LEGISLATIVE COUNCIL

Tuesday 6 December 1983

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

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Bills of Sale Act Amendment,
Criminal Law Consolidation Act Amendment (No. 3),
Financial Institutions Duty,
Prices Act Amendment,
South Australian Health Commission Act Amendment (No. 2),
Stamp Duties Act Amendment (No. 2),
Wrongs Act Amendment (No. 2).

PETITION: EDUCATION ACT AMENDMENT BILL

A petition signed by 176 residents of South Australia praying that the Legislative Council would reject the Education Act Amendment Bill was presented by the Hon. K.L. Milne.

Petition received and read.

PUBLIC WORKS COMMITTEE REPORTS

The PRESIDENT laid on the table the following interim reports by the Parliamentary Standing Committee on Public Works:

Marla Bore Police Complex—Stages I and II,
Yatala Labour Prison—Security Perimeter Fence and Microwave Detection System.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Classification of Publications Board—Report, 1982-83.
Superannuation Act, 1974—Regulations—Employee Transfers.

By the Minister of Corporate Affairs (Hon. C.J. Sumner):

Pursuant to Statute—

Credit Union Stabilization Board—Report, 1982-83.
National Companies and Securities Commission—Report and Financial Statements, 1982-83.

By the Minister of Health (Hon. J.R. Cornwall):

Pursuant to Statute—

Institute of Medical and Veterinary Science—Report, 1982-83.
South Australian Planning Commission—Report, 1982-83.
(Director of Planning—Report for part of year ended 4 November 1982.
Planning Appeal Tribunal—Report, 1982-83.
State Planning Authority—Report for period ended 4 November 1982.

By the Minister of Agriculture (Hon. Frank Blevins):

By Command—

Australian Agricultural Council—Resolutions of the 117th meeting of the Council held in Port Moresby, Papua New Guinea, 1 August 1983.

Pursuant to Statute—

South Australian Council on Technological Change—Report, 1982.
Department of Mines and Energy—Report, 1982-83.

By the Minister of Fisheries (Hon. Frank Blevins):

Pursuant to Statute—

Department of Fisheries—Report, 1982-83.

QUESTIONS

URANIUM MINING

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Attorney-General a question about uranium mining.

Leave granted.

The Hon. M.B. CAMERON: As honourable members would know, following last Saturday's election in the Northern Territory, which saw the defeat of the Labor Opposition in the Northern Territory—

The Hon. C.J. Sumner: It was not in Government.

The Hon. M.B. CAMERON: It thought that it would get into Government—this is what the Leader of the Northern Territory Labor Party, Mr Collins, said:

> I have no hesitation at all in expressing my total contempt, and indeed hatred for the left wing of the Party . . . I loathe the . . .

A word is left out; if I said it, Mr President, you would declare it unparliamentary.

The PRESIDENT: I am sure that we would not want that.

The Hon. M.B. CAMERON: That is so. Mr Collins went on:

> 'The majority of Australians is saying those left-wingers are not really interested in democracy . . . I mean they are really the worst Fascists.'
>
> The Left simply refused to acknowledge they lived in a democratic society.
>
> 'That's the thing I can not stand about them.'

Those are very strong words. I guess that, coming from a Labor Leader, they have even more force within the community. I imagine that the problem for the Leader of the Labor Party in the Northern Territory, Mr Collins, is that he has been forced to stand on a platform in the past three weeks and defend a lie, because that is really what the A.L.P. policy on uranium is. The people are not stupid, even if the A.L.P. thinks that they are, and they have given their answer in this recent election, at least in one part of Australia, and no doubt that answer would be repeated elsewhere.

Does the Attorney-General agree with Mr Collins that members of the left wing of the Labor Party are the 'worst Fascists', that they refuse to acknowledge that they live in a democratic society and that they cannot operate in government? That was another view expressed. Does the Attorney realise that the A.L.P. policy on uranium mining is causing, understandably, wide confusion within the A.L.P. and throughout the community because of its obvious faults? What steps is the Government taking to ensure that the threats by the A.C.T.U. to block Roxby Downs (which is directly associated with the policy) will not disrupt that project? What steps is the Attorney taking to ensure that A.L.P. policy on uranium mining is eventually cleaned up to a stage where people in the community can understand it?

The Hon. C.J. SUMNER: I have said on a number of occasions in this Council during the year that the State Labor Government supports the Roxby Downs development. I have indicated the nature of the Labor Party's policy in relation to uranium mining and I would have thought that honourable members opposite could determine that policy from the considerable press publicity that has been given to it in recent times.

The Hon. L.H. Davis: Your Federal Executive doesn't even know what it means.

The Hon. C.J. SUMNER: That is not true. Caucus has made certain decisions in relation to uranium mining, including proceeding with the development of Roxby Downs in accordance with the policy determined at the last national Conference of the Labor Party. Indeed, it is not just a matter of public record; it is matter of public record that has been made very obvious on a number of occasions. So, I do not think that there is any need to reiterate the State Labor Government's position in relation to uranium mining; it has been stated by me in this Council and by the Premier on a number of occasions. I do not believe that there is confusion about the policy. At this stage certain projects have been given the go ahead and certain others have not been given the go ahead. As to the so-called threats of the A.C.T.U., as yet no action by that body has manifested itself in relation to Roxby Downs. Therefore, I see no need to comment further on that matter; indeed, just as I see no need to comment on the preamble to the honourable member's question in relation to remarks by Mr Collins.

The Hon. M.B. CAMERON: I desire to ask a supplementary question. Will the Attorney-General explain the difference between uranium mined at Beverley and Honeymoon and uranium mined at Roxby Downs?

The Hon. C.J. SUMNER: I am happy to do that. I refer the honourable member to an answer that I gave to precisely the same question in this Council some months ago.

The Hon. L.H. DAVIS: I desire to ask a supplementary question. Is the Leader saying that the Government is not concerned about the threats made by the President of the A.C.T.U., Mr Dolan, to stop Roxby Downs?

The Hon. C.J. SUMNER: No, I did not say that the Government was not concerned: I said that no steps had been taken by the A.C.T.U. at this stage in relation to Roxby Downs. Therefore, I am not going to comment on the matter.

LICENSING FEES

The Hon. J.C. BURDETT: My question is directed to the Minister of Consumer Affairs. I refer to complaints that have been made in relation to liquor licensing fees and the fact that, if the Government does not reduce the new fees that it has set, liquor prices will have to be increased on 1 January 1984 on the basis of the fees presently fixed. Can the Minister say whether or not the Government intends to make an early announcement about a Bill to reduce the new licence fees?

The Hon. C.J. SUMNER: The matter of licence fees, as the honourable member knows, is a matter for the Treasurer. I understand that there have been discussions the result of which I am not aware of. However, I will refer this matter to the Treasurer to ascertain whether or not there is further information that can be made available to the honourable member.

CLASSIFICATION OF PUBLICATIONS

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the classification of publications.

Leave granted.

The Hon. K.T. GRIFFIN: The Attorney-General today tabled the 1982 annual report of the Classification of Publications Board which makes reference to an increase in material referring to incestuous behaviour. In referring to that topic the Classification of Publications Board states that the prevalence of this behaviour is difficult to determine and then makes the following comment:

> The Board has noted a marked increase in materials explicitly describing incestuous encounters in a manner which is erotic. Such articles are often couched in spurious rationalisations of the 'forbidden behaviour'. Usually included are family members who are grown up in the sense that they are described as being over 16 years of age. In general, written material is less likely to cause offence than explicit photographs. The Board nonetheless believes that material dealing with incest raises similar concerns as with child pornography. There is at least a sense in which a child in an incestuous relationship at home could reasonably be considered to be as exploited as children who take part in photography for child pornography. The Board has taken a position of closely scrutinising all such material, and being conservative in terms of the classification of such material.

If one looks at the standards referred to as an annexure to the report, one finds that there is no specific reference to incestuous behaviour being included in either categories I and II, or in material for which classification has been refused. Since incest has been a matter of considerable concern to both Governments, as I understand, and to the wider community, and in light of the report of the Classification of Publications Board, could the Attorney-General ascertain from the Board more precise details of the manner in which the Board deals with material depicting or referring to incestuous behaviour and into which particular category the Board would classify material involving that behaviour?

The Hon. C.J. SUMNER: I am quite happy to obtain that information for the honourable member. I accept the comments made by the Classification of Publications Board relating to incest. I believe that similar action ought to be taken in relation to that category of material as is taken in relation to child pornography. Child pornography has been refused classification in this State for many years. The Government has taken quite firm action in relation to that sort of material, including the introduction of legislation in this Parliament, seeking to make quite sure that the law relating to the production and distribution of child pornography is as tight as it possibly can be. Indeed, I think that that action has been successful because any attempt in recent times to obtain that sort of material has been unsuccessful.

That is the position that the Government would like to maintain in relation to this material. I see incest as being in a similar category, as indeed does the Board, and I would certainly be happy to obtain additional clarification of that matter for the honourable member.

The Hon. K.T. GRIFFIN: I wish to ask a supplementary question. In the light of that reply, does the Government presently have any proposals that would, by Statute, put pornographic material depicting incest or referring to incest in the same category as child pornography?

The Hon. C.J. SUMNER: The Classification of Publications Act and the Police Offences Act, which have passed this Parliament and are being considered in the House of Assembly this week, are quite adequate to deal with the question of incest. The Board has the power to refuse to classify, and if classification is refused, one is subject to prosecution. The powers are quite adequate, just as the powers in relation to child pornography are adequate.

Regarding classification in relation to child pornography, the powers were always adequate; the only problem is that there is some doubt about the law relating to its production, and that matter has been clarified. I believe that doubts have been cleared up by the legislation that was passed. So

there is no problem in regard to the powers of the Classification of Publications Board and the Police Offences Act in dealing with incest. Therefore, I do not believe there is a need for further legislation: there are controls in the existing legislation.

CRIME STATISTICS

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

Leave granted.

The Hon. ANNE LEVY: On 16 November I asked a question of the Attorney-General on crime statistics, and I have not yet received a reply. However, I realise that it will take a while to obtain the information, and I do not want this question to be regarded as a complaint in any way.

The Hon. L.H. Davis: You are just unhappy.

The Hon. ANNE LEVY: I am not unhappy. Since then, statistics have been published by the Office of Crime Statistics on penalties for various offences, including the average fine that is now being imposed in our courts for the possession of *cannabis*. I would like to expand on my previous question in the light of the data presented by the Office of Crime Statistics, and I wonder whether the Attorney could ascertain what is the average penalty that is handed down for possession of marihuana in the Christies Beach, Darlington and Glenelg courts of summary jurisdiction, as the published information does not allow me to determine this, but only the average for the whole State.

The Hon. C.J. SUMNER: I will obtain that information for the honourable member.

LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question about the Legal Practitioners Complaints Committee.

Leave granted.

The Hon. I. GILFILLAN: Until the passing of the Legal Practitioners Act in 1981, the Law Society was responsible for investigating complaints against solicitors, I have been advised. The Society, if it considered the complaint justified or of its own motion, would then bring proceedings in the Supreme Court to have the Solicitor struck off. However, in 1981 the Legal Practitioners Act was repealed and a new Act enacted. Under the new Act the power to investigate is vested in the Legal Practitioners Complaints Committee—a separate body from the Society.

I have received information from a member of the profession which indicates that the committee is not properly fulfilling its function. I am informed that in April of this year a complaint was lodged with the committee concerning an alleged misuse of trust funds. Seven months later this complaint has not been dealt with by the committee. The Secretary of the committee, Mr Stephen McNamara, has not mounted a proper investigation.

His only action has been to pass letters backwards and forwards between the alleged victim and the solicitor concerned, so I have been informed. It also appears that the committee has failed to establish proper lines of communication with the police, the Supreme Court or the compulsory professional indemnity insurers. Mr McNamara has been unable to advise my informant whether the solicitor had a current practising certificate or what stage various proceedings relating to the practising certificate had reached. It is obvious from this case that the committee is not functioning correctly. Therefore I ask the Attorney-General whether he will consider abolishing the Legal Practitioners Complaints Committee and passing its functions to the Department of Public and Consumer Affairs or some other suitable organisation. If not, why not?

The Hon. C.J. SUMNER: That is a strange question from the honourable member if I may say so, and it is a little uncharacteristic of him. The honourable member has made several allegations but he has not disclosed the source of his allegations. If the honourable member would like to have the matter of his complaint investigated, I am happy to have it investigated and let him have a reply to the complaint that he has made. I would say that the Complaints Committee comprises not just legal practitioners but also representatives of the non-legal community. As a result of the Legal Practitioners Act, which was passed during the time of the previous Government, there is also a lay observer, Mr Guscott, who is responsible for overviewing the Complaints Committee, the Legal Practitioners Disciplinary Tribunal and other activities relating to complaints against legal practitioners. So, there is significant lay input into the procedures for complaints against legal practitioners. At this stage, that is where the matter rests. The Government does not have any immediate proposals to change that situation. It has been in operation for only for two years—

The Hon. K.T. Griffin: Not even that long.

The Hon. C.J. SUMNER: It is less than that, as the Hon. Mr Griffin says, and there should be a chance to see how it works and to see whether the Complaints Committee is an effective means of dealing with complaints against legal practitioners in an impartial and unbiased manner. All I can say to the honourable member at this stage is that, if he would like to give me details of the complaint, I will have them investigated. However, I do not believe that it is warranted to take any further action at this stage in the absence of any evidence of general dissatisfaction with the operation of the Complaints Committee.

The Hon. I. GILFILLAN: I make this comment: it seemed to be inadvisable to make public the details that I have, but I am willing to give the name of the complainant and the details of the case, which I trust will be satisfactory for the Attorney.

The Hon. C.J. SUMNER: Indeed.

RESOURCES RENTAL TAX

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about a resource rental tax.

Leave granted.

The Hon. L.H. DAVIS: The Federal Government is committed to the introduction of a resource rental tax. This tax, if fully implemented, provides for the replacement of all existing mining industry taxes, levies and charges currently imposed by Federal and State Governments. Senator Walsh (Minister for Resources and Energy), in a speech to the Mining Club of New York on 22 November 1983, made the following statement:

> The Federal Government's preferred position is that existing royalty payments work onshore and offshore be abolished together with excises and the States to be compensated by a share of the rental tax. This will be a matter of negotiation.
>
> If the States will not co-operate, the Commonwealth will have little option but to retain the excise and therefore remit the proposed rental tax to offshore areas.

Senator Walsh had earlier stated that he was aiming to introduce a resource rental tax in the 1984-85 financial year. Negotiations with the States and the Australian Minerals

and Energy Council are expected to commence early in 1984 regarding the introduction of the resource rental tax.

Great concern has been expressed about the resource rental tax, both by companies engaged in the exploration for and development of minerals, oil and gas in Australia and by industry groups. For example, as an indication of that concern, Mr James Strong, Executive Director of the Australian Mining Industry Council, stated:

> . . . the mining industry in Australia is already subject to excessive total levels of taxation and other Government charges, particularly when compared with its competitors overseas. The total burden in 1981-82 was in excess of 72 per cent of pre-tax profits.

Concern has been expressed also by B.H.P.'s Manager, Petroleum Marketing, who said that he feared that the introduction of a resource rental tax could cancel the new oil policy which existed and so destroy or reduce the Australian exploration effort for oil and gas, given that we need to double our drilling effort in the next 15 years just to maintain the self-sufficiency that we currently have. This matter of the introduction of a resource rental tax is of particular importance to South Australia, given that royalties from the Cooper Basin oil and gas production will increase dramatically in the near term and in the longer term—

The PRESIDENT: The honourable member seems to be giving a very long explanation.

The Hon. L.H. DAVIS: My question is this: has the South Australian Government resolved whether or not it supports the Federal Government's resource rental tax, given that it is aware of the strong views against the introduction of a resources rental tax which have been expressed publicly and, I presume, to the Government by companies engaged in the exploration for minerals, oil and gas.

The Hon. FRANK BLEVINS: I thank the honourable member for his question. I shall be happy to refer it to my colleague and bring down a reply.

PERSONAL EXPLANATION: MEMBER'S INTERJECTION

The Hon. M.S. FELEPPA: I seek leave to make a personal explanation.

Leave granted.

The Hon. M.S. FELEPPA: During the late hours of Thursday night 1 December, the Hon. Mr Lucas, in debating new section 6 (2) *(c)* of the Bill, stated:

> I am sure that the honourable member would have to agree that the greatest likelihood is that the nomination will come from a member of the United Trades and Labor Council. Once again, the point that I made in the second reading debate is that many members of our ethnic communities who are employees are not members of a trade union, and the United Trades and Labor Council is not—

I emphasise 'is not'—

> a representative organisation for those employees.

What I interpreted the Hon. Mr Lucas as having said was:

> . . . and the U.T.L.C. is a representative organisation for those employees.

And I therefore endorsed the honourable member's remark with my interjection, 'And the working class, too'. However, when I checked *Hansard* the following morning I realised that I had misunderstood the honourable member. Therefore, I seek the indulgence of the Council in asking that my remark be deleted from *Hansard.*

The PRESIDENT: I think that the honourable member's explanation covers the situation. We would have to withdraw a whole week's *Hansard* and have it reprinted to actually delete the remark. The honourable member's explanation today, I think, puts the matter clearly.

The Hon. M.S. FELEPPA: I trust that by following your instruction, Sir, it can be recorded that it was not my intention to endorse that remark.

YATALA LABOUR PRISON BUILDINGS

The Hon. K.L. MILNE: I seek leave to make a brief explanation before asking the Attorney-General, representing the Chief Secretary, a question about the preservation of buildings at Yatala Labour Prison which are part of our heritage.

Leave granted.

The Hon. K.L. MILNE: It has been brought to my notice by the Enfield and Districts Historical Society Incorporated that on Thursday 21 July this year an advertisement was inserted in the *Advertiser* by the Hon. Dr Hopgood to the effect that he was withdrawing the A Division building from the State Heritage List. I understand that eight significant heritage buildings at Yatala are classified by the National Trust as essential to the heritage of Australia. I read from the *Prospecter*, the monthly suburban journal in the area of Enfield and districts, as follows:

> Of the cell-blocks, A Division is the finest, showing the best quality workmanship in the detailing of stone walls. Most of the heritage buildings are constructed of stone quarried as a prison industry from the banks of Dry Creek, which flows through the prison property.
>
> Hard-labour prisoners produced handbroken stone for use in road construction and 'builders' and 'pavers' for the gaol and many other Adelaide buildings. This historic association adds further to the heritage value of the gaol buildings.

It appears to the Society that in order to avoid embarrassment for a Government that is breaking its own rules the Minister first wishes to defuse a possible heritage argument by delisting the building, and it looks to me as if that is so. But Adelaide has come to look after its buildings and to be proud of some of its older buildings (especially in King William Street, but a lot of others). Perhaps most of us had overlooked that there were these very old buildings in Yatala prison. My questions are:

1. Has A Division of the Yatala Labour Prison been removed from the State Heritage List? If so, why? If not, does the Government still intend to do so?

2. Has consideration been given to written protests and a petition that was submitted to the Department of Environment and Planning, signed by 400 people?

3. Has consideration been given to A Division's being preserved due to its unique historic and constructional ties with the foundations of this State?

4. Does the Government intend to preserve the A Division building at all?

5. Has the Government considered alternative uses of the building if it is preserved?

The Hon. C.J. SUMNER: The answers to the honourable member's questions are as follows:

1. No; A Division has not been removed from the Heritage List.

2. Yes, written protests have been considered by the Department of Environment and Planning.

3. Yes, consideration has been given to the preservation of A Division.

4. No.

5. Yes.

The end result of all that is that the Government places a high priority on reform of the prison system. Part of that reform involves the considerable rebuilding at Yatala Labour Prison to make sure that the prison is modern and up to date. Careful consideration has been given to the heritage questions involved in relation to A Division, but the Government believes that its overriding duty is to ensure that

there are up-to-date facilities at Yatala Labour Prison in an area which has been neglected for some considerable time in this State.

BULK HANDLING OF BARLEY

The Hon. H.P.K. DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question on the bans on shipping of bulk barley from Port Adelaide and Wallaroo.

Leave granted.

The Hon. H.P.K. DUNN: A very critical situation has arisen in South Australia, as there is no shipping of bulk barley from Wallaroo and Port Adelaide. The harvest is in full swing and the silos are under great pressure; the Australian Barley Board and farmers are relying on shipping of much of that barley to relieve that pressure on terminal silos. It is well understood that barley loses a considerable amount of its weight while it is left on the stalk, and that for every week that it is left there it loses weight, and that is a loss of income to the whole State. The situation as I understand it has been brewing for quite some time. As I understand it, overseas currency fluctuations have had a considerable influence. The Middle East has been offering lower subsidies to its merchants. Also, lower wages in Singapore have allowed them to develop this industry in that country.

Has the Minister been aware of the situation for a long time? What contact has he previously had with the parties involved (that is, the Waterside Workers Federation, the Australian Barley Board and the private individuals who are bagging), and what is his plan to solve the problem?

The Hon. FRANK BLEVINS: I will come to the answer to the third question when I have dealt with the others. I first thank the Hon. Mr Dunn for the confidence that he expresses in me when he suggests that I have a plan that will solve the problem. I will do my best, but I cannot guarantee that any plan of mine will solve the problem.

The position is very roughly as outlined by the Hon. Mr Dunn—although not quite. My understanding is that the problem relates only to the export of barley to Singapore for bagging in Singapore before being delivered ultimately to the customer; it is not a ban on the delivery of barley that is going overseas in bags. So, we differ somewhat there in our interpretation of the problem.

There has been an arrangement for some time between the Australian Barley Board and the Waterside Workers Federation that has had the effect of keeping a great deal of the work involved in bagging barley within South Australia. It has been appreciated by both sides (the Waterside Workers Federation and the Australian Barley Board) that it was desirable if possible to keep this work in South Australia.

Arrangements have been made to enable that situation to continue. The Barley Board offered a considerable discount to enable the operation to be based in South Australia. The Waterside Workers Federation made considerable concessions regarding manning levels, and so on. It has been a very good and satisfactory arrangement to date. However, the Barley Board wrote to the Waterside Workers Federation on 17 November giving an assurance, as follows:

> No bulk barley would be exported from South Australian ports to Singapore for bagging and reshipment to Middle East markets where the said South Australian port had a bagging plant in operation.

The Barley Board felt that it could no longer adhere to the undertaking that it gave to the Waterside Workers Federation. The Waterside Workers Federation retaliated with the bans that presently apply to the shipping of bulk barley to Singapore for bagging.

I have been aware of the problem for about two weeks. As soon as the Barley Board made me aware of the problem I contacted the Waterside Workers Federation and had some discussions. I then contacted the Barley Board and had further discussions. I was delighted to find that there was considerable appreciation by both parties of each other's views. I believe that that is a very good basis for further discussions. While both sides appreciate that the problem is difficult, they have in no way reduced the issue to a slanging match and it is not yet a serious dispute.

My suggestion to both parties, which was something that they had been considering, anyway, was to have a discussion involving all parties to see whether the issue could be talked through. I advised them that I would be happy to facilitate such a conference taking place and would make available whatever facilities were required to assist them. Indeed, I was prepared to assist them by convening and chairing the meeting, if necessary. I was also prepared to offer them any Government facilities required to enable the parties to get together and hopefully reach agreement.

I received a response to my suggestion on 29 November from the Australian Barley Board. The Board agreed to everything that was proposed. A meeting was arranged for 10 a.m. on Tuesday 20 December in the boardroom of Grain House on South Terrace. I understand that the Barley Board arranged the meeting, and I agreed. The letter from the Barley Board of 29 November, states:

> In the meantime we do not anticipate any immediate problem as it is not intended to present any vessels at Port Adelaide for loading bulk barley destined for bagging at overseas ports until early in the new year.

However, on Friday evening I was contacted at home to the effect that the meeting should be held as soon as possible as other events had overtaken the situation as outlined in the letter. I was asked to convene a meeting for Monday. However, that time was unsuitable for some of those participating and it was decided that Tuesday would be more appropriate. I then invited both parties to come to Parliament House today to discuss the issue amongst themselves and with me: that will occur in about 30 minutes from now. Again, the Government is offering the parties whatever facilities and officers are required (such as secretarial assistance, and so on) to see whether a resolution to this quite difficult problem can be found.

I repeat that, at this stage, there is a large measure of goodwill between the two principal parties involved, that is, the Waterside Workers Federation and the Australian Barley Board. Both parties have an understanding and an appreciation of the problems of the other party. Given that base, I hope that the discussions that are being held this afternoon will be successful in solving what is quite a difficult problem.

DEFAMATION LAWS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about defamation laws.

Leave granted.

The Hon. R.I. LUCAS: My question follows a similar question asked by the Hon. Mr Griffin last week in relation to the proposed Uniform Defamation Code. In response to that question the Attorney-General said that there were three options: truth and public benefit, truth alone, and 'truth alone as the criterion for defence but provides some alternative privacy protection mechanisms in the legislation'. The Attorney-General would be aware that a fourth option

has been discussed, that is, truth and public interest, rather than truth and public benefit. The Attorney-General also said:

> I remain of the view . . . that truth alone should be all that is required for the defence of justification, and I will continue to support that position.

The Commonwealth Attorney-General, Senator Evans, outlined some of his proposed changes at a seminar conducted by the Media Law Association some two weeks ago. The Melbourne *Age* quotes the Commonwealth Attorney-General, as follows:

> As revealed by the *Age* last week, the feature of his draft Bill that Senator Evans hopes will be the keystone of consensus is that truth alone should be a defence against claims of libel except where privacy concerning matters of health, private behaviour, home life, personal or family relationships has been invaded.

That proposal differs from the personal view expressed by the Attorney-General in this Council. The Commonwealth Attorney-General is saying that the proposed change that he will be putting to the Standing Committee of Attorneys-General on 16 December will be the third option mentioned last week, that is, truth with some privacy considerations. He has looked at health, private behaviour, home life and personal family relationships having been invaded.

Given the Commonwealth Attorney-General's views and the fact that, if his proposal, amongst others, had the greatest chance of success, would the Attorney-General in this Chamber be prepared to compromise on the firm personal view that he put to this Council last week? The Melbourne *Age* mentioned three other aspects of the Commonwealth Attorney-General's proposal, including the creation of a new defence allowing a publisher to claim that a particular slur was too trivial for the law to worry about; publishers being free to attack the reputations of people more than a year after their death without fear of legal action being taken; and the possibility of imprisonment as a penalty for defamation. Does the Attorney-General or, more importantly, the State Government have a view on the Commonwealth Attorney-General's three proposals?

The Hon. C.J. SUMNER: I really answered this question last week. At that time I said that I had not seen the detailed proposals outlined by the Commonwealth Attorney-General and that once they had been made available to me I would consider them. I advocated the three broad alternatives that were available. I also indicated that, at the first meeting that I had attended of the Standing Committee of Attorneys-General in March this year, I argued in favour of truth alone being the criteria for the defence of justification.

I argued that point again in July and September. As to the proposition I put last week, namely, that truth alone be sufficient to constitute a defence, but with some other arrangement relating to privacy, I think I indicated at that stage that that was the proposition put forward by the Federal Attorney-General and that I had not had a chance to consider it. I am still not in a position to provide the honourable member with a firm view on this matter, which will be discussed next week at the Standing Committee meeting. All I can say is that, as a general proposition, I am favouring truth alone as a defence. However, that does not mean that there is not a case for some other mechanism to protect privacy being produced.

The original report of the Australian Law Reform Commission did have built into it, in relation to changes to the defamation laws, some notion of privacy. That is no doubt what the Commonwealth Attorney-General is referring to. I am certainly prepared to give consideration to any proposition put forward by the Commonwealth Attorney-General relating to some protection or mechanism to provide protection for privacy. At the same time, I repeat that I have outlined my basic position in this Council previously, and that I have maintained it since March of this year in relation to the forms of the Standing Committee. What the honourable member and Council members have to realise is that in order to get uniformity by way of State legislation as opposed to referring of powers to the Commonwealth to get uniformity, and as one who has discussed the matter with other Attorneys and other Governments, I can say that compromises have to be reached and that that is no doubt a process that will be taken some steps further next week. I still believe that the Bill will not be finalised then and there will be an opportunity for further public comment on the redrafts of it.

MINISTERIAL STATEMENT: ETHNIC COMPOSITION OF THE PUBLIC SERVICE

The Hon. C.J. SUMNER (Minister of Ethnic Affairs): I seek leave to make a statement.

Leave granted.

The Hon. C.J. SUMNER: Earlier this year the Hon. Mr Feleppa raised a number of questions arising out of the Report on the Ethnic Composition of the Public Service. He referred in particular to the under-representation of migrants in the Public Service. He raised a number of questions about the action that the Public Service Board would be taking to develop a system for monitoring the ethnic composition of the Public Service; about the development of equal opportunity programmes throughout the service by the Equal Opportunity Unit of the Board; and about the establishment of task forces on delivery of services to migrant groups and the need for senior administrators in the service to be sensitive to the ethnic background of the South Australian community.

I indicated in response to the Hon. Mr Feleppa's question that the Public Service Board was preparing an action plan based on the report and that the action plan would address the means by which equality of opportunity might be enhanced both in recruitment and advancement through the career structure of the service for the people of non-Anglo-Celtic background. I now have much pleasure in tabling for the information of the Council the Public Service Board Action Plan. In doing so, I should emphasise that the Action Plan, which was prepared by an inter-departmental committee established by the Board for the purpose, is related only to the Report on the Ethnic Composition of the South Australian Public Service. It should be noted, first, that all the data relating to ethnic background on individuals within the service will be collected on a voluntary basis only and, secondly, that action in relation to a number of the recommendations is contingent upon another initiative, namely, Equal Opportunity Management Plans becoming operational throughout the service. This latter initiative will be carried out progressively and therefore the result of improving the composition in some areas of service will not be immediate.

It should also be noted that recommendations, like the ones contained in the recent Report of the Review of the Ethnic Affairs Commission, concerning the appointment of persons with background and expertise in ethnic affairs to the Equal Opportunity Branch of the Public Service Board and to the staff of the Commissioner for Equal Opportunities are not addressed in this Action Plan but are separate initiatives that will be pursued by the Commission. I have been advised by Commissioner Beasley of the Public Service Board that the recommendations of the review of the Ethnic Affairs Commission have been noted by the Board and will be incorporated into the development of guidelines for the Equal Opportunity Management Plans throughout the service.

In addition, the Chairman of the Commission will be pursuing the appointment of the two particular offices recommended in that report as a matter of course and as resources permit. The Action Plan lists the recommendations of the Report on the Ethnic Composition of the South Australian Public Service and indicates the action that will be taken by the Board in response to them. The matter of the determination of the criteria of defining 'ethnic minority background' is one that presented some difficulties. In general terms the word 'ethnic' is taken to refer to groups from non-English speaking backgrounds, and the Public Service Board in implementing the recommendations about data collection on the ethnic background of members of the Public Service will take into account, albeit on a voluntary basis, mother and father's country of origin; if born outside Australia, how many years a person has lived in South Australia; and, if normal conversation is used at home, how often a different language is spoken or heard. These general criteria will be used as a contribution to the establishment of a working definition of 'ethnicity'. The Action Plan will be referred to the various task forces that have been established in the Health, Education and Welfare areas of Government to take into account in formulating recommendations.

The PRESIDENT: The Attorney-General made mention of a table in his speech. Is leave granted for the tabling of that table and its inclusion in *Hansard*?

Leave granted.

SOUTH AUSTRALIAN PUBLIC SERVICE BOARD

Action plan: Recommendations of the Report on the Ethnic Composition of the South Australian Public Service

Recommendations	Action
Recruitment and selection procedures; data collection	
• A study of the ethnic origin of applicants for positions advertised outside the Service should be undertaken. Particular attention should be directed at the intake of base grade recruits (page 97).	*English language training* • The Recruitment Unit of the Public Service Board plans to have base grade clerical tests in line with Equal Opportunities considerations. A questionnaire, to be completed on a voluntary basis has been designed to gather data on ethnic background, language usage, disabilities etc. of the applicant. A trial of this questionnaire has been run. It has been modified for use with the school leaver group in September, 1983.
• The study should aim to devise an information system to monitor the ethnic composition of future staff intake on a regular and permanent basis (page 97).	• The Recruitment Unit will design a system for monitoring the ethnic background of appointments to base grade positions.
• This study should involve an investigation of possible cultural bias in selection tests and selection criteria (page 97).	• The Board's Recruitment Unit will develop a means of checking ethnic bias in selection tests. It plans to develop validity studies and a study of ethnic interaction in selection tests, to be completed by end 1983.
• A review of occupational classification, where both skills in language and cultural understanding might be utilised, be undertaken. The aim of this review should be to specify those classifications where skills in a community language and/or familiarity with community cultural groups are a desirable job qualification (page 101).	• Cultural/language skills requirements as job qualifications will be evaluated and where appropriate, included by the Public Service Board and management services operatives in departments as existing positions fall vacant or alternatively, as part of the process of establishing new positions. An instruction will be issued to departments to this effect.
• Data be collected annually on the ethnic background of all officers newly appointed to the ranks of Administrative and Executive staff. This information should be obtained on a voluntary basis by means of a confidential letter from the Senior Equal Opportunities Officer (page 98).	• The Public Service Board will collect this data on an annual basis.
Conditions of service	
• A review of the part-time interpreter scheme be undertaken with a view to upgrading the allowance available (page 101).	• The Ethnic Affairs Commission will be asked to review the adequacy of the allowance paid in accordance with NAATI II accreditation and, if necessary approach the Australian Industrial Commission for an adjustment to the Award. • The Public Service Board will continue the current practice of paying an allowance to non-registered part-time interpreters until those officers are given the opportunity to meet registration requirements and/or that the board has sufficient registered officers.
Training	
• Current and future line management undertake a mandatory equal opportunities training course. The implementation of a training course of this type is justified not only in terms of the numbers of non Anglo-Celtic officers employed under the South Australian Public Service Act but also because it would increase the efficiency of decisions relating to the weekly paid employees and contact with the general public (page 98). • This course should place particular emphasis on imparting an understanding of the unique problems which confront persons from other cultures in their workplace (page 98). • A mandatory equal employment opportunity training course be instituted for all line management officers and all supervisors responsible for staffing decisions. Emphasis should be placed on understanding of a multicultural society and improved communication with overseas born staff, weekly paid employees, and members of the general public. Participation from Ethnic groups should be sought (page 100).	• The thrust of these recommendations will become incorporated into overall staff development strategies in Equal Opportunity Management Planning throughout departments. The Department of Technical and Further Education will be asked to review their courses in business studies and management to incorporate equal opportunity practices. • In the interim, the Ethnic Affairs Commission will be approached by the Public Service Board to conduct cultural awareness programmes in Government agencies.

