LEGISLATIVE COUNCIL

Thursday 8 December 1983

The PRESIDENT (Hon. A.M. Whyte) took the Chair at 11 a.m. and read prayers.

PUBLIC WORKS COMMITTEE REPORTS

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

Adelaide Remand Centre, Currie Street,
State Aquatic Centre.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Public Service Board of South Australia—Annual Report, 1982-83.

Acts Republication Act, 1967—Schedule of Alterations made by the Commissioner of Statute Revision to the Mental Health (Supplementary Provisions) Act, 1935.

Parole Board of South Australia—Report, 1982-83.

South Australian Metropolitan Fire Service—Report, 1982-83.

South Australian Superannuation Board—Report, 1982-83.

Industrial and Commercial Training Commission—Report, 1982-83.

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

Pursuant to Statute—

The Flinders University of South Australia—Report and Legislation, 1982.

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

By Command—

Planning Act Review Committee—Final Report.

Pursuant to Statute—

State Clothing Corporation—Report, 1982-83.

DRUGS

The Hon. J.R. CORNWALL (Minister of Health): I seek leave to table the A.N.O.P. report on Community Attitudes towards Drugs and Related Matters.

Leave granted.

QUESTIONS ON NOTICE

JOB CREATION SCHEME

The Hon. DIANA LAIDLAW (on notice) asked the Attorney-General: In respect of the wage pause Job Creation Scheme in the metropolitan/urban and country areas of South Australia:

1. How many projects were submitted by—
   (a) local government;
   (b) community organisations;
   (c) the State Government;
   (d) statutory authorities?
2. How many projects were approved and how many were rejcted in each of the categories referred to in question 1?
3. How many male and how many female persons were to be involved and were involved in those projects approved and those projects rejected in each of the categories referred to in question 1?
4. For those projects rejected in each of the categories referred to in question 1, which guideline for the scheme was not satisfied?

The Hon. C.J. SUMNER: The answers are as follows:

1. *(a)* Details are available in schedule form.

(b)and (c) Due to the volume of the schedule it is considered inappropriate for printing in *Hansard.*

(d) A copy will be provided to the Clerk of the Council for the use of members.

2. Details are available in schedule form (A). See above.
3. Male and female estimates for projects are not required by project applicants and therefore the information sought in respect of applications lodged is not available. Statistics on placements under the programme are maintained by the Commonwealth Employment Service and are not readily available per project. The aggregate number of males employed to the end of October is 570 and the aggregate number of females is 95.
4. Details are available in schedule form (see Attachment B). Once again, a copy will be made available to the Clerk of the Council.

ELECTRICITY CHARGES

The Hon. K.T. GRIFFIN (on notice) asked the Minister of Agriculture:

1. Has the Government assessed the impact on irrigators and employment generally in irrigation areas of the 25½ per cent increase in electricity charges approved by the Government in the past 10 months?
2. If it has, what is that impact?
3. If not, will the Government immediately undertake a study of the effects of these increases on irrigators in Government irrigation areas and irrigation areas generally?

The Hon. FRANK BLEVINS: The replies are as follows:

1. Yes.

2. Recent electricity tariff increases (12 per cent on 1 December 1982 and 12 per cent on 1 November 1983) have been necessary to meet additional costs beyond the Electricity Trust's control. The greater part of the increases is due to increases of over 116 per cent in the ex-field price of Cooper Basin natural gas, which is the result of pricing arrangements agreed by the previous Government with the Cooper Basin Producers in October 1982. The tariff increases have been applied evenly to all classes of electricity consumers, and the financial impact on irrigators has therefore been to add the same proportion to electricity charges as to other users. More specifically, the impact on irrigators has been assessed as follows:

   (a) In the short term, an increase in farm cash costs of 1.05 per cent and in total costs of 0.63 per cent.
   (b) In the medium to longer term, substitution of increased management for electricity consumption could reduce the impact on annual cash costs of the increase in electricity charges. The adoption of improved irrigation technology could further reduce costs although such technology is oriented primarily to using existing water rights more efficiently.

The impact on employment generally in irrigation areas is assessed as follows:

   (a) In the short term, nil.
   (b) In the medium to longer term, accelerated rate of installation of improved irrigation systems may lead to an increase in employment in irrigation areas, though electricity costs are considered to be a minor aspect of introducing improved irrigation practices.

Additionally, increased production of components for these systems may stimulate employment in the manufacturing sector.

3. Not applicable.

REPLIES TO QUESTIONS

The Hon. FRANK BLEVINS: I seek leave to incorporate in *Hansard* without my reading them answers to questions that have been asked previously during the session.

