advice before investing trust moneys in undertakings that may involve some element of risk. New section 5a empowers a trustee to purchase a dwellinghouse for the use of a beneficiary under the trust.

Clause 5 replaces subsection (1) of section 35 of the principal Act with two new subsections. These provisions elucidate the liability of a trustee in the event of a loss being sustained by the trust estate. Clause 6 removes from section 57 of the principal Act a reference to the doctrine of restraint on anticipation. This doctrine was designed to prevent a married woman from dealing with her separate property. It has been removed by legislation from the law of South Australia and the reference in section 57 is a historical anomaly.

Clause 7 repeals sections 59 and 59a of the principal Act. The substance of these sections is included in Part VA enacted by clause 10 of the Bill. Clause 8 enacts section 59c of the principal Act which empowers the Supreme Court to approve variations to the terms on which trust property is held on behalf of beneficiaries that are not *sui juris* or on behalf of persons who may become beneficiaries in the future.

Clause 9 adds three new sections to the principal Act. New section 69a provides that where the purposes of a trust are both charitable and non-charitable, the charitable purpose shall be enforceable. At the moment both the charitable and non-charitable purposes would be invalid. New section 69b expands the circumstances in which the Supreme Court can approve the application of property held on charitable trusts for purposes other than those specified by the settlor or testator but which are as near as possible to the original purposes. The advantage of this power is that the charitable intention of a testator or settlor can be maintained although circumstances change. New section 69c of the principal Act validates trusts for recreational purposes where the trust is for the benefit of the public generally or for people in special need of recreational facilities.

Clause 10 enacts Part VA of the principal Act. The purpose of this Part is to give greater protection to beneficiaries. New section 84b requires trustees to keep records of their administration of the trust property and allows a beneficiary or a co-trustee or the Public Trustee to inspect and take copies of the records. The beneficiary can then have the records examined by an accountant or other expert if he wishes. New section 84c gives the Supreme Court power to appoint an inspector to investigate the administration of a trust. The inspector has wide powers to require documents to be produced to him and to require the attendance of any person before him. He reports to the Supreme Court and the Attorney-General but may not disclose information acquired by him as an inspector to any other person unless directed by the court.

In conclusion, because the proposals in the Bill are complex, I have decided that they should lie on the table until 25 March 1980, to allow for comments or submissions from members of the public, the legal profession or others. I am asking that any submission on the detailed provisions of the Bill be made to me no later than 19 March 1980.

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

DOG CONTROL ACT AMENDMENT BILL

The Hon. C. M. HILL (Minister of Local Government) obtained leave and introduced a Bill for an Act to amend the Dog Control Act, 1979. Read a first time.

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

That this Bill be now read a second time.

It proposes two amendments to the principal Act, the Dog Control Act, 1979. The Bill proposes amendments to section 58 of the principal Act which deals with the licensing by councils of kennels, the effect of which would be that the fees for such licences may be fixed by the councils by by-laws, instead of, as at present, by the Governor by regulation. The Bill also proposes a provision designed to make it clear that by-laws under the principal Act shall be made by councils in the manner provided by Part XXXIX of the Local Government Act, 1934-1979.

Clause 1 is formal. Clause 2 amends section 58 of the principal Act so that it provides that the fees for licences for kennel establishment may be fixed by the councils by by-law. Clause 3 provides for enactment of a new section 65a providing that any by-laws made by councils under the principal Act shall be made in the manner provided by Part XXXIX of the Local Government Act, 1934-1979.

The Hon. J. R. CORNWALL secured the adjournment of the debate.

ALSATIAN DOGS ACT AMENDMENT BILL

The Hon. C. M. HILL (Minister of Local Government) obtained leave and introduced a Bill for an Act to amend the Alsatian Dogs Act, 1934-1979. Read a first time.

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

That this Bill be now read a second time.

It proposes an amendment to the principal Act, the Alsatian Dogs Act, 1934-1979, relating to the part of the State to which the principal Act applies. At present the principal Act prohibits the keeping of Alsatian dogs and authorises the destruction of Alsatian dogs in certain parts of the State, principally the pastoral areas outside local government boundaries. This Bill proposes an amendment designed to enable the Governor to declare by regulation that the Act shall not apply in any specified part of the State.

The Government is aware of the concern of the pastoral industry that Alsatian dogs should not be kept in pastoral areas and it intends that the amendment will only be applied to exempt the opal mining townships, such as Coober Pedy, where there is a concentration of population and the dogs are kept as domestic pets and for security purposes. I understand Alsatian dogs have been kept in the mining townships for many years and the amendment will therefore enable effect to be given to what is in fact the present situation.

Clause 1 is formal. Clause 2 amends section 3 of the principal Act by inserting a new subsection providing that the principal Act shall not apply in any part of the State to which the Governor declares by regulation that it shall not apply.

The Hon. J. R. CORNWALL secured the adjournment of the debate.

ART GALLERY ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 13 November. Page 905.)

New clause 1 inserted.

Clause 2 passed.

Clause 3—"Constitution of the board."

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

Page 1, after line 13—Insert new subclauses as follows:

(2) One member of the board must be a person—

(a) who is a member of the staff of the Art Gallery; and

(b) who has been chosen, and nominated for appointment, in accordance with the regulations by the members of the staff of the Art Gallery

but the head of the Art Gallery Department or his deputy is not eligible for nomination under this subsection.

(3) In this section—"staff of the Art Gallery" means all persons employed on a full-time basis in or about the Art Gallery.

This amendment provides that, in the expanded number of members on the board of the Art Gallery, one of those nine members at least shall be a member of the staff of the Art Gallery. By "staff of the Art Gallery" I mean all persons employed on a full-time basis in or about the Art Gallery. That means those employees who are officers of the Public Service, and others who may be employed on a full-time basis in or about the Art Gallery and who may not be officers of the Public Service, but nevertheless are employed on a full-time basis.

In that category could come the attendants, or some other employees of that kind who might not be in the permanent Public Service. The intention of the amendment is that there should be a member representing the whole of the staff at the Art Gallery, whether professional staff, public servants or otherwise. It applies only to full-time staff members, and not to part-time members, and excludes from appointment or nomination under this provision the head of the Art Gallery Department or his deputy. In other words, it is envisaged that the person appointed as a member of the staff to the board should be a person genuinely representative of the staff and not the head of the Art Gallery or his deputy.

That is the essence of the amendment. The reason for it was explained in the second reading debate. It is consistent with what members on this side believe should be the policy followed throughout the Government services in that, in the governing bodies, such as the Art Gallery Board and other areas of Government service, there should be some provision for employee participation in decisions emanating from those boards or bodies. It was a policy adopted consistently by the former Government to attempt to get this kind of representation. I understand that the new Government may have a different approach to the matter, but no doubt this amendment will provide the Hon. Mr. Hill with an opportunity to tell the community of his Government's policy in this area.

The head of the Art Gallery and his deputy are excluded from nomination under this provision, which provides for staff representation, but there would be no objection to the head of the Art Gallery being appointed as another member of the nine-member board, if the Hon. Mr. Hill thought that that was desirable. The important thing about the amendment is that it should give effect to a policy which gives the employees a genuine say in the operation of the Art Gallery, and not merely of representation from those people in authority over them because of their position as head of the department or deputy head.

The Hon. C. M. HILL: I oppose the amendment, which is not in keeping with the present Government's approach at this stage to the question of employee participation at the Art Gallery. Certain changes are pending, and time is required before the kind of employee participation that I want to see in the Art Gallery will evolve. The question of time in this area of employee participation is most important. The Hon. Mr. Sumner says that his amendment is in keeping with his Party's approach to worker participation or employee participation in the Art Gallery, but that is not altogether true. Certainly, it goes some of the way, but steps have been taken and other detail is required by the honourable member if he proposes to implement the scheme at the Art Gallery exactly as his Party has envisaged at least since 1978.

The reason for my objection to the amendment is that it was never the Government's intention that this kind of phasing in of employee participation should take place at the time of increasing from seven to nine the number of members on the board. The reason for that was simply that it brought the board into a comparable position in relation to numbers with similar boards in other States. That is the first point: in moving the amendment originally, there was no intention at that stage of involving it with the question of worker participation.

What was the A.L.P. policy on worker participation at the Art Gallery at the time of the change of Government? In the earlier debate on the Bill on 13 November 1979, the

Hon. Mr. Sumner made his position clear, as follows:

> Although the Government, since its election, has adopted a different approach to employee participation on boards such as the Art Gallery Board, the Opposition, while in Government, adopted a consistent approach of attempting, where possible, to provide that there ought to be employee representation. By that we do not just mean the Director or the executive head of a statutory corporation or board.

When one inquires further into the history of worker participation as enunciated by the Labor Party in connection with the Art Gallery, one finds that proposals for employee participation in the gallery were finally put forward in May 1979. The proposals were the result of many months of activity, which had two major stages. The first stage developed an outline structure of involvement, which was drawn up by a steering committee comprised of representatives of staff and management. This outline was drawn to the attention of the board in November 1978.

After general approval of the outline, the second stage translated it into explicit written documents presented in May. This activity was carried out by the group of staff representatives forming the employee council. The document was prepared under the previous Government, and the terminology used reflects this. In its final form, there were three major propositions in this document, and this gives us an idea of what really are the plans of the A.L.P. in relation to worker participation at the Art Gallery. When Opposition members amend a Bill in this way at this stage, one can only assume that they still have this ambition in mind and want to achieve their goal. These three major propositions were: an employee council, comprised of staff representatives; a joint management meeting comprising two members of the employee council plus the Director and Deputy Director; and—and this is the point I stress—employee members of the board in the ratio of one employee member to each two other members, to be chosen from the employee council, excluding the Director and the Deputy Director.

That is the A.L.P. ambition in regard to worker participation at the Art Gallery: one employee member to every two other members. The Hon. Mr. Sumner has not discussed any of these plans, yet one finds this position when one looks at the history already established within the Art Gallery on this matter.

The employee council has been operating for a number of months, and elections have recently been held which resulted in a majority of new members. The existence of the employee council has been formally recognised by the Public Service Board. The Chairman of the board, on 4 December 1978, agreed to constitute a Departmental Classification Review Committee for Curators composed of the Director of the Art Gallery, or nominee, as Chairman; a Public Service Board representative; and a nominee of the Art Gallery Employee Council.

The joint management meeting has also operated, although there have been objections to its title, and a proposal from the Director to change its name to one more in keeping with current Government policy has been presented to staff and is being considered. Although no employee representative (as defined by the May document put forward by staff) has been appointed to the board, meetings of the board have been attended by members of staff as observers. When we go back into the history of the A.L.P.'s involvement with this kind of worker participation, we see what its plans really are.

The Hon. C. J. Sumner: What are they?