SOUTH AUSTRALIAN PUBLIC SERVICE BOARD

Action plan: Recommendations of the Report on the Ethnic Composition of the South Australian Public Service

Recommendations	Action
The Equal Opportunities Unit of the Public Service Board undertake an assessment of the level of demand amongst officers of non Anglo-Celtic ethnic origins for: (i) The provision of remedial English language training. (ii) A service to provide individual officers with an evaluation of their English language ability and guidance as to the most appropriate remedial action where necessary (page 101).	• The Equal Opportunities Branch in co-operation with the Department of Technical and Further Education will prepare an article for *Equity* and the Public Service Bulletin outlining the various courses and services available for remedial English language training, the article will encourage officers who wish to enrol in these courses to do so, as well as informing them of the procedures necessary prior to enrolment.
Organisational support The now defunct Ethnic liaison officer scheme be studied in depth with a view to revitalising this system to provide personal counselling and guidance facilities for non Anglo-Celtic officers. A new system of this type should incorporate responsibility for furthering equal employment opportunities amongst both officers employed under the South Australian Public Service Act and weekly paid employees of the South Australian Public Service (page 101).	• The system will be considered in concert with Equal Opportunity Management Planning, which will take into consideration action taken by departments and agencies such as the S.A. Ethnic Affairs Commission, to implement the principles of Equal Opportunity.
Information Publicity Campaign • An information campaign be undertaken to increase the level of equal employment opportunity information regarding overseas born officers in the service. The emphasis of this campaign should be placed on explaining the benefits to be gained from equal employment opportunity practices and to reassure all officers that equal employment opportunity does not confer unfair advantages on any groups (page 100).	• The Public Service Board will develop an information campaign in conjunction with the Ethnic Affairs Commission.
• That a review of the effectiveness of the circulation and distribution mechanisms of the newsletter *Equity* be undertaken with a view to improving the coverage and regular readership of this newsletter (page 100).	• A review of the circulation and distribution of *Equity* is underway: at completion, steps will be taken to adopt the spirit of this recommendation.
• The Equal Opportunities Unit publicise its interest in contacting all officers who have either been refused recognition of their qualifications in the past or who wish to seek recognition of overseas qualifications (page 101).	• It should be noted that recognition of overseas qualifications lies with the Commonwealth Committee on Overseas Qualifications (C.O.P.Q.). However, the Public Service Board and the Ethnic Affairs Commission can be utilised as information and referral agencies. In concert with this action, the Equal Opportunities Branch is preparing articles for placement in the Public Service Bulletin, the Public Service Board's Equal Opportunity quarterly *Equity* and in the P.S.A. Bulletin which address this question.
• The Equal Opportunity Advisory Panel give consideration to the implementation of a study of the ethnic composition of the weekly paid workforce and career disadvantages stemming from ethnic background experienced by members of this workforce (page 102).	• This will be referred to the Equal Opportunities Advisory Panel for consideration.

QUESTIONS RESUMED

DIVING STANDARDS

The Hon. R.J. RITSON: Has the Attorney-General an answer to the question I asked on 30 August about diving standards?

The Hon. C.J. SUMNER: Part 1, clause 6 of the Industrial Safety, Health and Welfare Act states that the Act binds the Crown. Therefore, all divers employed in the Public Service, and divers employed on Government construction work, have the protection of the Act.

AUSTRALIAN DANCE THEATRE

The Hon. ANNE LEVY: Has the Attorney-General an answer to the question I asked on 15 November about the Australian Dance Theatre?

The Hon. C.J. SUMNER: Discussions on this issue have been going on for some time between officers of the Department for the Arts and officers of the Theatre Board of the Australian Council. Since the recent funding crisis with the Australian Dance Theatre, a meeting was held on Friday, 11 November, between the Chairman of the Theatre Board of the Australia Council and the Director of the Arts Development division of the Department for the Arts on this issue. It is likely that this issue will be discussed by the Theatre Board at its next meeting in February.

PENALTY RATES

The Hon. DIANA LAIDLAW: Has the Attorney-General an answer to the question I asked on 30 August about penalty rates?

The Hon. C.J. SUMNER: The proposal for a five period seven day week would have grave implications for both workers and their families. Most workers spend their evenings and weekends with family and friends. In addition, many leisure and sporting activities are structured to occur at the weekend. A general development to abandon the standard working week would seriously disrupt family and social life. I.L.O. studies have shown that working non-standard hours puts much greater stress on the family unit. Similarly, studies have shown that working evenings in particular can have a serious effect on the health of workers, leading to serious nervous and digestive complaints.

It is for these reasons that industrial awards in Australia, and collective agreements overseas, stipulate that penalty rates should be paid, both as a deterrent to an employer requiring workers to work non-standard hours, and as compensation for the problems workers and their families suffer. As such, the State Government supports the payment of reasonable penalty rates. For the information of the member, there is no obvious link between a reduction in penalty rates and an increase in jobs. No comprehensive study has been undertaken to show that by reducing such rates employers would necessarily take on more labour. On the contrary, it has been argued that a reduction of these rates would lead to more overtime being worked by existing employees, with less new jobs being available. In addition, it is not true that Australian penalty rates are uniquely high in relation to overseas countries. If one examines a representative selection of collective agreements in these countries it will be readily apparent that such payments are not dissimilar to those in Australian awards.

UNEMPLOYMENT

The Hon. DIANA LAIDLAW: Has the Attorney-General a reply to a question I asked on 17 November about unemployment?

The Hon. C.J. SUMNER: A return to sustained economic growth is the only permanent solution to the unemployment problem. As the Federal Minister for Employment and Industrial Relations acknowledges, even under these conditions high levels of measured unemployment will remain for some years. The principal reasons for continuing high unemployment are the growth of the workforce and the large numbers of hidden unemployed that may be expected to re-enter the workforce when employment prospects improve. The importance of economic growth to a recovery in the labour market is difficult to overstate and the primary responsibility for this rests with the Federal Government.

With regard to having provision for permanent part-time employment inserted in relevant State awards, the matter has been further considered and no action will be taken. Currently the Government is considering a number of schemes and proposals to reduce unemployment in South Australia. These options are being considered by the Human Services Committee of Cabinet. Once Cabinet has made a decision on the approaches to be developed or expanded, I will be happy to provide the honourable member with details.

DAVID JONES EMPLOYEES' WELFARE TRUST (S.A. STORES) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the trusts of the indenture constituting the David Jones Employees' Welfare Trust (S.A. Stores). Read a first time.

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

That this Bill be now read a second time.

In 1921 Mr N.K. Birks established a welfare trust for the benefit of employees of Charles Birks & Co. Ltd. The indenture creating the welfare trust has been amended by the Charles Birks & Co. Limited Employees' Welfare Trust Act, 1946, and has been subsequently amended by deeds in 1963, 1964, 1965, 1982 and 1983. The object of the welfare trust as presently constituted is to provide pensions and other benefits to employees and former employees of David Jones (Adelaide) Ltd and their dependants. However, in August 1976 the business of David Jones (Adelaide) Ltd was taken over by a related company, David Jones (Australia) Pty Ltd. Persons employed by David Jones (Adelaide) Ltd became employees of David Jones (Australia) Pty Ltd. David Jones (Adelaide) Ltd presently has no employees, is not carrying on any business and is to be wound up voluntarily in the near future. Clause 23 of the trust deed provides that, if David Jones (Adelaide) Ltd is wound up, then the welfare trust itself must be wound up and the property of the trust distributed in the manner provided in that clause.

The management of David Jones (Australia) Pty Ltd desires that, notwithstanding that David Jones (Adelaide) Ltd is not now carrying on business, has no employees and is to be wound up, the welfare trust be continued for the benefit not only of the former employees of that company and the dependants of those former employees but also for the benefit of those persons employed by David Jones (Australia) Pty Ltd in the group's Adelaide store and their dependants, whether or not those persons were formerly employed by David Jones (Adelaide) Ltd. However, in its present form, the welfare trust can provide benefits only for the employees or former employees of David Jones (Adelaide) Ltd. The employees of David Jones (Australia) Pty Ltd who were not previously employed by David Jones (Adelaide) Ltd are precluded by the wording of the trust deed from taking any benefit from the trust.

The welfare trust has long been regarded as a trust for the benefit of the persons employed in David Jones' Adelaide store. It was not foreseen that, after the transfer of the business of the Adelaide store to David Jones (Australia) Pty Ltd, the range of beneficiaries under the welfare trust would be limited to those persons who, prior to that transfer, were employees or former employees of the transferor company. It is therefore proposed that the trust deed be amended to widen the range of beneficiaries.

However, the provisions of the trust deed do not permit amendments, by deed, to effect this purpose. The variation required by the trustees can only be effected by an Act of Parliament. At the request of the trustees, and following receipt of advice from the Crown Solicitor and discussions with the solicitors acting for David Jones (Australia) Pty Ltd, this Bill to effect the necessary changes to the trust deed has been prepared.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure be deemed to have come into operation on 2 August 1976, and that the indenture dated 25 February 1982 be deemed to have had effect from 2 August 1976. Clause 3 defines 'trust deed'. That expression means the indenture made on 3 June 1921 between Napier Kyffin Birks, James Frederick Brock Marshall, Theodore Rechner, John Carter Williams and Florence Margaret Jones, as amended by the Charles Birks & Co. Limited Employees' Welfare Trust Act, 1946, and indentures dated 28 March 1963, 20 August 1964, 12 November 1965, 25 February 1982 and 22 September 1983.

Clause 4 makes amendments to the trust deed. Paragraph *(a)* makes amendments to clause 1 of the trust deed, which is the clause dealing with interpretation. The definition of 'the company' is struck out and a new definition of that expression is substituted. 'The company' means David Jones (Adelaide) Limited or David Jones (Australia) Pty Ltd and includes any company formed upon a reconstruction of that lastmentioned company. A definition of 'employee' is inserted, and means a resident of South Australia employed by the company in relation to the business carried on at 44 Rundle Mall Adelaide or such other place as the trustees declare to be a place of business of the company for the purpose of the trust deed. The expression 'in the employ of the company' has a corresponding meaning. The definition of 'the trust property' is struck out and the following definition substituted: 'The trust property' means—

(a) the shares specified in the schedule to the trust deed, any shares that may be acquired or received by the trustees;

(b) all moneys, investments and property transferred to the trustees;

(c) all accumulations of income;

or the investments and property representing such shares, dividends, moneys, investments, property, additions and accumulations.

Paragraph *(b)* amends clause 3 of the trust deed by striking out the word 'persons' and substituting the passage 'employees in the actual service of the company'. Clause 3 sets out the class of persons who may be trustees. Paragraph *(c)* makes an amendment to clause 22B of the trust deed. That clause authorises the purchase by the trustees of fully paid up shares of £1 each in the Charles Birks & Co. Limited. The amendment reflects the changed definition of

the company, and authorises the purchase of fully paid ordinary or preference shares in David Jones Limited.

Paragraph *(d)* amends clause 23 of the trust deed. That clause contains certain definitions (paragraph *(a)*), and provides (in paragraph *(b)*) for the manner in which the trust property is to be distributed amongst the beneficiaries in the event of the winding up of the company. A new definition of the expressions 'service' and 'service with the company' is inserted—they mean continuous service as an employee of the company and where a person leaves the company and is later re-employed, means his service from the date of re-employment. However, a person shall not be taken to have left the employ of the company by reason only of the taking over of the business of David Jones (Adelaide) Limited by David Jones (Australia) Pty Ltd.

Paragraph *(b)* of the clause is amended by striking out the passage 'If the company shall be wound up otherwise than for the purpose of reconstruction, then' and substituting a passage as follows: 'If David Jones (Australia) Pty Ltd is wound up otherwise than for the purpose of reconstruction, or ceases to carry on business at 44 Rundle Mall Adelaide and each other place declared by the trustees to be a place of business for the purposes of the deed, then'. The purpose of this amendment is to prevent the trustees from having to wind up the trust merely because David Jones (Adelaide) Ltd is wound up.

Paragraph *(e)* amends the trust deed by striking out clause 29 which provided that, if the trusts declared in the trust should fail, then the trust property would revert to Napier Kyffin Birks or his executors. Paragraph *(f)* amends clause 30 of the trust deed by adding a paragraph *(b)* which provides that if at any time the number of trustees able to act as trustees is reduced to less than three, then the remaining trustees, or if there are none, the Attorney-General, may by writing appoint not more than three persons in the actual service of the company to act as trustees.

Paragraph *(g)* amends the trust deed by adding new clause 32, which provides that the powers, authorities and discretions conferred upon the company or the board of directors of the company by the trust deed shall, with effect from 2 August 1976, cease to be exercisable by David Jones (Adelaide) Ltd and its directors and shall be exercisable by David Jones (Australia) Pty Ltd and its directors.

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

SELECT COMMITTEE ON LOCAL GOVERNMENT BOUNDARIES OF TOWN OF GAWLER

The Hon. ANNE LEVY: I move:

That the time for bringing up the report of the Select Committee on Local Government Boundaries of Town of Gawler be extended until Tuesday 20 March 1984.

Motion carried.

SELECT COMMITTEE ON ST JOHN AMBULANCE SERVICE IN SOUTH AUSTRALIA

The Hon. J.R. CORNWALL (Minister of Health): I move:

That the time for bringing up the report of the Select Committee on St John Ambulance Service in South Australia be extended until Tuesday 20 March 1984.

Motion carried.

SELECT COMMITTEE ON REVIEW OF THE OPERATION OF RANDOM BREATH TESTING IN SOUTH AUSTRALIA

The Hon. G.L. BRUCE: I move:

That the time for bringing up the report of the Select Committee on Review of the Operation of Random Breath Testing in South Australia be extended until Tuesday 20 March 1984.

Motion carried.

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate on second reading.

(Continued from 1 December. Page 2203.)

The Hon. M.B. CAMERON (Leader of the Opposition): The Bill before us deals with one of the most complex, difficult and potentially divisive issues which the Australian community faces. Aboriginal land rights is an issue which has no easy solution. There is no completely right way or completely wrong way to solve the dilemmas involved. In the end, all we can hope to achieve is a balance between the various competing interests which we find involved in this issue.

I stress at the very start of my speech that the Opposition's attitude on this matter is quite clear. The Liberal Party recognises the right of the Yalata community to have the Maralinga lands returned. In other words, the question of land rights for these people is not in doubt in the Liberal Party's mind. And I say that categorically. We support the transfer of the Maralinga lands to the Aboriginal people now centred at Yalata. The Opposition does, however, have some concerns with the present legislation, and these centre on three key issues:

(I) Provisions for mining and exploration,

(II) Access to the lands,

(III) Registration of sacred sites.

In addition to these specific concerns there are several general Aboriginal issues all relevant to this legislation which I wish to address. It is to these general issues that I first turn.

We recognise the very strong association between Aboriginal people and their lands. For the traditional Aboriginal this association extends beyond the European concept of possession to one of 'oneness'. Aboriginal Australians' traditions, customs and practices are tied to the land. Liberals understand and appreciate this relationship. Indeed, two prominent Liberals, a former Senator, Chris Puplick, and Sir Robert Southey, in their book *Liberal Thinking* which was prepared in conjunction with the philosophy sub-committee of the Liberal Party, discuss this fundamental tenet of Aboriginal culture and life in the following terms, and I quote:

> One thing central to the concept of Aboriginality and which in essence differs from any known parallel in European culture, is the relationship of the Aborigine with his land. This relationship, it should be stressed, is continually relevant to only a small proportion of the total Aboriginal population. But for them it may well be the *sine qua non* of their existence. This interdependence, far too complex to be spelled out here (but well understood by anthropologists and involving not so much the Aborigines possession of the land as its possession of them), is recognised by Liberals as being a valid consideration in the making of decisions of a policy nature. Consequently, Liberals accept that particular policies which reflect an understanding of this special relationship between a people and their traditional land are needed in Australia.
>
> The task is to design such policies to give an adequate and appropriate recognition of this relationship, while at the same time balancing the rights of other individual Australians and the Australian nation as a whole.

That sums up well the Opposition's attitude. We recognise and support the need for land rights to be granted over the Maralinga land. But in doing this we believe there are inadequacies in the Bill presently before the Council. We believe that the rights of individual Australians and South Australians as a whole are not satisfactorily balanced in a number of ways. We believe that it is essential that an appropriate balance is achieved between the various interests in the Maralinga lands if the granting of this land is not to create an unnecessary backlash and discord between black and other Australians.

Earlier, this year a number of my colleagues from this side of the Council and I journeyed to the Aboriginal communities in the Far North-West of the State. We met with the councils of the various communities and their community advisers and we witnessed first-hand the difficulties they faced. We witnessed, too, the operation of the Pitjantjatjara Land Rights Act which has now been in effect for some two years. In my Address in Reply speech in August I dealt with some of the issues which we felt arose from our visit to the region and I discussed at some length the real problems that continue to face our community in resolving the quite substantial differences which exist between the European culture of the majority of Australians and the traditional Aboriginal culture.

There is no easy solution to this dilemma. The Opposition recognises that. The Government, too, must recognise that there is not an easy solution. It would be all too simplistic to think that, by merely handing back to the Aboriginal communities the land over which they once had a strong association and with which they continue to have strong association, all the problems of the Aboriginal question would be resolved. That is just not the case. We must be prepared to face up to a number of very fundamental questions. Can Aboriginal and European cultures co-exist in Australia? Is it inevitable that one will disappear with the passage of time? Will we find in many years time that European-derived standards of health, education, law and morality, even personal relationships, have been so inculcated in Australian Aboriginals that we have a number of people within Australia exhibiting different external racial characteristics but in all other respects being members of a European culture?

Certainly, this is the position that has developed throughout Europe and in the United States, where people with quite different racial backgrounds have in a sense finally and ultimately been subsumed by a dominant culture. That is not something which we advocate but it is a problem which we must recognise could occur and which may result over time. Therefore, in addressing the dilemma of continuing to recognise and support the Aboriginal culture system, and the traditions and practices of the Aboriginal community, we must recognise that to appropriately support them involves more than just the granting of large tracts of land.

Certainly, the provision of the land which they see as rightfully theirs is an important part of our response to their needs, but it cannot be seen in isolation. No matter how much we may deplore the social disintegration which has occurred within the Aboriginal community, in the breakdown of their traditional values and ties, the process is already far advanced in many areas, and in a number totally irreversible. Quite frankly, there are certain areas in which European non-intervention is not a policy alternative. In other words, we cannot simply expect to give land rights to the Aboriginal people and say, 'That will solve all their problems.'

As I mentioned in my Address in Reply speech, there are areas of conflict between European and Aboriginal culture where one culture must override the other and, for example, I mentioned in my Address in Reply speech the area of infanticide. We could not support the wilful murder of young Aboriginal children, even though that may have been a traditional practice of Aboriginal life. So, in that situation the European value and the sanctity of life must rule. I mention this point only to emphasise that there are areas of conflict where one viewpoint must be adopted in supremacy of the other. There are many other areas of Aboriginal culture with similar conflicts to our culture which we will eventually not be able to ignore—

The PRESIDENT: Order! I ask the gentlemen in the gallery to please be seated or to continue their conversation out in the lobby.

The Hon. M.B. CAMERON: —and which involve the young people of Aboriginal society. We need to recognise that Aboriginal culture is in many senses static. It is totally resistant to change and varition. Fundamental to the Aboriginal way of life is a strict adherence to the traditions, myths and practices that have been established over thousands of years. These contrast significantly with our European culture which in so many ways is dynamic and always changing—quite readily and willingly past values and practices are being questioned and changed. We see that daily. We see that frequently. We see that in so many of the measures that come before this Parliament.

Few things in the European culture are regarded as being totally unchangeable. This, of course, is the reverse of the case of the Aboriginal community, particularly for that part of their culture which is based on myths and hallowed secrets. The reconciliation of the two cultures, both equally coherent and authentic but contradictory, poses enormous problems for this Parliament. To quote again from *Liberal Thinking* by Puplick and Southey:

> On one extreme there are the practices of pure paternalism imposing one set of values and standards on another culture. At the other extreme it should be recognised that the policy of maintaining Aboriginal communities entirely separate from the mainstream of Australian life is apartheid under another name. There cannot be two Australian nations—one white and one black. Unlike some other political Parties, we utterly reject this facile solution.

In other words, we need to strike a balance between the extremes. As I have said, Aboriginal Australians already benefit in many ways from some of the advances brought to them by the Europeans within the past 200 years, particularly in the areas of health and communication. They suffer, too, from being forced out of their traditional environment and being unable to cope in many respects within the European culture, but unable to return to a complete and truly traditional Aboriginal life. And there never will be an opportunity for them to return to a totally and wholly traditional lifestyle.

So, the dilemma which this Parliament faces is to strike that balance. We cannot afford to take action in this Parliament which will only accentuate and exacerbate the differences between Aboriginal and European cultures. We cannot afford to take action which can in any way divide Aboriginal and European Australians for, after all, we all are Australians. We need to know very clearly why we accept the decision to return the Maralinga lands to the Aboriginal people. Do we do it out of guilt for some past action or do we do it in recognition that that land is of particular importance to the Aboriginal people? When do we decide that it is acceptable to transfer land to the Aboriginal community and when do we decide it is not? Do we decide that it is only acceptable when the land appears to European man, at least, to be worthless?

I made the point in my Address in Reply speech that we cannot hope to return Aboriginal people to their pre-1779 position; that is, there is no way that Aborigines can go back totally to their customary traditions and practices. There are many reasons for this, the most fundamental of

which is the fact that, of course, the Aboriginal culture developed as a result of a system where people's entire activity was dominated by the need to survive, their entire day was devoted to effectively satisfying their physical needs. Of course, they had very important spiritual customs and practices and in many areas they remain, but they have only developed within a system where the predominant occupation for Aborigines was the search for food and the provision of shelter and clothing.

The arrival of European culture has meant, of course, that this complete predominance of the need to satisfy physical needs has, to a certain extent, been overcome. Aborigines no longer need to spend their entire day hunting and fishing and gathering food; they have time to do other things. Unfortunately, on the one hand European culture has given them the benefit of improved communication, food and health, but at the same time it has made them in these areas totally dependent on European culture, thus drawing them away from their traditional lifestyle and leaving them in some form of limbo, not able to fully return to their traditional lifestyle, but not able to fully take advantage of that which European lifestyle offers Europeans.

The transfer of the Maralinga lands to the Aboriginal people at Yalata is but one way of recognising that the traditional practices and values of Aboriginal society remain important and are valued not solely by the Aboriginal community but by the South Australian community as a whole. We as a Parliament recognise the attachment of the Aboriginal people to that land, but in saying that we recognise, too, that the South Australian community as a whole must be considered in this matter. Combined with those of the Aboriginal people, the needs of European Australians must be considered, and it is important in a number of areas that amendments are made to this legislation before the Parliament in order that the overwhelming majority of South Australians are considered in the transfer of the Maralinga lands to the Yalata people. That is not to say that the transfer should not take place, but there are conditions which must be considered for that transfer to be acceptable.

In discussing the general question of the transfer, I believe that I should raise a concern that has been put to a number of members on this side of the Council regarding the constitution of Maralinga Tjarutja. Embodied in this legislation is the importance of a new corporate body. This Bill provides for the Maralinga Tjarutja to have a variety of functions and powers. The functions are as follows:

(a) To ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions;

(b) To protect the interests of traditional owners in relation to the management, use and control of the lands;

(c) To negotiate with people desiring to use, occupy or gain access to any part of the lands; and

(d) To administer land vested in Maralinga Tjarutja.

These are important functions when we think that an area of 52 000 square kilometres and a proposed additional 25 000 square kilometres of the State is involved. They mean that we must be fully satisfied that the Maralinga Tjarutja, as a corporate body, is an appropriate body to hold title to the lands.

We have accepted that the Maralinga lands should be transferred to the Aboriginal people because of their close affinity and ties to those lands. Aboriginal tradition and culture is extremely complex. Authority in Aboriginal society is vested in the tribal elders. The elders are, unlike people in our system, not elected to their positions of authority. That authority is passed down to them in accordance with custom. The tribal elders (traditionally the tribe's older men) hold the tribe's secrets and knowledge of ceremonies. This information is passed from one tribal elder to the next, and so the system of authority is perpetuated.

The concept of democracy (that is, elected representatives) is at odds with Aboriginal society; yet this is the system we are requiring the Maralinga Tjarutja to adopt. This is contradictory: on the one hand the Government supports the transfer of the Maralinga lands because of the Aboriginal people's traditional association with them, yet on the other hand it is ignoring the traditional system of authority and imposing a European system on the Maralinga people. Appointment of an executive elected at an A.G.M. is quite at odds with traditional practice. Those elected are not likely to be the tribal elders in whom traditional authority (and knowledge) is vested. They are more likely to be the younger traditional owners. These people's authority will not be tribal authority but European authority. They may not have the knowledge of the tribe's secrets or ceremonies and hence may not be recognised by the traditional owners as the true spokesmen. Hence Governments, companies and individuals may not be dealing with those with true tribal authority.

This is something which must be looked at by the Government. How can we impose European hierarchical systems over traditional authority if our aim in passing over the Maralinga lands is to recognise the traditional association of the Maralinga people with the lands? The same difficulty applies to Anangu Pitjantjatjaraku; I acknowledge that.

As the traditional owners surely know their tribal elders, why can we not rely on the traditional owners themselves to let the tribal elders with the traditional authority speak for them? We must not further undermine tribal authority by effectively endorsing non-traditional spokesmen.

Since the Maralinga Tjarutja Bill was referred to a Select Committee five months ago, a number of matters have been drawn to our attention which need to be resolved. Principal amongst these was, of course, a Supreme Court judgment by Mr Justice Millhouse on 21 July of this year. The access provisions of the Pitjantjatjara land rights legislation were found by Mr Justice Millhouse to be invalid.

The access provisions contained in the Maralinga Tjarutja legislation are, in most respects, the same. Hence, we have a situation where a Government seeks to impose through this legislation provisions which have elsewhere been found to be invalid and are the subject of an appeal. It would be more than foolish to support those provisions within this Bill if at the same time they were considered invalid and are the subject of a dispute. Surely, common sense would suggest that it would be better to wait just a little longer and resolve the problems involving these access provisions. There must be automatic limitations placed on the debate in this area through the *sub judice* provisions that apply to this Parliament.

Since the Yalata people have waited over 20 years for their land to be returned, a brief (and I stress 'brief') extension would be preferable to the alternative of rushing in and creating a faulty Act of Parliament and creating further problems of litigation. It should be considered that, even if this legislation were not passed today, the position of the people at Maralinga Tjarutja would remain exactly the same as it is now. At worst, a short deferral of this Bill will ensure the *status quo*. I understand that some people have quite unfairly concerned some of the Yalata people by telling them that, unless the Bill goes through now, they will no longer have water and food supplies on the Maralinga land. This is quite untrue. Nothing different will happen to these people, whether the Bill is passed now or in a short time. They have been camped there for 22 years and can keep on doing that.

It is clear from the evidence presented to the Select Committee that an enormous range of views is held by people about the level of access which other Aborigines, miners, tourists and members of the community generally should have to the Maralinga lands. Some believe that white people should have no access to the lands whatsoever, and others that there should be unlimited access for all South Australians.

Within these extremes are a variety of views regarding those who should have access and for what purpose. As with the entire dilemma which we face because of the conflict between Aboriginal and European culture, this is a difficult issue to be resolved, but it is one that this Parliament must address. The Opposition does not believe that the present legislation adequately addresses this problem or the differing views.

I do not believe that the recommendation of the Select Committee in another place (that the access provisions should stand in the Bill and that they not be proclaimed to come into operation until such time as their legal efficacy has been clarified) is adequate.

Really, what the Government is saying when it promotes that point of view (and I must stress that that is a Government point of view, because at least two members of the Select Committee did not agree with those recommendations, although they were prevented from presenting a minority report) is that, for the Government, the Maralinga Tjarutja Lands Rights Bill is essentially a superficial document—a document without substance. That approach is rejected by the Opposition. We believe that the provision of land rights certainly is an important symbol of our commitment to the Aboriginal community and a recognition of the association with the land and their occupation of the land prior to the arrival of the European man 200 years ago.

But it is more than a symbol and we will be creating potentially faulty and certainly unfair legislation if we allow this Bill to be passed without the access provisions proclaimed; in other words, without access to the land being clarified.

It is folly to suggest that this is appropriate. It does, as I said before, simply ignore the present problems. We would be much wiser to await the final outcome of the appeal on this matter. It is likely to happen in 1984. It is only a few months away. We would be better waiting, ensuring that the matter is resolved once and for all before we tie up such a large section, another 8 per cent of our State (18 per cent in total) in such a way under such uncertainty.

The Opposition considered very carefully the evidence presented to the Select Committee. In many respects we do not believe that the final report adequately reflects the evidence presented to the committee, and it seems that the views of some are given much more predominance and weight than the views of others. It is not appropriate for this Council to endorse views which seek to establish a State within a State. We are all Australians whether we have a European cultural background or an Aboriginal cultural background. Let there be no mistake, there were views put to the Select Committee that this land should be kept quite separate and distinct from the European community. During the evidence to the Select Committee a witness, when asked how important it was to keep a check on who comes into the land, responded as follows:

> Very important. The Australian Government has a law about who comes into Australia and to me the position concerning our lands is similar.

This implies that there are two Australias and, of course, this is a notion which we must reject. We are all Australians regardless of colour.

A disturbing proposition was put by Mr Hiskey, the legal adviser for the Yalata community. In his evidence on behalf of the Yalata community he said:

> The fixed position, the starting point so far as the community is concerned, and most particularly the starting point for the older members of the community and those with the greatest authority traditionally, is that there ought not be white people on that land at all.

This is a view that we cannot morally or legally contemplate. The facts are that European man is in Australia, has been in Australia for 200 years, and so a starting point must be a recognition that these various cultures exist in Australia, they exist in South Australia, they have an interest in the Maralinga lands, and whatever this Parliament does in relation to transferring those lands to the Yalata Aboriginal people must acknowledge that position. We cannot be blind to that fact.

There are Europeans who are making their living on that land at the moment; there are Europeans who have an interest in the land; and there are Europeans who wish to travel over the land. We cannot simply say that over 200 years ago there were no white people on this land and that is the position to which we must return. In fact, I believe the majority of Aborigines themselves would not want that position. The second specific area of significant concern to the Opposition is that of the exploration and mining provisions. These provisions were intensely debated before the Select Committee.

Anyone who reads the evidence and the minutes of proceedings will confirm that that is the case. Since this legislation was first introduced in another place the intensity of that debate has increased. A rational and responsible resolution of the difficulties in this area has not been assisted by the attitude of the Minister of Aboriginal Affairs who, in tabling the Select Committee Report, openly admitted when talking about the problems faced by mining companies that wanted to explore on Aboriginal lands:

> We talked about it frankly with the mining companies and with spokesmen from the Aboriginal communities and we do not have the answer; it is as simple as that.

The Opposition rejects the Minister's negativism: we believe answers to the problems must—and can—be found.

I refer to a report tabled by the Department of Mines and Energy, as follows:

> The constraints on exploration which result from the setting aside of Aboriginal-controlled land and of conservation parks, as well as the negative decisions on proposed development of the Honeymoon and Beverley uranium deposits, need to be assessed and taken into account in dealing with the maintenance of exploration effort. With regard to uranium, it should be recognised that expenditure directly on uranium exploration over the past decade comprised 25 per cent of company exploration expenditure.

The following is stated on page 4 of the report:

> *Exploration on Aboriginal land*
>
> Attention has been drawn to the matter of exploration, in the State and National interest, on Aboriginal land in several annual reports since 1975-76. It is therefore with particular concern that it is necessary to report again that determination of appropriate guidelines for the negotiation of access to Aboriginal land for the purpose of exploration remains unresolved. With the proposed granting of the Maralinga Lands, the matter becomes of even greater concern. Four years have now elapsed since departmental drilling encountered oil in a shallow stratigraphic well drilled on the eastern margin of the Officer Basin. Despite proposals for appropriate follow-up, by a major Australian-led consortium, of the prospective deeper parts of the basin, agreement on conditions of access have not been achieved.
>
> It must be emphasised that this issue, for the Department and the companies concerned, is not concerned with land rights as such but with access for exploration purposes. It is suggested that it is not in the interest of the majority of South Australians to restrict exploration in these remote, extensive and potentially prospective areas covering nearly 15 per cent of the land area of the State. Crown or public ownership of minerals extends throughout the State. To provide for delineation and proper exploitation of mineral resources is therefore considered to be a Government responsibility in all areas of the State. Such delineation and

exploitation has traditionally been a co-operative exercise between the Department and exploration companies.

I have been informed that the downturn in expenditure on mineral exploration in this State amounted to $5.5 million in 1982-83. In real terms that is a downturn of $10 million, and it is the first downturn since 1975. I have referred to a Government document from a Government department, which expresses the same concerns as expressed by the Opposition.

The Minister also made an extraordinary statement in the Select Committee concerning mining company profitability when he said that it was really a Federal issue! On the one hand the Government is prepared to grasp the nettle on the question of lands; on the other hand, when this action affects mining companies attitudes towards exploration in South Australia, he washes his hands quickly and says, 'I do not believe that it is appropriate for a State Parliament to involve itself in financial incentives for the mining industry as such, and I believe that, along with other incentives of this nature, particularly for mining exploration, it should be created not from one State to another but should be established federally.' I do not believe that this Parliament can so lightly dismiss the issue of mining and exploration. If we are prepared to tackle the land rights question at a State level, we should be prepared to tackle at a State level the impact on resource development that land rights will have. We cannot simply defer to the Federal Government.

This legislation as it presently stands will have a serious and undesirable effect on exploration. Identical provisions are contained in this legislation as in the Pitjantjatjara Land Rights Act. To date, these provisions have proven unsatisfactory in relation to the Pitjantjatjara lands. The one exploration application has resulted in an impasse. As a result, we do not know what, if any, valuable resources of potential benefit to the entire South Australian community (including and especially Aborigines) remain locked beneath the surface. The impasse between Hematite Mining and the Anangu Pitjantjatjaraku has been extensively discussed in another place. In the Select Committee Report it is inferred that the talks broke down because of inexperience in the handling of the Act by the Aboriginals and that claims of excessive compensation were unfounded because 'negotiations did not reach the final stage'.

Whilst it may be true that the Aborigines themselves were inexperienced with the Act, it would be naive to suggest this was the case for the legal advisers who were involved in detailed discussions leading up to the legislation over a number of years. The committee cannot simply dismiss the mining company's (and industry's) concern at excessive compensation claims by calling them unfounded. Nor can it say that the mining company is wrong to allege that front-end payments or key money were sought by the Aborigines just because such payments are illegal under section 21 of the Act.

Mr Bryan Griffith, the General Manager (Exploration) of Hematite, told the committee that a draft agreement had been reached with the Pitjantjatjara which provided them, in the company's opinion, with considerable protection both in terms of their lifestyle and sites of significance. The company also planned to absolutely minimise contact with the Aborigines so that there would have been little, if any, social disturbance.

Mr Griffith estimated that protections the company planned would have cost about $340 000 more during the first two years of the project, than had the same exploration been undertaken outside Aboriginal lands. The Pitjantjatjara were not satisfied. For physical disturbance, in excess of $400 000 was claimed. A compensation claim was also made for social disturbance at the rate of $1 000 per head of population, for about 1 500 Pitjantjatjara. Mr Griffith summed up the claim as follows:

> Together with additional payments we were prepared to make to avoid sites of significance, to minimise disturbance, would involve us in our initial two-year programme in something in excess of $2 million.