Leave granted.

LANGUAGE COURSES

In reply to the **Hon. M.S. FELEPPA** (9 November).

The Hon. FRANK BLEVINS: I am advised by my colleague, the Minister of Education, that the South Australian College of Advanced Education has centred its community languages teaching at the city site of the college. The college has received copies of the petition signed by 591 persons, mainly from residents of Elizabeth, Salisbury and other areas to the north of Adelaide. The college intends, on a trial basis, to introduce the first year of Italian at the Salisbury site of the college to test demand for teaching the language in the Salisbury/Elizabeth area.

KINDERGARTEN UNION

In reply to the **Hon. ANNE LEVY** (8 November).

The Hon. FRANK BLEVINS: Funds for the proposed Kindergarten Union headquarters are to be obtained by the disposal by the Kindergarten Union of two of its North Adelaide properties, namely at 95 Palmer Place (C.T. 2851/200) and at 108 Kermode Street (C.T. 3271/22). I do not anticipate there will be any request to the Government by the Kindergarten Union for additional revenue as a result of the new building. The Minister of Education informs me that a number of options were considered by the Kindergarten Union Board and the Government, including the removal of the Kindergarten Union headquarters to the Education Centre. The Magill Campus venue provided opportunities for shared resources and interaction with the South Australian College of Advanced Education and a close association between the de Lissa Institute of S.A.C.A.E. and the Kindergarten Union as a major employing body which could not be achieved by any of the other options considered. It is not proposed that any construction on the Magill site will be initiated until the Coleman Report has been reviewed by Cabinet.

NATIVE VEGETATION CLEARANCE

In reply to the **Hon. H.P.K. DUNN** (2 June).

The Hon. FRANK BLEVINS: The honourable member's question related to the viability of farms affected by native vegetation clearance regulations, the possible use of Rural Adjustment Scheme money to obtain a more efficient holding, and the situation of farmers who had been lent money under farm build-up provisions where that build-up depended on land being cleared. At the time the question was raised a working party was being set up to examine a range of issues related to the regulations. While consultation is still continuing I am able to report that recently officers from the Department of Environment and Planning met with officers of the Rural Assistance Branch of the Department of Agriculture to discuss, among other things, those matters raised by Mr Dunn. In general terms, these matters are not an issue because under the Rural Adjustment Scheme, applicants for concessional loans must first be able to demonstrate that they would be in a non-viable situation without these loans. Secondly, clearing of land has not featured as a way of changing a situation from non-viable to viable. However, while that is the general assessment, there may be specific cases where plans to clear were not made obvious in an application. Each of these cases should be presented and examined on its own merits. The honourable member asked a similar question on 27 October and I trust that the foregoing will serve as an answer to that particular enquiry.

The Hon. C.J. SUMNER: I seek leave to incorporate in *Hansard* without my reading them answers to questions that have been asked previously during the session.

Leave granted.

POLICE SERVICE

In reply to the **Hon. ANNE LEVY** (30 November).

The Hon. C.J. SUMNER: It is the Police Department's policy to transfer members of Drug and Vice Squads after members have served a period of three years. The maximum period that members are allowed to serve in these squads is three years. The length of time present members have served to date in these squads is listed as follows:

	Number of members	Time served to date
Drug Squad		
	2	4 months
	1	7 months
	1	8 months
	2	9 months
	1	10 months
	1	11 months
	3	14 months
	1	15 months
	1	16 months
	3	17 months
	3	18 months
	1	21 months
	2	22 months
	2	24 months
	1	28 months
	1	32 months
	26	members
Vice Squad		
	1	1 month
	1	4 months
	2	14 months
	1	15 months
	1	22 months
	1	25 months
	7	members

SEX DISCRIMINATION

In reply to the **Hon. K.T. GRIFFIN** (1 December).

The Hon. C.J. SUMNER: Ms Nancy Koh lodged a complaint of discrimination with the Commissioner for Equal Opportunity on 7 June 1983. Discussions were held between the Commissioner, Ms Koh, and representatives from Mitsubishi Australia Limited, and it was the intention of the Commissioner for Equal Opportunity to continue inquiries to determine whether or not there was substance to her allegations. On 25 July 1983, Ms Koh unexpectantly announced that she wished to withdraw her complaint. She was informed of the implications of her decision in that the Commissioner for Equal Opportunity would not be able

to assist her in the presentation of her case, if the matter was to be referred to the Sex Discrimination Board. She was informed that if she continued on that course of action she would need to lodge a complaint directly with the Registrar, and she would then be responsible for bearing her own legal costs.