The Hon. C. M. HILL: That example is certainly one of them. The Labor Party's ultimate goal is to put one employee to every two ordinary members on boards.

The Hon. C. J. Sumner: To which document were you referring?

The Hon. C. M. HILL: The official document prepared by the staff and approved by the Labor Government in 1979.

The Hon. D. H. Laidlaw: Under the Bill it introduced some years ago, the former Government wanted to have any number of workers on the board.

The Hon. C. M. HILL: Exactly, and it may not even stop at that. The Hon. Mr. Sumner has conveniently forgotten all that today. He simply comes along and pleads for just one, saying, in effect, "That's all we want and we'll be happy as far as worker participation goes."

The Hon. B. A. Chatterton: Which Minister approved the 1979 proposal?

The Hon. C. M. HILL: I believe that it was Mr. Dunstan—whoever was in charge of the Art Gallery then.

The Hon. B. A. Chatterton: Was the document you referred to signed by him?

The Hon. C. M. HILL: There is no doubt that it was agreed to by him because its implementation is already under way, and the Employee Council has been formed and held meetings. The Joint Management Committee meets, and employees are admitted to meetings. The former Labor Government failed to implement its worker participation policies at the Art Gallery. Yet, it would appear through this amendment that it still thinks it is able to continue with its plans, even though it was unsuccessful. I put to the Chamber that the general public, at the last election, gave the Labor Party the message as to what it thought in general terms about that Party's worker participation policy; in general terms it proved among the public at large to be an unpopular issue from the former Government's viewpoint. I believe that the new Government is entitled to say, "We support the principle of employee participation, and in due course and in our time, and by our plans, methods and negotiations with staff, we intend to proceed and implement our particular scheme." I do not think that it is right for Parliament at this stage to revert in any way to the procedures that the A.L.P. had in mind. I believe that the Opposition should wait and allow the present Government to proceed with its policy.

What is our policy in this area? The Hon. Mr. Brown, the responsible Minister in another place, has issued a document headed "Employee participation". I do not intend to read that in full, because all members have a copy of it or can obtain one if they so wish. However, I shall quote two or three sentences from the document, as follows:

> . . . any programme of employee participation must always be adopted because of a genuine and enlightened desire by all concerned to identify and satisfy the changing needs and mutual interests of both employers and employees.
>
> Companies may choose, if they wish to do so, to have employee representatives on their boards. There are instances where it is desirable for employees, who have experience and understanding of employee problems and affairs, to be members of boards. But, as a general principle, the South Australian Government does not favour the election of employee representatives to boards solely because they are employees.

If one endeavours to implement change in this area in haste, all sorts of problems can arise. The State election was only five months ago. The new policy that we have issued does not differentiate between cultural institutions, boards of statutory bodies in the area of the arts, ordinary corporate bodies in the private sector or, for that matter, statutory bodies which are not involved in the arts—bodies which are involved more in public works or the

development area, such as the Electricity Trust, the Housing Trust, and statutory bodies of that kind.

It may well be, with the passing of time, that different approaches would be required for those different categories of boards. But that is just an example of the great deal of detail and consideration required if the State is to achieve the best form of employee participation in each instance. As far as the Art Gallery is concerned, the position of the Director must be fully considered. The Hon. Mr. Sumner has not considered his position at all.

The Hon. C. J. Sumner: I did; I told you about it.

The Hon. C. M. HILL: The Hon. Mr. Sumner just cut him out.

The Hon. C. J. Sumner: I did not. I said that you could put him on.

The Hon. C. M. HILL: In his amendment, the Hon. Mr. Sumner cut him out, because it clearly states that the member of staff he was trying to place on the board shall not be the Director or the Deputy Director. The Hon. Mr. Sumner knows that the previous Government was negotiating on this question of the Director's position in the concept of that Government's worker participation policy at the gallery. I quote from a memorandum from the Premier of the day (Mr. Dunstan), dated 27 February 1978, to the Director of the Art Gallery, as follows:

> I invite you to accept appointment on the understanding that arrangements will be set in train during this year for the introduction of industrial democracy within the department. This will eventually lead to an amendment of the Act. As a consequence your appointment may in effect be for only one year, at the conclusion of which the board will be appointed on a new basis. As we discussed recently, I asked that procedures be initiated as soon as possible to work towards the introduction of industrial democracy in the Art Gallery Department. I will ask the head of the Industrial Democracy Unit to consult with you on the most appropriate approaches for your situation.

In other words, the former Government was treating with the Director and slotting him into a place in its scheme. It gave him an appointment and warned him in this minute that it may be for only 12 months. As it happened, he was given a formal appointment for four years. He was given a clear understanding that, if he was asked to resign after 12 months because of the implementation of some scheme, he would do so.

The Hon. C. J. Sumner: We appointed him for four years.

The Hon. C. M. HILL: Your Government appointed him for four years on this understanding. It could not have appointed him formally for one year, because that would have been contrary to the Act.

The Hon. M. B. Cameron: That wouldn't stop them.

The Hon. C. M. HILL: It did not stop that Government under the Housing Trust Act. The Government extended the period for Housing Trust board members for two years and did not announce it. It did not go that far in regard to this Act. It came to an understanding that it might ask him to resign after 12 months but, because it had to appoint him to the board for four years if it appointed him at all, it made that appointment. Before we start moving any further towards worker or employee participation, his situation must be examined fully and I, as Minister, am at present considering that situation.

Before this Government is going to proceed with any employee participation at the Art Gallery, we would want that original charter that I have read out amended. We will not proceed further when there is a basic charter, an ambit claim so to speak, at the Art Gallery which has basically meant that there would be one employee representative for every two board members.

The Hon. C. J. Sumner: That doesn't sound right to me.

The Hon. C. M. HILL: I can assure the honourable member that it is quite correct. This was prepared by Mr. Charles Connelly, Chief Project Officer in the Employee Participation Branch, a responsible public servant who is involved in my inquiries at present and a person for whom I have a high regard. We are not going to be pushed at this stage into further steps regarding worker participation at the Art Gallery until these important matters are sorted out.

The term of the appointment must be specified. In terms of the amendment, an appointment would be recommended and, under the Act, we would have to appoint a person for four years. If the council lost confidence in that appointee and wanted to recommend another member for the board as representative, that could not be done. What is most important is that there must be mutual confidence and respect amongst the Government, the employees, and the Director. In due course a system can evolve at the Art Gallery that I think will be in the best interests of the gallery and the State.

I have no objection to the stage that has been reached at the gallery whereby the employee council has appointees at board meetings as observers. That is a proper step in the sequence of events. The output from that council at present involves an attitude that I commend. The people now appointed on the employee council, in my view, have the best interests of the gallery at heart.

That council and the gallery staff as a whole give excellent service to their institution and the State, and I am very proud to be associated with them. The environment is there in which, with a few further changes made necessary because of the change of Government, step by step the most satisfactory system of employee participation at the gallery can evolve and be implemented. It is my intention, too, to take steps stage by stage to achieve this.

The Hon. C. J. Sumner: Will you put one on the board eventually?

The Hon. C. M. HILL: That is the sort of thing I will be discussing with them eventually. I will not impose that on them at this stage, because I want to talk this situation through. I want to talk through the situation of the Director and the original charter, and I am sure we can obtain a result that will be far better in the interests of the State than was the objective of the Labor Government which objective, may I suggest with respect, the Hon. Mr. Sumner still has in his mind because of his close association with the scheme and his Party in this area. I oppose the amendment but I give an undertaking that the whole process of the evolvement of worker participation at the gallery will be investigated. As I have said, I hope that a final excellent result will be achieved.

The Hon. C. J. SUMNER: The Hon. Mr. Hill obviously enjoyed his break last week when he was representing the State in New Zealand, because he has come back very relaxed and loquacious. He quoted from a document which he said had been prepared by Mr. Connelly and which he said represented the Labor Government's policy that there ought to be one member of the staff on the Art Gallery Board for every other two members. That is the first time I have heard that proposition. The document that I have refers primarily to whether there should be only one representative on the board or whether there should be two, in addition to the Director, which is another question. The reason why there was discussion as to whether there ought to be one or two staff members on the board arose out of the fact, as I have indicated, that there are two sorts of employees at the Art Gallery. There are those who are members of the Public Service and

therefore members of the Public Service Association, and there are those others who are covered by another union.

I understand that in the past there was discussion on whether there should be two employee representatives or only one. I have never seen the suggestion that the Hon. Mr. Hill has now brought into the debate, namely, that there should be one representative of the staff for every two other members of the board. Certainly, I would need to examine that more closely. Surely, the matter of whether that statement by Mr. Connelly was endorsed by the Government or not is irrelevant to the present position. The culmination of negotiations under the previous Government was that it would provide the employees of the Art Gallery Board with some input of capacity to influence decisions, many of which doubtless would have a bearing on their working conditions and on the Art Gallery generally. Obviously, they would have a contribution to make for which the board would be grateful.

The Minister has drawn a red herring across the trail and has not honed in to the real issue in the amendment, which is that there should be one employee representative on the board at this stage. This would give employees a voice in the affairs of the board.

The other red herring concerns the Director, who is already on the board. If the Minister wants to move an amendment to make it obligatory for the Director to have a position as a matter of right, we can consider it. I would be happy for progress to be reported to allow the Minister to consider that aspect. I doubt that he wants to do that, because he does not agree with the basic principle advanced.

The Minister was not willing to commit himself for the future and said he would have discussions with the employees and their council. He was unwilling to say that, if the discussions were satisfactory, he would at some time in the future make a position available for an employee representative. The Minister has no intention of doing that. The Chamber now has a statement on the Government's policy on employee representation on such boards. Although the Government may talk with employee councils that may be established it will do nothing about giving them an effective say by placing a member on the board. That is the effect of the Minister's statement this afternoon.

The Minister referred to the representative being on the board for four years and said that if the representative was no longer a member of the staff of the gallery he could still be a member of the board. If the Minister is concerned about the drafting amendment, I am happy to examine it. Progress could be reported to cover this matter. I am happy to move a further amendment to clarify the situation. There are no problems from this side at all, but the Minister does not want to report progress because he is opposed to the principle involved.

The Opposition is pleased that it has flushed the Government into the open and has obtained from it a statement that it does not agree that employee representatives should be on boards such as this. I have heard no valid reason why this amendment should not proceed, or why it is not a good idea to have such a representative on the board. It is not a particularly novel idea. Representatives of employees at universities have been on university councils for many years without adverse effects. It would keep faith with such institutions. The former Government conducted negotiations on this basis and was willing to move towards some degree of industrial democracy and employee representation as a matter of principle. That is the critical issue. It is desirable that there be such representation because employees are affected by board decisions, and employees do have knowledge of the daily workings of the organisation and are able to make constructive contributions to the affairs of the board.