This would have been an increase of 25 per cent in outlays by the company because its planned expenditure on exploration for the first two years was $8 million. Mr Griffith's evidence on these points is to be found between pages 383 and 395 of the Select Committee evidence. In his evidence to the Committee, Mr Toyne for the Pitjantjatjara, said the following:

> Everything except compensation has been agreed to the complete satisfaction of the Anangu Pitjantjatjaraku. We are satisfied that none of the operations on the company's part would have caused sacred site damage. In addition, we are satisfied that as a result of provisions in the agreement. Minimum environmental impact would have occurred.

Those statements are to be found on pages 347 and 348 of the evidence. They raise questions about the justification of the claim by the Pitjantjatjara, given that on all the facts and all the evidence put before the Select Committee all forms of disturbance were to be minimised.

The Opposition has legal advice on the validity of the compensation claim in this case. That advice is based on an examination of a report prepared for Anangu Pitjantjatjaraku on the compensation which it should claim. That report was the basis of the compensation claim. Our legal advice is to the effect that the approach suggested in the report was quite wrong and clearly contrary to the objective of the legislation that compensation should be calculated only on a genuine assessment of actual disturbance caused by exploration.

The Government members of the Select Committee suggest that in their report where they refer to 'the opportunity which still exists for the whole procedure to be tested'. As a result, Hematite told the Select Committee in clear terms that it would not follow that course. In explanation, it said that exploration expenditure was already very high risk and the cost of arbitration would only increase that risk in a manner which the company could not justify. Its money could be spent more profitably in lower risk areas elsewhere. As a result, the amount that Hematite had budgeted for this exploration—$30 million over five years—has been reallocated and the company is now preparing to engage in petroleum exploration off China.

Amendments have been proposed to provide that the existing provisions of the Mining and Petroleum Acts will apply to applications for exploration on these lands. If exploration leads to proposals for a permanent mining operation on the lands, an arbitrator should be appointed at that stage to deal with any disputes over compensation and other questions. This proposal would not rule out the payment of compensation for actual disturbance to their lands during any exploration, and companies still would have to fully consult with the community before any exploration does proceed.

What is even more unfortunate is that this impasse has resulted in the mineral and petroleum exploration industry in Australia taking a stand in principle against the current arbitration provisions of South Australia's land rights legislation. This was a fact made clear to the Select Committee by a number of witnesses from the industry, particularly those representing the South Australian Chamber of Mines and the Australian Mining Industry Council. Lest the Council wishes to dismiss the claims as lightly as did the members of the Select Committee, let me quote from a letter from Mr Griffith of B.H.P., Australia's biggest company:

The Report of the Select Committee of the House of Assembly on the Maralinga Tjarutja Land Rights Bill, 1983, was tabled in Parliament on 17 November.

This report recommends passage of the Maralinga Tjarutja Land Rights Bill with but minor variation. If passed by Parliament as so recommended, the Bill will extend and reinforce the terms and conditions of the Pitjantjatjara Land Rights Act, 1980, particularly as they relate to the provisions for compensation and arbitration which, in their only application to the petroleum exploration industry, have been found by B.H.P. petroleum to be unworkable. As such, passage of the Bill will have an adverse impact on the petroleum exploration industry in the State, an outcome which is not in the best interests of the South Australian community as a whole.

The letter goes on to make a number of important points which are very relevant to this legislation, for it relates to identical provisions in the Pitjantjatjara Land Rights Act as are in the Maralinga Tjarutja Bill. I will repeat these specific points in detail during the Committee stages. However, the letter makes the following valuable comments about the Select Committee report:

Section 16 (1): B.H.P. Petroleum, contrary to the report, is appreciative of the rights and affiliations of the Aboriginal people, and in the draft agreement reached with the Anangu Pitjantjatjaraku every effort was made to protect and preserve Aboriginal culture, land and ways of life. In particular, specific provisions were made in the agreement to avoid sites of significance and considerable cost to the joint venture.

Section 16 (2): Section 24 of the Bill is identical to section 24 of the Pitjantjatjara Land Rights Act which, in B.H.P.'s negotiations with the Anangu Pitjantjatjaraku provided one of the major stumbling blocks to the conclusion of a successful agreement.

In attempting to recognise the special culture affiliations of the Aboriginal community, section 24 introduces concepts whose definition is impossible in financial terms or at least highly subjective and thus open to considerable interpretation and potential abuse.

Compensation for social disturbance is immeasurable in financial terms. Notwithstanding this fundamental problem the Anangu Pitjantjatjaraku claimed exhorbitant moneys for such disturbance not surprisingly without basis of fact or logic. In effect, the only practical means of protecting Aboriginal society is to ensure minimum contact and disturbance, both of which B.H.P. was prepared to ensure in its proposed exploration programme in the Officer Basin.

Compensation for the affront caused by disturbing the land for which the Aboriginal has a religious affiliation is also incapable of assessment. However, physical disturbance *per se* can be compensated for on the basis of European concepts of commercial value, and, as such, has been appropriately allowed for by the Mining Act and by industry practice elsewhere in non-Aboriginal communities. However, Anangu Pitjantjatjaraku under the provisions of section 24 of the Pitjantjatjara Land Rights Act, introduced the concept of rent, based on American Indian Homeland values, which are alien to Austrlaian practice and experience. B.H.P. Petroleum wants the provisions of the relevant mining Act to apply, with the addition of those conditions necessary to protect Aboriginal culture and way of life. Thus there is thus no need for the specific provisions of section 24 of this Bill.

Section 16 (3): While section 21 of the Bill (section 21 of the Pitjantjatjara Land Rights Act) specifically prohibits the payment of any 'key money' or 'front end' payment, it should be recognised that, in its negotiations with B.H.P. Anangu Pitjantjatjaraku claimed cash payments under the compensation provisions of section 24 of the Act, thus, effectively negating the provisions of section 21.

Section 16 (4): It should be recognised that exploration activity is of a transitory nature. If pursued with care such activity causes minimal disturbance thus allowing rapid recovery of the land. This is in direct contrast to development and production activities which are permanent and thus likely to have a much more significant impact on Aboriginal land and society.

Section 16 (5): During negotiations with B.H.P. the Anangu Pitjantjatjaraku were always represented by lawyers who are both experienced and well versed with the provisions of the Pitjantjatjara Land Rights Act, having been intimately involved in its negotiations with the Government. The claims that the provisions of the Act were new and the Anangu Pitjantjatjaraku were inexperienced in their administration is spurious. Any arbitration which accepted the payment of compensation as claimed by Anangu Pitjantjatjaraku under section 24 of the Pitjantjatjara Land Rights Act would set a precedent in all Aboriginal lands throughout Australia. Such a circumstance would have potentially serious consequences for the entire exploration industry and, in the long run, on the Aboriginal community. Moreover, as the Anangu Pitjantjatjaraku compensation claims for physical disturbance are expressed on the basis of European concepts of land values, the precedent so established would sooner or later flow through to non-Aboriginal lands.

It should be recognised that, although the decision of the arbitrator is binding on both the South Australian Government and the applicant, such a decision provides no guarantee that exploration operations will proceed. In the first instance, the South Australian Government, while recognising the arbitration decision, might well refuse to issue an exploration licence under the terms and conditions imposed by the arbitrator. Secondly, even assuming an exploration licence is offered by the South Australian Government under the terms and conditions determined by the arbitrator, the applicant has the right to refuse such licence on the terms and conditions offered. However, in either event, the arbitrator's decision, if it set a new regime for access to lands, would, in the opinion of B.H.P. Petroleum, remain as a precedent facing all other petroleum explorers wishing to gain access to Aboriginal lands, not only in South Australia but in all other areas of the country.

It should be recognised, as a fundamental point of principle, that by allowing any argument to proceed to arbitration the Government has lost control over the decision-making process, and has thus lost its right to determine the scope, extent and conditions of petroleum exploration and, indeed, production activities. The legislation effectively abrogates the fundamental role of Government in favour of an arbitrator having no public accountability. The effective relinquishment of Government control over mineral rights appears to be against the national interest.

The Select Committee, in preparing its report, chose to discount the evidence provided by B.H.P. Petroleum, the only company to have had experience of negotiating with the legal representatives of the Aboriginal community under the provisions of the Pitjantjatjara Land Rights Act. In certain key sections this Act has been found unworkable. Passage of the Maralinga Tjarutja Land Rights Bill, in its current form, will reinforce and extend the same basic legislation to another large area of South Australia, to the detriment of the exploration industry.

I make no apology for including all those comments in *Hansard*, because I believe that they provide a basis for a lot of concern. We believe that the difference between the exploration and mining stages of resource activities need to be much more adequately defined. The Opposition and the mining industry are not alone in these views. Indeed, Dr Colin Branch, Director of Resources in the Department of Mines and Energy, said in his evidence:

> We feel that it may be beneficial to consider in both the Pitjantjatjara legislation and the Maralinga Tjarutja legislation a point of clarification to distinguish the exploration stage and the tenements acquired at that stage from the mining stage.

In other words, even the Government's own advisers acknowledged that mining and exploration are two quite separate activities. Regrettably, this Bill is based on a Select Committee report which is frankly wholly inadequate.

The committee members suggest that exploration could cause more disturbance than production. That is nonsense and contrary to evidence given to the Select Committee. The committee members also suggest that compensation provisions in the legislation are modelled on existing provisions in the Mining Act. That is not true. It is also suggested that the arbitration provisions of the legislation are akin to powers of a Royal Commission. In fact, they are much more wide ranging.

The Liberal Party believes exploration must be distinguished from mining if this legislation is ever to work properly. The necessary amendments to provide for this have been prepared. This legislation, including the arbitration provisions, should still apply at the mining stage, so that the Aborigines retain much greater protection than any other group in our community when a permanent production operation is planned to be located on their lands. But for applications for exploration, the existing provisions of the mining and petroleum Acts should apply.

Let me point out some of the protections that will still give the Aborigines, as follows:

The Government can prescribe any conditions it thinks fit. In determining those conditions, special regard would be had to the following criteria:

- the natural beauty of any locality or place that may be affected by the conduct of exploration operations;
- features and objects of scientific or historical interest that may be affected;
- the Government can ensure full and effective consultation with Aboriginal communities affected, before any exploration takes place.

In addition, a Warden's Court can hear disputes about access to land and compensation for disturbance under the existing provisions of the mining and petroleum Acts. These amendments offer a realistic compromise. They can ensure the protection of the interests of the Aborigines. Disturbance during the exploration stage can be minimised but, where there is actual and demonstrable disturbance, compensation can be determined, according to already established criteria.

This is a mechanism with precedents, and I believe, therefore, that the Liberal Party's amendments in this area can resolve the present impasse. I shall put them before the Council in a genuine, constructive and responsible spirit. They recognise that the Aborigines still require special protection for their lands. But they recognise, as well, that it is important for South Australia to continue to seek to discover mineral and petroleum resources, because this is a fundamental basis of a large proportion of our economic growth. And, unfortunately, unlike other forms of production, the location from which these resources can be economically recovered is not a matter of choice. They are already there to be found, and it is not easy to find them. Indeed, it is very expensive—and very risky in financial terms. Not every company finds a Roxby Downs when it sets out to explore. The Select Committee heard that, of every 1 000 exploration ventures, only one is ever successful.

I believe it is also the desire of the Aborigines on these lands to see such developments proceed, provided that their interests are protected to the maximum extent possible and they can benefit in tangible ways from such developments. Current developments in the Northern Territory show that only too clearly where Aboriginal communities now want compensation because uranium developments on their lands are being stopped. It has been quite wrongly alleged that the Liberal Party is taking the stand it is on this Bill only because of pressure from mining companies. That is untrue. Our concerns cover many issues. Certainly, we are worried about the mining and exploration provisions as they presently stand and the lack of accountability to make them work in the present legislation.

Our concern is relevant not just to the mining companies. We believe that, if there are resources beneath the ground in the 52 000 square kilometres of the Maralinga lands and the proposed additional 25 000 kilometres between parallels 132 and 133, then these should be taken advantage of for the benefit of the entire South Australian community—not least for our Aboriginal population. It may seem trite to say it, but, before any resources on the Maralinga lands can be exploited, they need to be discovered. For this to occur mining companies need to be encouraged to explore. The Aboriginal people need to understand that this means providing every incentive possible for exploration. Exploration is a risky process. Companies have to spend large sums without any guarantee of return. If Aboriginal communities place heavy demands for compensation during the exploration stage, they could be cutting off their nose to spite their face.

Mining companies will not explore (as the situation in the Pitjantjatjara lands shows), hence mineral developments will not proceed. Mineral developments are where the real money is—it is once a mine is developed and earning income that Aborigines can really benefit. Compensation through the exploration stage will not guarantee substantial long-term returns—actual mining will. Once mines are up and running, present and future generations of Aborigines will benefit. The money which potentially can come (as Northern Territory Aboriginals prior to the A.L.P.'s uranium about face well know) from mining will help the communities to become self-sufficient and improve prospects for their young people.

The benefits of mining will not simply accrue to a few mining companies, as some people would wrongly suggest. They will bring the prospects of employment and an expanded pool of wealth to the local Aboriginal community. This means money to improve health care facilities, education and communication. It means, above all, economic independence for the Aboriginal people. Such potential should not be put at greater risk by unrealistic claims during the uncertain exploration stage. The rewards of mineral developments will not be confined to the Aboriginal people and the mining companies alone. The entire South Australian community will benefit from increased employment, from the purchase of goods and services in South Australia and from increases in State revenues, such as royalties.

In the interests of constructive negotiation towards a mutually acceptable conclusion, the Opposition does not intend to pursue, in this Council, amendments which would vest the lands in the Aboriginal Lands Trust, which would then re-lease the lands to the Maralinga Tjarutja. We accept the wishes of the community to hold the lands directly, although we do emphasise that in earlier negotiations over many years it had always been considered that the Lands Trust would be the body which would hold the Maralinga lands on behalf of the traditional owners. We believe this compromise on our part is further evidence of our reasonable and balanced approach to this very complex issue.

In addition to changes to the general access and mining and exploration provisions, the Opposition has proposed amendments to a number of other areas within the Bill. We believe that the Bill should be amended—

- to require the Maralinga Tjarutja to operate offices at both Adelaide and Yalata at which legal process, notices and other documents (for example, for the purpose of obtaining permits) may be served.
- to ensure that the Maralinga Tjarutja shall not 'unreasonably or capriciously' refuse permission to enter the lands.

We do not want to support a system which would make it easier for any ordinary South Australian, black or white, who is not a member of Maralinga Tjarutja, to obtain an entry permit to a foreign country than to 18 per cent of his or her own State—

- To allow a person invited by a traditional owner to enter the lands without a permit.
- To allow the (lawful or *de facto*) spouse or child of a police officer on duty, any other officer appointed under statute and on duty, any person authorised by the Minister of Aboriginal Affairs who is carrying out functions assigned to a Minister, or Government department, or instrumentality, or member of Parliament, or candidate, or genuine staff member to enter the lands without a permit.
- To allow a person to enter the lands without the need for a permit if carrying out exploration operations on the land.
- To allow entry without permit on the southern portion of the lands within 50 kilometres of the Trans Australian Railway, thus avoiding the need for a complex set of provisions relating to the residents of Cook.
- To provide that access for mining purposes only (not prospecting) can be subject to conditions.
- To set a prescribed limit on royalities payable to the Maralinga Tjarutja in the same way as a prescribed limit on royalties applies to the Pitjantjatjara lands. Any royalties obtained beyond the prescribed limit would be paid into general revenue from which they can be disbursed

for the benefit of the general South Australian community, including other Aboriginal groups.

- To set aside additional roads, which will be serviced by the Highways Department and to establish appropriate road reserves, 100 metres either side of the road centre.
- To allow the public to have free and unrestricted access on all designated roads and the adjacent road reserves, since public moneys are to be used to maintain roads on those lands.
- To apply the Highways Act to the roads designated in the appropriate schedules of the Bill.
- To allow a person who is refused permission to enter the lands to appeal to a local court and to require the Maralinga Tjarutja to state, in writing, reasons for the refusal of permission to enter the lands. The local court can reverse the decision unless satisfied that permission was unreasonably or capriciously refused.
- Exclude the extra 25 000 square kilometres (between 132 degrees and 133 degrees) which the Select Committee added to the original Bill without any significant justification or evidence.

I believe that I have highlighted a number of serious problems in the legislation before us. Principally these problems relate to access, to mining and exploration and the protection of sacred sites. The issues which I have discussed affect the entire South Australian community, and they are extremely important.

The Opposition has not been wilful in its attitude to this Bill—we support the transfer of the Maralinga lands to the Aboriginal people but we believe that this Bill is inadequate as it presently stands. We believe that it is necessary, and I understand that there has been some discussion between you, Mr President, and other people regarding a survey of sacred sites which would then be laid down and kept in custody and made available only to people who are agreed to.

Ideally, the Government should agree to the adjournment of the debate on this Bill until March and so enable reasonable and calm debate to proceed over the issues of concern that we and other South Australians have raised. The Government should not pursue this Bill with blind indifference to the concerns that have been expressed. To do so would merely result in unnecessary conflict and division within the community, which no-one in the Council wants. If the Government refuses to support the adjournment of this Bill to allow for further negotiations on the deficiencies which I have highlighted, then its real commitment to the cause of Aboriginal land rights and the wellbeing of the South Australian community must be questioned.

I confirm my intention to move amendments to this legislation should the Government not support the adjournment of this legislation. I indicate that a request will be made at a later stage in the debate.

The Hon. K.T. GRIFFIN: The Liberal Government gave a commitment to transfer the lands at Maralinga, but not the additional piece of land that has been added in the House of Assembly under this Bill, to the Aboriginal Lands Trust. There were negotiations during the three years of the Liberal Government, particularly in the later 18 months after the Pitjantjatjara Land Rights Act had been enacted, towards achieving the vesting of the Maralinga lands in the Aboriginal Lands Trust. That was in pursuance of a commitment given by Sir Thomas Playford, Premier, when he gave a commitment as long ago as the 1960s that the lands at Maralinga would be transferred to the Maralinga people who had traditional rights in respect of that land.

In fact, towards the end of the term of office of the Tonkin Liberal Government proclamations had been drafted—in the early stages by the adviser to the Yalata people—with a view not only to effecting transfer to the Aboriginal Lands Trust but also to ensuring adequate controls were placed over the land in respect of mining, exploration and access.

Under the Aboriginal Lands Trust Act, the vesting of the land in the Trust could occur only by resolution of both Houses of Parliament. It was in the course of the preparation of those resolutions that the proclamations were also prepared. It was suggested prior to the 1982 State election that the lands at Maralinga should be vested in a body corporate separate from the Aboriginal Lands Trust, but this was towards the end of that term of office.

Subsequently, as we now see in the Bill, the present Government has agreed to the establishment of a separate corporate body to hold the land for the people of Maralinga who have traditional rights in respect of that land. As the Hon. Mr Cameron has indicated, the Liberal Party will support the vesting of the lands in such a separate statutory body, and I support it, although I did believe that during the time of the Liberal Government we were acting in good faith to ensure an early transfer of lands to the Trust which, up to that time, had been the accepted vehicle for the holding of those lands.

I am willing also to support the second reading. The regrettable thing is that there has been so much pressure on members of Parliament to get this Bill passed before we rise at the end of this week for a very long recess (3½ months). Of course, the normal practice is to adjourn in the second week in December and resume in the second week in February, with a view to sitting for perhaps four to six weeks and finishing off the business of the session. However, we have now a 3½-month recess, which is undoubtedly a significant contributing factor to the pressure that is being placed on all members of Parliament to deal not only with this Bill but also with a whole range of other important legislation, some of which has been brought in at very short notice.

I deplore that pressure. I do not believe that it is conducive to good legislation, and it means that reactions and feelings run fairly high on significant issues. In respect of this Bill, it is an important piece of legislation which vests a significant piece of South Australia in a separate statutory body modelled, it is correct to say, on the Pitjantjatjara land rights legislation; nevertheless, it is a significant piece of legislation. Members of this Council have not, I suggest, had sufficient time to consider adequately the Select Committee's report or the proceedings in another place, to read the bulky evidence submitted to the Select Committee, or really to come to grips with all the matters raised by opposing points of view in respect of this legislation. That is most unfortunate.

If pressure is kept up for us to pass this Bill by the end of this week and other important legislation now before us, unless some quick compromises are made, I doubt that the legislation will pass. I do not particularly want to see that situation occur, because I believe it is important legislation. However, the Government will give us no option but to vote against the Bill at the third reading if there is not a reasonable approach to amendments.

Of course, that vote against the third reading will be only on the basis that the Liberal Party supports 99 per cent of the Bill and wants to see it enacted, but subject to certain matters to which I will refer during the course of this speech. I have some very strong sympathy for reasonable Aboriginal land rights, which was demonstrated during the course of the Tonkin Government's consideration of land rights in respect of the Pitjantjatjara in the North-West of South Australia. I was one of the Ministers who was very deeply involved in negotiating that Act, which came before the State Parliament as a result of 12 to 18 months negotiation

between the Government, its officers, the Pitjantjatjara and their advisers.

In respect of that piece of legislation, up to the 1979 election there was legislation before the State Parliament which was very wide and which would have alienated completely the North-West area of South Australia and given additional rights to make claim for adjoining lands. That was not reasonable. The later legislation was in the context of a general commitment by the Liberal Government towards land rights in respect of the North-West Reserve.

The Tonkin Government believed that it had an obligation to undertake negotiations with a view to reaching some compromise with respect to that piece of South Australia. The old North-West Reserve, which comprises the bulk of the Pitjantjatjara lands covered by the Pitjantjatjara Land Rights Act, was an Aboriginal reserve under the Community Welfare Act, which applied very tight controls over access to that land as well as opportunity for mining and exploration. I recollect that under the old Social Welfare Act there was an embargo on exploration and mining in respect of that land. Not all the Pitjantjatjara lands were included in the North-West Reserve and subject to that embargo, but a substantial parcel was.

Other land, originally pastoral leasehold land adjoining the North-West Reserve, became land vested in the Anangu Pitjantjatjaraku under the Pitjantjatjara Land Rights Act. In respect of the Pitjantjatjara land, there are some significant differences from the Bill that is before us. One is in respect of the distribution of royalties which, under the Pitjantjatjara Land Rights Act, was limited to a sum fixed by regulation, and if a regulation was not in force no distribution would be made.

That limit on royalties was to be negotiated between the Government of the day and the Anangu Pitjantjatjaraku with a view to determining the reasonable needs of that community in respect of aspirations to maintain roads, to develop their own schools and medical facilities and to provide other services, as well as development opportunities in the Pitjantjatjara lands. In the second reading explanation at the time of the introduction of that Bill a specific commitment was made that there would be meaningful consultation with a view to establishing that upper limit. The upper limit to royalties has been excluded from this Bill.

Another significant difference relates to the roads. Under this Bill the roads are to be maintained by the Highways Department. The Road Traffic Act, the Motor Vehicles Act and the Police Offences Act and other legislation that might generally apply do not apply under the Pitjantjatjara Land Rights Act, and particular difficulties relating to those pieces of legislation were drawn to the Liberal Government's attention. We were in the process of considering the problems, but there is presently a difference between this Bill and the Pitjantjatjara Land Rights Act.

The other area that has created some problem under the Pitjantjatjara Land Rights Act relates to access for exploration. I do not intend to deal with this in great detail except to say there have been difficulties which were not envisaged at the time of negotiation for the Pitjantjatjara land rights legislation, and I want to address some further comments on the access for exploration in the context of this Bill later in the course of my speech.

There is no doubt that if amendments are made to this Bill ultimately they ought to be made in the Pitjantjatjara Land Rights Act. In the last session the Government introduced an amending Bill in the House of Assembly with a view to bringing the Pitjantjatjara Land Rights Act into line with the Maralinga Land Rights Bill. I hope that that will continue in the future, but for the moment we are considering the Maralinga Land Rights Bill.

There has been a lot of discussion about freehold title in respect of Maralinga lands. If one looks at the vesting provisions, one sees in clause 15 that the Governor may issue a land grant in fee simple for the whole or any part of the lands for Maralinga Tjarutja. That has been equated with freehold. It is different from freehold, but it is appropriate to refer to it by way of the shorthand description of 'freehold'. But it differs markedly from ordinary freehold property because under clause 17 no estate or interest in the land may be alienated from Maralinga Tjarutja and no land may be compulsorily acquired, resumed or forfeited under the law of this State. So it is immune from compulsory acquisition by the State or from resumption or forfeiture for any purpose such as the building of roads. But it cannot be alienated. That really means that no traditional owner or the body corporate may grant a mortgage of the land or part of the land by way of security for any funds that may be raised, recognising that if there is any default under the mortgage the right of the mortgagee is to forfeit for a default under the security. In fact, if mortgages were to be allowed the land would no longer be inalienable.

Clause 17 also means that no encumbrances can be registered over the lands; it means that there can be no sale and subsequent transfer; nor can there be any gift and a subsequent transfer; and leases and licences are limited for periods referred to in the Bill. The members of Maralinga Tjarutja are not limited in their enjoyment of the lands, but those who are not members are substantially limited in that opportunity. So all the rights one would normally associate with freehold land are not present in the context of this piece of legislation.

The other clause that is relevant to that description of the title is clause 41, which applies all regulations relating to the depasturing of stock that apply to the holders of pastoral leases under the Pastoral Act, 1936.

If any people inhabiting or occupying the Maralinga lands depasture stock, the provisions of the Pastoral Act will apply in relation to the proper care and maintenance of the land on which the stock is depastured. While there is a great deal of commotion about the freehold inalienable title, the fact is that the Bill does not grant freehold title. It grants a *quasi* freehold title with very substantial limitations on that which is ordinarily regarded as being freehold title under South Australian law. It is also important to recognise that the matters relating to exploration, access and roads will not impinge on the quality of the title as conferred by the legislation.

Before dealing specifically with the Opposition's three major difficulties with the legislation, I refer to the judgment of Mr Justice Millhouse in the Supreme Court when considering, I think, section 19 of the Pitjantjatjara Land Rights Act. He ruled that that section of the Act was inconsistent with Commonwealth law and, therefore, was invalid. In answer to a question that I asked several weeks ago the Attorney-General indicated that he had taken the matter on appeal to the High Court. I expect the appeal to be heard within the very near future.

The Attorney-General said that he took that course of action following consultations with the Commonwealth Attorney-General, in the belief that the South Australian legislation is valid. I point out to the Council that the previous Liberal Government was aware of a possible problem with the Pitjantjatjara Land Rights Act after the High Court had handed down its decision in the Koowarta case in 1981 or 1982. That decision upheld the validity of the Commonwealth Racial Discrimination Act. As a result of that decision, the Liberal Government was advised that there was a real prospect that the South Australian Pitjantjatjara Land Rights Act was invalid in so far as it purported to confer upon a section of the community more

significant rights than it conferred on other members of the community. In fact, it was held to be racially discriminatory.

The then State Liberal Government requested the then Federal Liberal Government to pass validating legislation that would put the question beyond dispute. The Federal Liberal Government did not get an opportunity to do that before the Federal election was called early this year. When I referred this matter to the present State Attorney-General, he indicated that, if the High Court upheld Mr Justice Millhouse's decision, he and his Commonwealth colleague (Senator Evans) would consider the means by which the South Australian land rights legislation could be validated. That is a fairly serious matter.

I think that it is unsatisfactory to pass legislation that may be invalid and in which there is currently a challenge in relation to almost identical legislation. I think the best course in relation to access is to defer consideration of that part of the Bill until the High Court decision is known, or until the Commonwealth has indicated that it will enact complementary legislation that will put the validity of the South Australian legislation beyond doubt. There are two grounds for seeking further time to consider this legislation: first, the haste with which we are asked to push it through Parliament before the Christmas recess; and, secondly, the uncertainty created by Mr Justice Millhouse's decision, which is now on appeal to the High Court.

I now turn to the three specific matters of concern to the Opposition. The first relates to roads. Clause 40 (2) seeks to provide that the Road Traffic Act and the Motor Vehicles Act apply to any roads on the lands, regardless of whether or not they are public roads. Up until now, those roads have been public roads. If the legislation passes, those roads will cease to be public roads in the ordinary connotation of that term. Under the Pitjantjatjara Land Rights Act, that is exactly what occurred. Police officers were reluctant to apprehend motorists for breaches of road traffic law; they were reluctant to entertain applications for driving licences; and they were uncertain about their rights to stop and check unroadworthy vehicles. There was a great deal of concern about those parts of the law that would ordinarily apply to roads accessible to the public. There were also questions about third party bodily injury claims and whether insurance normally compulsory, was necessary or would be effective if taken out in respect of travelling on roads within the lands.

The Bill now before us relates to the Maralinga lands and applies the Road Traffic Act and the Motor Vehicles Act. That means that drivers travelling on the roads by car must be licensed; the motor vehicles must be registered and insured in respect of third party bodily injury claims; the vehicles must be roadworthy; vehicles must be driven on the left side of the road; drivers must observe speed limits and load limits; and passengers and drivers must wear seat belts. There are a whole range of other obligations that come into effect. In addition, there is a provision that public funds, either generated from all members of the South Australian community or received under Commonwealth road funding, will have to be applied to maintaining roads within the Maralinga lands.

In addition, other laws that apply to public places must apply to the lands under clause 40 (1). Therefore, if there is a football match on an oval within the boundaries of the lands, for example, and there is a brawl, the police have the right to intervene and, where necessary, apprehend and prosecute for breaches of the peace. At the moment, there is considerable doubt as to whether that can occur. In respect of meeting halls, for example, they become public places. In respect of other areas of the community, they may become public places. People who break into a local store on a community in the lands could be apprehended for being unlawfully on the premises.

All of that means that, rather than the lands in fact becoming an island (as some people wish them to become), they become subject to a very substantial body of South Australian law applying to public places. That brings both responsibilities and obligations on Government and on all the people of South Australia. It seems to me to be quite reasonable that, if those laws and other provisions are to apply, and if public funds are to be spent on maintaining roads and other facilities, there ought to be a *quid pro quo* and that is that at least the roads ought to be accessible to members of the public and, in certain circumstances, access ought not to be refused to other parts of the lands.

It has to be remembered that, if roads do become road reserves for the width of the road and 100 metres on either side, that does not prejudice the nature of the title conferred upon the body corporate. Nor does it make the lands any more prone to extraordinary and unreasonable influence by those who may be visiting because not only will the general law apply but, also, the provisions of the Bill will equally apply. Clause 19, subclause (2), for example, sets a very heavy penalty for unauthorised entry upon the lands and for travelling off the road reserve for more than 100 metres on either side of the road. One is then guilty of unauthorised entry upon the lands and the penalty, where the offence is committed intentionally, is a fine of $2 000 plus a fine of $500 for each day during which the convicted person remained on the land after the unlawful entry. In any other case there is a fine of $200, so the penalties are quite substantial in those circumstances.

I believe that the limit on royalties embodied in the Pitjantjatjara land rights legislation is appropriate and provides an adequate balance between the rights of those with traditional interests in the land and other members of the South Australian community. As I said earlier, the negotiations in respect of Pitjantjatjara land rights embodied an agreement that the limit on royalties would be fixed after negotiation and consultation with the traditional owners, the Anangu Pitjantjatjaraku, and that it would take into account the desire of the traditional owners for funds to provide adequate services, whether in health, education or other areas of responsibility.

Another matter that needs to be recognised is that royalties in excess of the limit will, in fact, be applied for the benefit of all South Australians. It is all South Australians, both Aboriginal and non-Aboriginal, who carry the responsibility for paying the Public Service, Police Force and a whole range of other Government officers, and for the provision of the range of Government services. Therefore, we are all in it together and there ought to be a reasonable balance between royalties being paid to both the traditional owners and the wider Aboriginal community, and the whole of the South Australian community. I believe that there ought to be a limit on royalties and that mechanism used to arrive at the limit negotiated in the Pitjantjatjara land rights legislation is the appropriate mechanism for setting that limit.

The other matter to which I want to address a few comments relates to access for exploration. This is a particularly sensitive area. It has risen largely, I think, because of the claims and counterclaims in respect of access for exploration to the Pitjantjatjara lands and in relation to the Haematite Petroleum problem. Certainly, at the time of negotiating the Pitjantjatjara land rights legislation, it was not envisaged that there would, in fact, be large amounts of compensation claimed in advance of any exploration occurring. Specifically, the provisions in the Pitjantjatjara land rights legislation were designed to deal with the development of mines and then to provide adequate compensation to the traditional

owners for a whole range of matters that had to be taken into consideration in fixing that compensation. If it were not fixed by agreement, then it would go to an arbitrator. However, before one gets to the point of development there has to be exploration. I suggest that, generally speaking, the provisions of the Mining Act and the Petroleum Act are satisfactory to deal with this problem relating to lands claimed to be similar to freehold lands.

All of the other members of the South Australian community who own land, whether freehold or leasehold, are, in fact, subject to the Mining Act and Petroleum Act in relation not only to exploration but also to mining. It is to be recognised, incidentally, that no royalties are payable to the ordinary citizen who owns or occupies land, but there is a mechanism for establishing compensation. That mechanism is through the Warden's Court. Such application can go on appeal to the Land and Valuation Court and right on up to the High Court of Australia if compensation fixed is unsatisfactory. There are mechanisms enshrined in both the Mining Act and the Petroleum Act which will allow persons who object to an explorer entering their premises to make an objection to the Warden's Court and until such objection is resolved entry is not permitted. When it is resolved by the Warden's Court that resolution is again subject to appeal.

Therefore, there can be quite extensive delays under the Mining Act and the Petroleum Act in relation to exploration. The sorts of matters that might be compensated under the Mining Act or the Petroleum Act include damage to land, disturbance, annoyance and nuisance. I would have thought that, to the extent that exploration is a problem, the mechanism under the Mining Act or Petroleum Act would be adequate to protect the rights of traditional owners as occupiers of that land and, corporately, as owners of that land. It would then put them in no different position from other South Australian property owners.

They are the three matters on which I think there needs to be further consideration. I know that the Hon. Martin Cameron has raised other matters that are also important, but I place the greatest significance upon the three matters to which I have referred. If this Bill passes the second reading I hope that the Government, and all other members of this Council, will give proper and reasonable consideration to my comments and to the comments of other members who share my concern about the present state of the Bill, even though that consideration is under some pressure. Again, I would hope that the Government could be prevailed upon to accept that it is unreasonable to resolve these outstanding matters within the space of three days and will defer the Bill to 20 March in the light of various matters to which I have referred.

In order that the matter can be further considered during the Committee stage I am prepared to support the second reading, indicating that 99 per cent of the Bill has my support. However, significant matters still need attention.

The Hon. I. GILFILLAN: I was glad to hear the previous speaker say that 99 per cent of the Bill has his support. I am not sure whether that is a qualitative or quantitative judgment, because I rather suspect that a lot of debate and discussion on the detailed Bill is based on a premise that actually threatens the granting of Aboriginal land rights. In my opinion, we need to restore a sense of completeness and integrity of unchallengable ownership of title of land to a people whose life is intrinsically involved in the very texture of that land, being a commitment for human life to this planet.