UNIVERSITY DEGREES

In reply to the **Hon. R.J. RITSON** (20 October).

The Hon. C.J. SUMNER: Perusal of past editions of the *Australasian Post* has revealed one advertisement on 15 September 1983 concerning mail order selling of doctorates and ordinations bearing a Western Australian address and the name 'C.M.A.'. However, other advertisements were noticed concerning a similar practice bearing a Canberra address with the name 'Mail Order Exchange'. Information has been received from the Western Australian Consumer Affairs Bureau that the person behind the scheme is Mr Noel Fisher who is well known in Perth for his involvement in various nefarious mail order schemes. He uses various aliases in connection with his activities including Alan Noel Bottrill, Mrs McKee and Mrs Fay Brown and operates from Unit 8, 4 Gadsen Street, Cottesloe, Western Australia. The doctorates and ordinations referred to in the advertisement do not relate to University qualifications but concern a pseudo-religious organisation established by him and of which he is the self-styled 'Bishop'. There is no set fee but suggested 'offerings' are $50 for an ordination and $60 for a doctor of divinity degree.

The Consumer Services Branch of the South Australian Department of Public and Consumer Affairs wrote to the address given in the advertisement and received back correspondence indicating that the address in Canberra is also part of Mr Fisher's organisation which operates under the name of the Church of the Modern Apostles Inc. and appears to trade under the name CMA Publishing. Neither the South Australian Consumer Services Branch nor the Western Australian Consumer Affairs Bureau has received any complaints from consumers who have responded to these advertisements. However, consumers would be well advised to ignore these advertisements as the degrees offered appear to be a sham.

QUESTION

TELEPHONE CONTRACTS

The Hon. I. GILFILLAN: Has the Attorney-General a reply to the question I asked about telephone contracts?

The Hon. C.J. SUMNER: Yes. I seek leave to have the reply inserted in *Hansard* without my reading it. In doing so, I indicate that there was some concern about a report that a verbal request over the telephone by a client to a service company is not a legal contract and does not have to be honoured. That was the purport of the statement made in relation to a particular case that I was asked to investigate. The reply explains the position. In fact, the factual situation was not quite as reported, and in my view service companies should not be alarmed by the finding in this particular case which was reported and to which the Hon. Mr Gilfillan referred.

Leave granted.

Reply to Question

The honourable member asked whether I agree with the statement made by a magistrate that a verbal request over the phone by a client to a service company is not a legal contract and does not have to be honoured. I have obtained a copy of the reasons for judgment of the case which led to this matter being raised. The case reveals that this case was not decided on the basis of whether or not a phone call to a service company creates a legal contract. Briefly, the facts of the case are that the defendant purchased a second-hand air-conditioner for the sum of $400. He employed an electrician to instal the unit. That electrician found that on switching the unit on it did not operate. He advised the defendant to call another electrician who subsequently overhauled the defendant's air-conditioner. He was paid $400 for doing that.

Approximately three months later the defendant found that the unit was not operating satisfactorily. He contacted the second electrician on the telephone who called at the defendant's home and attempted unsuccessfully for approximately half an hour to remedy the defect. Because of his lack of success, the second electrician then telephoned the plaintiff who also was and is an air-conditioning mechanic, for assistance. A telephone call was received by the plaintiff's secretary after which the plaintiff sent one of his staff to the defendant's home, collected the air-conditioner and returned to the workshop repairing the machine for the sum of $76. The owner of the machine was contacted by telephone and informed that the price was $76 and would be payable when the unit was returned to his home.

The unit was delivered to the defendent's home but no-one was in attendance and the unit was left at the home with an account for the sum of $76. The defendant refused to pay the sum and suggested to the plaintiff that he should contact the second electrician to obtain the payment. The defendant claimed that the second electrician had made the call to the plaintiff from his telephone.

The position as far as the defendant was concerned was that having paid the second electrician $400 to recondition the unit with a verbal warranty for 12 months, he looked to the second electrician to put the unit into working order when it broke down three months after it was reconditioned. Relying upon that warranty, he presumed that the second electrician was in the process of remedying the defect by calling another electrician in to do the work. The second electrician however had called the plaintiff for technical information and not to contract with him to repair the unit on his behalf.

The problem which the plaintiff faced in this case was that he could not make out a case against the second electrician. In order to do that in the particular action, it would have been necessary for the plaintiff to succeed against the defendant in which case the defendant could have then made a claim against the second electrician. The plaintiff had to satisfy the court on the balance of probabilities that there was a contract between himself and the defendant. That could be implied from the conduct of the parties or from the nature of the transaction. The magistrate however was not satisfied that it was the defendant who sought to contract with the plaintiff, never intending to be responsible to the plaintiff in any way. The magistrate was of the view that the responsibility should have rested with the second electrician and that the plaintiff should have sued him in this case. If he was not a party to the action the plaintiff could not succeed.