The Hon. C. M. HILL: First, I accept the accusation that there is some procrastination and that there is not any haste on my part in rushing into working out machinery for employee participation at the Art Gallery. Honourable members should know that taking this activity slowly is one of the tenets of employee participation. The former Premier (Mr. Dunstan) when he was unsuccessful in an umbrella Bill to cover all worker participation activities within companies and corporations, and when he set that Bill aside, emphasised that it was a subject that should not be taken in haste.

The Hon. Mr. Sumner and his colleagues have been impressing on the unions that have been upset about this subject that it is not a matter that any Government can rush. They have impressed on unions how fatal it can be if worker participation is implemented too quickly. This Government does not intend to fall into that trap, which is why I am opposing the amendment.

Secondly, from where is the demand coming? I have not heard from the Employee Council that it wants representation on the board. Running true to form, the Labor Party is trying to impose its own plan upon workers in this State, and I object to that. When the Employee Council accepted the final document in May 1979, to the best of my knowledge it did not lay down its request for this step at all, although the following statement was made:

> We see our Employee Council as a means of improving the operation of the gallery, which will result in a better service to the community. We believe our first responsibility is to our institution and that our decisions will in the first instance take that responsibility into account.

They are genuine and noble sentiments. Officers involved in that kind of loyalty to their institution do not want to be herded into any scheme by the Labor Party such as this step will mean. These are the reasons why I oppose the amendment.

The Hon. N. K. FOSTER: I am amazed by the juvenile outburst by such a responsible Minister. The Minister has used such terms as "it is fatal" and has applied it to worker participation, but he has not any concept of what worker participation means and involves. He is not aware of its value as it applies to the Leader's amendment.

Would any honourable member opposite suggest—and they all love to boast that they represent the rural community—that wheat producers and woolgrowers do not work for their living? These people are not necessarily wage or salary earners within the meaning of the Conciliation and Arbitration Act. However, inherent in the setting up of the Australian Wheat Board, the Wool Industry Council, the Australian Dried Fruits Association, and various other bodies, not only are those producers directly represented on those boards but also the Federal Government has enacted provisions covering them which are well-meaning, deliberate and admirable in their intentions. In fact, under those provisions the Federal Government cannot make any fundamental changes to those bodies unless a plebiscite is held among members and a majority vote is carried after a properly constituted and conducted ballot of all growers concerned. Those organisations are directly represented and are legislatively protected in that way. Is it a huge advance to suggest that this amendment should be carried? The Hon. Mr. Hill has said that we cannot go too quickly, but I remind him that it is not 1880, and he should not sit there tugging his forelock and straightening his smock. For God's sake, the

amendment only attempts to give recognition—

The CHAIRMAN: Order! I ask the honourable member to refrain from using the Lord's name in his speech.

The Hon. N. K. FOSTER: Well, the Hon. Mr. Hill thinks he is God, but he is not. Mr. Chairman, you are correct in pulling me up on that, because I do not want to hurt anyone's feelings. Boards are set up within that vast admirable organisation, the C.S.I.R.O., and it is necessary to have worker representatives sit on those boards because of their training and expertise. When in Opposition, the Hon. Mr. Hill was always quick to get to his feet and insist that somebody or other should be represented on a board or committee. I wonder whether the Hon. Mr. Hill and the Hon. Mr. Cameron recall their arguments regarding the appeals committee dealing with water supplies on the Adelaide Plains. The Hon. Mr. Hill defended his personal friend, Mr. Ron Baker, very stoutly there, because he thought that Mr. Baker was going to be removed by the then Minister, Mr. Corcoran.

The Hon. C. M. Hill: Your old scoutmaster.

The Hon. N. K. FOSTER: Yes, my old scoutmaster; he could not even tie a reef knot. The Hon. Mr. Hill heaped a great deal of scorn upon the then Government at that time, as did the Hon. Mr. Cameron, because a committee was set up which included, as they said, some friends of the Labor Party.

Personally, I am not acquainted with any person who works for the Art Gallery, unlike the Hon. Mr. Sumner, who I know has a much wider contact with the world of arts and crafts than I do. In fact, the Leader has a much wider knowledge of people who are likely to be placed on the Art Gallery Board. I appeal to the Hon. Mr. Hill's better instincts and ask him to cast his mind back, as he already has done today, to the 1940's and the principles that he held to be so dear in those years. Hopefully, those principles will return to his mind and he will accept the amendment. As Minister, I am sure the Hon. Mr. Hill will have sufficient understanding and respect for the members of the board to include a representative from a worker organisation, which will not cause the downfall of the Government, the Art Gallery Board, this Bill or any Minister. I commend the amendment to the Committee and prevail upon the Minister to have a change of heart.

The Hon. R. C. DeGARIS: Can the Hon. Mr. Foster inform me whether the President of the wheat or woolgrowers organisations is excluded from representation on the Wheat Board?

The Hon. N. K. FOSTER: I cannot answer the Hon. Mr. DeGaris's question off the top of my head, because I do not know.

The Hon. R. C. DeGARIS: Does he agree that the President of the Stockowners Association and the Deputy Presidents of the organisations to which I have referred should be banned from the Wheat Board?

The Hon. N. K. FOSTER: Not necessarily.

The Hon. C. J. SUMNER: I am sure the Hon. Mr. Hill would not want to go on record as having misrepresented the position in relation to the previous Government's policy. He quoted from a document which he said had been prepared by Mr. Connelly, from the Industrial Democracy Unit, as it then was, indicating that the Government was suggesting one employee representative for every two other board members. When I replied previously, I said that I had doubts about whether that represented Government policy. I have now ascertained that it did not represent Government policy, but that it was a proposal put up by the Industrial Democracy Unit as a basis for discussion and at no stage did it receive the approval of the Government at Cabinet level, nor did it become official Government policy. Perhaps the Minister will say whether it is the policy of his Government ultimately to provide for an employee representative on the Art Gallery Board.

The Hon. C. M. HILL: The policy of the Government has not been finally formulated, but I sincerely hope that the time will come when there is a representative of the employees on that board. In relation to the other matter, I do not want there to be any misunderstanding. The document from which I quoted was quite genuine.

The Hon. C. J. Sumner: I am not saying it wasn't genuine. I am saying it was not Government policy, approved by Cabinet.

The Hon. C. M. HILL: There was an outline of the total proposal drawn to the attention of the board in 1978. Then, after general approval of that outline, the second stage translated it into the explicit written document presented in May. Then, it appears, from the minute I have in my hand, that in its final form the document submitted those three propositions, two of which have been implemented. The first was that the employee council would comprise staff representatives; the second was for a joint management meeting comprising two members of the employee council plus the Director and Deputy Director; and the third was for employee representatives on the board in the ratio of one employee member to each two other members, to be chosen from the employee council, excluding the Director or his Deputy.

That I have looked upon as being an ambit claim. It is casting the net wide, but there must be a final ambition for it to be achieved. I do not think the Hon. Mr. Sumner would deny that. In Government, his Ministers should have taken strong exception to that, because he was the Minister responsible for the Art Gallery and, if he did not agree, he should have seen to it that the final plan was excluded from the document which formed the basis of the arrangement of May 1979, which set up these two bodies and started the machinery that exists today.

The Hon. C. J. SUMNER: As I understand it, the Hon. Mr. Hill has quoted from a document, but the Labor Government's policy in relation to employee participation on these boards was not established to the point that there should be one employee representative for every two board members as Government policy.

The Hon. G. L. BRUCE: I support the amendment. I do not see anything earth-shattering in asking that one of the nine board members be appointed from the employees. The Hon. Mr. Hill says that the employees themselves have not raised the issue, but I wonder whether they have been given that opportunity. It would be an interesting exercise if they were asked whether they wanted a member representing them on the board. I am quite sure that they would welcome such an opportunity and accept it.

It is wrong to say that the Labor Party is putting its policy into the Art Gallery, and to say that the Labor Party lost the election on its industrial relations policy is also wrong. That was only one of the issues, and it was not given a proper airing. Workers should have the right for their point of view to be represented in the highest corridors of power, and I see nothing wrong or radical in that. The Hon. Mr. Hill says this is the thin end of the wedge, but he has complete control of the Act at all times and, if he thought the position was unworkable, he could move further amendments. I support the amendment, and I hope it will have the support of the Committee.

The Hon. K. L. MILNE: I had the privilege of serving on Mr. Dunstan's industrial democracy committee for some time, until it got going so fast that the harness broke. I have always had an uneasy feeling that it is wrong in principle for the Government to attempt to bring

industrial democracy into a small State struggling to maintain its industry, and to frighten people with it, and to do it by virtually forcing it into certain Public Service departments and on certain statutory authorities.

The Hon. C. J. Sumner: How is that going to affect the economy?

The Hon. K. L. MILNE: I think the honourable member will find from past history that it did affect the economy.

The Hon. C. J. Sumner: Putting an employee representative on the Art Gallery Board?

The CHAIRMAN: Order!

The Hon. K. L. MILNE: I am talking about the principle that the honourable member has talked about in the past, and I am giving a warning. I would prefer to wait until we know the Government's policy on this matter. The Government must have a policy, because there is no point in its creating problems in that area. It has to keep on with it, and Government members know that. I will encourage the Government to do that.

I do not think it is right and proper to try to force the issue on a small statutory authority. It is very unwise to put one staff representative on a board of any kind. There must be two, otherwise the one is quickly distrusted. I do not count the Director as being one of the people that the workers would prefer. The Government must have an opportunity to form a policy, and, when it is formed, it must apply to everyone. It is wrong to bring it in piecemeal. I oppose the amendment.

The Committee divided on the amendment:

Ayes—(10)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, C. J. Sumner (teller), and Barbara Wiese.

Noes—(11)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, M. B. Dawkins, R. C. DeGaris, K. T. Griffin, C. M. Hill (teller), D. H. Laidlaw, K. L. Milne, and R. J. Ritson.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 4 passed.

Words of enactment inserted.

Title passed.

Bill read a third time and passed.

[Sitting suspended from 5.46 to 7.45 p.m.]

SUPREME COURT ACT AMENDMENT BILL

In Committee.

(Continued from 26 February. Page 1182.)

Clause 1—"Short titles."

The Hon. C. J. SUMNER: Perhaps I can make a suggestion as to the procedure that ought to be adopted. There is only one substantial amendment that I intend to move to this Bill. The substance of that amendment is contained in the new clause, but I think it would be appropriate to either move to deal with that one immediately and with the other clauses later, or, alternatively, to move the first amendment standing in my name, and that can be a test case for the rest of the Bill.

Consideration of clauses 1 and 2 deferred.

New clause 3—"Courts of summary jurisdiction not to be constituted of justices who have attained the age of seventy years."