Somewhat belatedly we have recognised a need that the Aborigines have felt in their hearts for many years. The Hon. Sir Thomas Playford made the situation quite clear to those people. Now it appears that those of us who feel that there is an overriding obligation on our society are frustrated to find that the major issue in the minds of so many people who are considering this matter is not so much what goes on on top of the land but what is underneath the land. I for one believe that that is a very low priority in comparison with our doing the right thing for human beings, their style of life, and their protection. That is what we are really concerned about. Because of the concessions to the society in which they live, I believe that the Maralinga people have accepted somewhat reluctantly that mining will go on on their lands, and it is my understanding that those who speak for the Aborigines would say that they would prefer that the minerals would not be mined. They are not looking for money.

I have every reason to believe that those people answered the question that you, Mr President, put to them at Maralinga, when the Hon. Gordon Bruce and I were there, as to whether they were looking for money compensation for exploration, by saying, 'No, we are not interested in money: we are interested in the lands,' with an absolutely unchallengeable interpretation of the way they feel. At present we are involved in a dialectic debate as to the degree to which mining should be tolerated on these lands, under what conditions, and in regard to the distribution of royalties and what money may be allocated in compensation.

I would far rather spend the first part of my contribution approaching the reasons for and the goals that we all share in South Australia in regard to the results and the fruits of proper land rights legislation. We have taken over a part of the world that has been lived on and in by people for 40 000 or 50 000 years, and we share life with those people in this land. For most of my lifetime those people have been regarded as second-class human beings, not just second-class citizens. We have been encouraged in the interpretation of our laws and the expectations of behaviour to believe that the Aborigines were not of our quality and our standard, and so we were more or least inculcated to believe that they were below our standard.

However, there has been a rather dramatic turn-around, and one example of that is to be found in the Pitjantjatjara case. We have accepted a dramatic and praiseworthy land rights measure, it has been enacted, and we are about to deal with another such measure. Instead of being so obsessed with what Australia will obtain from ripping stuff out of the ground, we should pause for a while to measure the value of the traditional lifestyle of the Aboriginal communities that have lived for so long in the areas of South Australia which have until now been of absolutely no interest to most of us except as a venue for firing rockets or letting off atomic bombs.

Because of the rapid advance of mining technology, this area now has a lure, as underneath its surface there is so-called untold wealth. However, we take the risk of allowing to pass before our eyes one of the rarest, most precious things in the world today—a culture which has survived for so long, which does not destroy resources, and which has developed its own sustainable law. Yet we are treating that culture as an insignificant by-product and so many South Australians feel that this Bill really is a concession to a group of people who do not deserve any more than they have today. Very often, these people are the victims of very vicious, derogatory criticism, and as a result many of them, particularly those who have no established roots in the land of their people, flounder with no stable strength. These people do not have the sense of pride and self-respect that is the essential ingredient and the entitlement of any human being living in our society.

I believe that we should welcome enthusiastically the allocation of these lands to the Aboriginal tribal people. We should belatedly recognise that this area deserves our study

and our respect as much as anything else that is studied in our education system. We have revered the spiritual heritage of other cultures, such as Buddhism, Hinduism, and Mohammedanism. We have always given those people status, but for reasons which I suppose are surrounded by ignorance (although it is not too late to do something about it now) we have not reversed the deplorable lack of recognition for Aborigines, the original residents of South Australia.

This situation was reflected by a sign on the Maralinga radiation dump. This is an interesting story in itself, but I do not intend to digress, except to point out that this is an area of great danger to people who may inadvertently go there. There are warning signs that tell people not to enter the area in seven or eight different languages, such as Hebrew, Greek, Arabic, and so on. But there is no warning in the Pitjantjatjara language: there is no attempt to communicate with the people who live in that area. They have just not counted.

I hope that most South Australians will come to welcome this legislation, as so many of them welcomed the earlier Pitjantjatjara Land Rights Act. This should be one of South Australia's strengths, not something that is given begrudgingly, with people saying step by step in negotiations that they will only give so much. This is an opportunity for us to show wholeheartedly our respect and admiration and a sense of justice for these people who have inalienable right to the lands. We should put mining in its proper perspective. The people to whom we have talked recognise that mining will go on, and they do not intend to obstruct it unnecessarily. They are prepared to allow mining, and in other cases they have shown that they are capable of arranging satisfactory terms and conditions for mining companies to explore and then mine while showing care for sacred sites and social stability.

It is a pleasure for me to be able to say to this Council that there is a mutual recognition both by the mining companies and by the Aborigines that they can work together to devise ways and means which will result in the least disturbance to the Aboriginal people and which will enable the mining companies to explore satisfactorily and eventually to mine.

I think that the Hon. Mr Griffin mentioned Hematite. This raises one of the more undesirable and disastrous features of the legislation, exemplified not so much in the interpretation of the Act but in the inadvertent foolishness of probably one or two people. From my discussions with others who are involved in the field, advisers to the Maralinga people and from reaction from Aboriginal people themselves, the Hematite claim for social disturbance was done abruptly, with little previous deliberation and discussion, and it may well have been the decision of one man. It was made in the nature of an ambit claim, rather like trade unions putting an ambit claim for wage awards. There was no real expectation that the claim would be honoured.

The Hon. L.H. Davis: Whom are you talking about?

The Hon. I. GILFILLAN: I am talking about opinions given to me as to the intention of those who made the claim on behalf of the Pitjantjatjara people against the Hematite exploration. The unfortunate aspect in my opinion is that that was not carried through to the arbitration system. It is my opinion that the arbitrator would have taken a realistic view of that claim and it would have been reduced to an acceptable level for all parties and would not have had the hysterical reaction that we are getting from mining companies—that is one example—and it was not tested to the ultimate position.

The Hon. L.H. Davis: The first and only example—after Mr Toyne had said that it was most unlikely that the arbitration provisions would ever be used.

The Hon. I. GILFILLAN: I am not sure whether it was Mr Toyne's initiative to take it to arbitration: I think it was Hematite which was used as a flagship by the mining community in a sort of contest rather than a genuine attempt to find genuine resolution of that conflict. I am sorry about that. I do not want to pause on that matter. In the discussions that have been taking place between those who really care about getting through a Bill that will get the most good to the most people without destroying the basic integrity of the land, we have been assured that the people of Maralinga would consider seriously a clause which will remove any scope for 'up front' claims for compensation that are based on social disturbance or the formula for rental which was used in the Hematite case.

The point is that it is not in the Aborigines' mind to be looking for gratuitous large sum payments at that stage of exploration. We believe that the actual conditions in the Bill, which deal with exploration—

The Hon. L.H. Davis: Are you talking about clause 21 (19)?

The Hon. I. GILFILLAN: No, that is in relation to mining. The mining companies do not object to estimated compensation for social disturbance when it relates to the eventual mining activity. What they are nervous about, and justifiably so, is the case of Hematite where social disturbance compensation was sought for exploration. That is transitory and relatively light weight. The people do not have any desire to have that firmly entrenched in the Bill. We believe that there is a very real chance that a satisfactory clause can be put into the Bill, and I can identify the place so that honourable members can look at it. Clause 21 (6) provides:

> Upon an application under this section, Maralinga Tjarutja may—
>
> *(b)* grant its permission subject to such conditions (which must be consistent with the provisions of this Act) as it thinks fit—

it will continue—

> with the exception that payments of money for compensation by application licences shall be limited to payments for damage to lands, financial loss, hardship or inconvenience caused by the proposed exploration.

That is quite specific and is actually taken from and based on the Mining Act. I will be very disappointed if we do not achieve an arrangement which will provide a workable base for the mining companies to feel confident that they can explore and still retain for the Aborigines what I believe is an inalienable right for them to say, 'No', if they cannot, after having gone through the procedures, agree that certain exploratory activity is acceptable. The matter can then be referred to arbitration.

The Hon. R.I. Lucas: What if the arbitrator does not agree with the Aborigines?

The Hon. I. GILFILLAN: Then it goes ahead. If there is to be the integrity of the land rights, which I believe is essential in this case, then the Aborigines must have the right to say, 'No'. There are other very valuable attempts, I believe, and amendments that are constructive and helpful. I want to put on record my admiration and praise of you, Mr President, for the initiative that you have shown in attempting to secure reasonable treatment for all those who have reasonable fears in South Australia that the mining industry would be unnecessarily obstructed.

I think that most non-Aboriginal South Australians have had cause to question the situation of sacred sites and their occurrence at times in conflict with exploration or mining procedures. The proposal is, of course, still in the pipeline and we will not see anything firm about it, perhaps until the Committee stage, but there is an intention to have an arrangement or register of sacred sites—some identification of them—so that they will be firm and fixed, and the

accusation that sacred sites are artificial creations to be put up in front of a mining venture in an attempt to either obstruct that venture or extract money can no longer be levied at Maralinga Tjarutja.

I would just like to add to that there are other amendments which I know are in your mind, Mr President, but I have been very impressed with the ability that you seem to have to understand the essence of the arrangement that we are trying to establish to give back the land to people who never really felt that they had lost the land. You have recognised that characteristic, Mr President, and there are very few non-Aborigines in South Australia who have recognised that. I hope that many others of us can acquire that and reflect it in the way that we react to this Bill.

It is because of that that I believe that we have an optimistic view of the situation—that there is a chance that the Bill can incorporate amendments which will satisfy deep-seated fears and anxieties and there are others, of course, in the mining industry and perhaps from the Liberal Party which will be able to be accommodated in the Bill. It concerns me that we must make every effort to get a Bill which is going to give to the people of Maralinga Tjarutja the land rights to which they are entitled without so mauling them that they become unsatisfactory for the very purposes that we want. There is no purpose in giving to these people the Maralinga lands if it is in such circumstances that they cannot have that deep feeling of contentment and security that they will need for the whole group of people to re-emerge self-confident and self-fulfilled and, I believe, as admirable citizens of the whole of South Australia and not just of the Maralinga area.

My final remarks relate mainly to the companies which perhaps are getting the criticism and which are the target of the blame for this Bill's not having an easier passage through Parliament—the mining companies themselves.

In some ways they have been misrepresented, but, as is often the case, their very sincere and genuine attempts to come to proper arrangements with the Aborigines have been ignored and they have not had the credit to which they have been entitled. In the conversations that we have had with the Chamber of Mines, we believe that they have a sincere purpose of awarding genuine land rights to the Aborigines. They fully realise that their activities must not threaten or damage sacred sites and they recognise that their activities must be minimal in their impact on social structures and other activities that are taking place on the Aboriginal lands. They do not fear anything in the Bill in relation to their negotiations with Aborigines.

Unfortunately, a lot of South Australians do not recognise what a vast store of goodwill exists between these groups. Although the Aborigines do not want mining, they have found the mining companies reasonable to deal with in so many cases and they can deal with them; on the other hand, the mining companies say that they can deal with the Aborigines. They have misgivings about some of the advice that the Aborigines get, but that is a hazard of any relationship and of organised deals with any groups of people.

I hope that the amendments that come forward in Committee will be effective to the extent that in your case particularly, Mr President, the recording of sacred sites will be properly in place; that for the Aborigines the integrity of the tenure of the land is without question in their minds and they can feel joyful and delighted with what the Bill affords for them; and that for the mining companies, although it may not give them everything that they ask for, they can feel that they can work in the area with a good chance of exploring without unnecessary hindrance, and harvest the rewards of successful exploration in mining operations.

I conclude by saying that whatever benefits may be in mining for the people of South Australia, for the people of Australia and (I do not think that I am being too expansive) for the world, what remains for the traditional culture of Australia is inestimable in its value. We must be prepared to maintain and cherish it—not begrudgingly saying, 'We will give them something to keep them quiet' and distortions of that. Some people have stridently said, 'Let us have access to these lands,' but when these Aborigines were thrown off their land they were subject to the ravages of our society and were criticised by thousands of Australians, who said, 'They are a drunken lot—hopeless.' When we take a step in giving them their land and the right to control who goes on it, the same people want to let pedlars with boot-loads of booze go in and destroy them.

I hope that people will view Aboriginal society as the most precious thing that we are hoping to preserve and maintain in this Bill; the other factors, including mining, are only subsidiary. We can all accommodate them and live with this Bill happily. I hope that it has a successful passage; I support the second reading.

The Hon. R.C. DeGARIS: I was a member of this Council when the original Aboriginal Lands Trust legislation was introduced by Mr Dunstan in 1966.

An honourable member: You are the only one left.

The Hon. R.C. DeGARIS: Yes. Although I was not Leader of the Opposition at that stage, I led the Liberal Party in that debate. When the Bill came in it was referred to a Select Committee; the reference of that Bill to the Select Committee was very strongly criticised by the Premier at that stage, but I believe that the Council was right in referring it to a Select Committee because no reference had been made of this Bill to a Select Committee in the Lower House. Following the Select Committee report in this Council a number of amendments were moved, and final agreement was reached with the House of Assembly following a very long conference of managers.

Since then, we have seen further amendments to the original Aboriginal Lands Trust Act. We have also seen a new concept in Aboriginal land rights in the Pitjantjatjara Land Rights Bill which was introduced by the Liberal Government led by Mr Tonkin. The Liberal Government continued discussions with the Pitjantjatjara people that were commenced by the A.L.P. when it was in Government, although certain changes were made by the Liberal Government in relation to the Pitjantjatjara people.

In the original Aboriginal Lands Trust Bill an amendment was moved in the Council following the conference, as follows:

> No such proclamation shall be made in respect of the North-West Reserve until such a Reserve Council of that Reserve has been constituted and such council has consented to the making of such a proclamation.

Whilst this amendment was wise at that time, it was clearly part of the origin of a separate land rights Bill covering the Pitjantjatjara people. I do not wish to follow this examination further except to say that I believe it is unnecessary to establish separate land rights Bills for different people of Aboriginal descent.

We should have retained the original concept of the Aboriginal Lands Trust and followed the provisions of that legislation. Now that the Pitjantjatjara Act is a separate Act, and once this Bill goes through, does anyone believe that further separate Bills will not be presented to the Parliament of South Australia? When this Bill passes, 18 per cent of South Australia will be held by inalienable title by two separate Aboriginal groups, with powers and rights over that land that are greater than the powers available to any other persons owning land.

No blame can be placed on any one political Party for the position in which we have placed ourselves, but unless we resolve these problems they will continue to multiply at a great cost to the people of South Australia.

The breaking of the concept of the Aboriginal Lands Trust with the introduction of the Pitjantjatjara legislation is really a crucial issue. As I have said, both political Parties were actively pursuing this concept. I am pleased that the present Liberal Party is prepared to admit that it made mistakes with that Pitjantjatjara legislation and is seeking changes to it. I am interested to hear the Hon. Mr Gilfillan mention the question of amendments to this Bill, and I will come to that point in a moment in relation to the Pitjantjatjara legislation.

Whilst I am pleased, also, that in the House of Assembly the Liberal Party moved for the Maralinga lands to be transferred to the control of the Aboriginal Lands Trust, with respect, I believe that that is not a reasonable suggestion unless the Pitjantjatjara lands are also transferred to the Trust. One cannot in relation to the land rights question come to different arrangements with different Aboriginal groups. The Pitjantjatjara legislation established a standard, and this State, at the moment, is stuck with it. One point is clear: if this Bill varies in any way from the provisions of Pitjantjatjara legislation, the Pitjantjatjara legislation needs to be amended at the same time as this Bill passes.

That can be achieved in a number of ways: a statute amendment amending the Pitjantjatjara legislation could be included in this Bill; the Bill could also contain a clause to prevent it from being proclaimed until such time as the Pitjantjatjara legislation is changed in relation to what is contained in the Bill now before the Council. We also need to understand that, having established that principle, as legislators we will have to meet continuing demand by other Aboriginal peoples for similar concessions. I do not wish to pursue that point, except to argue as strongly as I can that it is necessary that the two pieces of legislation, the Maralinga Bill and the Pitjantjatjara legislation, should be identical and, if necessary, the Pitjantjatjara legislation should be amended to achieve that. That needs to be done in this Bill or at the same time that the Bill passes.

I do not wish to reiterate many of the points raised by other honourable members. Instead, I will emphasise the more important issues. We know that the access provisions of the Pitjantjatjara legislation are probably invalid. It would be surprising to me if Mr Justice Millhouse was right—although I believe that in his judgment he may be. Should not we put that question right in both pieces of legislation now, when we have the opportunity? In speaking to the third reading during debate in another place, Mr Olsen, the Leader of the Opposition, said:

> There must be no States within a State, yet I am concerned that we may be drifting in that direction.

I think that the word 'drifting' should be in the past tense, because we have already created that concept.

The future of all South Australians has some dependence on the development of our resources. Any restriction on or blockage of the exploration and exploitation of those resources should not be tolerated. I listened with great interest to the Hon. Mr Gilfillan. While he is a little concerned about the question of exploration, I am very gravely concerned about it. I believe that it needs to be corrected—and corrected very quickly. One point that needs to be understood by the Council is the difference between exploration and other facets of mining. If we do not explore, our huge mineral resources, presently providing 40 per cent of our export income, will remain unknown and undiscovered.

One of the largest future mines in the world, Roxby Downs, probably would not have been discovered if huge costs had been placed on Western Mining at the exploration stage. Initial exploration costs are high, the risks are high and the successes are few. For every thousand exploration prospects, only one mine will develop. Under our existing land rights legislation, the owners of the land can demand certain payments, whether or not at the exploration stage. That will effectively stifle exploration for our mineral resources to the detriment of the Aboriginal population and all South Australians. Therefore, it is imperative that this matter be resolved now.

During debate on the original Lands Trust legislation, the question of royalties from resource development became an important point. I said then that the transfer to the Trust of royalties from land held by it might not be the right approach and that we should consider a percentage of royalties for Aboriginal people on all minerals in South Australia. It is very dangerous, when we are establishing separate land rights for separate groups, that more royalties go to other Aborigines than to those who belong to that particular group. The original legislation applied equally to all people in the State, except that the Government had the right to transfer to the Trust royalties received from minerals found on Trust lands. That provision was changed in the Pitjantjatjara legislation, to the detriment of the search for minerals on those lands. This question must be resolved, because the existing position is not acceptable.

We all understand the exploration problems that have eventuated under the Pitjantjatjara legislation. We all know the high cost of exploration and the existing provisions of the Pitjantjatjara legislation and that the provisions in the Bill now before the Council will considerably restrict the potential for exploration in South Australia. The Director of Resources in the Department of Mines and Energy told the Select Committee:

> We feel it may be beneficial to consider in both the Pitjantjatjara legislation and the Maralinga legislation a point of clarification to distinguish the exploration stage and the tenements required at that stage from the mining stage. That decision must be made if we are serious in our assistance to resource development in South Australia.

Another problem is the protection of sacred sites. I do not wish to explore that area at length, because it was covered by the Hon. Mr Gilfillan. Sacred sites must be registered and stated at this stage, if that is possible. I admit that I have grave doubts about that being possible.

The three major points that concern me are, first, access and the associated questions of road construction, maintenance and use within the lands; secondly, the exploration for minerals and other resources; and, thirdly, the question of sacred sites. If any resolution of those questions is possible in this Council, it is very necessary that the existing provisions of the Pitjantjatjara legislation are amended accordingly at the same time. As I pointed out, that can be covered in this Bill in a number of ways. At this stage I support the second reading, although I believe that we must make important changes to the legislation.

The Hon. H.P.K. DUNN: I do not wish to prolong the debate, because I believe that almost everything has been said and that going over the same points is repetitious. This is a complex and difficult problem. I have great sympathy for the people in their attempts to acquire land that is important to them. I support the Bill but I have reservations similar to those telegraphed by other Opposition members. The relationship that an Aborigine feels with the land is much more significant than that felt by the average South Australian. I have particular sympathy in that regard, because in the past I have lived on the land and used it to earn a living. I clearly understand the feelings of Aborigines for particular parcels of land. Even though the section that I worked was much smaller, I was able to exist and live off the land, and it provided me with all my requirements.

Aborigines themselves see the land as providing them with all their requirements. The occupancy that I enjoy over my land is what the Aborigines want in relation to their land. It was decided 20 years ago to shift the Maralinga people to Yalata. Along with most members of this Council, I was too young to have any influence over the decision to use that land to test weapons.

I was some 300 miles from Maralinga and heard the first of the atomic bomb explosions, as it was not very far away. I have travelled into this area a number of times by aircraft (not on foot or by car) and have grown to like it very much, because it is lovely country. As the State develops, more and more people will want to look at this country.

That comment brings me to one of the problems that I see as existing in legislation which stops people having access to this country. If people do not have access to this country in some form, we will have the problem of their saying that we are developing a separate State in this area, which I do not believe we should be doing.

Access to this land is necessary. However, I do not believe that, because of its physical situation, there will be hordes of people travelling in and out of it. The very fact that it is situated where it is means that there will not be Sunday drivers or weekend drivers going in and out of the land. One should be able to go on to the land if one has a significant reason for wanting to do so. I believe that people ought to be allowed that sort of access but with the provisions that have been telegraphed by people on this side of the Council—that is, that they are restricted to the road and to limited access. In fact, rest areas where people can camp already exist in our roads system. I suggest that such places could be established on these roads, if necessary. There are places in this area that people would like to visit to perhaps study some of the flora and fauna.

If the Maralinga Tjarutja people want to travel in or leave the area, they will need to have licences and be prepared to face the same restrictions as we face when travelling on those roads. I do not see any problem with these people wanting to travel differently from the way in which they are now travelling. If people want to use these roads, they will want them maintained. I have heard complaints from people at Fregon and Amata that the people there cannot maintain their roads, as they do not have money to provide graders and skilled operators to work them. I believe that if these people want such access (I do not believe that they will want to go back to travelling in less than a motor car when moving around in those areas), they should therefore be subject to the same regulations as the rest of the State. I do not believe that that is too heavy a demand to make.

I turn now to the register of the sacred sites that are of significance to these people. Surely the people who know these sites should be able to identify them. I am concerned that it has been said that they have difficulty in identifying these sites. That situation is not going to improve. More and more sites will not be found. If the present elders know where these sites are, surely their location can be entered into a register and the sites held in trust and used only with discretion. I believe that it is important that such a register be kept.

Finally, I turn to exploration rights. I believe that the previous two speakers covered this subject adequately. However, if we as a nation cannot determine what resources we have in this country, how in the world can we programme for our future? I believe that it is important that we at least allow explorers on to these lands on reasonable terms.

I was not in this Council when the previous Pitjantjatjara land rights Bill was debated, but it was obviously a Bill in its embryo stages. It is also obvious that it has been found since that that legislation requires modification. I believe that what we are doing at the moment is upgrading and improving this legislation for the whole of the nation and, in particular, for the Aboriginal people involved. This land is most important to the Maralinga people. However, I believe that we need to take account of the problems that exist with this legislation at the moment. I support the second reading.

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

PRISONS ACT AMENDMENT BILL (No. 2)

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

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

In view of the hour and the length of the second reading explanation, I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

I am certain that all honourable members are aware of the Government's commitment to the reform of South Australian correctional services. This commitment takes many forms, from the proposed $40 million investment in prison accommodation and facilities, through expansion of alternative sentencing options, to administrative and legislative change. As part of proposed legislative change, this Bill seeks to amend the Prisons Act so as to provide substantive changes to the parole system. The proposed system is not radical or untried, in that it already operates in other States of Australia. For South Australia, the Bill constitutes a significant social and penal reform.

The new system of parole, although largely modelled on the Victorian system introduced in 1974 by the then Hamer Government, also incorporates the best features of other interstate models. Honourable members would recall that in August of this year a discussion paper was released by the Chief Secretary entitled *Proposals for a New Parole System*. In that paper the view was expressed, a view which the Government holds, that to sentence a person to imprisonment, to order that a person be deprived of his liberty by confinement, is, apart from death, the most drastic sentence which can be imposed by law.

For some categories of offences, imprisonment is necessary for the protection of society as, for example, in cases where a lesser sentence would depreciate the seriousness of the defendant's crime or where lesser sanctions have been applied in the past and have been ignored by the offender. The Government believes that in so far as imprisonment is a necessary form of punishment for persons convicted of some offences, it should, as far as possible, be certain, consistent and proportional to the gravity of the crime for which the offender is being sentenced. The existing system of parole which appears to subject the offender to double jeopardy is not consistent with that principle.

The Bill embodies three main principles. The first is that it places with the courts the responsibility of determining the length of time which a prisoner will serve in prison. Currently some of that power and responsibility is vested in the Parole Board itself, and many people have argued—and the Government concurs with the view—that the Parole Board should not have that responsibility.

The second principle is the provision of a greater degree of clarity and certainty in the sentencing of offenders. Currently offenders have no real idea of how long they are

likely to spend in prison. This Bill aims to ensure that, when a person is sentended, he can have a clear expectation that, if he behaves and works well, he will be released on parole on the completion of his non-parole period, less remissions earned.

The third principle is that there will be a much greater incentive for prisoners' good behaviour during the term of incarceration by ensuring a right to earn up to one-third remission on all sentences of over three months and on a life sentence in respect of which a non-parole period is fixed or extended after this Act comes into operation, and by permitting the reduction of non-parole periods by that remission. Failure to behave in prison will mean that the prisoner will spend longer there, so that it will be within the capacity of the prisoner to determine whether he will be in prison for all the non-parole period fixed by the court, or whether he will be eligible for an earlier release date. Under the present system, remission earned only reduces the total length of a sentence of a prisoner who is not released on parole, and therefore has no effect in relation to the majority of prisoners who are released on parole. Remission on non-parole periods is an essential management tool enabling the authorities to maintain control over correctional institutions.

I should point out to honourable members that the court itself will take into consideration non-parole periods and the remission that a prisoner can earn on his or her non-parole period when determining sentences. The Government believes that the court should always determine the minimum and maximum length of time that an offender might spend in prison, while at the same time a system is provided whereby the prisoner has a very real incentive to behave well while in prison.

The introduction of a system that permits the reduction of non-parole periods by the earning of remission of course results in the abandonment of the concept of conditional release (which has not yet been brought into operation), as all but a very small number of prisoners will automatically be released on parole, and will stay on parole for the balance of their sentences or, in the case of life prisoners, for a period of not less than three but not more than 10 years.

The Bill reflects the Government's belief that the setting of a non-parole period should be fixed in all cases of life sentence or sentences of terms of imprisonment in excess of 12 months. The only exception is where in the opinion of the court there are special reasons for requiring an offender to serve the whole of his sentence in prison. The new system will provide for the ultimate release on parole of all offenders sentenced to life imprisonment or terms of imprisonment in excess of 12 months, with only rare and reasonable exceptions. By restricting eligibility to sentences of 12 months or more the use of parole as a rehabilitative measure is more realistically applied.

Prisoners sentenced to life imprisonment or terms of imprisonment in excess of 12 months before August 1981 who do not have a non-parole period fixed will have the ability to apply to the sentencing court for a non-parole period to be fixed. The Crown may apply to the sentencing court for an extension of a non-parole period, whether fixed before or after this amending Act, but the court may only grant such an application where it is necessary to do so for the protection of the safety of other persons.

Another important aspect of this Bill is the provision for a slightly differently composed six-person Parole Board with a Chairman and Deputy Chairman. This will enable the board to divide into two divisions for the purpose of expediting proceedings, but with the obligation to meet as a full board when a matter before a division cannot be resolved unanimously. This will speed up the parole process, as well as ensuring due consideration to serious and difficult questions of release conditions or cancellation of parole. A prisoner or parolee will be entitled to have legal representation before the board in cancellation proceedings, or on an application for discharge from parole.

I would point out that the Government, in formulating this Bill, considered a number of submissions received in response to the discussion paper. As a result, the Bill's clear objective is to develop a modern parole system in which the prisoner has a sense of certainty in relation to his or her future and the rules of which are easily understood and that may be accepted with confidence by law enforcers, courts and the community alike.

Clause 1 is formal. Clause 2 provides for the commencement of the Act upon proclamation, with a power to suspend the operation of any specified provisions. Clause 3 amends the arrangement section. Clause 4 repeals a definition of 'conditional release' in view of the retention of the remission system. Clause 5 provides for the transition from the old system of parole to the new. Parole orders in force at the commencement of the Act will continue in force as if they were granted under the new system. Where an application for parole is part-heard at the commencement of the Act, the old Board will continue to dispose of those applications that are from prisoners who have non-parole periods as if the prisoners were being released under the new system. Applications from prisoners who do not have non-parole periods will be disposed of by the old Board under the old system (such prisoners of course will also have the right to seek a court order fixing a non-parole period). All other part-heard proceedings (e.g., reviews of indeterminate sentence prisoners, and cancellation of parole) will be disposed of by the old Board, but under the new provisions.

The members of the Board are to vacate their offices to allow for new appointments, but will continue to constitute the old Board for the above purposes. Clause 6 deletes the regulation-making power relating to remission of sentence—this matter is now provided for in the Act itself. Clause 7 is a consequential amendment. Clause 8 substitutes the provision that deals with the actual release day for prisoners. Under the current system, long-term prisoners may be released up to two months early, and short-term prisoners up to three days early, on the authority of the Director. Other provisions are made for early release where a discharge day falls on Good Friday or Christmas Day, or in the period between Christmas Day and New Year's Day. The new provision rationalises the whole situation by giving the Director a simple power to authorise the release of a prisoner at any time during the month preceding his normal discharge day. This provision will be used particularly in relation to prisoners serving sentences of three months or less, or returned to prison for three months or less upon cancellation of parole, as such prisoners are not eligible to earn remission.

Clause 9 deletes the definition of an expression that is redundant. Clause 10 alters the composition of the Parole Board, by allowing for the appointment of a judge, or a retired judge who has not reached 70, of the Supreme Court or the Local and District Criminal Court as Chairman of the Board. It is made clear that there should be at least one member of both sexes on the Board. At least one member of the Board must be of Aboriginal descent. Provision is made for the appointment of one member as the Deputy Chairman. Clause 11 repeals the section that deals with the procedures of the Board and substitutes a provision that enables the Board to sit either as a full Board, or in two separate divisions if the pressure of business so requires. A division will be comprised of two members plus either the Chairman or the Deputy Chairman. A decision by a division must be unanimous and, if not, the matter must be referred to the full Board for fresh hearing. New section 42ca repeats provisions currently contained in section 42c.

Clause 12 makes it clear that any member of the Board, whether Chairman, Deputy Chairman or ordinary member, may issue summonses or administer oaths. Clause 13 requires the board to review annually and report on each prisoner who is serving a sentence, or sentences, exceeding one year and in respect of whom a non-parole period has not been fixed. Clause 14 amends the section dealing with the fixing of non-parole periods by courts. A non-parole period must be fixed in respect of all sentences which singly or together exceed one year, and all sentences of life imprisonment. If the sentencing court thinks special reasons exist, it may decline to fix a non-parole period, which will mean that such a prisoner will be outside the parole system altogether. A non-parole period must, unless the sentencing court thinks special reason exists for not doing so, be fixed for a prisoner or parolee who is sentenced to further imprisonment or, where a non-parole period already exists for such a person, it must be extended appropriately. A prisoner who currently does not have a non-parole period (that is, those prisoners sentenced before August 1981, when the courts only had a discretion to fix non-parole periods) may go back to the sentencing court for the fixing of a non-parole period.

The Crown is given the power to apply for the extension of a non-parole period, whether fixed before or after the amending Act, but the court may grant such an application only if it is necessary to do so for the protection of other persons. Where a court is fixing a non-parole period for a prisoner who currently does not have a non-parole period, the court is not permitted to look at his behaviour in prison, as the length of the non-parole period is to be based on the offences, not on subsequent behaviour. Where the court is determining an application by the Crown for extension of a non-parole period, the court may only look at the prisoner's behaviour in prison for the purpose of assessing his likely behaviour if released from prison.

Where a court, in fixing a non-parole period for a prisoner who does not currently have a non-parole period, decides that he has already served a period in prison that would equal or exceed such a period (less remissions), the court must fix a non-parole period that expires forthwith. Such a prisoner will then be released on parole when the Board has fixed, and he has accepted, the conditions of his parole. A prisoner may apply to the sentencing court for the reduction of his non-parole period, and, if such an application is refused, the court may fix a date before which he cannot reapply. New subsection (6) provides a definition of 'sentencing court'.

Clause 15 substitutes a new section dealing with release on parole. The Board is obliged to order that a prisoner whose non-parole period was fixed or last extended before this amending Act comes into operation be released on the expiry of that non-parole period, and that a prisoner whose non-parole period is fixed or extended after that commencement be released on parole upon the expiry of his non-parole period as reduced by any remission he may have earned during that period. The primary role of the Board is to fix the parole conditions or, in the case of a prisoner serving a sentence of life imprisonment, to recommend those conditions to the Governor. A prisoner will not be released on parole until he has accepted those conditions. If he fails or refuses to accept the parole conditions, he must be reviewed regularly by the Board and if he subsequently accepts the conditions, he will be released on parole. Clause 16 is a consequential amendment.

Clause 17 provides the Governor and the Parole Board with a power to vary or revoke the parole conditions of a person who is serving a sentence of life imprisonment. Clause 18 provides that, where a person is discharged from parole, his sentence is wholly satisfied. Clause 19 repeals the provision that deals with cancellation of parole where the parole was obtained by some unlawful means. As the Board no longer has a discretion to release on parole, such a provision is no longer necessary.

Clause 20 provides that, where the Board cancels parole as the result of breach of a parole condition, it may only return the parolee to prison for a period not exceeding three months. At the end of this period, the prisoner is automatically released from prison to continue his parole under the original order. Clause 21 makes it mandatory for the Board to interview as soon as possible a prisoner who has been returned to prison upon cancellation of his parole as a result of the imposition of a further sentence of imprisonment. It is also made clear that a person returned to prison under this section after the amending Act comes into operation in respect of whom a non-parole period is fixed is only liable to serve that non-parole period in prison.

Clause 22 empowers the Board to cancel warrants that have not been executed. Clause 23 gives prisoners and parolees the right to be represented by a legal practitioner in any proceedings before the Board for cancellation of parole or for discharge of parole. Clause 24 repeals a section that is redundant as a result of the new system of parole. Clause 25 is a consequential amendment. Clause 26 repeals the Part that provided for conditional release, and substitutes a new Part dealing with remission. At the moment, remission is dealt with under the regulations. A prisoner serving a non-parole period of a sentence of life imprisonment, being a non-parole period fixed or extended after the commencement of this amending Act, will now be eligible to earn remission.

Prisoners serving sentences exceeding three months will continue to be so eligible. Parolees returned to prison upon cancellation of parole for breach of condition will not be so eligible, as the Board will now only have power to return such a person to prison for a period not exceeding three months. The Director may credit up to 15 days per month, which effectively means the remission of one-third of the total sentence. The emphasis is on the earning of remission for good behaviour, not the loss of remission for unsatisfactory behaviour. Provision is made for the release of the prisoner in his final month (whether release on parole, or release under this section). New section 42rb provides that a prisoner who is released under this Part (that is, those who do not have non-parole periods) is deemed to have wholly satisfied his sentence. Clause 27 is a consequential amendment.

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

[Sitting suspended from 5.48 to 7.45 p.m.]

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2336.)