Service companies should not be alarmed by the finding in this case. A verbal request over the phone by a client to a service company is quite capable of establishing a legal contract. I can understand the concern of service companies because of the manner in which the judgment in the case was reported. It gave the impression that telephone contracts for services would not be enforceable. This is not the case.

CONTROLLED SUBSTANCES BILL

The Hon. J.R. CORNWALL (Minister of Health) obtained leave and introduced a Bill for an Act to regulate or prohibit the manufacture, production, sale, supply, possession, handling or use of certain poisons, drugs, therapeutic and other substances, and of certain therapeutic devices; to repeal the Food and Drugs Act, 1908, and the Narcotic and Psychotropic Drugs Act, 1934; and for other related purposes. Read a first time.

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

That this Bill be now read a second time.

This is a long second reading explanation and, in view of the fact that this may be the last day of the sitting of Parliament for this year at least, I seek the leave and indulgence of the Council to have the explanation inserted in *Hansard* without my reading it. I make clear in doing so that I do not seek to introduce a precedent.

Leave granted.

Explanation of Bill

It introduces wide-ranging changes to the controls over the use of legal and illegal drugs and poisons in South Australia. It represents the most extensive and comprehensive revision of drug law ever undertaken in this State. It spearheads the Government's comprehensive strategy for tackling drug problems.

Over recent years there have been a number of Royal Commissions and inquiries into drug use and abuse in this country. For example, the Sackville Royal Commission into the Non-Medical Use of Drugs in 1979 canvassed the situation in South Australia. The Williams Commission of Inquiry into Drugs in 1980 examined the matter from a national perspective, with particular reference to law enforcement. There is now a wealth of published material on the drug situation in Australia.

As the various inquiries and Commissions observe, drug taking is not new. Drugs have been taken for centuries, for reasons of tradition or custom, to relieve symptoms and satisfy a myriad of personal needs. However, clear evidence has emerged that patterns of drug use have changed significantly. In particular, as the incidence of illicit drug usage has increased, major changes have taken place in the general nature of drug trafficking in this country.

The new dimension of drug abuse is its promotion for profit, the involvement of organised crime and the diversion of huge sums of money into criminal enterprises. Trafficking has, in recent years, become big business. The illicit drug trade in Australia has become a billion-dollar industry.

The Government believes that urgent action is necessary to combat the growing drug problems. Indeed, if there is a common concern shared by every member of this House, I have no doubt that it would be the growing problem of drug abuse in our community.

All the available evidence points to the need for the development of social policies, goals and strategies. Ministers and officers have and will continue to participate in national forums aimed at developing a strategy to deal with the drug problem on a national basis. However, national developments cannot be a substitute for action at the State level, in those areas over which the State has jurisdiction. We must act, and we must act now.

The Government has therefore devised a comprehensive strategy, which includes a combination of administrative controls (restrictions on distribution outlets, prescription requirements, record-keeping, monitoring of supplies), treatment and education programmes, and the criminal law. No single approach will adequately deal with the problem—it must be tackled in several ways. Dealers, pushers and traffickers must be prevented from making a profit from human fallibility and vulnerability. Those who have become dependent on drugs or have otherwise sustained harm from their drug use must be offered treatment and rehabilitation. Education programmes must be devised to assist people to develop attitudes and behaviour towards the use of drugs which will be most beneficial to themselves and others.

The Bill before you today spearheads that strategy. It brings together in one coherent piece of legislation, and extends, the administrative and criminal controls which are presently scattered between the Food and Drugs Act and the Narcotic and Psychotropic Drugs Act. Honourable members would be aware that the confused state of the present drugs legislation has attracted criticism from time to time. As the Sackville Royal Commission put it in their 1979 report:

> The history of the current controls shows that the South Australian legislation has grown in piecemeal fashion, in response to several pressures. The legislation has not been systematically revised, despite significant changes in the patterns of drug use and in the scope and nature of controls. Frequent amendments to the legislation have often created uncertainty and sometimes confusion.

The Narcotic and Psychotropic Drugs Act particularly has attracted strident criticism from the Supreme Court of South Australia, which has been faced with some difficult questions of statutory interpretation. A former Chief Justice, the distinguished John Jefferson Bray, criticised the Act as follows:

> It is an understatement to compare the Narcotic and Psychotropic Drugs Act, 1934-1976, to a patchwork quilt. It is more like a repatched patchwork quilt. The subject dealt with is of vast importance to the life of the community. I venture to suggest that the time has come for a completely new and coherent enactment.