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

After clause 2 insert new clause as follows:

3. The following section is enacted and inserted in the Justices Act, 1921-1979, after section 45 thereof:

45a. (1) Subject to subsection (2) of this section, a court of summary jurisdiction shall not be constituted of a justice who has attained the age of seventy years, or of justices any one of whom has attained the age of seventy years.

(2) A justice who attains the age of seventy years may complete the hearing and determination of any proceedings part heard before he attained that age.

The new clause amounts to an amendment to the Justices Act and inserts a new section 45a in that Act, which has the effect that courts of summary jurisdiction should not be constituted of justices of the peace who have attained the age of 70 years. That is the principle I referred to in my second reading speech, when I canvassed my arguments. In summary, members of the High Court bench have to retire at the age of 70 years. Similarly, members of the Supreme Court and Local and District Criminal Court benches in this State have to retire at 70 years. If they have to retire at that age at the top level of the administration of justice in the State, I see no reason why justices sitting in courts of summary jurisdiction also ought not to retire at that age.

In addition, by the amendment we are providing what we are providing in the amendment to the Supreme Court Act, namely, that any justice who attains the age of 70 years may complete the hearing of any proceedings that are part heard before he attains that age. We are seeking to insert a similar provision.

The Hon. K. T. GRIFFIN: The principal Bill was designed to deal with only one matter, namely, the retirement of Supreme Court judges. The principal Act presently provides that Supreme Court judges are to retire at 70 years but there is some possibility that the present provision could be ambiguous. Therefore, the Bill is designed to ensure that the court is not in a position where it is faced with ambiguity in that context.

We have also provided in the principal Bill for Supreme Court judges to be able to continue to hear a case that may be part heard on the day they attain 70 years or retire, and to enable them to give any reserved judgments on matters that they hear before they reach that age. While the Opposition has available to it the opportunity to amend other measures in the circumstances in which it has now moved this amendment, it seems to me not reasonable to deal with matters such as the retirement of justices of the peace when that was not contemplated when the Government brought forward the amendment to the Supreme Court Act.

Under the Justices Act there are provisions for justices of the peace to sit in courts of summary jurisdiction, and in some cases they may be magistrates. The present Government's policy is similar to that of the previous Government regarding justices of the peace; that is, when they reach 70 years they should not sit in courts of summary jurisdiction. That is sometimes difficult, because there are not sufficient justices of the quorum qualified to take over courts of summary jurisdiction. Notwithstanding that difficulty, we have been able to cope.

I can see that, if there was a mandatory requirement that all justices, including some magistrates, were to retire at 70 years, there could be problems in the way matters are disposed of expeditiously. Under the Supreme Court Act there is provision for the Governor-in-Council to issue a commission to persons to conduct, for example, Circuit Court sittings. One Supreme Court judge who has attained the age of 70 years and has retired has been commissioned to take Circuit Courts at Port Augusta and Mount Gambier. With respect to Supreme Court judges, there is flexibility in allowing them to assist in the work of the court. Without that, the trial lists of the Supreme Court would not be as up to date as they at present are.

It has been an advantage to have flexibility under the

Supreme Court Act to issue commissions to retired Supreme Court judges for this work. Under the Justices Act, it would be mandatory for justices to retire at 70 years. There may be occasions when we need to provide for justices over 70 years to sit in courts of summary jurisdiction and I suggest that the Government ought to have that flexibility, rather than that an option be closed off as the amendment seeks to do.

Another relevant point concerning courts of summary jurisdiction is that there are some magistrates who have reached the age of 70, who have retired but who can be used in such jurisdictions as the Industrial Commission, in the Adelaide and other magistrates courts, and courts of summary jurisdiction.

The Hon. C. J. Sumner: Not usually when they are over 70.

The Hon. K. T. GRIFFIN: When they are over 70 on occasions, to assist with the backlog. Provided they demonstrate continuing common sense, I see no reason why they should be cut off from providing that service for the Government merely because they have reached the age of 70. My Government and the former Government were not aiming to put people in the position where they are presiding over courts where they are not competent to arbitrate on disputes that come before them after reaching the age of 70 years.

The Hon. C. J. Sumner: How do you decide?

The Hon. K. T. GRIFFIN: It is easy to determine. It is a matter of common sense. A magistrate who has retired at the age of 70 years and who still demonstrates competence should be able to take on part-time work if he is available and if there is a need. If the Opposition's amendment is carried it would preclude such activity which is reasonable and, if the option is closed, it will severely hamper the flexibility that is necessary in administering justice in many courts of summary jurisdiction and other courts throughout the State. I cannot accept the amendment.

The Hon. C. J. SUMNER: The Attorney has based his opposition to the amendment in two categories. First, he claimed that my amendment was not related to the purpose of the original Bill, which is true. Secondly, he dealt with the merits of the matter. The Minister's first objection was really a procedural objection that this amendment is an amendment to the Justices Act dealing with justices, and his original Bill was an amendment to the Supreme Court Act dealing with judges of the Supreme Court. In the past such a procedure has been common practice, where appropriate. Although the title of one Bill dealt with one subject matter it has been common for an instruction to be given to the Committee to deal with an amendment to another Act relating to similar subject matter as the principal Bill. In principle the original Bill deals with Supreme Court judges and provides that they should retire at the age of 70 years. It provides that the position in the Supreme Court Act should be clarified. There is a relationship between whether or not Supreme Court judges are fit to sit on the bench and whether justices of the peace are fit to sit on the bench. A common principle is involved: at what age should judicial officers retire from sitting on the bench?

It is not true that my amendment bears no connection with the original Bill. It is an amendment to a different Act, true, but we are considering a procedure, and that was the Attorney's first objection. That procedure has been adopted in the past and it is proper that it should be adopted now, especially when we consider that there is this connection between the age at which all judicial officers should retire. That common thread runs between the two amendments involving the Supreme Court Act and my amendment to the Justices Act. The fact that it is an amendment to a different Act should not influence the Committee in accepting or rejecting the amendment, and I hope the Committee will deal with this matter on the merits and not on the procedural point raised.

Concerning the merits, the Attorney refers to problems and says that he does not believe there would be a sufficient supply of justices to fill the courts of summary jurisdiction in some areas if justices over the age of 70 were prohibited from sitting. I doubt whether that is the case. There are many justices in the community, and I believe that, if certain others were encouraged to take part in the judicial processes and sit on the bench, there would be an adequate number.

In dealing with the substantive matter, the Attorney referred to the fact that some magistrates sit when they are over 70 years to help reduce the back log of cases. He would like there to be that sort of flexibility regarding justices. He referred to cases involving Supreme Court judges; they receive commissions to sit on circuit when they are over the age of 70 years. That is a limited exception to the general rule. They must receive a specific commission from the Governor, and then they can sit only on circuit. If the Attorney is worried about that problem and requires further time to investigate whether there is a sufficient supply of justices should my amendment be passed, I would be happy to have progress reported so that he can carry out his investigation.

It is unfortunate that the Minister has objected to the merits of the amendment on such arguments when they are matters that could be clarified if the Minister made the necessary investigations. There would be no harm in reporting progress, and the Opposition is willing to do that. The amendment to the Supreme Court Act that we are now correcting was passed in 1944, so it can hardly be a case of urgency. A number of judges in recent years have retired before the age of 70 and, in respect to the question of finishing cases that were part heard, the matter has been dealt with adequately so far. I do not believe that there are any judges who are about to retire from the Supreme Court, so that, in terms of the urgency to pass this Bill, that argument has no basis. As it was 1944 when this amendment to the Supreme Court Act was introduced, there cannot be such urgency, and I do not believe that there are the sorts of problem that the Attorney has referred to.

Therefore, I am quite prepared to proceed with the amendment. However, if the Attorney is worried, I suggest that that is one way out of the dilemma. It would be quite wrong for the Committee to object to the amendment because, although it deals with different Acts, in principle, the matter is the same. The Committee must return to that issue when discussing this provision. The principle is whether officers sitting on the bench (whether they be judges of the High Court, or justices of the peace) should cease doing so at the age of 70. I ask the Committee to give sympathetic consideration to the amendment contained in the new clause, and I ask the Attorney whether he is prepared to report progress if he is worried about this matter. If he is not worried about it and wishes to proceed, I ask him whether the Government would be prepared to support a separate amendment to the Justices Act.

The Hon. K. T. GRIFFIN: I received the impression that the Leader was seeking to distinguish between magistrates and justices of the peace. I do not believe that there is any distinction in these terms, but if he is seeking to make a distinction it is curious that he should not also seek to amend the Justices Act to make it mandatory for magistrates to retire at 70. I wonder, if that is a correct impression of what the Leader has just said, why is the

Leader directing his attention to justices and not magistrates, also? Whether he directs his attention simply to justices, or includes magistrates, in my view the principle is the same. The arguments that I have put to the Committee for flexibility and for the Committee to oppose the amendment still apply.

I am not prepared to report progress. The Leader has suggested that he is quite amenable to that approach, but I am satisfied that on the merits there is a good argument why the amendment should not be carried. If the Leader suggests also that we should support him if he puts this proposal up by way of a separate Bill, my view would still be the same. The fact is that there is a real need to have flexibility in some cases.

From time to time there is some difficulty in obtaining sufficient justices of the peace under the age of 70 years who are prepared to devote their time to sitting in courts of summary jurisdiction. If the Leader was not aware of that when he was Attorney-General, then all I can suggest is that he did not read the appropriate file relating to the policy on this matter. The Leader should know that his Government's policy was to move towards justices of the quorum (those justices who had some special training for sitting on the bench) to eventually be the only justices to sit in courts of summary jurisdiction. That objective had not been achieved when the Leader ceased to be Attorney-General, and it has still not been achieved, because it is a slow process to find sufficient justices of the quorum available for that purpose.

In the meantime, other justices are available who may have no special qualifications, except the benefit of some long experience in sitting in courts of summary jurisdiction and sharing the work load in those courts. Those justices make a very significant contribution to the way in which the courts are administered and the way in which justice is dispensed. Therefore, my principal point is that by making this provision mandatory, the Leader is seeking to close off some of the flexibility that the Government presently has.

The Hon. M. B. DAWKINS: The new clause disturbs me because many of our most experienced justices, particularly in the country areas, are in their late 60's and early 70's. In many cases they are retired people and have the time to sit in courts of summary jurisdiction. I believe that some flexibility is necessary to avoid losing these valuable people, and at the same time avoid what could easily become a shortage of suitable people. The Leader used the term "on their merits": if people over 70 years of age can be used, one will find many such people are very good both physically and mentally. People of that age should be used if they merit use and if there is going to be a shortage. As the Attorney-General has said, to completely stop using these people who are suitable and competent simply because they have reached the age of 70 years is unwise, because many people at that age are still quite competent and have the time to do this type of work which they do in an honorary capacity, whereas younger people often have difficulty in finding time to sit in courts of summary jurisdiction.