The Hon. L.H. DAVIS: This is a historic piece of legislation. We should not look any less closely at this measure than we looked at the Pitjantjatjara legislation that was passed through this Council some three years ago. Land rights legislation has the unique task of trying to reconcile competing interests, the recognition of the importance of land to the Aborigines of Australia, and also the practical aspect that must take into account that that land may well contain valuable minerals and oil and gas deposits. As well, it may have some attraction for the people of South Australia and Australia.

The operation of the Pitjantjatjara land rights legislation has been under scrutiny, and members already in this debate have made note of the operation of this legislation. I wish to discuss this matter in some detail later. The Yalata community numbers some 350 people, and for about 20 years they have been promised the right of ownership of their land, dating back to the time of Sir Thomas Playford. In this sense the Maralinga land rights legislation is a fulfilment of the promise that was made to them so long ago. Thus, in introducing this legislation, the Government has obviously been concerned to protect the accepted rights of Aborigines while at the same time realising that we will be advancing no-one's interest by building a brick wall around the area in question.

There should be no doubt as to the Liberal Party's view on land rights legislation. The Pitjantjatjara legislation introduced by the Tonkin Government was undoubtedly a historic measure. It built on the idea that had initially been included in the Dunstan legislation, and let there also be no doubt that it substantially improved that legislation. It is perhaps easy to forget that there were some severe defects in the Dunstan legislation. For example, it proposed a split control of Pitjantjatjara territory in the sense that it provided for both land councils and land trusts, whereas the Tonkin legislation provided for one single authority to preside over the affected territory. The Dunstan legislation also provided that all royalties from any mineral and oil and gas development should go to the Aboriginal community: the Tonkin legislation modified that, I think, in a most practical fashion.

Furthermore, the Dunstan legislation provided that, in time, perhaps up to 25 per cent of the State could be the subject of land rights for Aborigines: the Tonkin legislation modified that provision also. Finally, the initial proposal by the Dunstan Labor Government provided that the Pitjantjatjara retained the right to veto mining, exploration and production. The Tonkin Government sought to modify that, in good faith, I believe. It did so, but, as I have already mentioned, regrettably that good faith was not observed by the parties to that legislation when the first real test came in the form of Hematite Petroleum. It is perhaps interesting to reflect on what Dunstan proposed, because I am sure that honourable members would agree that, if that legislation had been in place now, there would have been some very real and practical difficulties.

I want to refer in particular to one of those difficulties, involving the only real test on the practicality of that legislation—the application by B.H.P.'s subsidiary, Hematite Petroleum, to explore for oil and gas in the Pitjantjatjara area in 1981. Evidence was given to the Select Committee that the arbitration provisions relating to exploration in the Pitjantjatjara area would be unlikely to be triggered, and indeed Phillip Toyne, as the legal adviser to the Pitjantjatjara (from the evidence of the Select Committee on the Pitjantjatjara Land Rights Bill in 1981, page 21), stated:

> The Pitjantjatjara Council feels primarily that the arbitration provisions will rarely, if ever, be called into operation.

Yet the claims that were made by the Pitjantjatjara Council, I would presume on the instruction of its advisers, requested or required that the Hematite Petroleum group provide at least $1.5 million for the right to explore on that land, for the right to spend $12 million over two years to explore on that land, and then ultimately for the right to spend *in toto* up to $30 million in exploration. Hematite Petroleum, not surprisingly, did not wish to proceed to arbitration. It did not believe it was worth spending additional money on proving its point at arbitration. That is regrettable, not only in the sense that exploration of that very potential area has not proceeded but also in the sense that there is no question that there was a breach of faith on the part of one of the parties to the Pitjantjatjara legislation. We cannot resile from that allegation, because the people who were the parties to the very detailed and exhaustive negotiations associated with the Pitjantjatjara land rights legislation were the same people who were seeking to implement it shortly afterwards when Hematite Petroleum made its application to explore for oil and gas.

I was particularly interested in the considered remarks of the Hon. Mr Gilfillan, which was the first public comment from someone who might be in a position to know that perhaps there had been some inadvertent foolishness on the part of one or two people acting on behalf of the Pitjantjatjara people, in the sense that they were making an ambit claim—that they really did not believe that Hematite Petroleum would agree to $1.5 million, but that they would try them on. It is sad to find that legislation which was entered into with such good faith by both parties was so quickly breached by one party or, shall I say, the advisers on behalf of one party, seeking to cut down the good faith that existed at the time those negotiations were entered into.

Mineral exploration is a very delicate and high-risk game. It is easy for people to say that explorers come into an area, they explore, desecrate, ravage and leave the area if they find nothing. That is a fashionable concept. Mr Ray Woodhall, who is the Director of Exploration for Western Mining and is based in Adelaide, is arguably the most successful explorer in the world today, in the sense that he discovered not only Roxby Downs but also Yeelirrie, Kambalda and Benambra in Eastern Victoria. He is arguably one of the greatest explorers for minerals that the world has seen in the 20th century. Mr Woodhall made the valid point on more than one occasion that if one took all the mining development in Australia and put it in one place it would not cover the metropolitan area of Adelaide. That certainly puts it in perspective. To put it perhaps in a better perspective, the miners of today are not the miners of yesteryear. They have an affinity with the environment in which they work. In fact, the geologists and other people I have come to know associated with the Moomba project, the Roxby Downs development and the massive Cooper Basin liquid oil and gas project have a real affinity and empathy with the environment in which they work. It is quite at odds with the popular misconception about people who work for the mining industry.

The legislation before us has a similar provision to that contained in the Pitjantjatjara legislation regarding access. I am particularly concerned that since the passing of the Pitjantjatjara legislation there has been controversy associated with the rights of access to the Pitjantjatjara lands. It is undoubtedly unusual and perhaps unique that the person who has ruled this way is a former member of another place. In his judicial capacity Mr Justice Millhouse ruled that the Pitjantjatjara land rights legislation prohibits free access to land and that this is invalid in the sense that it is contrary to the provisions of the Commonwealth Racial Discrimination Act and the International Convention on the Elimination of Forms of Racial Discrimination.

The Hon. B.A. Chatterton: Isn't that subject to appeal?

The Hon. L.H. DAVIS: The Hon. Mr Chatterton rightly observes that this is subject to appeal. The Chief Justice of the High Court, Sir Harry Gibbs, in fact criticised the current Attorney-General for insisting that there be an appeal against the decision of Mr Justice Millhouse to be heard in the High Court. The Chief Justice suggested that it would be more appropriate for the matter to be heard by the Full Court of the Supreme Court. It is not for me to comment on that matter, except to say that, on a matter so fundamental as access, I would have thought that it would have been prudent to delay this Bill until this decision was made.

There is no doubt that the Attorney-General of this State has seen it as such an important and fundamental issue that

he decided to refer it forthwith to the High Court, thereby bypassing another option, namely, the Full Court of the Supreme Court. To me, as the Hon. Mr Griffin so properly explained, that is a very important consideration for this Council in examining the legislation, namely, to clear that aspect before we finally resolve the matter.

It is not improper to mention that, having waited for 20 years to see this legislation through, another few months will not make any difference. The Elders of Maralinga and Yalata have observed publicly on more than one occasion that they want this legislation right. It is incumbent on this Council to ensure that the legislation is right. In this case I believe that time is not of the essence.

Similarly, I express some reservation about the extension of the land from the initially proposed area of 52 000 square kilometres to 77 000 square kilometres. That was not at any stage contained in the original proposal and came about after the Select Committee reported. Interestingly, the Department of Mines is against the proposition. As I understand it, this additional 25 000 square kilometres is the largest remaining single area of unallotted Crown land and increases the subject area by some 50 per cent. It may be said that the land is desert, that it is not particularly arable and may be a marginal pastoral area at best, that the wealth of its minerals is very uncertain and that perhaps it is easier in this case to say, 'What does another 25 000 square kilometres of arid land matter'. The fact that this proposal was introduced after the Select Committee's report is an important consideration.

There is this dilemma in the legislation before us, that we understand the Crown has ownership of resources underneath the surface of the land and that the ownership of the land is being vested in a corporate body for the Yalata people. But, as the legislation is now before us, the mining companies must weigh the potential benefits of mining exploration or development against the cost of land rights and the uncertainties of dealing with that corporate body, given the Pitjantjatjara experience.

To be fair, one should also consider that there are costs to the Aborigines, including the possible desecration of sacred sites, the invasion of privacy and the disruption to their way of life. Of course, there are certain benefits attached to the opening up of lands to mineral exploration. Certainly, it is interesting to observe the experience in the Northern Territory, where in 1982-83, $10.3 million was paid to the Aboriginal Benefit Trust Account from the operations of the Ranger uranium mine, and $1.4 million from the small but very rich Narbalek uranium mine. Of that total amount, 30 per cent was transferred to incorporated bodies comprised of Aborigines living in the mining areas, and I should say that would not only include people who had traditionally lived in that area but others who came to live in that area. Another 40 per cent of that amount was paid to meet the expenditure of land councils and the administration associated with the running of those groups. The balance was paid to Aborigines throughout the Northern Territory.

The Council can see that in 1982-83 there were benefits accruing to Aborigines exceeding $10 million as a result of royalties which had been negotiated with producers at the Ranger and Narbalek uranium mines. In recent days we have seen an interesting development. Whilst perhaps one hesitates to introduce politics into a debate which in large part has a degree of bipartisan support, it will be interesting to see what the impact of the Federal Labor Government's decision is in regard to those Northern Territory uranium mines on the Aborigines who have been the beneficiaries of those royalties.

The Federal Government effectively closed down the Jabiluka and Koongarra uranium mines, and has given them over to the Kakadu National Park, effectively cancelling 300 mineral exploration leases. The Federal Government, because of its dilemma with uranium, has sought to create the Kakadu National Park as a tourist bonanza for the Northern Territory. It has actually transferred Aboriginal land—the Jabiluka land leased by Pancontinental and owned jointly by Aborigines and the Territory Government and Koongarra, which is located in the Aboriginal area—into Kakadu National Park. I find that extraordinary.

The proponents of Aboriginal land rights are nowhere to be seen. There have been no statements saying how outrageous this is from the point of view of the Aborigines. The only people who have been left to fight for their cause are the Aborigines themselves. In fact, the Chairman of the Northern Land Council, Mr Yunupingu, had a meeting with Mr Hawke and was quoted as saying, not surprisingly, that he was surprised, upset and confused that the Federal Government had not even committed itself to compensation and that the leases that had been transferred to the park had been leases of strictly Aboriginal land. So, we had this quite amazing situation where Aboriginal land had been transferred away from Aborigines without any consultation at all. The Northern Territory Chief Minister (Mr Everingham) also commented by saying that he found the situation improper, and of course that was one of the factors instrumental in the landslide victory which the non-Labor Party had in the Northern Territory only last Saturday.

As a result of the Federal Government's decision (which had been forced on it by left-wing forces dictating that uranium mining was all right at Roxby Downs but not at Honeymoon, Beverley or in the shape of new mines which had been found even before Roxby Downs was found and which no man in his right mind could possibly justify as not being capable of development) the Aborigines in the Northern Territory may be seeking compensation from the Federal Government because of the closure of the prospective Jabiluka and Koongarra uranium mine. The Chairman of the Northern Land Council was quoted within the past two weeks as having stated:

> Compensation is only one of the options available. They may negotiate with the Government, or just wait until Roxby Downs begins operation and then assess environmental and sociological impact, and sue for damages.

There has been much feeling clearly engendered by the decision of the Federal Government to close down the future development of those uranium mines on Aboriginal lands which will affect not only the potential producers but also the Aborigines who stood to make substantial gains from royalty payments. I seek to draw the distinction between the advisers to the Pitjantjatjara, who did not even allow Hematite to explore, on the one hand, and the advisers to the Northern Territory Aborigines who, not surprisingly, are concerned that they are losing—

The Hon. B.A. Chatterton: What evidence have you that it is the advisers?

The Hon. L.H. DAVIS: Because press reports talk about the advisers. We can talk about advisers later if the Hon. Mr Chatterton wants to discuss them in more detail.

The Hon. B.A. Chatterton: That's a very paternalistic attitude.

The Hon. L.H. DAVIS: Not at all; it is an interesting contrast. I seek to draw that distinction because it highlights the real difficulties and dilemmas that exist when we come to talk about land rights legislation. Professor Geoffrey Blainey has written many books on the history of Australia, including *Land Half Won* and *Triumph of the Nomads* which was published in 1975 and which sets out in some detail the history of Aborigines before white settlement in 1788. He has some interesting comments on land rights legislation.

Last year, when he was a keynote speaker at the graduation centre at La Trobe University, Professor Blainey made some fairly interesting observations on this important subject. I quote:

> One has to realise what one's doing. By giving land rights to Aborigines we are running against one of the strongest and most welcome changes in the Western world in the past 200 years—the decline of hereditary rights, the decline of the monarchy, the decline of the landed nobility.
>
> We are setting up a new form of hereditary rights, where it's your birth which determines whether you are entitled to ownership of certain pieces of land.

He makes the observation that, because Aborigines say that the land is especially important to them, one obviously has to pay attention to that point. We all do: indeed, that is evidenced quite clearly by the Liberal Party's strong support for the Pitjantjatjara legislation and the strong support in principle for the legislation that is now before us.

The Hon. J.R. Cornwall: Tell us what you wanted to do with Granite Downs in connection with the Pitjantjatjara.

The Hon. L.H. DAVIS: The honourable member can tell us, if he likes. Professor Blainey, who has the ability to see beyond today, in my view, goes on to say this:

> Mineral discovery depends very heavily on mental and physical effort and if too large an area of the Northern Territory is held by Aborigines, and there are too many obstacles to mineral discovery in those areas, then the Northern Territory will suffer economically.
>
> That is not sensible because it would do enormous harm to Aboriginal-white relations if we said later: 'We've made a mistake; we didn't mean to given you back this land on these terms.'

That to me is an interesting observation from a person who could be said reasonably to be bipartisan and who has made a specialty of studying the history and future of this land in which we live.

In making those observations, he is backed up by the history of the situation. Since land rights have been introduced into the Northern Territory, no exploration licences have been granted on land that is the subject of Aboriginal land rights. When I say that, I am talking about a period of some 13 years. That is an important matter for us to consider when we are balancing the interests of the Aborigines who have a claim to the land and the interests of those who believe that the land could have some value to them. Indeed, the Australian Mining Industry Council made the observation quite recently that nearly 25 per cent of the Northern Territory has already been designated Aboriginal land and another 25 per cent is under claim. It has been suggested that in the Northern Territory no longer are Aborigines just claiming land on which they wish to live; in several land claims hearings in which they claim that they are the original owners of the land the Aboriginal claimants have not expressed any wish whatsoever to live on the land claim. That certainly is not the case here.

The Yalata community has expressed a desire to live on the land, but I raise that matter because it concerns me that this Bill may well be followed by another Bill. I have heard from fairly good authorities that the Kokatha people are considering a land rights claim to take in the Roxby Downs area, which has enormous potential economic value to the people of South Australia.

I was on the uranium Select Committee formed in 1979 (as was the Hon. Martin Cameron and the Hon. John Cornwall); it met for two years before bringing down its report. I am confident in my recollection that, apart from one observation that was made by a witness from Port Augusta about the possible Aboriginal links with one of the areas associated with the Honeymoon/Beverley region, there was no specific reference whatever to the Roxby Downs area. When one remembers that Roxby Downs was discovered in 1975 and was proved to be a commercial mine of some magnitude in 1977, it is singularly unfortunate that it is in 1983 when we first hear of claims that there are sacred sites in the Roxby Downs area. That breeds a form of cynicism which I believe is quite understandable: that some eight years can elapse between the exploration commencing and the claim for recognition of sacred sites.

I have touched on subjects other than Maralinga to emphasise the complexity of this general area of land rights. I have recognised already that the Aboriginal milieu places a heavy emphasis on land: that it has a spiritual quality rather than an economic value, that they belong to it and that they are part of the land.

The Hon. J.R. Cornwall: They have both; that is quite clearly recognised by anyone who knows anything about it.

The Hon. L.H. DAVIS: Sure. As one commentator has said, the term 'land' is not really adequate: 'earth' gives a more accurate meaning. The Woodward Land Rights Commission, which was established in 1973, observed that the spiritual connection between a clan and its land involves both rights and duties. The rights are to the unrestricted use of its natural products; the duties are of the ceremonial kind: to tend the land by dances, songs and ritual ceremonies at the appropriate times and places. Mr Justice Woodward, at the time of his second report in 1974, coined the term 'sacred sites' and made the point that the first step in the protection of these sites and their identification is difficult since it is contrary to normal Aboriginal practice to disclose the whereabouts of sacred sites to strangers.

I am interested to hear the observations again of the Hon. Mr Gilfillan, and to have read in recent months in the press, that a group of elders believes it is possible and appropriate to establish a register of sacred sites, perhaps not only in relation to this area (the subject of this Bill) but perhaps in relation to other areas which are in contention. I am encouraged to think that that may be possible.

So, notwithstanding the fact that the Woodward Report arguably had narrow terms of reference, it certainly was an important step in the progress of land rights. We have come a long way in the past 30 years.

It was only in the early 1950s that major Government settlements and missions embodied a policy of assimilation. That had also been the official policy of State Governments. It was clearly defined in the pronouncement of the Native Welfare Conference of 1961, as follows:

> . . . all Aborigines and part Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs as other Australians.

That was the policy of assimilation. In 1967, the Federal Government held a referendum in which 89 per cent of the voters agreed to give the Commonwealth power in respect of Aborigines. In the early 1970s the Federal Government began to develop a policy of self-determination for Aborigines, and the pace and direction of change quickened.

As I have already observed, that was followed by the Woodward Commission and the proposal for land rights. It is now nine years down the track and we have land rights legislation in the Northern Territory; there was an inquiry into land rights in Western Australia this year, we have had the historic Pitjantjatjara legislation of two years ago, and we now come to address ourselves to the Maralinga lands. Before the atomic weapons testing the inhabitants of the Maralinga lands lived in an area that was tinged with the history of Daisy Bates at Ooldea. It is a hard and cruel land, but a land that they knew and love. There is no question about the validity of their claim, which dates back some 20 years.

The Hon. Diana Laidlaw: Twenty years?

The Hon. L.H. DAVIS: Since the promise was first made. It is a matter of degree as to how far this legislation should go. The Hon. Mr Cameron and the Hon. Mr Griffin have spent some time in detailing points that are at variance with the legislation now before the Council. During debate in another place it was perhaps disappointing to note that the Minister of Mines and Energy had no comment to make at all about this legislation. The Minister in charge of the passage of the legislation in another place stated that it was his intention to retain a provision to provide for compensation for the disturbance of lands in relation to mining operations carried on and for which a claim was made.

The Mining Act defines 'mining operations' to include exploration. Therefore, I was gratified to hear the Hon. Mr Gilfillan indicate his intention to seek a variation to the provision now contained in the Bill to limit claims made for compensation in the exploration stages. I am not quite certain how far the Hon. Mr Gilfillan's amendment will go in relation to limiting claims for exploration, but, as other speakers have observed, that was a crucial point in relation to the problem with Hematite Petroleum. Unfortunately, that problem had a bandwagon effect in the sense that it could have deterred other potential explorers of the Pitjantjatjara lands from applying for licences to explore what is generally regarded as very prospective territory. During the Committee stage I will welcome elaboration from the Hon. Mr Gilfillan in that regard.

It was interesting to note that in the application of the Pitjantjatjara legislation a Department of Mines and Energy officer, one Mr M. Benbow, was refused permission to enter the Pitjantjatjara lands. He was a departmental officer who had been mapping rocks in the Officer Basin since 1979 with the full co-operation of the Pitjantjatjara people. He was to return to complete the mapping programme in 1981, but his entry on to the lands was made difficult. I find that unfortunate and hope in the application of the legislation now before the Council that sort of anomaly can be corrected.

The observations of a former Director of Mines and Energy, Mr Bruce Webb, who is now the Managing Director of Poseidon (the most successful Adelaide-based gold producer) are important. He expressed his reservations about some of the practical applications of the Pitjantjatjara legislation. The evidence mounts that the main concern surrounding the legislation now before us (and in relation to the Pitjantjatjara lands) is the way in which it is applied in practice. It is one thing to have words on paper; it is another thing to make them work.

My main concern is that this Council should ensure that we have legislation which will work, which is practical, which respects the rights of Aborigines, and which also respects the fact that the lands may contain valuable minerals, oil and gas. The legislation must also recognise that the lands contain public roads on which people should be allowed to travel and that residents at Cook should have reasonable access to nearby areas.

In conclusion, I support the second reading of this important Bill. I believe that the Leader's amendments will correct some of the anomalies that currently exist, particularly in relation to the need for access to the land, unrestricted access to the roads, and the need to explore without front-end payments. Generally speaking, it will be a very difficult task to balance the competing interests. I accept that when in Government the Liberal Party made a commitment to introduce this legislation. I accept, too, that the people of the Maralinga area have an expectation that this legislation will proceed. I believe that we should not rush the legislation in the dying hours of the Parliament for the sake of meeting that expectation. If it is possible, through a few extra weeks of consultation, to improve the legislation, I believe that that would be a most desirable course to follow.

The Hon. R.J. RITSON: I support the second reading of the Bill. The amazing thing about the situation in which we find ourselves is that nobody in this Parliament disputes for one moment that the Yalata people who were displaced from Maralinga when the area was resumed for defence purposes should be allowed to go back there and should be given legal protections so that they may peacefully enjoy the land on which they used to live. Nobody in this Chamber disputes that they should be given ownership of that land. But, the peripheral matters which arise as to the formal conditions of ownership and the form of title are in dispute, and we find ourselves in a situation where these complex matters have to be considered under circumstances of great pressure in this Parliament.

We have to deal not only with this matter but also very contentious amendments to the Education Act, with a major bank merger and with changes to parole conditions. We have 21 Bills on the Notice Paper. We will receive more messages from the House of Assembly, and there will probably be some conferences. Amongst all that pressure, which represents very poor management by the Government in organising its legislative programme, we have to deal with these peripheral matters that are in dispute.

The Government's attitude seems to be that it will not deal with that—that it will close the doors to negotiation and bulldoze this Bill through. If the Bill should not pass this House, it will not be because any member on this side of the Chamber disagrees that those Aboriginal persons should have that land. It will not be because anyone on this side of the Chamber believes that the Aborigines should not have full legal title to protect their peaceful enjoyment of that land: it will be because matters concerning the rights of some of the residents at Cook to a limited use of a small portion of that land remains in dispute, and it will also be because the question of roads through the land (along with a number of other matters) remains in dispute. Those matters will remain in dispute for one reason only: that this Government has determined that the matter will be completed by Christmas and that there should be a 3½ month holiday between now and the next sitting of Parliament, leaving no room for negotiation.

At the moment, whilst we are discussing matters of broad principle in the second reading speech (we are not delaying the issue), negotiations are occurring in the corridors. Depending on the outcome of that and what happens to the Bill in the Committee stages, the Bill will pass or fail. It is a tragedy that the Government could not be generous enough to realise that the Parliament should be allowed a little more time to consider the matter, that there should be more sitting days and a deferral of the debate to the New Year so that these negotiations which are continuing can be carried out in a sense of calm, with a freedom from pressure, hasty panicky decisions and sensationalist press. However, that will not happen, as we have to get through 20 Bills in three days, and we must deal with the Bill as best we can.

The broad principles involved in this matter begin with the problem of the people at Yalata who were displaced from their land. The land is now in a condition where it can be returned to them. We believe that it should be returned to them and that they should have legal title. The problems that we will cite in Committee are a little thorny. The question of title involves not just simply ownership but also the sort of title and conditions of ownership. An ordinary citizen of this country, having title to land, has certain rights but not absolute rights. A right exists to eject trespassers and to keep unwanted people off the land. My home, with its surrounding land, is mine to that extent, but people do not have to get a permit to go through my front gate and knock on the door. It has been said that the owners

of the land, when title is granted, will be reasonable and will use the power rationally. It is suggested that we have no reason to believe that the Aboriginal people will abuse that right.

However, there is some anxiety that the white advisers are using their influence to manipulate the actions of, for example, the Pitjantjatjara and may manipulate the actions of the Yalata people for specific political purpose, for example, to obstruct multinational companies. I would not go so far as to say that that will occur, but I observe throughout the community (not only in political circles) a growing fear and suspicion that these very sincere and well-meaning Aboriginal people, who wish rightfully to return to the land, will be manipulated by people with grand ideological dreams. Perhaps in the Committee stage that matter will be cleared up, but we want to see the matters relating to entry and access formulated in such a way that those suspicions will be allayed.

On the question of roads, one of the difficulties is that dispute exists as to access and maintenance. We all know that, if there is a public road, the public use it and the taxpayer maintains it. With a private road the owner may exclude the public: he uses it and he maintains it. However, some doubt exists on the status of roads in the lands to be granted and regarding whether the new owners of the land, when title is granted, will be put in a position of having it both ways—where tourists not wishing to enter the land itself or to interfere with the peaceful enjoyment of it will, on the one hand, be prevented from using those roads or camping on the roadside and, on the other hand, as taxpayers they may be required to maintain this very expensive outback network of roads.

I believe that these matters should be dealt with in Committee and, as I have said, the outcome will be determined by the negotiations that are continuing. I am concerned at the lack of attention being paid to Aboriginal welfare in general by some of the advisers and politicians who are so obsessed with the whole question of Aboriginal rights. That feeds the sort of suspicion that remains in the community in this regard, because those people are so obsessed with the idea of manipulating the Aboriginal people as a political tool and their principal obsession may be the anti-uranium lobby or the creation of an apartheid-like State as part of some ideological dream. These people seem to be unconcerned with the problems of the Aboriginal people as a whole.

I would imagine that the Aboriginal people who wish to live in these lands and lead a tribal or semi-tribal life would be a very small proportion of the total Aboriginal population of Australia. Each type of Aboriginal person has a different problem. For this small proportion, the problem is that they wish to go back and live in these tribal lands, and they wish to obtain the legal right to do so and to have some income from mining royalties to enable them to do so in a way that is reasonably independent of welfare handouts. However, other Aboriginal people have quite different problems. They may be unemployed or poorly educated, trying to survive in a big city. To that extent, their problem may be the same as the problem faced by any other unemployed or poorly educated person in a big city. Some Aborigines have a problem with alcohol, as do some white people. Some Aborigines may have a problem, while not being tribal Aborigines, of living in outback areas, and they face the same problems as other people living in remote areas.

Some Aborigines may have everything going for them except that they are discriminated against because of their colour. They may be well educated and have a position in society, but, because of a social attitude towards colour, they may not advance in society as they would wish. There are many problems related to literacy, education, health, employment and prejudice that beset so many Aboriginal people. Some of these problems they share in common with white people, but those problems are completely unaddressed by the land rights considerations. Those who are so furious in their pursuance of some aspects of land rights connected with politics, such as the anti-uranium lobby, are notable by their absence from other areas of welfare in which they might be helping other Aborigines with this other range of problems.

So let us not deceive ourselves that, by granting title to this land, we are helping many Aborigines. We are restoring that land to the few people who choose to live there, and I believe that we should do that. Many people are afraid that in the process of granting the terms of that restoration, powers will be given to certain grand ideological visionaries to use those terms to manipulate Aboriginal populations in an undesirable way. However, nothing will be done to solve the problems of prejudice and unemployment among the urban Aborigines. This measure is really scratching the surface. A tremendous example can be seen in relation to the Minister's portfolio: in the Budget a very small segment (perhaps not even a segment but a very fine line) was allocated to Aboriginal health. Here we are very obsessed—

The Hon. J.R. Cornwall: Most of the money for Aboriginal health comes from the Federal Department for Aboriginal Affairs, and you know it. You are pretty ignorant, but you know that.

The ACTING PRESIDENT (Hon. H.P.K. Dunn): Order!

The Hon. J.R. Cornwall: Land rights are the right of the Aboriginal people, and you know it.

The ACTING PRESIDENT: Order!

The Hon. J.R. Cornwall: You are talking rubbish, referring to ideological dreams.

The ACTING PRESIDENT: Order!

The Hon. R.J. RITSON: That is the very sort of abnormal reaction that creates suspicion in the community. I hope that in the Committee stage some of these technical problems about rights and the extension of claims beyond the original land in question will be dealt with, but if they are not dealt with and if the Bill fails, I have no doubt that it will fail because the Government is attempting to bulldoze it through under stressful circumstances. This measure is one of 21 Bills on the Notice Paper, many of which are controversial and all of which are listed to be debated in two more days of sitting. But be that on the Government.

We support the granting of land to the Yalata people, and we support their having legal title to it. We wish to find a solution to their other problems but we do have fear and suspicion that, if we do not get it right, the Aboriginal people will be manipulated and abused for political purposes by some of their advisers. We want to get it right, and, if we do not, it will be because we have not had time to negotiate and discuss the proposal—and that will be the fault of the Government, not the fault of this Party. I support the second reading.

The Hon. C.M. HILL: Parliament has debated this measure at great length. There were late night sittings in the other place last week, and we have not done too badly today. I gather that this debate will continue for some hours, but I will not speak for very long. The debate has reached the stage where one tends to repeat issues, points and arguments that have already been made, and I do not believe that repetition is particularly good. I support the second reading, but I will not agree to the Bill at the third reading if it remains in its present form.

The ACTING PRESIDENT: Order! There is too much audible conversation. I cannot hear the honourable member.

The Hon. C.M. HILL: Thank you, Mr Acting President. I was a member of the last Government, which brought down legislation for the Pitjantjatjara people. We knew at the time that that was something of an experiment. We hoped that it would all work out very well in practice, but one or two problems have emerged and I believe that it would be prudent, when legislation of this kind and of a similar nature is introduced, to take into account problems that have occurred so that the process of evolution to find the very best form of land rights legislation for the Aborigines can develop as we overcome errors that have occurred previously.

The underlying principle in the whole issue from the public's point of view is that the legislation must be in the best interests of all South Australians. One cannot overlook the fact that, with this particular proposal and the Pitjantjatjara land already transferred, some 18 per cent of the State's area is involved.

The most worrying aspect from my point of view concerns exploration and mining. The importance of mining to South Australia is very great indeed. From a national viewpoint, mineral exports comprise 40 per cent of the nation's total commodity export. They amount to between $7 billion and $9 billion annually. Mineral exports rank second only to primary production as the greatest export of Australia.

The South Australian economy and, therefore, the welfare of the people at large, is not particularly strong, but is strong in primary production. This State has considerable worry regarding our secondary industries. We are experiencing the situation now, and have done so for the past year or two, of very strong competition from overseas and particularly interstate. Of course, in that secondary industrial area unemployment raises its head because of the labour-intensive activity in that sector of the economy. Exploration and mining, therefore, should be encouraged for the benefit of the South Australian economy.

There then emerges this problem of the front-end payments sought by the northern communities. The mining interests generally have objected quite strongly to those payments and we read where, in the Pitjantjatjara area, because of the high demand for front-end payments, some mining interests have turned away from exploring there and, indeed, I understand that about $30 million of exploration work has been lost because of the heavy demands for these front-end payments.

This is a tragedy, not only for the Aboriginal people who would benefit as a result of mineral finds and work which would follow exploration—at least some work would follow because it is quite evident that there are minerals in the area—but also for the Government, because of its loss of royalties, and for the South Australian community, because the more income that the Government can generate from this source the more money it has for social welfare payments and public works.

So, these mineral resources must generate wealth, but they cannot do that unless exploration takes place. If mining interests turn away from exploring because of high and unreasonable front-end payments sought simply for exploration, then that is a great loss and I do not believe that that situation should be permitted. Research officers tell us that one job in mineral resource development generates seven other jobs in the community.

To summarise my thoughts on this point, I do not agree with the principle of front-end payments for exploration. I believe that exploration should take place by negotiation between the Aboriginal people and the mining interests and that once minerals are found the Aboriginal people should get a fair, just and reasonable benefit and proportion of the rewards from such mineral activity. As I said a moment ago, not only the Aboriginal people would benefit from a situation like this but also the whole South Australian community. It simply does not have a chance to do that where these unreasonable front-end payments are sought. I believe that this is one of the problems that has arisen from the Pitjantjatjara legislation and I think that it is the duty of Parliament to look at this question now and endeavour to see that the same situation will not occur in the future with the Maralinga Tjarutja people.

The other point that concerns me and that has been raised by other speakers is the question of access to roads. I believe that the South Australian public should be able to travel through the Maralinga lands without a permit, provided that it is an offence if they stray off those roads without a permit. Taxpayers will bear the cost of maintenance of some of those roads and, therefore, they should have the right to use some of those thoroughfares.

Other matters have been raised which again, I stress, I do not want to repeat. I will be pleased to support the second reading. I hope that the Bill can be fashioned so that it is acceptable to Parliament and that, before long, the Maralinga people will attain the rights to this land which they seek and which Parliament, in its wisdom, will approve. Accordingly, I support the Bill at the second reading stage.

The Hon. R.I. LUCAS: I, too support the second reading of this Bill. Being, I think, the tenth speaker in this debate, I do not believe that there is any point in repeating any views that have already been adequately expressed and which happen to agree with my views. I will summarise those views and explore a couple of other points in some detail. I am pleased to see that the Liberal Party in, I believe, a spirit of reasonableness and compromise, is not persisting with the proposal to vest the Maralinga lands in the Aboriginal Lands Trust and then leasing it back permanently to the Aboriginal people. I am pleased to see that my Party is accepting the proposal that the Maralinga Tjarutja people will own the land freehold, as do their northern neighbours, in the Pitjantjatjara land.

I also accept that there is much merit in the suggestion that we heard earlier this afternoon from the Hon. Mr DeGaris that eventually we, as a Parliament, should ensure compatibility between the two forms of land rights legislation we have provided, first, to the Pitjantjatjara people and now, to the Maralinga Tjarutja people. I believe that this particular change to grant the lands freehold, which I understand was announced today by the Parliamentary Leader of the Liberal Party, is a significant step for the Liberal Party. I believe that it is a proper step and is one I wholeheartedly endorse. I hope that it will be accepted by all other Parties in this discussion as a wholehearted attempt at achieving proper and fair Aboriginal land rights legislation in South Australia.

As was the Hon. Mr Davis, I, too, was pleased with one aspect of the contribution from the Hon. Mr Gilfillan relating to the vexed question of the distinction between exploration and mining. Mr Mark Rayner, in a letter from the mining company Comalco Limited, which all members received, stated:

> Comalco feels that the Pitjantjatjara Land Rights Act and the Maralinga Tjarutja Land Rights Bill should be amended to distinguish between exploration and mining. After full consultation with the Aboriginal communities affected, we believe that access to exploration on these lands should be governed by the Mining Act, rather than under the terms specified in the Aboriginal land legislation of South Australia.

The Comalco Company went on at some length in explaining to us the distinction it saw between exploration and mining. I will not read out the detail of its argument; suffice it to say that it summarises well the distinction from a mining company's viewpoint between the exploration phase and the mining phase of mining development.

In his contribution this afternoon the Hon. Mr Gilfillan stated—and I have not yet been able to get a copy of *Hansard*, so I rely on my memory—the lines along which he was thinking in regard to compensation for exploration. That was something I had not heard from him earlier. The Hon. Mr Gilfillan suggested that compensation payable to Aboriginal communities for exploration should come within the general compensation provisions of the Mining Act. Section 61 (2) provides:

> In determining the compensation payable under this section, the following matters shall be considered:
> *(a)* any damage caused to the land by the mining operator;
> *(b)* any loss of productivity or profits as a result of the mining operations;
> and
> *(c)* any other relevant matters.