The Government agrees with the sentiments expressed—a coherent legislative framework is a fundamental requirement.

The Bill presented to the Parliament today therefore repeals the existing Food and Drugs Act and Narcotic and Psychotropic Drugs Act and consolidates control over drugs, poisons and therapeutic substances and devices. (A new Food Act is being developed for introduction early next year. This will replace the outmoded food legislation which forms part of the present Food and Drugs Act). The Controlled Substances Bill implements the recommendations of Sackville in most respects and also takes account of the Williams Report, with its emphasis on increased powers and penalties to deal with drug traffickers.

While the format of the Bill differs somewhat from the Sackville draft, it incorporates most of the essential legislative features of Sackville, either directly or through regulation-making powers.

The major features of the Bill are as follows:

1. Revision of penalties in relation to possession and sale of prohibited drugs and drugs of dependence, including creation of a new maximum penalty of $250 000 and 25 years imprisonment for large-scale drug trafficking. Both imprisonment and a fine are mandatory. (Clauses 28 and 29).
2. Inclusion of powers to enable the charging of financiers of drug-trafficking schemes as principal offenders. (Clause 29 (4) *(b)*).
3. Inclusion of powers to enable courts to order forfeiture of property of persons convicted of offences against the Act or of a related person or body. (Clauses 42 and 43).
4. Inclusion of powers to enable courts to prevent the dissipation of such property where a person has been charged with offences under the Act. (Clause 44).
5. Doubling of penalties for illegal prescribing of drugs of dependence. (Clause 30).

6. Creation of an offence to supply substances containing volatile solvents to persons whom the supplier knows intend to use them for inhalation. (Clause 18).
7. Inclusion of provisions to enable the establishment of Drug Assessment and Aid Panels. (Clauses 31 to 37).
8. Inclusion of provisions to enable establishment of a Controlled Substances Advisory Council to monitor and advise upon controls over the licit and illicit use of drugs, poisons and therapeutic substances and devices. (Clauses 6 to 11).
9. Provision of comprehensive and substantially upgraded regulation-making powers, particularly in relation to controls over poisons, drugs and therapeutic substances and devices. (Clause 59).

I now propose to deal in more detail with the areas I have highlighted, to give an outline of the considerations which led to the inclusion of these provisions and to indicate measures which are intended to underpin or complement the legislation.

To turn to the special provisions relating to drugs of dependence and prohibited drugs (points 1 to 4 above), the Bill envisages a grading of penalties based on quantities of drugs involved in the offence. It distinguishes between possessors for personal use and persons who profit from illegal dealings.

Under the proposals, cannabis remains a prohibited drug. The Bill therefore is a significant departure from the Sackville proposals for decriminalisation, or partial prohibition. The simple fact is that there is still widespread community opposition to such a move at this time.

Earlier this year ANOP was commissioned by the South Australian Health Commission to undertake a survey of attitudes of the South Australian community in relation to general concern about drugs and drug laws, knowledge and awareness of drugs and drug usage, expectations about future drug use and problems and the need for drug education. Amongst the mine of information available in the survey is a clear indication that the great majority of South Australians are not prepared to accept decriminalisation. Sackville, in making his recommendation, indicated that public opinion should be taken into account and that 'change cannot fly in the face of widely held attitudes'. The Bill takes cognisance of those attitudes.

An interesting feature which emerged from the survey was that a majority of the community admitted to having little information about cannabis, although it was perceived to have considerable side effects. As long ago as 1977 a Senate Standing Committee on Social Welfare under the Chairmanship of Senator Peter Baume, a senior medical consultant, recognised that not nearly enough was known about the health implications of cannabis use. That Committee recommended that the Commonwealth Minister for Health direct appropriate studies of the health implications of cannabis use. I am pleased to say that earlier this year South Australia, with the support of the Queensland Minister and subsequently all other Health Ministers, was successful in having the matter referred to the Standing Committee of Health Ministers (a committee comprising the most senior health officers for each State) for investigation, taking account of Australian and overseas information, and report to the next conference of Ministers.

In line with the current practice of the courts, the Bill introduces modest reforms in relation to penalties for simple possession of cannabis and cannabis resin and smoking equipment. Current penalties are $2 000 or two years gaol. Under the Bill, the gaol sentence is removed, and the maximum penalty is reduced to $500.