Apparently, the Leader is not trying to do anything about limiting magistrates, who can work part-time after the age of 70 years. There is no compulsion to call upon justices if they are no longer competent. I believe that the suggested new clause is premature and undesirable at this stage.

The Hon. J. C. BURDETT: I oppose the new clause and believe that the Bill should pass in its present form. The Bill relates to Supreme Court judges, not justices of the peace, and should not be delayed for extraneous reasons that relate only to justices. I accept the fact that we are not concerned with a procedural matter and we are not simply concerned with the fact that a different Act has been introduced by the Leader's amendment. However, leaving that aside, I turn to Supreme Court judges and justices of the peace. Although they are both judicial officers the situation regarding both is entirely different. Supreme Court judges are at the top end of the scale, as I think the Leader said, and they are salaried whereas justices of the peace are not. If a judge retires another can be provided. However, that is not always the case with justices, particularly in the country. As the Hon. Mr. Dawkins said, there are some justices who are quite able and competent to carry on after the age of 70 years, and others may not be available.

I believe it would throw the summary jurisdiction bench into chaos if this Bill were made to relate to justices. I believe the Committee should not support this new clause. The Bill relates to the matter of Supreme Court judges yet the amendment relates to justices of the peace, and that is an entirely different matter. As I have said, I oppose the new clause.

The Hon. N. K. FOSTER: I do not consider myself to be even a bushed bush lawyer, but I rise because the Hon. Mr. Dawkins has said that the provision should not involve people over the age of 70 years because they fit somewhere within the concepts of our judicial system. That hypocritical attitude cannot go unanswered.

We have in this place honourable members who belong to a political Party that does not believe in compulsory retirement. They consider that a person of 90 should still be able to be a member of this place.

I have during my Parliamentary career given character evidence in Adelaide courts, when the justice of the peace has virtually had to be carried into the court and helped up the few short steps to the bench. This was indeed a reflection on the system, and I admire the courage of any Party that wants to solve this problem.

Regarding the Commonwealth Chief Justice, it is obvious that Sir Garfield Barwick had lost his marbles, wanting as he did to build the magnificent structure that is now being erected in Canberra. However—

The CHAIRMAN: Order!

The Hon. N. K. FOSTER: —I will not pursue that matter any further. The number of people in South Australia over 70 years of age will double within the next 11 years and, if a person does not retire at 70, he is not likely to do so within five or 10 years thereafter. We insist that there should be a retiring age for railway and waterside workers, State and Commonwealth public servants, and many other people.

The Hon. C. M. Hill: And for members of the Legislative Council.

The Hon. N. K. FOSTER: Labor members must retire, but it is a different matter altogether for Liberal members, who can stay here forever. I should like Liberal members to give a specific example where they consider that the competency of a justice of the peace of 70 years of age is far in excess of that of a younger colleague. Are they trying to suggest that members of any jury must be over 70 because younger people have not had the experience? The Hon. Mr. Burdett keeps mumbling at me every time I speak.

The PRESIDENT: Order! The honourable member should address the Chair, and I will do my best to see that he is heard.

The Hon. N. K. FOSTER: The whole structure of the Judiciary should never have been based on a person's being able to sit on the bench forever. It has taken

hundreds of years for that to be recognised in this country. Indeed, we are still pestered by a learned gentleman at Glenelg who writes to the press so often because he is rotten about having had to retire from the bench.

The Hon. L. H. Davis: E. H. Crimes?

The Hon. N. K. FOSTER: That gentleman, who has never been a member of the Judiciary, has recently suffered an unfortunate illness. One of the first things he did was to give notice in relation to the responsible positions that he held. I thank you for that interjection.

The Hon. Mr. Burdett claimed falsely that the Bill related more to Supreme Court justices than it did to justices of the peace, who are on the lowest rung of the judicial ladder. However, the amendment ought to commend itself to anyone who considers that there is a need for a greater number of younger justices, including women, to be appointed.

The Hon. J. C. Burdett: They should apply.

The Hon. N. K. FOSTER: They have applied, but have experienced great difficulties. Recently, I had to take action on behalf of the Secretary of a large organisation in South Australia whose application to become a justice of the peace had been refused. His duties required him to sign all sorts of papers on behalf of his employers and the work force. However, his application was not accepted by the Party of which I am a member and, having taken strong exception to the refusal, I had the matter rectified. The Government should publicise that it will receive applications from people interested in becoming justices of the peace, as women consider that it would be useless for them to apply because they will be rejected. I commend the amendment to honourable members, because it merely says to a justice, "You've had a good run, and you should get off the scene at 70 years of age."

The Hon. K. T. GRIFFIN: I do not wish to embark on a long reply to the Hon. Mr. Foster. However, the amendment has nothing to do with whether we prefer younger people or older people to sit on the bench. I repeat the point that the Hon. Mr. Burdett and I have made.

The Bill deals with justices of the Supreme Court. The new clause deals with justices in courts of summary jurisdiction. The second matter, and the main objection which I take to the new clause, is that it removes a flexibility which the Government presently has to use people who are able as justices of the peace if there is a need for them and if they can demonstrate that they are competent. We are not saying that we are going to use all 70-year-old or 75-year-old persons to sit on the bench—far from it. However, we want to have flexibility to be able to use, in limited circumstances, persons who have demonstrated a capability, who have experience and who are able to provide a service to the community through this activity. That is the whole purpose of opposing the new clause.

The Committee divided on the new clause:

Ayes (8)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, Anne Levy, C. J. Sumner (teller), and Barbara Wiese.

Noes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, M. B. Dawkins, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, and D. H. Laidlaw.

Pairs—Ayes—The Hons. J. E. Dunford and N. K. Foster. Noes—The Hons. K. L. Milne and R. J. Ritson.

Majority of 1 for the Noes.

New clause thus negatived.

Clauses 1 and 2 passed.

Title passed.

Bill read a third time and passed.

WRONGS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 February. Page 1100.)

The Hon. C. J. SUMNER (Leader of the Opposition): I support this Bill, although with some misgivings. The effect of the Bill is to overturn a High Court decision in what I will refer to as the Atlas Tiles case, where the High Court refused to follow a Privy Council decision in the matter of the Gourley case. Both cases were referred to in the second reading explanation by the Attorney-General. The subject matter is the question of what allowance should be made for income tax when the court makes an assessment of damages for future economic loss following either a claim for personal injury or, indeed, a claim for damages for wrongful dismissal. The Atlas Tiles case held that, in assessing damages for future economic loss, a court could not take into account income tax that would have been payable by the plaintiff if he had actually earned income. Gourley's case, which is an English Privy Council decision (an earlier decision than the Atlas Tiles case) held that the court, in assessing damages, should take into account the fact that in the future the plaintiff or the victim would be paying income tax.

Taking that fact into account means that, under the Gourley proposition, the award of lump sum damages for future economic loss would be less than an award of damages for future economic loss under the Atlas Tiles decision, under which the fact that income tax was paid, thereby reducing the gross amount of the earnings, is not taken into account. It is conceded that the effect of the High Court decision in the Atlas Tiles case would result in higher awards to plaintiffs or, more particularly (victims because this is what we are really talking about in this instance), higher awards of damages for victims of industrial or road accidents.

My misgivings are that, first, we are ignoring the reasoning of the High Court. We are seeking to overturn a decision of the High Court—a decision admittedly which was split three to two but which nevertheless was favourable to the victims or plaintiffs in terms of the amount of damages that they received for their loss or injury.

We are taking something away from an injured plaintiff or, as I have said, what I am primarily talking about is that we are taking something away from a person involved in an industrial or road accident. The argument used in favour of reversing the Atlas Tiles decision is that we have to balance the interest of the plaintiff against, the public interest, and the effect on premiums that failure to reverse this decision would have. The State Government Insurance Commission is the insurance company primarily concerned. It is virtually the sole insurer involved in third party personal injury claims.

Whilst some other insurance companies would be involved in the case of industrial accidents, it is a matter about which S.G.I.C. is primarily concerned, because it pays out by far the bulk of damages for road or industrial accidents. Since the Atlas Tiles case, S.G.I.C. has estimated that the amount to be paid would increase from between 10 per cent and 20 per cent. When I was Attorney-General, the commission said that awards of damages could increase by 20 per cent. The Attorney's second reading explanation says that an increase of 10 per cent would result. The Attorney then speaks of windfall gains that would occur. I find that hard to accept, because I do not think an increase of 10 per cent would amount to a windfall gain.

Therefore, I support it with some misgivings, because we are overthrowing what was put forward by the High Court, the highest court in the land, and we are taking from victims of road accidents something that they have gained by judicial decision. If we support this Bill, it is appropriate that we also look at another court decision that took something away from the plaintiff and victim. We ought to amend not only the Wrongs Act but the Supreme Court Act to reverse that decision and put the position back where it originally was before the Privy Council intervened.

I am referring to the matter of the interest that is payable on judgments. The general proposition is that interest is payable on the amount of damages for the period from the issue of the writ in the appropriate court to date of judgment. The question that arises in relation to that is whether the defendant should have to pay interest on the component of that award of damages that relates to future loss of earnings; that is, loss of earnings that would occur after the date of judgment.

That is the question that the Privy Council considered in a case from South Australia, that of *Faronio v. Thompson*. The Privy Council held, contrary to the interests of the plaintiff, that interest from date of writ to date of judgment could be awarded only on that component of any award of damages that related to loss before date of judgment. In other words, interest would not be payable on the whole of the judgment. It would not be payable on that part of the judgment that related to future loss of earnings.

That decision was detrimental to the plaintiff and I consider that, if we are reversing a decision that gives a benefit to the plaintiff (the Atlas Tiles case), we should also reverse a decision that was a disadvantage to the plaintiff and put the principles back to what they were before those two cases were decided. In arguing for this, I think it important that I take the Council briefly through the history of the decision of Parliament in 1972 to provide for the courts to be able to make the defendant pay interest on a judgment that had been obtained. When discussing this, I think we need to consider the rationale of that decision.

Before 1972 there was considerable concern in the community, particularly on the part of litigants who were injured in road or industrial accidents, that some insurance companies acting for the defendants would adopt stalling tactics to save themselves money.

To them, it was a legitimate tactic to try to stall the proceedings so that they would avoid paying the amount of the judgment until the last moment. Unfortunately, insurance companies adopted that tactic. To overcome that, it was suggested that the insurance companies should have to pay interest on the amount of the judgment from date of issue of the writ to date of judgement. The evil that the Legislature was trying to overcome in that was the evil of insurance companies continuing to delay proceedings so that they did not have to pay out as early as they would have to pay otherwise. The fact that they had to pay interest from date of writ to date of judgment meant that there was more incentive for cases to be dealt with expeditiously.