I am not sure whether the Hon. Mr Gilfillan referred to paragraph *(c)*, but my recollection was that his amendment covered paragraphs *(a)* and *(b)* of the compensation clause in that Act. Certainly, I am advised by my legal colleagues that under the Mining Act the understanding of the word 'damage' has been established by a number of cases and relates generally to physical or clearly definable damage to the land by the mining operator. The problems with the compensation provisions at the exploration stage under the Pitjantjatjara legislation have been more than adequately explained by a number of speakers in regard to the Hematite case. I refer to page 2678 of *Hansard* and the debate in another place where the Hon. Mr Goldsworthy referred to the problems of the Hematite case. He quoted from evidence from Mr Griffith, Hematite General Manager (Exploration). Mr Goldsworthy states:

> Mr Griffith estimated that protections the company planned would have cost about $340 000 more during the first two years of the project than had the same exploration been undertaken outside Aboriginal lands. The Pitjantjatjara were not satisfied.
> For physical disturbance, in excees of $400 000 was claimed. A compensation claim was also made for social disturbance at the rate of $1 000 per head of population for about 1 500 Pitjantjatjara. Mr Griffith summed up the claim this way:
> Together with additional payments we were prepared to make to avoid sites of significance, to minimise disturbance, would involve us in our initial two-year programme in something in excess of $2 million.

This is at the exploration stage of this company's mining programme. The company was not assured in any way of finding minerals and, therefore, of being able to capitalise on the particular mineral find, yet it was being asked for compensation of $2 million and the major component was the compensation payment for social disruption at the rate of $1 000 for each of the 1 500 Pitjantjatjara people. The amount sought for physical disturbance exceeded $400 000.

The movement of the thinking of the Hon. Mr Gilfillan was indicated in his contribution this afternoon, in that he was willing to see that claims for social disturbance at the exploration stage ought not to be catered for. He went so far as to say that the people from the Maralinga Tjarutja communities to whom he had spoken did not want that compensation at the exploration stage. If that is so, it is a significant move forward in the debate on this provision, because clearly the compensation provision in the Mining Act (section 61) is much narrower than the compensation provision in the Pitjantjatjara legislation and the compensation provision in this Bill.

If that is correct, I am pleased to see that the Hon. Mr Gilfillan has moved forward in his thinking, in my view, and I would hope that this would be a further step in this debate, with all the Parties involved being able to resolve one of the sticky points in the negotiations. I repeat: we had a number of submissions. I have read to the Council only one (from Comalco, which clearly made a distinction between exploration and mining) but many other mining companies made or sought to make that distinction to members of the Council. Certainly, I will be pursuing with the Hon. Mr Gilfillan, as I am sure other members will, in Committee his proposed amendment to the compensation provision. I think the Hon. Mr Gilfillan referred to amending clause 21 (6) *(b)*. The Hon. Mr Gilfillan and the President publicly referred to the possibility of a register of sacred sites. If that proposal is achievable, I shall certainly be pleased to see the results and support the amendment in Committee.

The next matter to which I refer is covered in clause 42, which provides for a Maralinga Lands Parliamentary Committee, which would be a Standing Committee of the Lower House. I am pleased to see that the Attorney is now in the Chamber to hear my comments. I must say that I have some doubts about the merits of a special Standing Committee of Parliament, even from another place, to look at the Maralinga lands legislation. In saying that, I do not decry the importance of this legislation, but I just wonder at the need of a special Standing Committee, particularly when the Attorney has a Select Committee looking, albeit in a somewhat stilted manner, at present—

The Hon. C.J. Sumner: It was not my fault—

The Hon. R.I. LUCAS: I am not attributing blame at all.

The Hon. C.J. Sumner: You should—it's your lot that cannot get its act together.

The Hon. M.B. Cameron: Don't start that again.

The ACTING PRESIDENT (Hon. C.M. Hill): Order! The Hon. Mr Lucas has the floor.

The Hon. R.I. LUCAS: I think that we have had this exchange between the two respective Leaders before. I am sure that they can say 'ditto' to what is in *Hansard*. I was voicing some personal doubts about the value of a special committee in the light of the suggestion in the other House about a Standing Committee in relation to another matter (I think in relation to prisons and parole matters). It is not appropriate for us in Parliament to go about our business in an *ad hoc* way by suggesting Standing Committees in relation to each Bill or problem that comes before us. I am sure that the committee that is charged with looking at the whole range of committees—Standing and Select Committees—in Parliament may be able to instil some order and sensibility into the whole committee system in Parliament.

This particular committee has been recommended by the Maralinga Lands Select Committee. It is in this Bill and is being supported, as I understand it, by all and sundry. I raise it at this stage and will certainly explore in Committee whether there is any merit in providing some sort of sunset clause for the Standing Committee. It is only a thought off the top of the head at the moment, but I wonder whether a sunset clause—perhaps five years or a similar term—might not be an appropriate amendment that we ought to consider in Committee. Questions in relation to access have already been comprehensively debated by other members of this Council. The Hon. Martin Cameron summarised it most succinctly when he made the point that if public moneys are to be spent on public roads there ought to be some form of limited, control led on public access over those roads. I will certainly support the amendments to be moved to provide for, in effect, road reserves through the Maralinga land.

The last matter to which I wish to refer relates to the judgment of Mr Justice Millhouse in relation to access to the Pitjantjatjara lands and its relationship to the proposals that we have before us. I will quote at length from Mr Justice Millhouse's findings of Thursday 21 July 1983 in the case of *David Alan Gerhardy v. Robert John Brown*. On page 7 of the copy that I have, Mr Justice Millhouse quotes the relevant section of the Commonwealth Racial Discrimination Act, 1975, section 9, as follows:

(1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(2) The reference in subsection (1) to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes a reference to any right of a kind referred to in Article 5 of the Convention.

The Convention to which the learned Justice refers is the International Convention on the Elimination of All Forms of Racial Discrimination. Article 5 of that Convention reads:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . .

(d) Other civil rights, in particular:

(i) The rights to freedom of movement and residence within the border of the State: . . .

Mr Justice Millhouse refers to a High Court decision in the case of *Viskauskas and Another v. Niland,* which refers to the question of whether the New South Wales anti-discrimination legislation would stand because of the Commonwealth Racial Discrimination Act of 1975. The High Court decided that parts of it could not. In a joint judgment, Justices Gibb, Mason, Murphy, Wilson and Brennan state (and I take only one section of this quote):

It could not, for example, admit the possibility that a State law might allow exceptions to the prohibition of racial discrimination or might otherwise detract from the efficacy of the Commonwealth law. The subject matter of the Commonwealth Act suggests that it is intended to be exhaustive and exclusive, . . .

Clearly, that is an important judgment in relation to the appeal that is currently being made by the State Attorney-General to the same High Court. I further quote from Mr Justice Millhouse:

Being bound by what the High Court has said, I have to consider section 19 (1) of the State Act in the light of the Commonwealth Act and of Article 5 *(d)* (i) of the Convention which is ratified by it. To me the conclusion is inescapable. Section 19 is in conflict with Article 5 *(d)* (i) of the Convention; section 19 interferes with 'the right to freedom of movement' on the basis of race; it prohibits anyone who is not a Pitjantjatjara from entering freely a very large part of the State; anyone who is not a Pitjantjatjara is kept out (subject to exceptions) unless with permission. That is directly contrary to section 9 of the Commonwealth Act and Article 5 of the Convention which requires the right 'to freedom of movement'; section 19 of the Act and section 9 of the Commonwealth Act (and Article 5 of the Convention) are inconsistent within the meaning of section 109 of the Commonwealth Constitution.

The Hon. C.J. Sumner: What is the point of all of that?

The Hon. R.I. LUCAS: The Minister has problems with access. The final quote, which is a little at a tangent, but is useful for all those people who are interested in reading *Hansard* to have before them, is on page 12 of that judgment, where Mr Justice Millhouse refers to reasons for rejecting the case of Mr Selway, who is counsel for the complainant. I quote:

For the other argument Mr Selway likened 'the lands' to his own private house.

Many members have had this argument thrust at them. I continue:

He said that just as his house is his own private property and he is entitled to keep people out of it, so 'the lands' are to be the private property of the Pitjantjatjara. At first I was puzzled at the distinction between the two even though I was sure there was a distinction. The distinction is this: Mr Selway owns his house and its land—and may do so—because as a citizen, not distinguished in this regard on the basis of race, religion or anything else, he bought it; what the Act does, in contrast, is to provide that a group of people, on the basis of their race, shall own a tract of land; furthermore, people do not need a permit to go on to Mr Selway's land. He may order them off and they may then become trespassers, but at first they are entitled to enter it, whereas everyone who is not a Pitjantjatjara (with some exceptions) needs written permission to go on to 'the lands' at all.

As I indicated when I commenced my remarks, I will not canvass areas covered by other honourable members. Any further contribution that I have to make will be made in the Committee stage. I support the second reading.

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

EDUCATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 December. Page 2230.)

The Hon. R.I. LUCAS: This Bill seeks to make changes to Part V of the Education Act, which relates to the operations of the Non-Government Schools Registration Board, which was established in 1980. The proposed changes are as follows:

1. To give the board power to limit the period of registration.
2. To ensure the board has power to review registration.
3. To give schools power to request the board to review registration.
4. To give the board power to vary or impose conditions following a review.
5. To require the board to review each school at least once every five years.
6. To change the composition of the board.
7. To change the composition of the inspection panels.
8. To prescribe registration fees for schools.

At the outset, I indicate that the Liberal Party supports the first five suggested changes, will oppose the next two and is in a state of flux, depending on amendments to be moved by the Hon. Mr Milne, in relation to No. 8, which deals with fees.

Before considering the eight suggested changes, I intend to comment briefly on the more fundamental questions raised in the Bill. Most members will have received in the past week a submission from a Dr Adrian Geering on the subject of the registration of non-government schools. Dr Geering is a lecturer in education at the South Australian College of Advanced Education. As a result of his submission, I attended a public meeting last night. The meeting, which was held at short notice and in most inclement weather, attracted a large attendance. In fact, some 300 people concerned about this Bill went out in inclement weather to listen to Dr Geering and a number of other speakers.

The Hon. Mr Milne, representing the Australian Democrats, and the Hon. Dr Ritson were also in attendance at that meeting. The Hon. Mr Milne received a rousing reception from the assembled multitude. It is said that religion is the opiate of the masses, but I am sure that applause is the opiate of the politician. The meeting passed a five part resolution. I will leave it to either the Hon. Mr Milne or the Hon. Dr Ritson to read it into *Hansard,* as they were asked to convey the views of the meeting to Parliament. I could not help but be impressed by the sincerity and enthusiasm with which people at the meeting expressed their views about this Bill and the whole concept of the Non-Government Schools Registration Board. Having said that, I point out that I do not agree with everything that the meeting believed should occur.

Those attending the meeting raised many questions, including whether there should be a board, whether public funds should be used to support non-government schools, whether there should be compulsory registration for non-

government schools, and whether the Government should be acting to reduce expansion in a number of non-government schools. Dr Geering referred to figures and said that some 130 new non-government schools had sprung up throughout Australia in the past three years. I point out that I cannot vouch for the accuracy of those figures.

Another question raised at the meeting was whether schools that do not use public moneys should be made to register. That was a strong line of argument from Dr Geering. It was also asked whether the present procedures favour long established non-government schools as opposed to newer schools. I have had some discussions with the Hon. Mr Milne in relation to this matter. I confess that I believe that there is a chance that the present system may well favour the established school system as opposed to the newer schools.

Another question asked was, 'Should the board have power over the nature and content of courses offered by non-government schools?', and 'Are the powers at law enforceable, and will the Government and the Minister enforce them?' I understand that there is presently a case before the courts in relation to a school that is bucking the system.

Section 75 (5) of the Education Act provides:

> If a child of compulsory school age is not enrolled as required by this section, each parent of the child shall be guilty of an offence and liable to a penalty not exceeding $100.

Section 79 (3) provides:

> An allegation of habitual truancy in respect of a child shall be dealt with in accordance with the Juvenile Courts Act.

Section 80 (2) provides:

> Where an authorised officer observes any child who appears to him to be a child of compulsory school age in any public place, he may accost—

that is a wonderful word—

> the child and seek to obtain from the child his name and address for the purpose of ascertaining the cause of his non-attendance at school.

It goes on to give further powers to the authorised officer, who may be a member of the Police Force or come under a number of other categories. Therefore, considerable powers are allowed to ensure compliance. Whether the Government or the Minister, with the advice from the Department, will have to go down that track will be the subject of much interest, certainly for me if not for the Hon. Mr Blevins.

I would hope that all concerned will accept the decision of the Supreme Court. It raises the question of powers of the board and the Minister, whether they are enforceable and whether they will attract public odium in authorised officers, such as policemen, being sent out to accost young children in the Hills in order to get names and addresses. In my view it is not a nice thought. The common thread through the discussions to which I listened last evening and through the submission that Dr Geering has presented to us, in his words, refers to the rights of parents to choose education for their children. On page 3, point 2.4 of Dr Geering's submission, he states:

> Registration infringes personal freedom and values of parents and is wrong. As certain court cases testify, this legislation has infringed the personal freedom of parents. Under the United Nations declaration, parents have the right to choose the kind of education they want for their children. The previous legislation denies them that freedom.

However, following my consideration of that argument, I believe that a more important right exists, namely, the right of children to an adequate standard of education. Whilst I concede that the viewpoint put by Dr Geering is well meaning in regard to parents having the right to choose, as a Parliament and a community we have an important role, right and responsibility to ensure that all our children have an adequate standard of education to enable them to have at least some chance of making a success of their lives.

Whilst it is fine to talk about the freedom of parents to choose for their children, we have to consider the rights of those children, particularly when we are talking about children who are too young to be making such decisions for themselves. We have the situation of their parents, although well meaning, possibly making what in the end will be inappropriate decisions on the schooling of their children. Our children have a basic right to an adequate education and, once they become adults, they can then make their own choices in regard to the way in which they live. However, we have a responsibility to ensure that our childrens' basic right is protected. My view in this respect was shored up by the 1966 United Nations Covenant of Economic, Social and Cultural Rights, which required individual nations to:

> Have respect for the liberty of parents and, where applicable, legal guardians, to choose for their children, schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

There are three parts to that covenant which I wholeheartedly support: first, the validity of parents to choose non-government schools, other than public schools; secondly, a need for all schools to have a minimum education standard; and, finally, a freedom for parents to ensure that the religious or moral education of their children conforms to their own convictions. Whether that is done through the schooling system or within the family circle is a separate argument, but I accept that section of the covenant.

When I refer to religious or moral education, I am referring not just to Christian-based schools. Instances have been given of Islamic and Buddhist-based schools.

The Hon. Anne Levy: Jewish.

The Hon. R.I. LUCAS: Yes, that is another. I respect the rights of those parents to send their children to such schools. In summary, I cannot support the calls of schools that do not get public money to opt out of registration. That is one of the major points that Dr Geering is suggesting to us. Equally, I cannot support calls to remove the power of the board to ensure that the nature and content of instruction are satisfactory. That, too, is a major part of what Dr Geering has put to us and is one section of the motion that was passed by the public meeting last evening.

In my view we cannot allow the possibility of children paying the cost of decisions of their parents to become devotees of the Reverend Jim Jones type of cult figure—someone who might have an alternative lifestyle which includes schooling that might promote unquestioning obedience to the extent of committing suicide, free love between teachers and students, the violent overthrow of our social order, terrorism or the theory that Asians or migrants ought to be deported from our shores forthwith.

I believe that society and the Government have a responsibility to protect children from this sort of view, strange though it may be, of their parents. If parents want to promote free love between teachers and children, terrorism and other things to which I have referred, let that be handled in another section or left to one side. It ought not to be inflicted upon the children of those parents through the school system. I see that as an important role for society or, in this instance, the Minister or the Education Department to play.

Let me summarise this philosophical broad sweep by saying that, while I naturally respect the views of Dr Geering and his supporters, I cannot in this respect agree with them. I now return to the specific proposed changes that I mentioned at the start of my contribution. The Liberal Party supports giving the Board power to limit the period of registration. At present the Board has a choice of either registering forever or not at all.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: It is not much of a choice.

The Hon. Anne Levy: There is a history to it.

The Hon. R.I. LUCAS: Yes. The proposal is to allow, in effect, a probationary period, but the Bill does not state how long that will be, although in the second reading explanation the Minister in another place referred to 12 months. Certainly, at the meeting last night an important point was made regarding the question whether a probationary period of 12 months as suggested by the Minister was long enough. Instances were cited where certain schools (but I cannot check the correctness of the assertions) after 12 months were not really running smoothly. However, given a few years (and it was suggested that five years may be appropriate, but I believe that that is certainly too long) they would develop, grow and attract more students. I would certainly like to explore that issue with the Minister in the Committee stage.

It has been said that the Minister has indicated that a period of 12 months will apply, and I wonder whether the Minister would be prepared to ensure that there was some flexibility in that provision. I know that the Hon. Mr Milne will refer to this point. The proposal will allow verbal or written assurances given at the start to be checked, and my Party believes that that is a sensible provision. The Liberal Party will support ensuring that the Board has the power to review registration. At present section 72j, referring to an inquiry into the administration of schools, is a very wide provision. It states:

> The Board may, upon the application of the registrar, or of its own motion, inquire into the administration of any non-government school.

The Bill amends that section to provide for a review of the registration. We support that. I suspect that in this instance the Minister, in relation to section 72j, has been a little over-cautious, because that provision is already covered. Nevertheless, I support it. In the Committee stage I will ask the Minister whether the review that is being considered in 72j will entail the inspection panels listed under section 72p of the Act. If there are no requirements for inspection panels, it would appear to me that that would be inconsistent with the rest of the proposal. I will seek a response from the Minister in Committee.

The Liberal Party supports the provision that schools be given the power to request the Board to review registration. At present section 72j allows that to be done only by recommendation of registrar to Board or the Board of its own motion. Under the proposal, a school will be able, in effect, to petition the Board and ask for a review. In my view, that is sensible, and we will support that provision. But once again I wonder whether that is really necessary. The Minister in the second reading explanation stated that two schools were already seeking reviews, and if those schools have sought reviews I wonder under what provisions of the current Act they have done so.

The Liberal Party will also support a provision giving the Board power to vary or impose conditions following the review. At present, the Board can only cancel the registration: it is an all or nothing provision. This proposal can be viewed in two ways. One way of viewing the proposal is to see that the Board could make the particular conditions less onerous or less drastic, that is, by varying or reviewing conditions, and I believe that that is a sensible provision. The other way of viewing the provision (and this view was stated last night at the meeting) is that this proposal could be seen as proposing new and unacceptable provisions in regard to particular non-government schools. So there are two ways in which this provision can be viewed. It could perhaps impose new conditions that are less onerous and less drastic, but some people at the public meeting last night felt that this was the thin end of the wedge (to use their words) and that this provision could be used by the Minister or the Government as a vehicle for imposing unacceptable conditions. Once again, I will seek information in this regard in the Committee stage.

The Liberal Party supports a provision under clause (9) *(b)* of the Bill to require the Board to review schools at least once every five years. At present, there is no mandatory requirement in that regard, but there is certainly a much wider requirement already under section 72j, where the Board of its own motion or the registrar can recommend a review of non-government schools. This proposal makes mandatory a review, and it will mean that the Board will have to conduct periodical checks of all non-government schools. Certainly, very wide powers can be used.

At that point the consensus between the two parties stops. I now refer to the provision to change the composition of the Non-Government Schools Registration Board. We will oppose strenuously this attempt by the Minister to gain control of the Board.

Under clause 4 the Minister is entitled to appoint one further nominee to the Board. The practical effect of that will be to increase the numbers on the Board from seven to eight. So, there will now be eight members on the Board. The extra Ministerial appointee will mean that the Minister will now be appointing four of the eight members on the Board. The Chairman, who is appointed by the Minister, will have a casting and a deliberative vote. So, while on the surface it might appear that there is no concern, that everything is equal, that there are four members nominated by the Minister and four members from the non-government schools sector, in reality when one looks at the provision for casting and deliberative votes, the control is taken away from the non-government sector. Why is this Ministerial control needed? Why is this being attempted now? What particular ill or wrong exists in the operations at the moment that requires this particular change which is being opposed virtually across the board in this particular debate.

Some of the fears expressed not only at the public meeting last night but also by way of telephone calls to me and other members during the past few days tie in with the very wide powers of the Board and this attempt at taking away the control of the Board. I was talking about powers to vary or revoke conditions earlier and I said that some of the people, particularly last night, saw that as the thin end of the wedge, that perhaps new and unacceptable conditions might be imposed on new and even perhaps existing non-government schools.

However, I think that many of those people last night would be prepared to accept that increase in powers which is envisaged by the Bill and which I have already indicated I will support, if the control of the Board remains as it is. However, when one takes the two proposals arm in arm, that is, the increased powers of the Board together with taking away the control of the Board, then that really has many groups going and that is, in my personal view, one of the reasons why I cannot support this proposal.

The Hon. Frank Blevins: Would you support it in reverse?

The Hon. R.I. LUCAS: I support the increased powers with the existing Board.

The Hon. Frank Blevins: You don't support them hand in hand. Would you support them in reverse?

The Hon. R.I. LUCAS: No, not in reverse. What I am saying is that I support the increased powers. However, I believe that the composition of the Board should remain as it is. No problem has been identified and no evidence presented by the Minister in another place as to the need for this change. So, I and my Party accept the increased powers but not arm in arm with the taking away of control of the non-government sector on the Board. What I am

saying is that some people at the meeting last night, I am sure, would accept that position if they sat down and thought about it. Last night they were against everything.

The Hon. Frank Blevins: What if we left the powers as they were but had the additional person on the Board? Would you accept that?

The Hon. R.I. LUCAS: No, I would not accept it. To be frank, I do not think that your Minister would accept it, either. I think that the increased powers envisaged in this Bill, in the broad sense of the powers, are needed. I am sure that the Minister would want the Board to have them and I hope that he will see the point that I and many others have tried to make, that together those matters are of great concern. If the Minister was happy with getting his powers and leaving the Board as it is then I think there would be the consensus, which he referred to, between non-Government and Government sectors. We are happy to have that degree of consensus in South Australia and I will not generalise in any way.

As I said, this particular proposal is not just being opposed by the Liberal Party; it is being opposed by many groups. A letter from the Independent School Board states:

> We would prefer the composition of the Board to remain as it is. The Ministerial appointments (2) and Chairman have three deliberative votes and the Chairman has the casting vote thus allowing four votes against the four votes enjoyed by the non-government sector. If a tied vote ever occurred then it would be hoped that further discussion and deliberation would mean a consensus would be reached.
>
> If the retention of the current members is considered so undesirable and a third Ministerial nomination desirable, then section 72 *(b)* (5) should be amended . . . to delete all words after and including 'and, in the event of . . .' Without this deletion, although the Minister 'will be nominating half of the Board members' he will have five out of a possible nine votes which seems to be somewhat heavy handed and loaded unnecessarily against the non-government sector.

The Hon. R.J. Ritson: It doesn't sound like there has been much consultation, does it?

The Hon. R.I. LUCAS: The Hon. Dr Ritson asks about consultation. To be fair to the Minister, he has consulted with these particular groups.

The Hon. R.J. Ritson: He has not taken much notice.

The Hon. R.I. LUCAS: Perhaps he did not take much notice, but that is his prerogative. Certainly, the fundamentalist schools last night raised the point that they had not been consulted. Whether or not that is correct, they made the point that they are part of this whole system and they had not been consulted. A letter from the Catholic Education Office, which supports the Independent Schools Board, states:

> The Commission believes that the membership ought to remain as it is.
>
> If the Minister is forced to change the membership to that proposed in his amendment so that he appoints three persons plus the Chairman, then the Commission would accept this amendment so long as the section of Act 72 *(b)* (5) dealing with the voting procedure is also amended.
>
> This additional amendment should be such to ensure that the person presiding at the meeting has only one vote, not two as is allowed for in the current legislation.

Both those groups are suggesting further compromises, I guess, if the Minister does not see particular merit in the views we are putting to him this evening. In addition, the Liberal Party is opposing the changed composition of the inspection panels envisaged under clause 12 of this Bill, to amend section 72p of the principal Act. At present the Act allows for appointment by the Board, but those appointments need Ministerial approval. It is important to emphasise that the Minister has some say in this particular system. I have been informed that the present procedure has been, basically, that the nominee from the Education Department, the Catholic sector and the non-Catholic independent sector, as well as the Registrar, have generally comprised the inspection panel and those four people have generally included a Board member. The proposal from the Minister is that the inspection panel comprises an Education Department officer and another person not being a Board member.

There is a significant change in the make-up of the inspection panel. These proposals really appear to be contrary to the whole spirit of the registration process which, from my understanding, is meant to be based on self-regulation. The present system appears in my view to be working well. The three sectors are working co-operatively. The Board member is there as a liaison point. He has gone out to a particular school and been involved in the inspection of that school and, when the matter is discussed at Board level, he is able to provide first-hand information to the Board.

There do not appear to be any major problems with this provision. Again, in his contribution in another place, the Minister did not provide any evidence at all as to where the current system was breaking down. This is in regard to both these major proposals: the composition of the Board and the changed make-up of the inspection panel. The Minister did not provide any evidence as to how the current system was breaking down, why there was a need for these changes and why there was a need to put many people in groups in the non-government school sector on edge.

As I said, the Minister already has a degree of control in regard to approval. This change to the composition of inspection panels is opposed by both the Catholic Education Office and the Independent Schools Board. I refer to page 1 of the document from the Catholic Education Office, which expresses its view in this way:

> This procedure has allowed for an excellent interchange of ideas between the sectors and the school and such interaction is still considered important.
>
> The proposed amendment indicates that the Education Department will have a greater responsibility for the inspection and reviewing of schools and also breaks down the liaison between the Board and its visiting panels. The proposed amendment specifically excludes a Board member from being part of the visitation panel.

The final point that I wish to raise relates to the prescribing of the registration fees for schools. Presently there is no fee, but the proposal is that there be a fee for new registration. In his second reading explanation the Minister referred to about $200. He indicated that it would not be retrospective as concern was expressed that all those schools that had been registered might be presented with a bill. The Minister was good enough to indicate that that would not be the case. He then went on to say that this possible sum of $200 would not recover all the cost of the new process but would be a small contribution.

After the shadow Minister pointed this out, the Minister indicated that the amount of money received by the Government under this provision would be almost negligible; it will be a minuscule percentage of the cost of operating the Board. In effect, it is just a token gesture. As I said at the outset, our view on this matter was in some state of flux. The Hon. Mr Milne has indicated that he will probably move an amendment to prescribe a registration fee of $100, and I indicate now that if the Hon. Mr Milne moves such an amendment the Opposition will support him in that matter. In conclusion, the Liberal Party supports the second reading. However, we will be opposing those two major changes requested by the Minister in regard to the composition of the Board and the make-up of the inspection panels.

The Hon. R.J. RITSON: I will be moderately brief because I think that the best thing we can do is get the Bill into Committee and see what can be made of it. Therefore, I will not address myself to all of the matters raised by the Hon. Mr Lucas, but I will address myself to a couple of the matters raised, one of which I believe to be the nub of the whole question. In doing so, I want to refer to the history

of the legislation and the political history of this question of Board representation, because honourable members will recall that some years ago this matter of a Registration Board was canvassed by the Labor Government. Full consultation took place and an agreed Bill was drafted and presented the very new Liberal Tonkin Government as an agreed Bill. The manner of the first passage of that Bill through Parliament was rather extraordinary.

It occurred almost in the same circumstances in which we are debating this Bill tonight; namely, a late night sitting late in the session with pressure and with little time in which to go into detail. What happened on that occasion, (although the form of Board representation at issue was slightly different) was that the Bill was introduced in another place and dealt with by a Minister other than the Minister of Education, who was necessarily meeting with lobbyists at that time. Without the guidance of the Minister another place accepted an amendment from the Hon. Dr Hopgood, which reduced the non-government representation. That Bill came to this Council very late at night, without a clear print of the amended Bill, and very few members at the time of the Bill's introduction to this Council were aware that the Bill had been amended.

The Hon. Anne Levy: Nonsense! Read my speech.

The Hon. R.J. RITSON: The honourable member will get a lot crosser with me before I finish. I, for one, received a little chit, a little piece of paper headed 'Amendments to be moved by the Hon. Dr Hopgood', and that was the nearest information that I had that we were receiving the Bill in an amended form. I turned it over, read it upside down and the right way up. It stated, 'Amendments to be moved by the Hon. Dr Hopgood'. That was put in front of me as I listened to the motion to incorporate the second reading explanation without its being read—

The Hon. J.C. Burdett: Together with the original Assembly Bill.

The Hon. R.J. RITSON: —and as I was provided with the original Assembly Bill. There was no statement that the Bill had been amended in the Assembly. It was in those circumstances that the Bill passed in this Council in a matter of minutes and my telephone started ringing early the next morning. I had a long session with Mr McDonald of the Catholic Education Office and some clergy, and history recalls the weight of the lobby, the intensity of the lobby and the pressure we were under to recommit that Bill. If honourable members read *Hansard* of the night the Bill was passed, they will find that the amount of debate was minimal and that the A.L.P. was happy to sit there and give short mild speeches so that the Bill passed quickly. As a result of the intensity of dissatisfaction and fear on the part of non-government schools, there was instant and massive lobbying of the Premier and the Minister, and within days the decision was made to recommit that Bill as first cab off the rank in the next session.

That was done, and when it came through the A.L.P. opposed the recommittal of that Bill and the restoration of that board structure to the form in which the A.L.P. had agreed in its negotiations with the non-Government schools prior to the Liberal Government's coming into office. The opposition that members opposite put up the second time that the Bill came through was vehement; they spoke and opposed it vehemently. We had this spectacle of the Corcoran Labor Government's coming to an agreement with the non-Government schools. The Tonkin Government brought the Bill in in an agreed form and then, due to the pressures of the lateness of the night which occurs with either Party in Government, an amendment—

The Hon. Anne Levy: It was no later than this.

The Hon. R.J. RITSON: Just be quiet for a moment, Ms Levy.

The Hon. Anne Levy interjecting:

The Hon. R.J. RITSON: Just be quiet.

The ACTING PRESIDENT (Hon. C.M. Hill): Order! I must bring the Hon. Ms Levy's attention to Standing Order 181, which says that repeated interjections are out of order.

The Hon. R.J. RITSON: Thank you, Sir, for that protection. If we are to have an argument as to whether it was 10 o'clock or midnight, or Tuesday or Wednesday, we will distract ourselves from the fact that the Labor Government came to an agreement with the private, non-Government sector and then amended that to a non-agreed form when the Liberal Government presented what it believed to be an agreed form. This Bill passed this Council without a clear print of the Bill as amended from the Assembly. It came around in its original form, with a little chit that certainly came to me after the incorporation of the second reading explanation was arranged; it said, 'Amendment to be moved by the Hon. Dr Hopgood'. What chance did we have of addressing ourselves to that problem?

The fact remains that a Judas-like about turn was done by the people over there on this issue. When they were in Government they came to an agreement. We accepted that in good faith and tried to implement it. They amended it other than the way in which it was agreed. They opposed tooth and nail the restoration of the original board structure. That issue, which now rears its head again in clause 4, is one of the real nubs of this Bill.

Because the non-Government sector had agreed to some registration mechanism and because it had agreed to the Bill as it first entered this Parliament before it was mutilated by the A.L.P., it is probably still true that a majority of non-Government schools would continue to accept the existence of a Registration Board, but they have a fear, particularly as they have seen how the A.L.P. has made attempts at getting Government control of the schools, that this control will be used to their disadvantage and to limit their freedom.

Why does the Government need control of the Board? The Board has a clear charter as laid out in the Bill, which clearly addresses itself to this. If the Board was composed entirely of businessmen, bankers, Ph.D.'s in education or science, it would not mean that the Government does not have control. The Government is setting up a statutory authority, the terms of operation of which are in the Bill. They are justiciable. Why does it want to stack this qango with a majority of people who are subservient to a Government department? I suppose that one could say that it does not matter and that 'They will all be reasonable men.'

The Hon. Anne Levy: No; there will be women amongst them.

The Hon. R.J. RITSON: I am sorry: they will all be reasonable women, but that does not affect the argument. I wish that that neurosis would not keep popping up. The non-Government sector is really concerned about this now, not just because of the theoretical position that the Government may wish to use the increased dominance of the Board in an anti-Christian way, but because the vehemence of the A.L.P.'s persistence on this matter of the Board's dominance is being shown for the second time in a couple of years in an attempt to gain now what it failed to gain when this Bill was recommitted a couple of years ago.

So, unless members opposite can demonstrate that there is new mischief to be remedied that will be remedied only by the enactment of clause 4, members should oppose it. It is sinister; it has created anxiety; it is not what was agreed in the original concept of registration that was put to us as an agreed Bill. This can be dealt with at greater length in Committee.

I want to raise only one other anxiety. I will not consider an amendment, but it is an area of anxiety. It is in new

subsection (2) *(a)* of clause 9—the nature and content of the instruction offered at the school. To the extent that the non-Government sector originally agreed to a Registration Board, it must have agreed—and it stands to reason that there is agreement—that the State, having made education compulsory, has some right to define what education is and that children have some right to an education that is satisfactory. So we come to the difficult problem here of definition. We find in new subsection (2) *(a)* that the Board must be satisfied that the nature and content of the instruction of the school is satisfactory.

The commonsense view there is that it would be the only business of the Board to decide whether the teaching was of professional and adequate quality and the material in an academic sense being taught was of a standard generally on a par with most reasonable schools, and that any other content of instruction of a philosophical or ethical nature was non-destructive to the safety and welfare of the students. But some real anxiety exists among large numbers of people that, if the Board is dominated by Government appointees or departments, it is possible that the Board may view some forms of ethical and social instruction which are not consistent with the opinions of the Board as to what is a good ethic or good social teaching, and some moral and ethical environments which parents choose and which are not destructive or dangerous to the child, as undesirable.

I refer to a recent incident where an inspector compiling a report on a school that was applying for registration made an adverse comment about the nature of the social interaction between the children. I suppose what is adverse to a secular humanist could be desirable to a person of a particular culture and religion. I was concerned that reports should contain that type of subjective judgment. The people that have expressed concern to me have said that they want to choose the ethical, moral and social environment of their children, but they do not want to choose the alternative mathematics: they want their children to be taught that two plus two equals four, rather than five. The anxiety lies not with academic matters but with ethical matters.

It is a genuine anxiety lest the authorities reviewing the nature and content of instruction make subjective judgments based on their views of the value of secular humanism and lest they be critical of the cultural and social judgments made by parents who choose to send their children to a school with a different social regime. Unfortunately, any attempt to move an amendment is fraught with difficulties. If one were to totally exclude the Board's authority in making judgments about social and moral environmental factors in a school, whilst that would protect Christians totally against interference with those values, it would also protect other schools with quite difficult, different and dangerous social values. Some examples were provided by the Hon. Mr Lucas in relation to the protection from interference with institutions like the Jonestown disaster.