Figures from the Office of Crime Statistics in the Attorney-General's Department show that penalties imposed by courts for possession and use of marihuana have been moving down gradually from an average fine of $135 in 1979-80 to $119 in 1980-81 and $117 in 1981-82. In that time, only 13 people of 2 625 convicted of these offences were sentenced to gaol terms.

(It is interesting to note in passing that the A.C.T. Poisons and Narcotic Drugs Ordinance of 1978 provides for a fine not exceeding $100 in relation to possession of up to 25 grams of cannabis.)

In the case of personal possession or consumption of other drugs of dependence and prohibited drugs (e.g., cocaine, heroin, LSD) the existing penalities of $2 000 or imprisonment for two years, or both, are maintained.

Turning to what may be described as the profiteering offences of clause 29, the penalties for small traders in cannabis or cannabis resin are maintained at $4 000 or imprisonment for 10 years, or both. Similarly, for small traders in other drugs of dependence or prohibited drugs, penalties will remain at the existing $100 000 or imprisonment for 25 years or both, as recommended by Sackville.

However, in line with the recommendations of Williams, large-scale traffickers in both cannabis and drugs of dependence and prohibited drugs will be treated even more severely. They will be liable to penalties of up to $250 000 and imprisonment for 25 years. The Government considers drug trafficking to be one of the most reprehensible crimes against humanity. The Government believes that those who derive profit from the destruction of the lives of others should be pursued and punished with the full rigour and vigour of the law.

As honourable members will note, the quantities of drugs involved in the various offences are to be prescribed by regulation, following the passage of the Act. I believe, however, that it is entirely reasonable for the House to have an indication of the Government's thinking at this time.

A person will be presumed to possess with the intent to sell if he possesses more than the following quantities (those currently applying and as recommended by Sackville):

	grams
Cannabis	100
Cannabis Resin	20
Cocaine	2
Heroin	2
Lysergic Acid	.002
Morphine	2
Opium	20

If he possesses these amounts or less, he will most likely be charged with the lesser offence of possession for personal use.

If it can be shown that the offence involves the following amounts, indicating large-scale trafficking rather than small trading, the offender will face the highest penalties:

	Kilograms
Cannabis (other than resin)	100
Cannabis Resin (including cannabis oil)	25
Cocaine	.4
Heroin	.3
Lysergic Acid	.0004
Morphine	.3
Opium	4.0

The Government proposes, in addition to the above-mentioned penalties, the inclusion of powers of forfeiture and confiscation in relation to clause 29 offences along the lines of those proposed by the Hon. Trevor Griffin earlier this year.

Clauses 43 and 44 enable the courts to order forfeiture of money, real or personal property of persons convicted of offences against section 29, or of a related person or body.

Courts will be able to prevent dissipation of such property by making a sequestration order where persons have been charged with an offence. There is also power to charge financiers of drug-trafficking schemes as principal offenders (Clause 29 (4) *(b)*).

The Government is also aware of an upsurge in the diversion of prescription narcotics on to the illicit drug market and widespread poly-drug abuse.

Health professionals involved in drug treatment and counselling estimate that prescription drugs now constitute more than 50 per cent of the illegal drugs in South Australia.

The Government is aware that, while the great majority of doctors are conscientious, a small number of so-called 'script doctors' are unscrupulously issuing prescriptions for personal gain. It is illegal for doctors to prescribe narcotic drugs for addicts, other than those in approved treatment programmes. Since the present penalties seem inadequate as deterrents to such activities, the Government proposes a doubling to $4 000 or imprisonment for four years.

In addition, the Pharmaceutical Services Branch of the South Australian Health Commission is to be strengthened. The acquisition of a computer will assist in surveillance and detection of illegal or irresponsible prescribing.

Seminars will be arranged for health professionals to acquaint them with current trends in drug use and abuse. The Australian Medical Association and the Pharmacy Guild have indicated their willingness to co-operate with the Government in measures to combat the problem.

While the emphasis so far has been on increased penalties in various areas, the Government believes, as I indicated earlier, that criminal sanctions alone are insufficient, indeed sometimes inappropriate, as a means of dealing with the drug problem. There must be a recognition of the need to care adequately for those who have suffered harm associated with their drug use. As Sackville put it, 'The community has a responsibility to assist such people, even though they are often regarded as the victims of self-inflicted harm . . . It is more consistent with the values of a humane society to regard dependence not as a self-inflicted wound, but more as an inevitable consequence of society's inability to forgo or control absolutely the availability of drugs, chemicals and pharmacological knowledge.'