That, to my mind, is the basic philosophy behind interest on damages from date of writ to date of judgment. Before then there had been provision for payment of interest from the date of the judgment to the date that the money was paid to the plaintiff, but that is another question. It was an extension of that principle. I have tried to look at the history of the legislation and the intention of Parliament when it passed the legislation providing that interest should be paid. Unfortunately, in 1972 the second reading explanation was not all that full. It merely stated that the Act was designed to provide interest on judgments from the date the writ was issued.

It does not go into any details as to whether it was intended that that interest should also apply to future earnings or future loss as well as past loss. If one looks at the section inserted in the Supreme Court Act in 1972, new section 30c, one finds the policy that the Legislature hoped would be followed by the courts after that section was introduced. Subsection (3) provides:

> No interest shall be awarded in respect of—
>
> *(a)* damages or compensation in respect of loss or injury to be incurred or suffered after the date of the judgment; or
>
> *(b)* exemplary or punitive damages.

That was the state of the law in 1972, but there was argument because section 30c (3) provided that interest should not be payable on the component of damages that related to future loss. After the passage of that legislation the Supreme Court in this State had occasion to look at that section and try to interpret its meaning. I now refer to the judgment of the then Chief Justice Bray reported in *Sager v. Morten and Morrison* at p.154, 5 S.A.S.R., because the statement made by the Chief Justice sets out the policy that, the Legislature, I believe, was trying to get at when it passed this Bill in 1972. The Chief Justice stated:

> In *Jefford v. Gee*, Lord Denning M.R. thought that the English legislation was designed to carry into effect the principle commended by Lord Herschell L.C. in London, *Chatham and Dover Railway Co. v. South Eastern Railway Co.*, as a desirable one, though not at that time the law. His Lordship said:
>
> I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use.

Chief Justice Bray continues:

> This principle was succinctly summarised by Lord Denning in Jefford's case at p. 1208 as follows:
>
> Interest should not be awarded as compensation for the damage done. It should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him.

That was the principle that I was explaining. The Chief Justice continues:

> That is a clear and intelligible principle and one which, in my view, with respect, is conformable to justice. The difficulty is that s. 30c (3) *(a)* prevents its full application.

That was the section that I have just referred to. The report continues:

> If the appellant had got, immediately after the service of the writ, what the judgment of Zelling J. gave her some eighteen months afterwards, she would have received a sum of money which included an allowance for the cost of future hospital and medical treatment. In allowing for that an estimate would have been made of the likelihood of the treatment becoming necessary and, no doubt, if the sum was sufficiently substantial, there would have been an allowance for her receiving at the date of the judgment the present value of money which she would not have to pay until some time in the future. Equally, of course, she would, in the event postulated, have got immediately after the service of the writ, a sum of money which would have included an allowance for the future effects of her loss of earning capacity and for future pain, suffering and loss of the enjoyment of life.

> Logically all these allowances would have stood on the same footing. For example, an allowance for the cost of future medical and hospital treatment would have stood on exactly the same footing as an allowance for future pain and suffering or future economic loss. The appellant, if she had been paid the total amount of the final judgment immediately after the service of the writ—

The PRESIDENT: Order! I would like to draw to the attention of the gentleman behind the pillar that he is within the precincts of the Chamber and he must withdraw. The Hon. Mr. Sumner.

The Hon. C. J. SUMNER: The report continues:

> . . . could have invested it all straight away and had the interest on it thereafter in exactly the same manner with respect to each component of the judgment.

The Chief Justice then came to a conclusion, and said that interest could be awarded on damages for the loss of earning capacity, past or future from the date of service of the writ up to the date of judgment in so far as that capacity has been actually lost, but could not be awarded damages for some further loss of earning capacity after the date of judgment which loss was only potential at that date. Chief Justice Bray found that situation unsatisfactory, and at page 158 stated:

> I find these distinctions illogical and unsatisfactory, and the dissection of the moneys will impose a tedious, complicated and, in my view, unnecessary task on the learned trial judge. I think the attention of Parliament should be drawn to the matter with the suggestion that some simpler, easier and more rational formulation be adopted.

The important part of that judgment is that the Chief Justice and the Full Court, even with section 30c(3)*(a)* in the legislation, which did provide some prohibition on paying interest on the component of damages that related to future loss, held that in certain circumstances interest could be paid on the future loss; that is, future loss of earning capacity that could actually be calculated at the date of judgment.

As a result of that case and comments of the Chief Justice, the then Attorney-General (Hon. L. J. King) introduced an amendment to the Supreme Court Act that attempted to overcome the problems that had been pointed out by the Chief Justice in the case of *Sager v. Morten and Morrison* that I have referred to. In introducing that Bill in 1974 the Hon. L. J. King stated:

> In 1972 amendments were made to the Supreme Court Act under which the court was empowered to award interest to a successful plaintiff running from a date prior to the date of judgment. Before these amendments, with a few exceptions, interest ran from the date of judgment, but there was no power to award interest from a date before judgment. The purpose of the amendments, as honourable members will recall, was to remedy the injustice that occurs where a defendant delays settlement of a plaintiff's just claims, thus depriving him of proper compensation for a substantial period and at the same time obtaining the financial advantages that delay in the payment of compensation might confer. These amendments were considered by the Full Court in the case of *Sager v. Morten and Morrison*.
>
> The major question in this case was whether the amendments made by Parliament in 1972 empowered or obliged the court to award interest on future economic loss (that is, loss to be suffered by the plaintiff after the date of the judgment). A consideration of the judgment in that case discloses the considerable difficulty inherent in a distinction for this purpose between loss or injury to be incurred or suffered in future, and loss or injury incurred or suffered before judgment. However, be that as it may, the Government accepts the view of the judges that greater freedom and flexibility should be built into the provision for the award of interest, so that the court is empowered to do substantial justice between the parties without reference to rigid rules.

He then goes on to detail the amendments that were enacted by Parliament in 1974. The important part of the amendments that one needs to look at is that the former section 30c (3) was deleted.

As I have said, that was the section that referred to some kind of prohibition against interest being paid on future economic loss. Inserted in lieu of that section was a general section that enabled the court, when assessing interest, to do so on a lump sum basis and to award interest without technically looking at the precise formulation of an interest rate, or a precise formulation for future or past loss. In *Sager v. Morten and Morrison* the Chief Justice conceded that even with section 33c it was possible to apply interest to the component of damages relating to future economic loss. I would have thought that Parliament's amendments in 1974 did not disagree with the Chief Justice's reasoning in that case. At that stage Parliament's intention was that interest should be awarded on the whole of the damages that form part of the judgment.

I now turn to the case of *Faronio v. Thompson*, a Full Court decision in 19 South Australian State Reports at page 56. In that case the South Australian Supreme Court upheld the position that interest could be awarded on the whole of the damages, including that part referred to as future economic loss. On appeal, the case went to the Privy Council, which overruled the South Australian Supreme Court. I believe that that decision was quite contrary to Parliament's intention. The position is now that interest is not allowed to be awarded under legislation on that component of damages that relates to future economic loss. My quotation from Mr. King's speech in 1974, along with Chief Justice Bray's comments in the case of *Sager v. Morten and Morrison* (which led to the amendments in 1974), clearly indicates that Parliament's intention was to allow interest on the whole of the sum that was awarded for damages. The simple rationale put forward by the Chief Justice was that interest should be paid on the whole sum, because there is a delay in receiving that money from the date when the writ was issued to the date of judgment.

I am not arguing with the Privy Council, which does not have the benefit of being able to read the *Hansard* debates as the lawyers in this Chamber would know. I believe that, if we had read those debates, Parliament's intention would become clear.

Will the Attorney-General consider referring this whole question to an appropriate board for discussion in an attempt to rationalise the law in this area? The South Australian Law Reform Committee may be an appropriate place for this matter to be looked at. There are still several unresolved problems relating to the area of damages, particularly for personal injury. Mr. Justice Zelling, at pages 172-175, in the *Faronio v. Thompson* case criticised the formulation of the principle used in Gourley's case. In some respects Mr. Justice Zelling agreed with the High Court of Australia when it overturned that case. Mr. Justice Zelling also referred to several unresolved matters. For example, the question of inflation after judgment is not taken into account by the court when assessing the amount of damages. It has been traditionally held that it is impossible to predict whether there will be continuing inflation. However, that matter should be looked at. I am sure that most economic experts would agree that inflation will continue. I am not sure what allowance should be made for inflation; that is a matter that should be investigated and reported on.

Another matter of concern is whether or not allowance should be made for the fact that tax is paid by a plaintiff on the income he receives from the damages he invests. In most cases a plaintiff receives his damages as a lump sum, which he invests. He then receives an income from that investment, but must pay tax on it, which reduces the amount of the weekly payments that he receives. On the one hand, if we reverse the situation, to the plaintiff's detriment in assessing damages a judge will have to take into account the taxation that the plaintiff would have had to pay on his future earnings. On the other hand, when a judge looks at the damages he has awarded to an injured person, he cannot take into account the income tax that the plaintiff pays on income received from damages. Mr. Justice Zelling refers to several other matters such as loss of tax advantages, in that the lump sum is usually calculated on the basis that the money will be invested in a safe investment. He also says that no allowance is made for the fact that the plaintiff cannot better himself by changing his job from time to time.

The best way to resolve this complex issue is to put the position in relation to the law back to that which existed before the Atlas Tiles case and before *Faronio v. Thompson*, and for the Government, through its Law Reform Committee or in some other way, to have a fresh look at the assessment of damages situation and to produce a report that may form the basis of a more logical and rational approach in this area. Although I support the Bill, I will seek in Committee, by way of amendment, to deal with interest payments on lump sum damages.

The Hon. L. H. DAVIS: The Hon. Mr. Sumner is indeed correct when he says that this is a complex matter. A basic principle for the measure of damages in tort and contract is that there should be *restitutio in integrum*, that is, the sum of money awarded for pecuniary loss to a person who has been injured or who has suffered should as nearly as possible restore the injured party to the same position that he would have been in had he not been injured or suffered.

The object of compensation for loss of earnings is obviously to compensate the injured party rather than to punish the wrongdoer. However, common sense would demand agreement with Lord Reid's observation in *Parry v. Cleaver*, 1970 A.C.1 at page 13, that "it is a universal rule that the plaintiff cannot recover more than he has lost".

As the Attorney-General said when introducing this Bill, it seeks to restore the principle in the case of *British Transport Commission v. Gourley*, 1956, A.C. at page 185, which decision was overturned, as has already been stated, in the High Court decision in *Atlas Tiles Limited v. Briers*, 1952 A.L.J.R. at page 707.

The Hon. Mr. Sumner seemed to have qualms about the Legislative Council's looking at this matter in view of the High Court decision. I remind the Leader that the decision was given by a majority of three to two, and that this would not be the first time that the Legislature had overridden a court's decision. In fact, that is one of the privileges and obligations that Parliament has, namely, to review case law and, if in its view it is not satisfactory, to amend by legislation the effect of a decision that was made by a court.