There could be no objection to a training school for sexual athletes if the board's powers were thus limited. I see technical difficulties in interfering with clause 9 (2) *(a)* to give protection from the cultural and ideological interference wanted by some of those people who have contacted me. Perhaps it would be a double-edged sword, but I believe that Parliament should keep a close watch on the Board's behaviour. Doubtless, if that power is misused, people will complain to us and we will make sure that the public becomes very aware of what might happen if the Board's power is used to shift the philosophy of some schools towards the secular humanist end of the spectrum.

I think that there are dangers in assuming that a Bill is good enough purely because it relies on the fact that power is given and will be exercised by good and reasonable people. The question of Government control of the Board gives the Government power. I have no immediate evidence that the present Government is likely to abuse that power at the moment. However, I think that the Bill must be correct, and it cannot rely on the hope that Government appointees will be good and reasonable men at all times.

It is the fate of politicians when they retire to be appointed to a variety of qangos. The Hon. Ms Levy may yet succeed in cloning herself: with four Ms Levys on the Board, the private school sector would go wild with dismay because of her expressed and implied suspicion of Christianity. The two issues to which I have referred cause me the greatest concern, although there are other matters as well. I commend the Bill to the Committee and hope that something better may come of it.

The Hon. K.L. MILNE: I will not go over all the matters raised by other speakers. My first interview was with an officer of the Education Department. I point out that he was an efficient and persuasive person, and he gave me an honest impression of the intention of the Bill. As soon as one began to talk to representatives of the non-government schools, the independent schools, the systemic schools, and the new group of small schools, one found that they did not approve of the Bill.

The Bill is all about the private schools—it is not about the Education Department. My second interview was with the Reverend F.J. Neill (representing the South Australian Commission for Catholic Schools), Mr Miles (Chairman of the South Australian Independent Schools Board), Mr Hercus (Chairman of the Governing Bodies Association of Independent Schools), and Mr Leane (Executive Officer of the South Australian Independent Schools Board). The impression that I gained was that a great deal of their fears have arisen as a result of the latest moves in Canberra and statements made by Senator Susan Ryan. They felt that this would quickly filter down to the States, and they were most anxious that the situation did not change and that it certainly did not change in a hurry.

My third interview was with the new schools group (for want of a better term), which is a new group that must be considered since this Bill was first debated. I had long talks with the Reverend Dennis Bailes, a Baptist Minister from Mildura, and Dr Adrian Geering (to whom the Hon. Mr Lucas referred). I think that I now understand a great deal better the outlook, ambitions and desires of the new group of schools. I think that there are about 20 schools in that group, varying in size from about 20 pupils to about 200, and some of those schools have waiting lists. I suppose that there are around 2 000 pupils in total attending those schools, many of which are accelerated Christian education schools. I do not think that we can regard Christian schools as being bad.

At the public meeting last night, I was asked to read the resolutions that were passed, although I had left by that time. Like the Hon. Mr Lucas, I do not agree with them. However, they stated:

> 1. This public meeting of concerned citizens resolves to ask the South Australian Parliament:
>
> *(a)* To reject the Education Act Amendment Bill, 1983;
>
> *(b)* To base the registration of non-government schools on objective annual standard achievement tests;

They are doing that because they believe that the inspections have been concentrated on such things as buildings, teachers, qualifications, curriculum nature and content (to which they object), funding and libraries. They are the sort of things at which one ought to look, and that was the case when I was a member of the Commission on Advanced Education. It is one way of inspecting a college or school. The resolution further stated:

(c) To amend the Education Act, 1980, exempting from registration non-government schools not seeking Government funding;

I believe that would be unwise. The Hon. Mr Chatterton said that some schools had teachers who were unqualified but, certainly, the majority of those schools are saying that, no matter what the teachers are like, we should look at the standard of the children and pupils. They are prepared to do those sort of tests on arithmetic, English, mathematics and writing at any time; indeed, they have had to do so and have come out of it well. However, we still get a considerable proportion of children coming out of the education system after 10 to 12 years without being able to write. The resolution continued:

(d) To amend the Education Act, 1980, to remove reference to the nature and content of instruction in section 72;

That is a philosophical problem. I believe that the nature and content of most schools with the three Rs would be much the same and would be satisfactory. When one comes to the attitude of religious teaching, they fall into some criticism. However, I am not sure who is in a position to criticise. They do not mind the inspection facilities for health, welfare and safety of children; they approve of that entirely. The resolution further stated:

(e) To amend the Education Act, 1980, to include on the Non-Government Schools Registration Board a representative of the small Christian schools that are not members of the Independent Schools Board.

I have told them that I believe they must form an association. I believe that they will do so because I am not absolutely certain that the Board, comprising representatives of the older, established and bigger schools, is in a position to understand and represent the smaller and newer schools. So, I would consider that matter only if there was an association. The resolution finishes up by stating:

2. This public meeting of concerned citizens resolves to ask the honourable members of the South Australian Parliament here tonight to convey to that Parliament the requests expressed in the resolutions passed by this meeting tonight.

I hope I have done that. I also presented a petition this morning on their behalf, and the Parliament was kind enough to receive it. From my observations over the years, it seems that so many non-government schools—other than Catholic schools which are systemic—are denominational schools. It is an accident of history in Australia that we have a complicated situation, which has accentuated the difference in outlook between Education Department schools and others. I believe that the Minister has found that it is too difficult to make schools religious or denominational. There will be a difference. It is not so great in the United Kingdom but it is there to some extent.

In Australia this is accentuated partly because, in its early history, there were so few people that the only group to get together to form schools were religious or denominational groups. A great deal of emphasis is placed on inspection of non-government schools, and rightly so. But, who inspects Education Department schools and what guidelines do they use? Inspectors of Education Department schools are members of the Education Department. Who decides whether those schools are substandard, unsatisfactory or otherwise? Obviously, some schools in some areas must be substandard or we would not have illiterate children coming out of the system.

We have to face and be generous about the fact that the recent rise in the popularity of non-government schools is due to the disenchantment of parents with Education Department schools. We can only be thankful that the situation in South Australia is not as bad as that in Victoria, where it is almost beyond recall. The parents of these children going to private schools, especially the systemic and newer Christian schools, have decided on such schools, not necessarily because of the curriculum but because of a lack of discipline that seems to have grown up in Education Department schools.

It may sound old-fashioned for one to say that children should have manners and know how to dress, speak, write and behave. A few years ago it seemed as though all that was being discouraged. I saw a rally of teachers on the steps of Parliament House, and I would have been embarrassed to have to say that my children were being taught by any one of those teachers. It is well known to the Education Department and to some of its teachers that they have a responsibility, themselves. The Education Department has a great deal to look to, and I do not envy the Minister.

The whole basis and philosophy of the Non-Government Schools Registration Board is to protect the pupils of non-government schools. There can be no doubt that it is necessary. There should be freedom of choice for the parents but that can be overdone. I think the emphasis on freedom of choice for parents was over-emphasised at the meeting that Dr Ritson, Mr Lucas and I attended last night.

We should remember that there is also the freedom of choice for children, so that they can fit into the community after leaving school. Those children should not be disadvantaged by a type of education being so different that it makes them different and awkward and puts them at a disadvantage after leaving school.

I am still concerned about several amendments. The first concerns failing to limit the period of registration. I would have thought that five years would be a fair time for registration. It is difficult for a school to establish itself. It is like growing a vineyard: one cannot plant vines and pick grapes the next year. A school takes some time to build. There could be a proposal whereby schools could be given five years to establish but being subject to frequent inspections so that there could be a decision as to whether or not they were successful or failing before the five years was up.

I am a little concerned at the grounds for inquiry, but I will not stand on it. I am concerned, as are the non-Government schools, about the powers of the Board to vary or impose conditions, cancel registration and do other things. But the Non-Government Schools Registration Board asked for that and the Minister has conceded it. This is the result of a court case about a school where the judge indicated that the legislation was not clear enough. Most schools have accepted that, although some small schools have not and are frightened about it. I think that they will be happier if my proposed amendment is considered whereby the Board, when making a decision in regard to a school, will be required to set out in writing the reasons for its decision so that the school concerned knows the reasons for its decision and knows what to appeal against, as there are rights of appeal.

Concerning a review at least once every five years, I do not think that this matters. I cannot see that the people doing the review will go to the established and successful older schools just for the fun of it. They will have plenty to do without that. Schools that are confident with what they are doing should not be worried.

Regarding the question of a fee for registration, I do not see that there should be a complaint in that regard. I suggested that a fee of $100 should be accepted. After all, that is a very small amount compared to what is spent on a school and there is a bigger cost than that in regard to registering schools. I have suggested an amendment to provide that the sum of $100 be mentioned in the legislation so that an increase in this fee would have to come before Parliament. I did this because the schools seemed to be worred that the Government might impose a fee of $500 or $1 000. I do not think that the Government would do that, but if the

sum is specified in the Bill it would stop any argument in that regard.

I will oppose two matters because, with the Hon. Dr Ritson and the Hon. Mr Lucas, I feel that there is no real reason to change the *status quo.* The system took a long time to design and it took a long time for the Catholic and independent schools to come to an arrangement with the Education Department. Although the system is not perfect, it is working well enough, in my view, so that peer review and the self regulating system is working well. Therefore, I object to the composition of the Board being changed from seven, with three members controlled by the Minister, to eight, with four members controlled by the Minister, plus a chairperson having a casting vote and being an appointee of the Government.

In a sense that means equality, but the people who are suspicious say that the Minister is taking control. The Minister has no need to take control: it would be a compliment to the schools and the system if the Minister did not take control. My advice to the Minister would be not to take control. The independent schools prefer the *status quo.* While they understand the Government's wish for control, I think that that is entirely unnecessary, and nobody has given any reason why this action should be taken. Everyone would be happier if the non-government schools controlled themselves. In fact, they will be guided by the Education Department, which is right and proper. Nobody is complaining about that, but control is another thing. I do not think that that was originally intended, and I would prefer the *status quo* in this regard.

Regarding the people inspecting the schools, the inspection teams have not be laid down in existing legislation. The practice was for four people to make an inspection: one person was from the Education Department, one was from the Catholic sector, one was from the non-Catholic non-Government sector, and one was the Registrar, a member of the Board. I felt that the Minister was correct in breaking the nexus between the Board and the inspection team, but after listening to the schools themselves, and not necessarily to the Board members, I am not concerned with it. I could be pursuaded, but I do not think that it is a big point, and I would be in favour of leaving it as it is. A small team of two persons, as suggested, one being from the Education Department, is not flexible enough, and I do not know who would choose the other person. I realise that whoever is chosen to inspect the schools will not have a pleasant job, as I know from my experience inspecting colleges.

I do not wish to labour the matter, but I think that the Bill is an improvement in many ways in those parts suggested by the judge, requested by the Schools Board and acceded to by the Minister. I will not worry about other sections of this Bill too much, but I will stand on the two matters I mentioned, because I believe, that if there is to be a private schools system, it would be best run as outlined. We should be quite open about this. There is a difference in philosophy and it is a devisive matter. It is an unfortunate matter to raise in our small community, but it has been raised. It will not go away in a hurry. I think it would be much better to leave the *status quo,* which is something that has been working well, amicably and sensibly, unless there are grave mishaps, and carry on as it is.

The Hon. ANNE LEVY: I support the second reading of this Bill in its entirety. I would like to make a few points about some of the comments made by members opposite. I was very glad to hear the Hon. Mr Lucas give a good exposition of why it is necessary to register non-government schools. Whatever may be said, I endorse the right of parents to choose the education of their children: nevertheless, we as a community recognise that children have rights and one of these is the right to an adequate education.

If parents should be so misguided as to choose an institution which will give a most inadequate and inappropriate education, the State, representing the community, has the right to step in and ensure that the children for their own sake receive an adequate education. This principle has been recognised for a long time: parents do not have absolute rights over their children and on occasions the State must intervene to protect the rights of children. There are other examples of this in our legislation, such as legislation regarding the use of children in the production of pornography, which is one situation where the State assumes the right to step in if it believes that parents are not acting in the best interests of the children. We have many other examples in our legislation. If parents abuse their children the State acts on behalf of the children and removes them from the control of the parents.

I am not suggesting that any educational institutions in South Australia are of a kind which would damage children—far from it. However, we must realise that we do have a responsibility to see that all children receive an adequate education. If parents do not assume this responsibility, then the Government on behalf of the community must ensure the right of children to an adequate education. This is the justification for non-registration of non-government schools, and I was glad that the Hon. Mr Lucas expounded his philosophy fully and is in complete agreement with the proposition that the ultimate responsibility must lie with the Government.

Apart from that, this Bill is interesting, and I would like to indicate some of the history of the legislation—a correct history, unlike that propounded by the Hon. Dr Ritson. The original Bill was introduced in 1980 by a Liberal Government. It had not been prepared by the previous Labor Government.

The Hon. R.J. Ritson: Not discussed?

The Hon. ANNE LEVY: It had not been prepared by the previous Labor Government. There was no agreement between the Labor Government and anyone as to the form of any legislation.

The Hon. R.J. Ritson: Not discussed?

The Hon. ANNE LEVY: I do not know whether there had been discussions, but the existence of a board, and most certainly its composition, had certainly not been proposed by the previous Labor Government. The original Bill in 1980 was entirely Liberal Government legislation. In another place amendments were moved by the then shadow Minister of Education (Dr Hopgood) and accepted by the Liberal Minister of Education (Mr Allison), not another Minister acting on his behalf. Mr Allison accepted those amendments, which became part of the Bill.

When the Bill came to this Council it was not late at night—unless 10 p.m. is considered late. The Council was fully aware of what the legislation contained. If the Hon. Dr Ritson consults *Hansard* of 1980-81 (page 2498), he will see my speech: it is perfectly obvious that I was aware of the amendments which had been moved and which had been accepted by the Government in another place. The then Minister (Hon. C.M. Hill) in introducing the Bill in this place made perfectly clear in his speech that the Bill had been amended in another place. All the speeches in that *Hansard* report (but I must admit that I did not check the Hon. Dr Ritson's speech) showed that those honourable members who spoke on the Bill were aware that amendments had been moved and were part of the Bill before the Council. Perhaps some people are slow learners.

I should point out that the legislation was never proclaimed and that a few months later the Liberal Government introduced a Bill to remove the amendments which the Minister

of Education had accepted a few months earlier. The Bill to remove the amendments which the Minister had accepted passed through this Council and another place resulting in the law which is now being amended. At that time I remember pointing out to the Council that the amendments made by the Minister would not work, that they would result in the Board's either having to refuse registration to a non-government school or giving it registration in perpetuity. The only alternative was to give it registration subject to conditions—

The Hon. R.J. Ritson: You have gone away from the numbers issue.

The Hon. ANNE LEVY: I am not talking about the numbers issue: I am talking of the history of this legislation. The numerous speeches from the then Opposition members explained how the Bill would make great difficulties for the Board, and that the Board would not be able to investigate or check on any school once it had received registration, even if its standard fell to zero.

Once registered, they would be registered for ever. There was no way of going back on it. Again, if people would care to consult *Hansard* of the 1980-81 session at page 3564 they would find the explanation of why the amendments that the Government was then moving would not work and would not give the Non-Government Schools Registration Board the powers that it would need to function. As is obvious, as soon as the legislation was passed and the Non-Government Schools Registration Board was set up they found that what I had predicted had come about: that the legislation was not adequate for their purposes, that they could not do many of the things that they felt were desirable and, in consequence, they have asked this Government to amend the legislation to give them those powers.

I am pleased that now the Liberal Party is prepared to realise that this legislation is necessary. The Hon. Mr Lucas has commended the amendments regarding the powers of the Board: its ability to review schools at stated periods, its ability to impose conditions, to vary those conditions, and to change the conditions of registration. The Hon. Mr Lucas now commends this and says that it is necessary. I told the Council in 1980 that it was necessary.

An honourable member: Mr Lucas was not here then.

The Hon. ANNE LEVY: I realise that the Hon. Mr Lucas was not here at that stage, but it is pleasing that the Liberals, at least on this point—three years late—realise that in 1980 we were speaking sense and that what they were proposing was totally inadequate and would not work—as it has not worked. The Non-Government Schools Registration Board itself says that it does not work, and wants the change.

Aside from this, a few matters have been raised where there seems to be some controversy. First, on the composition of the Board: all of those who were opposing the change in composition must be unaware of what happens in every other State of Australia. In Queensland there is no registration procedure at all for non-Government schools, so that comparisons with that State are not appropriate. Everyone here agrees that registration of non-Government schools is desirable.

The Hon. R.J. Ritson: In Queensland, do they have particularly more mischiefs to be remedied than we do?

The Hon. ANNE LEVY: The honourable member's Party is not opposing the existence of the Non-Government Schools Registration Board. In Western Australia, non-Government schools apply for approval to the Minister alone, and the Minister grants or does not grant registration to the school. There is no appeal from his decision, no board, and no-one other than the Minister to decide.

In Victoria there is a committee of nine people in charge of registering non-Government schools, consisting of four from the Education Department, four from the non-Government schools sector and one person from the tertiary education sector, nominated by the Minister, so that Ministerial nominations are five out of the nine, but one of these people is not from the Education Department or the secondary sector but is from the tertiary sector of education.

In Tasmania there is a board of 10 individuals, whose functions are wider than just registering non-Government schools. Its members consist of two people from the Education Department, three principals of non-Government schools, three teachers, one person from the University of Tasmania, and one person from the pre-school sector, that person being present because the functions of this Board, as I say, are broader than just registering non-Government schools—again, no majority of non-Government school people.

In New South Wales the system is a little more complicated, but to register secondary schools for the purposes of offering the Higher School Certificate there is a committee of five people, of whom two are from the non-Government sector, two from the Education Department or from Government schools, and one from the tertiary sector—currently, I think, from the University of New South Wales. So, we can see that in no other State is there a majority of non-Government people on the Board to register non-Government schools. In every other State either the Minister controls the registration himself—alone—or the committee or board set up to have this function has a majority of other than non-Government school people.

The Hon. R.I. Lucas: Isn't there the same harmony there as there is in South Australia?

The Hon. ANNE LEVY: I have heard of no problems in any other State in terms of registration of non-Government schools.

The Hon. R.I. Lucas: There is harmony between Government and non-Government sectors?

The Hon. ANNE LEVY: As far as I know.

The Hon. R.J. Ritson: There has not been any public debate?

The Hon. ANNE LEVY: I have not heard of any suggestions that the non-Government sector should have a majority on the Board that registers non-Government schools.

The Hon. R.J. Ritson: You have not heard of any non-Government school objection or disquiet with that system?

The Hon. ANNE LEVY: No, I have not, and in every State, as I say, the non-Government school representatives are not a majority; the majority is made up of people from the Education Department, from the Government school sector and, very interestingly, usually at least one person from the tertiary sector of education, be it a university or college of advanced education.

In the light of that, people who start complaining that the non-Government sector would not have a majority under the legislation, really need to justify why they should have a majority in view of the fact that in no other State do they have a majority.

I now turn to the question of the inspection of non-Government schools. Again, I think that it is instructive to look at what occurs in other States. In every other State the inspection of non-Government schools is conducted solely by Education Department officers. In no other State is there even a representative of the non-government school sector on school inspection panels. The legislation before the Council proposes a halfway house: the inspection should be conducted by both Education Department and non-Government sector personnel. That is much more of a compromise than exists in any other State, where the inspection is conducted solely by Education Department Officers.

The suggestion that a non-Government person who inspects non-Government schools should not be a member of the Board has both a theoretical and practical reason. At

a theoretical level it is desirable to separate the functions of inspection and adjudication. A school that is refused registration might feel that justice has not only not been done but has not been seen to be done. The people who inspect the schools should not make the decision. The inspection of a school is a neutral function and the adjudication of the matter is the judgmental aspect. Both functions should be kept quite separate and should not be confused. At the practical level, there are 171 non-Government schools in South Australia at the moment, and the numbers are increasing. If each non-Government school is to be inspected or reviewed at least once every five years (and no member has objected to that) it means that between 35 and 40 schools will be reviewed each year, that is, one per week for the school year.

The job of inspecting schools, be it for original registration or review, cannot be taken lightly. It will take considerable time. If one school a week is to be inspected, I think it is too much to expect a member of the Board to be involved. Members of the Board have other occupations and other jobs to do and will resent having to give their time to undertake the inspection of one non-Government school per week for ever.

The Hon. R.I. Lucas: The power is with the board; it doesn't have to do that.

The Hon. ANNE LEVY: I agree that it does not have to do that. However, I still believe that that is the practical side of the question. The philosophical side is the greater argument. The inspection aspect must be kept quite separate from the adjudication aspect. In legal terms the prosecution and the defence should be kept separate from the judge. We must not confuse the two functions by having the same people involved in each area.

In relation to the composition of the Board, I mentioned what happens in other States. I remind honourable members opposite that there are plenty of education boards set up in this State with considerable powers, where there is a majority of members appointed by the Minister. I do not recall any member opposite objecting when legislation in relation to the South Australian College of Advanced Education went through this Chamber. The South Australian College of Advance Education Council has 14 of its 21 members appointed by the Minister—a clear majority. The Roseworthy College Council has a clear majority of its members appointed by the Minister. No-one has objected or said that that amounts to dreadful Government control of an institution.

The people appointed by a Minister are usually quite responsible: they have minds of their own, and they use their own expert judgment when considering matters before them. To suggest that people picked by a Minister will be inadequate, I think, is most insulting to the many people who accept responsible positions on the nomination of a Minister in all sorts of educational areas. No-one has suggested that there is nasty Government control of other institutions where Ministerial nominations are in the majority, so why should they object in this case? If the people appointed by the Minister are responsible, expert, influential, caring, and compassionate individuals, the fact that the Minister selects them will not mean that they are in any way inadequate to carry out their duties. To suggest that, I think, is most insulting to the people who have worked long and hard in those responsible positions.

Ministerial appointments should be in the majority because the non-Government school sector should not have ultimate control; the ultimate responsibility for the education of children in this State lies with the Minister. It is the Minister's responsibility to see that all children in this State receive adequate education. The fact that the Minister selects members does not mean that he controls them. Are members opposite saying that the Minister has complete control of the South Australian College of Advanced Education?

The Hon. L.H. Davis: Explain why there should be a change.

The Hon. ANNE LEVY: I have already explained it very fully. Philosophically, the Minister has ultimate responsibility to see that all children in this State receive an adequate education. In view of the situation pertaining in all other States of Australia, I think that the onus is on those who do not want the majority nominated by the Minister to illustrate why that should not occur. I think that at present the onus is the wrong way around.

In all other States the non-Government school representatives do not form the majority and it would seem that very good reasons would need to be advanced for having other than that situation. I do not believe that they have been advanced.

Various other points were raised by members opposite, some of which I will not respond to as I believe they are too trivial or insulting. I would, however, like to support most strongly all schools in this State and reject suggestions that one type of school is better than another type of school, be it non-Government better than Government or vice versa.

No such remarks have ever been recorded on this side of the Chamber. Any suggestions to the contrary or on the quality of teachers in the different types of school are, I believe, despicable and should not be entertained in a responsible Parliament if we are to have any credibility. I most strongly deprecate the remarks which have been made, involving those odious comparisons between types of school or teachers at different types of school. I make quite clear that I and the members of the Party to which I belong in no way wish to be associated with such remarks. I am sure various other points will arise in Committee. I support the second reading.

The Hon. FRANK BLEVINS (Minister of Agriculture): I thank honourable members for their contributions, which were interesting and diverse. It was a pity that such views seemed to be strongly held and are unlikely to be influenced by my giving a lengthy response to the second reading debate. One advantage of those strongly held views stated at great length is that, hopefully, it will ensure a brief debate in Committee, and members will not go over the same ground again in quite so much detail. I urge the Council to support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Constitution of Non-Government Schools Registration Board.'

The Hon. R.I. LUCAS: This clause involves the substantive problem that we have with this measure. Clause 4 provides for the Minister to appoint three, rather than two, members to the Board, and this, together with the appointment of the Minister, means that the Minister will control four appointments out of a total of eight members on the Board. I will not repeat at length the reasons why the Opposition will oppose this clause, as I have already given such reasons during the second reading debate. However, I would like briefly to respond to a point raised by the Hon. Anne Levy in her attempt to defend this change. The honourable member quoted at length situations that exist in other States and pointed out that the Government or the Minister controls the situation in most other States.

First, whether or not that is the case, I do not believe that it is a critical matter for us. By way of interjection, I tried to put the point that the Minister and the shadow Minister in another place have stated that a good deal of

harmony exists between the Government and the non-Government sector in South Australia. The Hon. Anne Levy did not concede the point, but, if she does some research, she will find that a degree of harmony and consensus exists between the two groups which does not exist in other States, in particular New South Wales and Victoria. That is not a major argument for or against the provision. Neither the Minister nor any Labor member in either House has provided one shred of evidence to show why a successful system needs to be changed. For that reason, the Opposition will oppose the clause.

The Hon. FRANK BLEVINS: I urge the Committee to strongly support the provision. It is perfectly proper that a board as important as this should have a majority of Ministerial appointees on it. The board has some very important functions such as deciding whether or not a non-Government school should receive registration. It is imperative that, whilst the Government or the Minister does not want to control every single facet of the operations of a school, the ultimate obligation must lie with the Minister and the Government as to whether or not the school should be registered and whether that school fulfils all the appropriate criteria for the education of children.

I have conceded a great deal to the view that parents do have significant rights in that area. In the final analysis, everybody has to agree that the Government must, as the Americans say, 'be the bottom line'. In essence, that is what this provision does. There is nothing sinister in that. It is totally responsible, and any Minister of either political Party would exercise that responsibility in an understanding and compassionate way. The ultimate responsibility, particularly for registration of schools, these days must lie with the elected Government of the day—the Minister in charge of the legislation.

The Hon. R.J. RITSON: I draw attention to matters raised by the Hon. Anne Levy in her second reading speech. She argued that the Government ought to have a majority on this board because that is so in other States.

The Hon. Ms Levy was not able to demonstrate any mischief requiring remedy which flowed from the composition of the Board either in this State or in any other State. Perhaps, during the course of the Committee stage, the honourable member will recall some practical example and be able to give it to us. It seemed, for the Hon. Ms Levy, to be a matter of philosophy and, as she addressed the question of the philosophical aspects of clause 4, she went on to give examples of other boards of management or control, as it were, in other areas of education.

The Hon. Ms Levy referred to post-secondary education and other matters. The interesting thing is that every example she chose was one where the Government appointed board was, in fact, managing an instrumentality that was entirely an instrument of the Crown. There is a distinction between a board controlling a State institution and a board controlling a private sector area.

There is no private university or college of advanced education in this State, and I see no difficulty with the majority of Government controls on a State instrumentality. I point out that those examples are not on all fours with the question of the mixed system of education that we have here, where the State has undoubted control over its own education system. It then has substantial control over the private system by the mere existence of the Statute and of the Board, regardless of who is on the Board. If the three stooges constituted the Board, they would still have to act within the terms of the Act.

All the Opposition is saying is that, since this Board is controlling not the State Government system but the private non-Government system, and as the Board's behaviour constrained by Statute, surely that is enough control. The substantial anxiety of the private sector ought to be allayed by allowing them majority representation and ensure that it would not be possible for a quorum to form, a meeting to be held or a vote to be taken without a private school representative at that meeting.

All I have said is theoretical. The urgency of the Government's change in clause 4 becomes even less important as long as the Hon. Ms Levy is unable to give practical examples of a mischief requiring a remedy which has arisen by virtue of the fact that this clause 4 has not been endorsed to date.

The Hon. K.L. MILNE: I point out again that the first three amendments to which the Minister referred in his second reading explanation were taken up by the Board as a result of the Supreme Court case, to which I referred. The Board itself requested these amendments—

The Hon. Anne Levy: I said that they would be necessary back in 1980.

The Hon. K.L. MILNE: Well, the honourable member has been proved right. The Board requested amendments for power to limit the period of registration, for grounds for an inquiry and for the power of the Board to vary or impose conditions following an inquiry. As I say, the judge of the Supreme Court recommended that the legislation be altered to improve this part of the legislation but did not make any further recommendations. He simply said that those things were wrong and that, 'The Board has agreed, the schools have agreed and we have agreed.' I think that the position should be left there.

The Hon. ANNE LEVY: In response to the Hon. Mr Milne's comments, the judge made no further comments because they were not relevant to the question before him. He was not asked to make any comment at all on the composition of the Board. It would not have been relevant to the matter before him. The fact that he made no comment has no significance at all. It would have been quite improper for him to do so seeing that it had nothing to do with the matter on which he was giving judgment. I think that the Hon. Mr Milne may not have heard some of the comments that I made in the second reading debate but, in all other States, the Ministerial nominees comprise a majority of the Board representing non-Government schools. That is the situation in every other State.

The Hon. K.L. Milne: I do not think its relevant. It does not matter.

The Hon. ANNE LEVY: I think it is relevant in that it is a recognition of the fact that has been stated here that in the final analysis the responsibility for the education of all children in this State lies with the Government. It is the Minister's responsibility to ensure that all children receive an adequate education. This is the ultimate responsibility of the Minister and to exercise that I would maintain that the composition of the Board as proposed in this Bill reflects that ultimate responsibility.

The Committee divided on the clause:

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

Noes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas (teller), K.L. Milne, and R.J. Ritson.

Pair—Aye—The Hon. C.J. Sumner. No—The Hon. R.C. DeGaris.

Majority of 3 for the Noes.

Clause thus negatived.

Clause 5—'Quorum, etc.'

The Hon. R.I. LUCAS: Clause 5 is consequential on clause 4. It seeks to increase the quorum from four to five on the basis that the Board will be increased from seven to eight. We oppose the clause.

The Hon. FRANK BLEVINS: It is not necessarily consequential; it could stand alone. I appreciate that the numbers are not with us on this, and I will not be calling for a division.

Clause negatived.

Clause 6—'Registration of non-Government schools.'

The Hon. K.L. MILNE: I move:

Page 2, line 9—Leave out 'by the prescribed fee' and insert 'by a fee of one hundred dollars'.

There is a general fear, particularly amongst the smaller newer schools, that the fee might be increased by a Government doing something excessive. My amendment provides a safeguard by including the fee in the Bill rather than providing for a prescribed fee.

The Hon. FRANK BLEVINS: The Government is happy to accept the amendment. It was never the Government's intention to create difficulties for small schools by making the fee excessive. A fee of $100 seems reasonable.

The Hon. R.I. LUCAS: I support the amendment.

Amendment carried.

The Hon. R.I. LUCAS: Clause 6 *(b)* seeks to insert 'for such period as it thinks fit' in section 72g (3). It is a wide open provision. The Minister, speaking in the second reading debate in another place, said:

It would be more satisfactory for the Board to be able to register the school initially for a period of, say, 12 months and then at the expiration of that period make another decision upon an inspection of the school and its programme.

The period of 12 months is not in the legislation. The Minister might have dragged 12 months out of the air or perhaps it is something that has been worked out by way of a proposal. Concern has been expressed that in some instances 12 months would not be long enough for some schools. The Hon. Mr Milne referred to this matter. I seek guidance from the Minister as to whether 12 months is something definitive which the Minister and his officers have in mind or whether there is some degree of flexibility in this proposal: it might vary according to circumstances.

The Hon. FRANK BLEVINS: It would be very hard to write into legislation all the various circumstances that could arise. It may be appropriate for the first time that a school is inspected that an open-ended provision can be made. Obviously, from an inspection of the buildings, the staffing levels, etc. it may be all perfectly normal and it just gets the continual registration. Alternatively, it may be that there is just a problem in one area; for example, the school buildings require upgrading and there is a programme to upgrade it over 12 months or two years or something like that and, having this provision, that can be done: the two years, 12 months, 18 months or whatever is appropriate. Then, when the problem is fixed and the school is operating to the required standard in all respects, continual registration would be given.

The figure of 12 months, from my reading of *Hansard,* was plucked out of the air and did not have any particular merit. The Minister in another place could easily have said that it was 18 months or whatever. It depends on circumstances, and the particular circumstance is in the interests of the school as well as in the interests of the authority that is doing the registration. It may put some pressure on a school to upgrade its facilities so that it can get the augmented registration. It is a two-way thing. There is nothing difficult in it for non-Government schools or for the Government. To write a provision to cover all circumstances would be extremely difficult, if not impossible.

The Hon. R.I. LUCAS: At the public meeting on Monday night some concern was expressed—and the Hon. Mr Milne has referred to this in part and is moving an amendment at a later stage—about the decisions being made by the Board and the reasons not being given in writing. It is important to point out to those few people who may read the *Hansard* that this provision in clause 6 stipulates that the Board must give reasons, and therefore that any of the concerns that some people had at the public meeting are not justified in respect of this clause.

New subsection (4a), which is the one that I could not read during my second reading speech, provides:

The Board may at any time on the application of the school concerned vary or revoke a condition imposed on the registration of a school pursuant to subsection (4).

I am seeking some clarification from the Minister. Is this a way of varying or revoking a condition without having to go through the formal review of an inspection panel established under section 72p? Is the provision in new subsection (4a), which is 53ly on the application of the school concerned and is a limited provision, one that would need going through the formal review of an inspection panel established under section 72p of the Act?

The Hon. FRANK BLEVINS: My understanding is that the school would still have to go through the normal procedures, but if, for example, a school wanted to change significant conditions (for example, moving from being solely a primary school to being a secondary school or something of that nature) the provision would be relevant.

I understand that the full procedure will have to be completed. If the Hon. Mr Lucas has some difficulty with my answer, it is because I have some difficulty with his question. I ask the Hon. Mr Lucas to express the point that he is trying to make in a direct way so that the Committee can understand it.

The Hon. R.I. LUCAS: Clause 9 amends section 72j of the parent Act, to include allowing a school to request a review Clause 6 does not mention the Registrar or a motion by the Board. Clause 6 amends section 72g of the principal Act by inserting a new subsection, as follows:

(4a) The Board may, at any time on the application of the school concerned, vary or revoke a condition imposed on the registration of the school pursuant to subsection (4);

I would have thought that the registration process is already covered under section 72j. If it is different, it appears to be a short-circuiting of the system. If a school applies to the Board, can the Board at any time vary or revoke a condition without going through the full procedure?

The Hon. FRANK BLEVINS: It does short-circuit the whole review process. If a school wants the review process short-circuited, it can make a request under new subsection (4a) for that to occur.

They may have very good reasons why the whole review process is in appropriate to what they are doing, for example, adding another year to the school operation. There is no need for the whole procedure to be gone through again, and it is at the instigation and on the application of the school concerned that the procedure be short-circuited. Therefore, it seems to me that there is a safeguard there, as the school itself has to make application for the review procedure to be short-circuited. On examining the two provisions closely, it would appear that, when there is a relatively small non-controversial matter to be decided, the whole review process does not have to be gone through before that alteration can be made.

The Hon. R.I. LUCAS: I thank the Minister for that explanation. It was as I suspected, although it was not clear. I am happy with the amendment.

Clause as amended passed.

Clauses 7 and 8 passed.

Clause 9—'Grounds for cancellation.'