Accordingly, the Bill proposes the establishment of Drug Assessment and Aid Panels as recommended by Sackville. Each panel is to consist of three members drawn from different disciplines, with experience in treating or assisting misusers of drugs.

Under this scheme, where it is alleged that a person has committed a simple possession offence (i.e., an offence against section 28 other than an offence arising out of the possession, smoking or consumption of cannabis or cannabis resin, or possession of equipment for that purpose) the matter will be referred to an assessment panel to ascertain whether the person should be directed to a treatment programme or whether a prosecution should proceed. The intention of the Bill is that diversion of offenders to the panels should take place at the first opportunity, which is immediately after arrest or apprehension by the police.

A panel will undertake a full assessment of the person referred and will have power to determine whether the prosecution for the alleged offence should proceed. However, the panel will have no power to determine disputed questions of fact and will not proceed to assessment if the person referred does not admit to allegations against him or does not wish the panel to proceed. The panel will have power to refer the matter back to the court if it considers such a course of action appropriate.

Panels will have power to require offenders to give undertakings to be effective for a period not exceeding six months. Such an undertaking may relate to the treatment a person must undertake; participation in a programme of an educative, preventive or rehabilitative nature; or any other matter which may assist the person to overcome personal problems leading to drug misuse. Failure to abide by an undertaking will be a ground to refer the matter to the court for prosecution in the usual way.

Proceedings before a panel will be informal and no representation will be permitted. The panels will be held in private and nothing said before a panel will be admissible as evidence in any legal proceedings.

It should be noted that the Bill does not contemplate the panel procedure applying to children, as a specialist approach to the problems of children is already provided for under the Children's Protection and Young Offenders Act.

The establishment of Drug Assessment and Aid Panels is a new innovation, which will involve close links between the criminal justice and treatment systems. The Government intends to monitor the operations of the scheme as it develops.

As indicated earlier, the Bill replaces the 'Drugs' part of the Food and Drugs Act. While the explanation so far has tended to highlight new controls to deal with the illicit drug scene, it should be pointed out that the Bill also provides the framework for important controls over the licit use of drugs, poisons and therapeutic substances and devices.

The Food and Drugs Act and regulations, among other things, set standards for quality control of drugs used for medicinal purposes and regulate the labelling, packaging, dispensing and advertising of those substances. They also impose record-keeping and notification requirements on those prescribing or dispensing drugs. As explained in the submission of the South Australian Health Commission to the Sackville Commission the Poisons Regulations made under the Food and Drugs Act are designed:

> to control the sale of poisonous substances in such a way that the general public is protected as far as possible from the misuse of the poisons, and from the possibility of accidental poisoning. Those objectives are achieved by the licensing of dealers in poisons, the restriction of certain strong poisons to sale on prescription, the provision of labelling and bottling requirements, and—in the case of the more dangerous substances—the requiring of a record of the sale of these poisons.

In South Australia, as in other States, the legislation classifies 'poisons' into eight schedules, and the requirements as to prescription, sale, storage and labelling depend on the schedule into which each substance is placed. The classification in South Australia follows closely the National Poisons Standard adopted by the National Poisons Schedules Standing Committee of the National Health and Medical Research Council.

It is proposed to retain the basic structure of the Poisons Schedules. For reasons of flexibility, the assignment of classifications to poisons, drugs, therapeutic substances and devices will be done by regulation rather than being set out in the Bill (as recommended by Sackville). Parts II, III, IV and VIII of the Bill deal particularly with these matters.

Attention is drawn to clause 18, which relates to the sale or supply of volatile solvents. The Government is concerned at the incidence of abuse in this area, particularly glue sniffing. Extensive consideration has been given to possible approaches to the problem. It seems that making offenders of children with an inhalation habit is not the solution. What this clause seeks to do is express the Government's abhorrence of the unscrupulous dealers who provide glue and other substances containing volatile solvents, allegedly in some cases together with plastic bags, clearly knowing that they are being purchased for self-inhalation.

Another clause to which attention is particularly drawn is clause 9. This clause proposes the establishment of an expert committee, including consumer representation, to

assist the Minister in determining appropriate controls over substances and devices subject to the Act.

The Controlled Substances Advisory Council contemplated by clause 9 is to consist of nine members, and is to be chaired by a Health Commission officer. As honourable members may be aware, Health Commission officers participate extensively in national deliberations on control measures. It should be noted that the Council will have power to form subcommittees and to co-opt members. It will therefore be possible to call in specialist advice in specific areas, should the need arise.

I turn now to the matter of powers of search, seizure and analysis covered by Part VII of the Bill. Essentially, the powers existing under present legislation are repeated. A clear distinction is drawn by clauses 48 (3) and (4) between the powers which may be exercised by a police officer and those which may be exercised by other authorised officers.