Gourley's case provided that, where compensation by way of damages for loss of earnings is awarded, account should be taken of any taxation that otherwise would have been payable on income or salary. No-one would pretend that this task of assessment is easy but, with all respect to the High Court's decision in the Atlas Tiles case, it seems odd that taxation that otherwise would have been payable was simply not taken into account in that case.

As has already been stated, the principle must be that a plaintiff should be properly compensated for what he has lost, but he should not be provided with an additional benefit.

It should be pointed out that the Commissioner of Taxation does not try to assess tax on awards of damages for personal injuries, and it is unlikely that he will do so if this Bill becomes law.

Again, that is a point that seemed to be overlooked by the Hon. Mr. Sumner because, if this Bill becomes law, taxation will be taken into account, and the person involved will be receiving a sum that will involve a discounted amount on an assessment of future earnings taking into account the tax that would otherwise have been payable. Had a person earned that amount, it would have been taxable, as would the income received by a person who invested the money. Such a person would also be taxed on his investment.

So, that point should be borne in mind. The Commissioner of Taxation does not try to assess tax on awards of damage for personal injury. There is therefore no fear of an injured party's being doubly taxed if this Bill becomes law.

Earl Jowitt's comment in Gourley's case reinforces the commonsense nature of this Bill: "The obligation to pay tax, save for those possessions of exuginous incomes, is also universal in its application. No sensible person any longer regards the net earnings from his trade or profession as the equivalent of his available income."

The argument in the Atlas Tiles case is against taking taxation into account. The argument in that case seems to be that the award is damages for impairment of earning capacity, not for loss of income. One should then argue that, if this was so, in relation to damages for impairment or destroying the profit earning capacity not to human beings but to property such as motor vehicles, the law should not take taxation into account. That would be the case if the Atlas Tiles decision was to be upheld. However, that is not so. There is a long stream of case law to suggest to the contrary. I refer, for example, to cases where motor vehicles are used to earn income.

It is interesting to note that we in this State are not alone in relation to introducing a Bill of this nature. In 1978, Queensland, following the decision in the Atlas Tiles case, introduced a Common Law Practice Act Amendment Act to restore by legislation the principle of Gourley's case. In Victoria, as late as November 1979, a move was made to restore certainty to this area and, through legislation, to reinstate Gourley's case.

A paper presented on this subject by Mr. Pincus, Q.C., to the 20th Australian Legal Convention in 1979 and reported in full in 53 *Australian Law Journal*, July 1979, at pages 365 to 373 concludes with the following appropriate comment:

> At the root of the matter is the difficulty that the task of devising a just and sensible system of taxation of compensatory payments necessitates the exercise of a legislative function of a more deliberate kind than the courts are equipped to, or constitutionally entitled to, undertake.

I agree with that proposition. We have spent little time looking at the effects of not passing this Bill. Members should be reminded, as the Attorney-General said earlier, that the effects on the community are significant. The State Government Insurance Commission, which it is commonly agreed would be the company most heavily affected, would suffer by at least 10 per cent as a result of increased damages that would be awarded. That is not to say that other private insurance companies would not also be affected because of claims made on them. True, they

would not be affected to the same extent, but they would however be affected. Of course, the impact of this does not stop at a greater pay-out: it also flows through to higher premiums.

I support this Bill, because it produces certainty where uncertainty now exists, for, although a person in receipt of damages pays no tax on the damages, he would have paid tax on his income had he earned it. That, to me, is the proof of the argument. It introduces common sense into the matter, as has been recognised already in Queensland and Victoria.

I refer finally, albeit briefly, to the Hon. Mr. Sumner's proposal regarding interest. He made several observations regarding decisions on this matter which, to my mind, were not entirely convincing. The Leader referred first to a Privy Council decision that ruled on a South Australian case. It was stated that interest was awarded only before the date of judgment. Chief Justice Bray observed that those involved were kept out of money, that is, interest that should have been paid. This is one of the great difficulties that we have when talking about interest. We must distinguish between interest on amounts that were not paid because of a delay in getting to court and the difficulty or necessity of trying to compute value for future interest.

If one looks at the Hon. Mr. Sumner's amendment, one finds that he is talking about damages and compensation for the future effects of loss or injury without putting a time scale on it. I was not sure whether that interest would be imputed up to the date of judgment or for the period of the expected life.

The Hon. C. J. Sumner: I was only talking about from the date of the writ to the date of the judgment. It is a question of whether it should be on the whole of the lump sum or just that component of it that relates to the loss before the date of judgment.

The Hon. L. H. DAVIS: I take that point. However, it still does not take away from the fact that the principle we are seeking to establish in this Bill has been by far the most contentious of these two issues. The tax issue has been debated at length. The Supreme Court Act, as it now stands, specifically mentions interest and, at present, having heard the Hon. Mr. Sumner talk about this matter of interest, I oppose the foreshadowed amendment and support the Bill.

The Hon. K. T. GRIFFIN (Attorney-General): I thank honourable members for the attention that they have given to the Bill. I am pleased to hear that the Leader will be supporting the Bill, although I cannot share his enthusiasm for the amendments which he proposes to move at the Committee stage. He did suggest that he wanted to put the law back to the position that applied before the Atlas Tiles case with respect to income tax and before Faraonio's case with respect to interest. However, the difficulty is that the law before the Atlas Tiles case was certain, and the law before Faraonio's case was not certain. What the Bill is seeking to do is ensure that the law, as we know it, which resulted from Gourley's case and before the Atlas Tiles case, applies. Soon after becoming Attorney-General, I had to consider the other part of this; that is, the result of the decision in Faraonio's case. I took the decision that the Privy Council was correct. For that reason the law did not need to be amended. I shall deal with that in more detail when we get to the Committee stage.

It seems to me that it is unreasonable for a plaintiff to receive interest on future earnings when interest is really designed to recompense a plaintiff for loss of use of that money. If part of a judgment relates to the future earnings, then to receive interest indicates that he is getting something in addition to recompense for money which he would not have had the use of prior to the date of judgment.

The illustrations which have been given have been fairly clear although, at first view, they could be regarded as complex. The fact is that, when a court gives judgment which takes into account loss of earnings, in addition to awarding general damages and perhaps some special damages to reimburse for medical and hospital expenses and other such special damages, it also makes an award for loss of earnings and divides them between loss of past earnings up to the date of judgment and an estimate of loss of future earnings from the date of the judgment. Provision already exists in the Supreme Court Act and the Local Courts Act for interest to be payable from the date of issue of a writ or summons to the date of judgment on the amount that is awarded for general damages, the amount that is awarded for special damages such as hospital and medical expenses, and on the damages awarded for loss of past earnings. But as a result of Faraonio's case no interest is payable on that part of the judgment which relates to loss of future earnings. It is perfectly reasonable that there should not be interest payable on that assessment of a lump sum for loss of future earnings; otherwise, as I have indicated, the plaintiff would be recompensed by way of interest for the use of money which he would not have had anyway if he had not been injured, because he would not have had any loss of future earnings at that point. Therefore, I am not convinced by the Leader's proposition with respect to interest on damages which relate to loss of future earnings although, undoubtedly, we will have the opportunity to debate that point further at the Committee stage.

The Hon. Mr. Sumner also referred to the possibility of referring the whole question of awards of damages for personal injuries to an appropriate body for consideration. He suggested possibly that the Law Reform Committee would be suitable. I can see that there are complex questions involved in this area of the law, and certainly I would be prepared to consider referring the question to the appropriate body. However, I am not prepared to give a commitment to do that at this stage.

Bill read a second time.

The Hon. C. J. SUMNER (Leader of the Opposition): I move:

> That it be an instruction to the Committee of the whole Council on the Bill that it have power to consider amendments to the Bill relating to the question of interest payable on judgments.

The Hon. ANNE LEVY seconded the motion.

Motion carried.

In Committee.

Clause 1—"Short title."

Progress reported; Committee to sit again.

CRIMES (OFFENCES AT SEA) BILL

Adjourned debate on second reading.

(Continued from 20 February. Page 1101.)

The Hon. C. J. SUMNER (Leader of the Opposition): The Opposition supports the Bill. The necessity for it results from the Seas and Submerged Lands Case, a decision of the High Court, in which the court pronounced on the limits of the territory of the States. The High Court decided that the territorial limit of the State was low-water mark, not the three-mile limit as had been traditionally thought for most of this nation's history.

Following that decision, in 1976 the Labor Government introduced the Off-shore Waters (Application of Laws) Bill, to apply both the civil and criminal law of this State in off-shore waters to the limit of the territorial sea; that is, three miles from low-water mark. The basis on which that Bill was drafted was that it was necessary for the peace, order and good government of South Australia that there be this extra-territorial application of our civil and criminal law to the adjacent waters three miles from low-water mark.

As can be seen from Robinson's case, which is mentioned in the second reading explanation, basing the extra-territoriality of the application of our laws on the general mandate in the Constitution for the South Australian Government to legislate for the peace, order and good government of the State is a somewhat precarious business. In that case, a majority of the High Court held that Western Australian legislation that purported to vest the wreck in the Western Australian Museum was invalid because the wreck was situated outside the State and the legislation was not necessary for the peace, order and good government of the State.

In the 1976 Act there was an attempt to cast the net wide to ensure full application of civil and criminal law up to the three-mile limit which we traditionally thought we had. However, Robinson's case indicates that there can be problems in ensuring the full application of the civil and criminal law in the territorial sea.

Further, the Oteri case also is referred to in the second reading explanation. There is a problem involving the high seas in the area adjacent to the State and the way in which laws are applicable there. There are problems for interstate travellers. The present scheme allows the State law to act where it has constitutional authority. Where it has not, Commonwealth law based on the external affairs power in the Commonwealth Constitution is used to fill in the gaps.

When this legislation is passed all around Australia, we will have the State law of each State applying by virtue of a State law based on the State's Constitution, and a Commonwealth law applying State laws to the whole sea area adjacent to the State. One body of law would apply, with the State law applying in the area adjacent to the State both up to the three-mile limit and in relation to the high seas. This has been possible because the Commonwealth had the power to legislate beyond low-water mark by virtue of the external affairs power.

In this case, we are dealing only with the application of the State criminal laws but we will be in the position of applying it to foreign ships on voyages to the State from overseas, on ships from South Australia going interstate or overseas, and to acts committed on the high seas. With respect to those matters, we will be applying State law by virtue of Commonwealth legislation, and in relation to criminal acts on intrastate voyages in coastal waters up to the three-mile limit, we would be relying on this Bill.