The Hon. R.I. LUCAS: Before the Hon. Mr Milne moves his amendment, I raise a point of clarification, although I think that the last response has probably clarified it for me. Under clause 9 (a), we are now including schools in that

provision in section 72j, so at the moment the Board can act on its own motion or through the Registrar, without having to slot the schools into that system. I want to clarify in my own mind that the process we are now talking about is the inspection panel process under section 72p.

The Hon. FRANK BLEVINS: My understanding is that this provision provides for a situation where a school has contravened the conditions of registration or does not comply with the conditions of the registration, and that is the instance to which section 72j refers.

The Hon. R.I. LUCAS: Let me pursue that. It will read:

> The Board may, upon the application of the Registrar, or of the school concerned or of its own motion, review the registration of a non-Government school.

Therefore, there appear to be three activators in this clause, but the action will be to review the registration of a non-government school. I want to know how that actual review process under section 72j will be conducted. Is it as under section 72p, where one talks about inspection panels? Does section 72j enact section 72p, that is, the inspection panel provision?

The Hon. FRANK BLEVINS: Yes.

The Hon. K.T. GRIFFIN: Before the Hon. Mr Milne moves his amendment, I have a question in respect of subclause (b) in relation to several reports made to me that, in reviewing the registration of non-Government schools, the Fire Safety Committee has been brought into the action and that, although the report in respect of the review has been favourable, a qualification has been made that certain Fire Safety Committee recommendations must be complied with.

Is it the normal practice to involve the Building Fire Safety Committee in the review process? If it is, has it become a condition of renewal of registration that the requirements of the committee should be complied with before such renewal is granted?

The Hon. FRANK BLEVINS: Whilst the terminology may not be quite correct in relation to the Fire Safety Committee, the general answer to the honourable member's question is 'Yes'. A provision exists under section 72g (3) *(b)* for a school to provide adequate protection for the safety, health and welfare of the students. That is something that will have to be taken into consideration on each occasion.

The Hon. K.T. GRIFFIN: I have no quarrel with that, but it concerns me that, in some instances in respect of schools and hospitals, some of the requirements of the Fire Safety Committee, the Metropolitan Fire Service or some other similar agency may require the expenditure of hundreds of thousands of dollars. Does the Board take into consideration the capacity of a school to meet that requirement, and what generally is the attitude of the Board in respect of such a requirement to carry out its responsibility in a non-Government school?

The Hon. FRANK BLEVINS: My understanding is that the Board is very reasonable about these matters. It is the Board's ultimate responsibility to ensure that the Act is complied with. However, the recommendations of the Metropolitan Fire Service are only recommendations. The Board takes into consideration, for example, the age of the building and costs involved in bringing the building up to what may be an ultimate standard. It may be not necessary to come up to that standard, given all the various factors that come into it. Whilst there is a general obligation to ensure that reasonable standards are maintained, the Board does not act in an unreasonable manner in regard to the recommendations of the Metropolitan Fire Service.

The Hon. K.T. GRIFFIN: I am pleased to hear that, because many schools are accommodated in quite old buildings. It would be an impossible burden on a school to be required to spend a substantial sum of money to upgrade to a high standard, as is now expected in a new building. A reasonable attitude needs to be taken in relation to whether or not the full recommendations of the M.F.S. are adopted in light of the age of the buildings and the capacity of an institution to pay. I wanted to ensure that at least it was on record in case there were further difficulties in future.

The Hon. FRANK BLEVINS: Whilst I am happy for that to go on the record, I would not want anyone to infer from what I have said that the board allows registration of buildings that are so substandard as to be a danger to people who are using those buildings.

The Hon. K.T. Griffin: I am certainly not suggesting that at all.

The Hon. FRANK BLEVINS: I know that, but I thought I would make that clear. That certainly is not the case. We are talking about responsible standards, given the nature, age, use and cost of the building. Certainly, no non-Government school is in any position of danger. It is the obligation of the board to see that that does not occur. I have no reason at all to believe that the board does not fulfil its duties in a proper and responsible way.

The Hon. K.L. MILNE: I move:

> Page 3, after line 33—Insert new subsection as follows:
> (2a) The Board shall, in a notice referred to in subsection (2), state its reasons for making its decision.

This amendment concerns the question of the board making its decision in writing. The schools, particularly new schools, are worried about what the inspectors are looking for, especially in regard to inspectors who may be hostile. Perhaps they are being unduly nervous and suspicious, although I see no harm in providing a safeguard for the schools.

I think there have been cases where the philosophies of the inspectors and the schools concerned have been far apart and where a school may not have known why it was criticised (not necessary deregistered but criticised), and where it may not have known what to do about the matter. I think the Maranatha School in its fight through the courts is a case in point. I understand that that all ended up happily, but it may not have done so.

There are very good appeal clauses in the existing Act, but it is felt that, if a school has reasons in writing as to what the authorities are complaining about, it would make it much easier, first, to discuss the matter with the authorities before going to a court of appeal and, secondly, would provide precise headings under which to appeal if a school felt that it had to appeal.

Further, I think this provision would also make the board more careful in its decisions where there was a disagreement with, say, pioneering schools which had new ideas or which were reintroducing old ideas. It would make a board of this nature more careful in its decisions if it had to put them in writing after having made them.

The Hon. FRANK BLEVINS: The Government is happy to accept the amendment. We could argue that the amendment was not necessary, but, having considered this matter, I see no reason to oppose it.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

Amendment carried; clause as amended passed.

Clauses 10 and 11 passed.

Clause 12—'Inspection of non-Government schools.'

The Hon. R.I. LUCAS: This clause relates to the second substantive point of disagreement between the Labor Party and the Opposition in this debate this evening. As we have already had a long debate about this matter at the second reading stage, I do not intend to repeat the arguments I put then. We oppose this clause.

The Hon. FRANK BLEVINS: The Government believes that the clause should remain. It seems entirely proper that

the inspectorate and adjudicating functions should be carried out separately rather than by the same people.

The Committee divided on the clause:

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

Noes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas (teller), K.L. Milne, and R.J. Ritson.

Pair—Aye—The Hon. B.A. Chatterton. No—The Hon. R.C. DeGaris.

Majority of 3 for the Noes.

Clause thus negatived.

Clause 13—'Regulations.'

The Hon. K.L. MILNE: This consequential clause is no longer needed. It appears in the existing Act under 'Miscellaneous making of regulations'. Regulation *(r)* provides that fees be charged in relation to any registration or renewal of registration of a teacher. Clause 6 provides a prescribed fee, and, as we have now prescribed a fee of $100, this clause is no longer necessary.

The Hon. FRANK BLEVINS: The Hon. Mr Milne is very persuasive this evening, and I do not intend to divide on this clause.

Clause negatived.

Title passed.

Bill read a third time and passed.

KLEMZIG PIONEER CEMETERY (VESTING) BILL

The Hon. C.W. CREEDON brought up the report of the Select Committee, together with minutes of proceedings and evidence.

Report received. Ordered that report be printed.

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. C.W. CREEDON: I take this opportunity to say that I believe that this committee was one of the least troublesome Select Committees on which I have had the opportunity to serve. I thank my committee colleagues for the attention and speedy resolve of the matter, and the committee thanks our committee secretary, Mr Blowes, for his work on the committee.

The Klemzig Pioneer Cemetery was a simple matter to reach a decision on because the two bodies involved in the transfer of the land—the Enfield Corporation and the Lutheran Church—had previously agreed to the transfer. It seems that the cemetery is quite a small piece of land (about the size of a house block, I am led to believe) and has not been used as a cemetery for many long years. The Lutheran Church felt that it was unable to manage the site in a way that would make it a worthy community asset.

In the centenary year 1936 a memorial arch and fence were constructed and the Enfield Corporation has agreed to maintain them and promote the historic significance of the early German pioneers' use of this small section of land. The church admits that the land is presently a bare untidy paddock, and we have been assured by the council that it will develop and maintain it after consultation with the Lutheran Church.

The Hon. K.T. GRIFFIN: Having received submissions on the Select Committee, I am satisfied that there is agreement between both the Lutheran Church and Enfield council and, accordingly, the Opposition supports the Bill. It is one of a number of these sorts of Bills that come before Parliament periodically. It is designed to overcome some technical difficulties in transferring property subject to trusts to another body—in this case the local council. Because the council has adequate resources to develop this piece of land, I am certainly willing to support this clause and the whole Bill to ensure that it is done as soon as possible.

The Hon. R.I. LUCAS: I support the report. I thank the staff, committee members, and the Chairman for his brilliant chairmanship.

Clause passed.

Clause 4—'Vesting of the land in the council.'

The CHAIRMAN: I point out to the committee that this clause, being a money clause, is in erased type. Standing Order 298 provides that no question shall be put in Committee upon such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill, and any debate on this clause must await the return of the Bill from the House of Assembly.

Clause passed.

Clause 5, preamble and title passed.

Bill read a third time and passed.

STATE BANK OF SOUTH AUSTRALIA BILL

Adjourned debate on second reading.

(Continued from 30 November. Page 2119.)

The Hon. K.T. GRIFFIN: This Bill will receive a large measure of support from the Opposition, subject to several amendments to which I will refer later in my speech. The Leader of the Opposition in another place has already dealt with the history of both banks at some length, and with the benefits that will arise from a merger of the Savings Bank of South Australia and the State Bank of South Australia. I do not intend to repeat that history, nor do I intend to speak at any length of the benefits that will arise from the merger. However, I think it is important to recognise that there will be a considerable number of benefits to the people of South Australia from having a large bank providing a wide range of banking services and facilities based in Adelaide.

With the demise of the Bank of Adelaide prior to the 1979 election South Australia lost its only head office bank. That resulted in a loss of services being provided at the local level. It is correct that the other private banks do provide a range of services in South Australia, but a significant number of the decisions in respect of those services are made in capital cities where the head office of those banks are situated, usually on the eastern sea-board. South Australia needs a sophisticated banking institution to be based in South Australia so that we do not have to run off to Sydney or Melbourne for decisions to be made on important questions affecting South Australian individuals, companies or other agencies. That is not only because of the services which can be provided to those persons and bodies but also because the decision making being carried out in Adelaide will necessarily bring with it a sophistication and expertise which will not come if South Australia does not have the head office of a banking or financial institution here.

I have already spoken at length, when addressing other Bills before this Council, about the spin-off effect of having a large corporation's head office based in South Australia and not merely a branch office of a company based on the eastern sea-board. I have expressed strongly the view that with a head office in South Australia there will be development of a range of expertise which, in a sense, will be self-generating, and which will aid the development of South Australia as a commercial centre of some significance. I

refer specifically to legal, accounting, financial and banking expertise.

One of the things that we notice in South Australia, with a number of head offices on the eastern seaboard, and few head offices in South Australia, is that in the legal profession at least—and I believe also in the accounting profession, in merchant banking and in the provision of other services—whenever a major commercial decision is to be taken the legal and other advice is generally obtained in Sydney and Melbourne because such a large volume of that sort of work is being done in those States and centres that the legal and other practitioners in those States are more exposed to that sort of work on a day to day basis.

There develops an attitude on the part of business people that the better and greater experience resides in Melbourne and Sydney; so, naturally they gravitate to those two centres for their expert commercial advice. I believe that South Australian professionals are equally as capable as their counterparts on the eastern seaboard and, unless there is a positive encouragement to commerce and industry to use legal resources and professional expertise in South Australia, we will continue on a downward slope in respect of the status of the commercial and industrial sectors of our economy in this State.

That is particularly relevant in respect of my own involvement in relation to the Stock Exchange and the steps that were taken in 1982 to ensure that our Stock Exchange remained viable, with financial institutions having some dependence on it and generating services around the key provision of Stock Exchange services. The same applies with merchant banking and with ordinary banking services.

The Savings Bank of South Australia is to be congratulated on having entered into a joint venture arrangement with the French Merchant Banking Company to establish a merchant bank based in South Australia although, as I understand it, its books are kept in Sydney and Melbourne. Nevertheless, it is based in South Australia and has the potential to provide valuable expertise and services to the South Australian commercial community.

If the State Bank and the Savings Bank of South Australia merge as this Bill envisages, we will have a particularly strong and developing organisation that will assist our development in South Australia. The new State Bank will be the largest banking organisation in South Australia, with total assets of more than $2.4 billion, total deposits of approximately $1.7 billion and some 700 000 account holders. There will be more than 170 State Bank branches in this State; so we would have the largest branch banking network in South Australia.

In addition to that, it will have a well-developed corporate department, and hopefully will develop that expertise even further. If the new chief executive officer is from the private banking sector from one of the eastern States, with expertise in international and corporate financing, the new State Bank of South Australia is likely to make very steady progress in developing that sector in its work.

However, there are some difficulties with the Bill as it has been received from another place. Some amendments moved by the Opposition in another place were accepted by the Government, and that is appreciated. However, others were not accepted. I will be moving some amendments during the Committee stage. One amendment relates to the composition of the Board. The Bill presently provides that the terms of office of members of the Board shall be for periods not exceeding five years. I will move an amendment to allow for the first set of appointments to be for periods up to five years, and thereafter the period of service will be for fixed periods of five years.

That is consistent with a number of pieces of legislation introduced by the Labor Government prior to 1979 and by the former Liberal Government in the past three years. It enables the Government to appoint the initial directors for varying terms and to have them retire on a staggered basis. It also means that no Government can unduly influence directors by, for example, appointing them on a yearly basis and either directly or indirectly suggesting that their reappointment depends on their compliance with particular directions by the appointing Government. A fixed term of, say, five years will put directors beyond the reach of any Government and beyond the sort of influence that could best be characterised as undue influence.

There is one exception to the five-year term after the first appointments; that is where a director in a period of appointment attains the age of 72 years. My amendment will allow an appointment for a period of less than five years to expire when a director attains the age of 72 years, which is the age at which directors under the South Australian Companies Code retires, unless at an annual general meeting of a company a special resolution (that is, three-quarters of the votes cast) is in favour of an extension of the term for one year.

The other matter in relation to appointments addressed in my amendment is that the appointment may be made on conditions as expressed in the instrument of appointment. However, we want to ensure that, if there are any conditions attached to the appointment, they are public. The mechanism that I am seeking to introduce is publication by notice in the *Government Gazette*. That will accommodate the Premier's criticism of the attempts to remove that provision in another place. I will deal with that provision in more detail when the Committee considers clauses 7 and 8 of the Bill.

The next point relates to the disclosure of interest. Under the Bill, the directors are required to disclose to the Board conflicts of interests. I have no quarrel with that, but I do have a concern about one aspect of clause 11. A Director is not required to disclose an interest under clause 11 (2) in respect of an interest that arises by virtue of the fact that the Director is a customer of the bank, being an interest that is shared in common with other customers of the bank. I have no quarrel with that, but clause 11 (2) *(b)* states:

> In respect of an interest that arises by virtue of the fact that the Director is a shareholder in a public company (being an interest that is shared in common with the other shareholders in that company).

I would suggest that there is a situation where the Director of a bank may be a shareholder in a public company (not necessarily a listed public company), holding more than, say, 10 per cent of the issued capital in that company, where that public company seeks to arrange accommodation with the new State Bank.

Technically, the Director of the bank would not be required to disclose an interest to the Board in the Board's deliberations on that request for accommodation. I would have thought that ordinarily any Director worth anything would disclose that potential conflict, but to ensure that it is required to be declared, I propose to provide that, where the Director is a shareholder in a public company and holds a substantial shareholding within the meaning of the Companies Code, then it must be declared. 'Substantial shareholding' under the Code is 10 per cent or more of the shares in that public company.

Clause 19 is another clause about which I have some difficulty, particularly subclauses (5) and (6), relating to insurance. Clause 19 (5) provides that the bank may provide insurance in respect of land mortgaged and that means that the bank itself can provide insurance or can arrange the insurance. As I understand it, the banks ordinarily arrange that insurance, but the difficulty I see is that the bank may as a condition of any loan compel the borrower to insure

with a particular company or organisation. Under the Trade Practices Act, none of the private banks is permitted to compel a borrower to insure with any particular organisation; provided the insurance is adequate and is with a reputable organisation, a private bank under the Trade Practices Act is required to accept the insurance arranged by the borrower.

I want to ensure that that same condition applies to the new State Bank in the context that we are trying to make this bank as much into a private banking organisation as is possible. Clause 19 (6) provides:

> The Bank may provide, or arrange for the provision of, life insurance on the life of any person who is indebted to the Bank.

The difficulty with this is that the bank may provide life insurance. I do not believe that it is any function of the bank to provide that life insurance, but I understand that the present banking practice of both banks is that they make an offer to borrowers that insurance on the life of the borrower can be arranged for a very low fee to insure the life of the borrower in respect of the outstanding liability, and that is a voluntary arrangement. My amendment will seek to ensure that that is in fact a voluntary arrangement.

The fixing of charges under clause 22 is an area of concern. This was debated at some length in the other place. I intend to move an amendment which is similar to that moved in the other place, so that any *quasi* dividend which is charged by the Treasurer will not exceed the amount of either 50 per cent of the operating surplus after the *quasi* income tax has been deducted or an amount expressed as a percentage which would be equivalent to a return on capital equal to the long-term bond rate for that financial year.

So, upper limits are fixed by the amendments which I propose which I believe are important for limiting the opportunity of any Government to make unduly high demands upon this bank. We have to remember in this context that we are not talking about the present or the next Government but that we are legislating for a bank which hopefully will continue well into the next century. So, it is important to have the ground rules established at an early stage. These are the major questions that will be raised during the Committee stages of the Bill. Apart from them, the Liberal Party applauds the proposals to merge the Savings Bank of South Australia and the State Bank of South Australia and will give it every support in what we believe should be its objective, namely, to become a vibrant, vigorous banking institution serving the interests of South Australia. I support the second reading.

The Hon. L.H. DAVIS: This is important and historic legislation bringing together the Savings Bank of South Australia, formed in 1848, and the State Bank of South Australia, formed in 1846, into a merged bank which will employ 2 500 people, have assets totalling $2.4 billion and account for 34 per cent of bank deposits in South Australia, making it by far the largest bank in the State.

The Savings Bank of South Australia has made housing loans of nearly $100 million in the year just past. It is not so strong in the rural sector but that is one of the great strengths of the State Bank. The Savings Bank of South Australia has made long-term loans totalling $543 million. It has been a constant and major provider of funds for statutory bodies, such as ETSA, the South Australia Housing Trust, the recently formed South Australian Government Finance Authority, and local government.

The community at large would appreciate the very active way in which the Savings Bank of South Australia has involved itself in community activities, both through sponsorship and promotion. It has been an aggressive merchandiser of its product, as is reflected in its steady diversification in recent years. That, of course, was mentioned by the Hon. Mr Griffin when he instanced that the South Australian Savings Bank has a 26 per cent interest in the French-backed merchant bank, C.C.F. Australia Limited.

On the other hand, the State Bank of South Australia has had as its great strength its support in rural areas. Its deposits will benefit from the very good rural season just passed. However, it is also strong in commercial operations and has been the banker for some of South Australia's major public companies, for example, Adelaide Brighton Cement Holdings Proprietary Limited. In recent years it has become active and successful in overseas banking operations. That will be a source of strength for the newly merged bank.

It has had an equity interest in Beneficial Finance Corporation Limited, which, whilst not successful in recent years, has the strength of a major Japanese bank, the Bank of Tokyo, with over 50 per cent ownership. I understand that Beneficial Finance is now performing considerably better than it has in recent years.

So, these two banks complement each other nicely. I am sure that this merged bank will be a very useful ally to industry in South Australia. There was, of course, great disappointment with the demise of the Bank of Adelaide in 1979, notwithstanding the fact that that bank had only 1 per cent of trading bank assets Australia-wide. Recently, the merger of the Bank of New South Wales and the C.B.A. occurred, resulting in the formation of the Westpac Bank. The National Bank has taken over the Commercial Banking Company of Sydney, and those two companies, together with the A.N.Z. Banking Group and the Commonwealth Banking Corporation, are really the only truly major national retail banks left in Australia.

There has been, arguably, a reduction in competition among banks as a result of these recent mergers, but, in my view, that has been more than counter-balanced by the fact that the banks concerned have increased strength. In those circumstances, I think it is an advantage for the State Bank and the Savings Bank to merge so that they can remain competitive with those stronger national groups, which, of course, are also competing for the investor dollar in South Australia and for loans to business and for the housing sector. The creation from these two existing banks of a new and strengthened State Bank institution will establish a well regarded banking institution.

However, whilst the conception had the necessary bipartisan support, the Party responsible for the birth has ensured a harsh environment for this new bank. The prosperity of the State, the momentum developed in a State such as South Australia, depends very much on perceptions that others have of us. I refer to potential investors, whether they already carry on business in South Australia or whether they are based interstate or overseas. Potential investors critically examine investment opportunities, our natural disadvantages or shrinking advantages, and our lack of certainty.

One can instance decisions made in recent times in the mining sector and taxation area which all go to underline the fact that a certain financial naivety has been displayed by the present Government during the 13 months that it has been in office. However, I do not quibble with this decision to merge the State Bank and the Savings Bank of South Australia, and it would seem that this decision has been made willingly by both parties to the merger.

A working party has been established on which is represented principal officers from both banks who have obviously worked long hours and come up with what seems to be a very satisfactory merger.

It is important, I think, to recognise that there will be dramatic trends in the banking area. The regulation of financial markets was accelerated by the Campbell Committee of Inquiry, and the Martin Committee is expected to report in the next few months on the licensing of overseas banks. It is almost certain that more banking licences will

be granted to overseas banks, although it would seem that that will be in the wholesale banking area rather than in regard to the granting of licences to operators in the more traditional retailing banking area.

Although there was some uncertainty about the Federal Labor Party's attitude towards overseas banking licences, it does seem that there will be support for this proposition. Certainly, there was no question where the previous Federal Liberal Government stood, because the former Treasurer (Mr Howard) in January 1983 announced that he would license about 10 foreign banks.

There is another aspect that is under active consideration, namely, the development of off-shore banking which will involve the development of a market for the trading of other currencies. So, in the near future we are likely to see banking licences granted to major overseas banks, plus foreign exchange licences. Indeed, it has been a well demonstrated fact that advertising for financial services has been the fastest growing segment of the advertising market. It demonstrates what is, I think, clearly visible to most people: that there has been a revolution in the provision and nature of financial services in the last decade which has accelerated in more recent times.

Quite recently Mr Colvin (the New South Wales Manager of P.A. Consulting Services and General Manager of P.A. Management's Financial Institutions Group for the Pacific Zone) made some comments on the development of banking over the next decade or so. He said that during the 1970s the savings banks lost about 30 per cent of their deposits to building societies and credit unions, the argument being that the staff was friendlier and more attentive in the building societies and credit unions, the systems were better and the premises more relevant and appealing. He concluded by saying that senior people in most Australian banks feel that the task of improving the quality of middle management was really one of the major challenges for the rest of this decade.

The banks really do have a challenge in front of them, and I am sure that this newly created bank, resulting from the merger, will be equal to this challenge. Within a few years we will see, quite literally, some financial supermarkets where people can stop, invest money, and get superannuation, insurance and overseas travel advice all at the one spot.

In addressing remarks to the Bill, I note that its provisions are, for the most part, satisfactory to the Opposition. The Hon. Mr Griffin has already indicated that there are three or four areas which will be considered in more detail in Committee and that, in fact, some amendments are on file. It is pleasing to see that the Government is attempting to make the merged bank compete as if it was a private bank, that it has to pay the equivalent of company tax, and that it must (under clause 23) prepare a report and present it to the Governor within three months after the end of the financial year. One may well ask whether a bank, such as the newly formed State Bank of South Australia, should report every six months rather than just yearly. Of course, it also has to pay a dividend.

In that respect, I was interested to note that similar legislation before the Victorian Parliament. The State Bank of Victoria will be required by legislation that was passed recently to pay a dividend to the Government that is equivalent to 5 per cent of the public investment. The bank has also been given the power to borrow funds off shore with the security of a Government guarantee.

In conclusion, I refer to the provision under which the bank will pay the charges that would normally be associated with banking in the private sector. The newly merged bank would be paying State and local government taxes and charges. In fact, both banks currently pay water and sewerage rates and local government rates, so the additional amount will involve land tax, and I understand that the sum will be about $40 000. The Hon. Mr Griffin has an amendment on file regarding the payment of a dividend to the Government. The existing provision in regard to the State Bank is quite clear— half of the operating surplus is paid to the Treasurer. In 1983 the operating surplus of $4.5 million was split so that the Government received $2.25 million. There was a more complex formula in relation to the Savings Bank, but effectively in 1982 and 1983 nearly half of the operating surplus was paid to the Government.

The amendment on file would provide a more satisfactory way of addressing that situation than would the rather open-ended provisions under clause 22. Obviously, that is a matter for further debate. I support this Bill. It is timely legislation and I believe that it will herald an exciting future not only for the newly formed bank but also for the customers that it will serve.

The Hon. K.L. MILNE: After listening to the Hon. Mr Griffin and the splendid outline given by the Hon. Mr Davis, I believe that all that needs to be said has been said, especially when one considers the second reading debate in the other place. I am sure that I speak for all members when I congratulate the Government on achieving this merger. It is a very good effort indeed that two banks of this size and in these circumstances should merge. Likewise, I congratulate the Chairman, the Directors, the General Managers and the staff of both banks for getting together. It was not easy, but those people have done a tremendous amount of work, and I understand that people are happy and support unanimously the results.

This is a great step forward, one that was long overdue. I also congratulate the Under Treasurer and the Treasury officials who assisted in this matter. There has been real teamwork in the South Australian banking area. Banking today is complicated and sophisticated, and this combination should be an enormous asset to the State. For a long time people have complained that the banks, working separately, were much less able to cope with the competition of bigger banks. As we say goodbye to the existing State Bank as we have known it, which has served us well, and to the Savings Bank of South Australia, which for generations has been the people's trusted friend, we should remember that we have regarded both of those banks with great affection.

Of course, they will still be there and we can feel that they are looking after us and the State. For the new State Bank, I am assured that I speak for everyone in this Council when I wish it every success. I do not intend to move any amendments, certainly not at this stage, because the Bill has been produced by very competent lawyers, accountants, bankers and others. A tremendous amount of work has gone into it—and consultation as well. I would prefer to get the new bank operating as soon as possible and iron out any problems then rather than now. The Australian Democrats will facilitate the Bill and will watch the bank's progress with interest and, with any luck, with pride.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members who have contributed to the debate and indicated their support for this measure which, as all honourable members have said, is an important step in the establishment of the important competitive State banking situation in South Australia. Although some queries have been raised about the detailed provisions of the Bill, I thank honourable members for their indications of support, and I will address those problems in Committee.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

PETROLEUM ACT AMENDMENT BILL

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

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Bill contains a range of amendments to the provisions of the South Australian Petroleum Act which governs onshore oil and gas exploration and development in the State. The main thrust of the changes is aimed at updating and making the exploration expenditure and relinquishment provisions of petroleum exploration licences more realistic and to ensure that licences are subject to appropriate and continuing work programmes. The Bill also removes an anomaly that has arisen since the enactment of the new Companies Code. Routine provisions to raise licence fees and fines, which have not been increased since 1978, are also included.

Expenditure conditions for the renewal terms that follow the initial five-year term of a petroleum exploration licence are currently inadequate largely due to the effects of inflation since they were last amended in 1978. For example, under the present arrangements a licence over 10 000 square kilometres in its sixth to tenth licence years would attract an annual expenditure requirement of only $310 000 as compared to drilling costs which frequently exceed $1 000 000 per well. This is unrealistic, especially as it relates to a licence which has already been held for five years. Licence expenditure conditions will therefore be doubled from their current levels for the three renewal periods which follow the initial five-year term.

Modern petroleum legislation increasingly emphasises work programmes rather than expenditure obligations. The present amendments retain the concept of expenditure commitments but make provision for increased emphasis on work programmes, that is specific siesmic and drilling programmes, as a basic condition of petroluem exploration licences.

The provision allowing carry over of excess expenditure to succeeding years of a licence term has in practice meant that credits can be built up so that no work need be carried out for a number of years and prospective areas can lie idle. The present amendments, therefore, restrict carry over rights by allowing excess expenditure to be carried forward for only one year. Other amendments require submission of work programmes for approval prior to the grant or renewal of a licence and strengthen the provision that entry into a licence year carries with it the obligation to comply with the work and expenditure conditions applicable to that licence year. All of these amendments will help to ensure that licences are subject to continuing and appropriate work programmes consistent with the prospectivity of a particular area.

Currently, companies are able to relinquish areas with sizes and shapes that inhibit future exploration by incoming explorers. The present amendments require relinquishment of more regular shaped areas which would then be available for exploration by another company as was intended by the relinquishment process.

Other amendments would prevent petroleum production licences from being taken out over unnecessarily large areas and only when petroleum of economic quantity and quality had been discovered. These provisions would prevent production licences being used as safety acreage and thereby escaping exploration commitments. Unless amended this practice would have allowed the retention of exploration areas for up to 21 years rather than the 5 years renewable originally intended.

The enactment of a new Companies Code has meant that some foreign companies previously registered in South Australia have instead become 'recognised companies'. On a strict interpretation of the Petroleum Act these companies cannot now apply for or hold tenements. The present Bill removes this anomaly.

Clauses 1 and 2 are formal. Clause 3 inserts a definition of 'production' of petroleum. Clause 4 removes an anomaly in section 6 of the principal Act. Subsection (1) (iii) refers to companies registered under the law of the State. Since the commencement of the Companies (South Australia) Code most companies operating in the State that are not incorporated under South Australian law are either recognised companies or recognised foreign companies within the meaning of the Code. Clause 5 amends section 7 of the principal Act. Besides increasing fees prescribed by the section the clause inserts a new provision that will require applicants for a licence to submit a programme of proposed exploration and expenditure.

Clause 6 replaces section 8a of the principal Act so that licences comprising separate areas of land will only be granted in exceptional circumstances. Clause 7 repeals section 16 of the principal Act. The substance of this section is replaced by the amendments to sections 7 and 17. Clause 8 amends section 17 of the principal Act. The new subsections restate the existing provisions (except for subsection (2) which is replaced by clause 10) in more general terms. Clause 9 amends section 18 of the principal Act. Paragraph *(a)* replaces subsection (1) with a requirement that an exploration and expenditure programme be submitted with an application for renewal of a licence. New subsection (3a) inserted by paragraph *(c)* is designed to ensure that the areas of land left after excision are of a suitable size and shape for further exploration. New subsection (6) ensures that a licence will remain in force pending the determination of an application for renewal.

Clause 10 amends section 18a of the principal Act. Paragraphs *(a)*, *(b)*, *(c)* and *(d)* increase the minimum expenditure levels prescribed by subsection (1). Paragraph *(e)* replaces the other subsections of the section with provisions similar to those inserted into section 17 by clause 7. Clause 11 inserts two new sections into the principal Act. The first of these sections replace subsection (2) of section 17 and 18a. The new provision restricts the carrying over of excess expenditure to the first year after the excess expenditure occurred. New section 18ac replaces section 16 (3) of the principal Act. Clause 12 increases fees prescribed by section 18c. Clause 13 inserts new subsection (1a) into section 27 of the principal Act. This subsection is designed to ensure that petroleum production licences are only granted for worthwhile fields.

Clause 14 replaces section 28 of the principal Act. The new provision provides that the area of a petroleum production licence will not exceed an area that is twice that assessed by the Minister as the area of the field concerned. The provision of a minimum area is no longer considered necessary. Clauses 15 and 16 increase fees prescribed by sections 32 and 34 of the principal Act. Clause 17 replaces subsection (2a) of section 38 of the principal Act with two new subsections. It is desired that the conditions existing in the year in which a licence is surrendered must be fulfilled. The new subsection (2b) provides that the surrender of a licence will not take effect until the end of the year in which the surrender is granted. If, however, the application is made near the end of one year but is granted after the commence-

ment of the subsequent year the Minister will have a discretion to direct that the surrender be deemed to have taken effect at the end of the previous year. Clauses 18 and 19 increase fees prescribed by sections 42 and 80o of the principal Act. Clause 20 increases penalties prescribed by section 87 of the principal Act.

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

REAL PROPERTY ACT AMENDMENT BILL (No. 2)

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

The Hon. J.R. CORNWALL (Minister of Health): I move:

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

It proposes a retrospective amendment to the Real Property Act, 1886, to overcome an anomaly with the present provisions requiring payment of 'open space' contributions on strata-title proposals. Where land is being divided the Real Property Act requires the applicant to either provide a recreation reserve or make a financial contribution to allow the purchase of land for recreation purposes. As the creation of strata titles under the Real Property Act has the effect of increasing the density of population in the same manner as land division, it has, for many years, been the practice under successive Acts to require an open space contribution on strata-title proposals.

Associated with the coming into operation of the Planning Act, 1982, on 4 November 1982, substantial amendments were also made to the Real Property Act, 1886. During debate on the Real Property Act amendment Bill Parliament raised concern over the rate at which open space contributions were proposed to be charged on land division proposals, and following amendment to the land division rates Parliament also amended the strata title contribution provision so as to be consistent with the land division provisions.

Before the 1982 amendment an exemption from paying open space contributions was provided in the Act in relation to building unit schemes that existed at the commencement of the Real Property Act Amendment (Strata Titles) Act, 1967. One effect of the 1982 amendment was to remove this exemption. This Bill replaces this exemption. The justification for the exemption is that a strata plan of an 'existing scheme' does no more than change the nature of the tenure of the land concerned. If it does not involve an increase in the number of units it is unlikely to result in an increase in the population density in an area or an increased need for open space.

The Bill also addresses a problem that has not been dealt with before. The Real Property Act at present does not provide for a strata scheme to be varied. Consequently, when an owner wishes to add an extra room, or adjust a unit boundary, a new scheme must be submitted. The existing and previous legislation required a contribution in relation to each unit of the new scheme. The effect of the amendment will be that contributions will only be required in relation to units that exceed the number of units in the old scheme. The Bill will operate retrospectively and therefore people who have made open space contributions in circumstances covered by the amendments since November 1982 will be entitled to a refund of those payments.

Clause 1 is formal. Clause 2 provides for the retrospective operation of the Bill. The Bill removes the requirement, in certain circumstances, that contributions be made to the Planning and Development Fund. The retrospective operation of the Bill will enable contributions already made to be refunded.

Clause 3 replaces subsection (3) of section 223mc of the principal Act. The new subsection makes it clear that, for a building to come within its terms, the building must have been divided in accordance with a building unit scheme immediately before the commencement of the Real Property Act Amendment (Strata Titles) Act, 1967. Paragraph *(b)* makes a small amendment to subsection (4) of the section. It is possible that both subsections (2) and (3) could apply to some strata plans and the determining factor will therefore be the subsection under which a plan is lodged with the Registrar-General. Clause 4 adds two new subsections to section 223md of the principal Act. New subsection (6a) provides an exemption for 'existing schemes'. New subsection (6b) provides an exemption where the plan is substituted for an existing strata plan. In both cases contributions are payable only in respect of units that are included in the plan in addition to the units included in the existing scheme.

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

SHOP TRADING HOURS ACT AMENDMENT BILL (No. 2)

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 1.17 a.m. the Council adjourned until Wednesday 7 December at 11 a.m.