I ask the Attorney to let me know his thoughts on one matter. That is the connection between this Bill and the Bill that we passed last year (No. 12 of 1979), which was for an Act to request the Parliament of the Commonwealth to enact an Act to extend the legislative powers of the State in and in relation to coastal waters. The Bill has been passed in our Parliament. It requested the Commonwealth Parliament to legislate, but I understand that that Parliament has not yet done so to give effect to that scheme. I should have thought that, had it done so, it would have provided a constitutional base for what we now wish to do. I ask what is the relationship between the Bill we passed last year and the Bill we are debating now.

I take it that the Attorney and his advisers are satisfied that this scheme dealing with the application of our State laws to crimes in coastal waters is valid and sufficiently well founded constitutionally despite the fact that the Bill that we passed last year requesting power from the Commonwealth in relation to the coastal waters has not yet been acted upon by the Commonwealth. I support the second reading.

The Hon. R. C. DeGARIS: The Bill may be described as an exercise in co-operative federalism, although it is somewhat of a one-sided exercise. The Bill forms part of an agreement that has been reached between the State and the Commonwealth to apply State law to the sea adjacent to the State.

It is co-operative federalism after the question of sovereignty has been resolved in the Seas and Submerged Lands Case, in which the judgment decided that State sovereignty ended at low-water mark. The battle between the Commonwealth and the States on the question of off-shore sovereignty was a long one with some political casualties occurring during the process. I do not think there is any need for me to detail that history, except to say that I have always held the view that there was no real need for a Commonwealth-State confrontation on the issue of sovereignty at all.

That may not be the view that necessarily appealed to the legal purists, but I firmly believe that co-operation between the Federal authorities and the States could have operated without the necessity of the Federal Government deciding on the course it adopted. As I said, that may not appeal to the legal purists.

Prior to the sea and submerged lands case mirror legislation was operating in relation to off-shore petroleum search and exploration, and a continuation of that approach on other matters always appeared to me to be a reasonable approach. I will come back to deal briefly with one matter associated with the off-shore petroleum legislation. I have had some difficulty in reading and understanding the Bill, and I would like some explanations from the Attorney-General about these matters.

The Council passed legislation last November requesting the Commonwealth to do certain things, and this Bill actually has a place in the Act that we passed last November. The necessary Commonwealth Bill has not yet been passed, although until tonight I thought it had been passed. The general principles of the Bill are acceptable and are of course necessary. The Bill applies to the criminal law of South Australia to the territorial waters of Australia seaward of the low-water mark of the boundary of the State.

The Bill is enacted under the coastal waters (State powers) legislation of the Commonwealth and, although the Commonwealth could legislate with respect to territorial waters from the powers vested in it under section 51 of the Commonwealth Constitution, under the Commonwealth-State agreement it has been agreed that the criminal laws of this State should apply to territorial waters. The question I find a little confusing, and I have no doubt that the Attorney-General can adequately explain the matter for me, is the definition of territorial and coastal waters in the Bill. I refer to the following definitions in clause 3:

"the coastal sea" means—

(a) the territorial sea adjacent to the State; and

(b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State,

and includes the airspace over and the sea-bed and sub-soil beneath any such sea:

"the territorial sea" means the territorial sea of Australia.

I now refer to Bill No. 12 on my file, which is a Bill for an Act to request the Parliament of the Commonwealth to enact an Act to extend the legislative powers of the States in relation to coastal waters. The schedule of that Bill contains certain definitions, but in that schedule there is no definition of "the coastal sea" although there is a definition of "coastal waters of the State". Perhaps they may be the same thing. Clause 3 of that schedule provides:

(1) In this Act—

"adjacent area in respect of the State" means, in relation to each State, the area the boundary of which is described under the heading referring to that State in Schedule 2 to the *Petroleum (Submerged Lands) Act* 1967 as in force immediately before the commencement of this Act;

"coastal waters of the State" means, in relation to each State—

(a) the part or parts of the territorial sea of Australia that is or are within the adjacent area in respect of the State, other than any part referred to in subsection 4 (2); and

(b) any sea that is on the landward side of any part of the territorial sea of Australia and is within the adjacent area in respect of the State but is not within the limits of the State or of a Territory.

Then there is a definition of the extent of the territorial sea and coastal waters. I believe that clause 4 of the schedule dealing with the extent of territorial sea and coastal waters refers to the three nautical mile limit.

On reading the Bill, I have become confused by the terms used. I refer to "coastal sea" and "territorial sea" yet, if I understand it correctly, they mean the same thing in the schedule to Bill No. 12. Perhaps I have not read the definitions correctly, but I have been struggling to understand them and I find it an extremely difficult situation to understand.

The definition of "coastal waters of the State" has been picked up as "coastal sea" in this Bill. Reference is made in clause 3 (1) *(a)* to subsection 4 (2), but there is no subsection 4 (2) in the actual Bill; there is no subsection 4 (2) in the Petroleum and Submerged Lands Act of 1967; and there is no subsection 4 (2) in the schedule, so I do not know to what subsection 4 (2) refers. I seek an explanation of that situation.

Having dealt with Bill No. 12 on the file, I now come back to the Bill before the Council and refer to clauses 6 and 7. Clause 6 applies the State's criminal laws in the coastal sea in relation to Australian ships engaged on intrastate voyages, and applies the provisions of the criminal law that are enforced in the State to any "act or omission that is committed in the coastal sea". That is relatively clear because, as I understand it in the two Bills that I have quoted, the coastal sea means to the three nautical mile limit from low-water mark. The relevant paragraph is as follows:

(b) any act or omission that is committed on or from an Australian ship beyond the outer limits of the territorial sea during a voyage of the ship between places in the State;

I pose the question whether the territorial sea is really outside the three-mile limit, or whether any change has taken place since Australia assumed the sovereignty of a 200-mile limit. I am somewhat confused about the words "territorial or adjacent waters (however described) of the State", which appear in clause 7 (2). Clause 8 relates to provisions concerning proceedings that involve a foreign ship, and provides that proceedings for an offence against the criminal laws in force in the State shall not be heard and determined except with the consent in writing of the Attorney-General, except for proceedings for offences against the law relating to fisheries. I believe I understand why that has been done, but I would like a further explanation from the Attorney-General as to why a certificate is required in relation to matters other than offences relating to fisheries.

I freely admit that this Bill is necessary, but I would like the Attorney-General to answer the questions I have raised. As I have said, this Bill is an exercise in co-operative federalism. I am pleased that this State has not lost the right to apply laws to its coastal seas. One interesting fact is that the boundary between South Australia and Victoria, which was drawn following an agreement between the previous Government and the Victorian Government (and moves roughly in a south-westerly direction from where the boundary crosses the coastline), has been virtually agreed to in the Bill that we passed last November. That original agreement would not be valid if South Australia had stood up for its rights regarding the extension of that boundary in the Bill we had before us in November. However, this Bill is necessary and applies laws to areas that at present contain an element of doubt as to which law should be applied. I support the second reading.

The Hon. K. T. GRIFFIN (Attorney-General): I thank honourable members for the attention they have given to this Bill, which is part of a complex package of Bills resulting from a High Court decision in the seas and submerged lands case. It has taken several years to develop to the point where the Commonwealth and the States are able to introduce legislation to implement agreements between the States and the Commonwealth in this area. It has also taken Parliamentary Counsel a considerable amount of time to devise the appropriate legislation. I make no secret of the fact that I relied heavily on the expertise of those counsel and my own officers in trying to pick up the threads of the co-operative scheme that had substantially developed before I became Attorney-General.

Questions have been raised by the Leader and the Hon. Mr. DeGaris. I will attempt to answer several of those questions now, but because of the technical nature of some of the other questions they will have to be answered in Committee, after I have had time to research suitable replies. The Leader and the Hon. Mr. DeGaris raised the present position regarding Bill No. 12, which has now been assented to in this State. I believe that there are two States in which the request legislation identical with Bill No. 12 has not yet passed, partly because of elections and partly because of insufficient time to have the matter considered in the respective Parliaments.

Once all States have passed the request legislation, the Commonwealth will be able to introduce its legislation and proceed to enact the Constitutional Powers (Coastal Waters) Bill. The Commonwealth's action is very much limited by the degree of expedition shown by the various States. On attaining office, the Government sought to move quickly, because this package of legislation contains a number of advantages for this State as for all States of the Commonwealth. It is my understanding that even if the Commonwealth had passed its Constitutional Powers (Coastal Waters) Bill, this Bill would still have been necessary, as is the next Bill on the Notice Paper and other Bills that have not yet been introduced in the various State Parliaments. Therefore, in answer to the Leader, this legislation is necessary regardless of the current status of the Commonwealth's Constitutional Powers (Coastal Waters) Bill.

The Hon. Mr. DeGaris raised several interesting questions, indicating a most thorough review of the Bill before us, and I thank the honourable member for that.

His questions need to be answered if not now then in Committee. The Hon. Mr. DeGaris referred to the territorial sea and the coastal sea apparently being synonymous in the legislation. I understand that there are good reasons for distinguishing between those terms. When this Bill goes into Committee I will endeavour to explain the distinction as simply as possible. The honourable member also asked whether the extension of the Commonwealth's territorial sea to 200 international nautical miles will make any difference to this State. Under the package of legislation that we are proceeding to enact, I believe that this State's jurisdiction will not ordinarily extend beyond the three international nautical mile limit, regardless of what happens at Commonwealth level.

The Hon. R. C. DeGaris: That makes the difference even more difficult to understand.

The Hon. K. T. GRIFFIN: The present description of territorial sea is limited to the three international nautical miles from low-water mark, for the purposes of this legislation.

If in other contexts the territorial sea is extended in Commonwealth terms to 200 international nautical miles, we, as a State, will not benefit. I can appreciate that the use of the description "territorial sea" in those two contexts can be confusing. There are other questions relating to the Victorian agreement regarding our mutual boundary (I refer to clause 7 (2) and clause 8) on which I cannot give answers now but with which I should like to deal in Committee.

Bill read a second time.

In Committee.

Clause 1—"Short title."

Progress reported; Committee to sit again.

OFF-SHORE WATERS (APPLICATION OF LAWS) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 February. Page 1102.)

The Hon. B. A. CHATTERTON: I support this Bill, on which I will not speak at length, as it is merely consequential on the Crimes (Offences at Sea) Bill with which the Council has just dealt. It is necessary to remove crimes from that legislation now that the separate legislation for the committing of crimes has been drawn up and is before the Parliament.

The Hon. K. T. GRIFFIN (Attorney-General): I confirm that this Bill is consequential on the Crimes (Offences at Sea) Bill, which has just reached the Committee stage.

Bill read a second time.

In Committee.

Clause 1—"Short titles."

Progress reported; Committee to sit again.

WHEAT MARKETING BILL

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

BARLEY MARKETING ACT AMENDMENT BILL

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

ADJOURNMENT

At 10.2 p.m. the Council adjourned until Thursday 28 February at 2.15 p.m.