I believe I have highlighted the main provisions of the Bill. The clause explanation will, in the normal manner, deal with all clauses in more detail.

I would like now to briefly touch on another aspect of the Government's drug strategy, that is, education. Sackville noted that carefully constructed drug education programmes have an important part to play in improving the community's understanding of the drug problem. The ANOP survey indicated that there was considerable support for increased drug education among the South Australian community. I have therefore appointed a top-level working group to study and report on issues related to such education, with particular reference to education in the community, in schools and for health professionals.

In addition, South Australia's drug services generally will be revamped and strengthened. Honourable members may have noted that the Bill makes no reference to the Alcohol and Drug Addicts (Treatment) Board, which in fact formed part of the Sackville Bill. The recent Smith Inquiry into Mental Health Services in South Australia dealt with the Board as part of its terms of reference, and the future directions of those services are being considered in the context of that review.

As I mentioned previously, the Government believes that urgent action is necessary to combat the drug problem. This Bill spearheads the Government's strategy. It has involved extensive consideration by the police and officers of the Health Commission and Attorney-General's Department. I believe it will be the most significant piece of legislation in the health area to come before the House for many years. I intend that the Bill lie on the table until the resumption of Parliament in March next year, so that interested persons have the opportunity to consider and comment on its provisions. Copies will be available and any comments should be made in writing to me by the end of February. I appeal to honourable members, as members of the community, as well as members of this House, to support this important area of law reform.

Clauses 1 and 2 are formal. Clause 3 repeals the two Acts that are replaced by this Act. Clause 4 inserts all the necessary definitions for the purposes of the Act. All the substances and devices to which this Act will apply are to be set out in the regulations. Cannabis (which will be a prohibited drug) is defined, as various penalties will depend on whether the particular drug involved in an offence is cannabis or cannabis resin, as opposed to cannabis oil or any other prohibited drug.

Clause 5 binds the Crown. The effect of this provision is that, for example, Government hospitals will be bound by the provisions of the Act as to licences and other authorisations or permits. This does not of course mean that the Crown will incur any criminal liability for failure to comply with such provisions. Subclauses (2) and (3) make it clear that compliance with this Act does not remove liability under other Acts or at common law. Part II sets up an advisory council. Clause 6 establishes the Council. The nine members will be drawn from a wide range of expertise and interest groups. A Health Commission employee will chair the Council.

Clause 7 sets out the usual provisions for terms and conditions of office. Clause 8 provides for the validity of acts of the Council notwithstanding defective appointments or vacancies of office. Clause 9 provides for the payment of allowances and expenses. Clause 10 also sets out the usual provisions relating to the conduct of the Council's business. Clause 11 gives the Council the function of keeping all substances and devices subject to the Act under review. The Council must also keep reviewing other substances or devices that might need to be controlled under this Act. The operation of the Act is to be monitored by the Council. The Minister may assign further functions to it. The Council is empowered to make recommendations to the Minister as to amendments to the Act or regulations. The Council must report annually to the Minister and any such report will be laid before Parliament.

Part III deals with the way in which certain substances and devices are brought under the Act. Clause 12 provides that substances potentially harmful to humans may be declared by the regulations to be poisons. A poison may in turn be declared to be a prescription drug or a drug of dependence. Substances designed to be used therapeutically (e.g., herbal medicines) or for contraceptive or cosmetic purposes may be declared to be therapeutic substances. Devices designed to be used for similar purposes may be declared to be therapeutic devices. The Governor may declare a substance to be a volatile solvent. The regulations may also divide poisons, etc., into sub-classes.

Part V deals with general offences. Clause 13 makes it unlawful to manufacture, produce or pack certain poisons, therapeutic substances or therapeutic devices. Drugs of dependence are excluded from the operation of this section as they will be dealt with separately under Part IV. Certain professional people are not guilty of an offence against this section if they manufacture the item concerned while acting in the course of their profession. All other persons must get a licence from the Health Commission. Clause 14 makes it an offence to sell certain poisons, therapeutic substances or therapeutic devices without a licence from the Health Commission. Pharmacists are of course exempted from this provision. Again, drugs of dependence are excluded.

Clause 15 provides a similar offence in relation to retail selling of such items. Clause 16 provides that certain poisons may not be sold to children. The vendor of such poisons is not permitted to sell those poisons to purchasers they do not know without first obtaining evidence of identity. Such a vendor must also attempt to find out the purpose for which the poison is required by the purchaser. Such information must be kept in a register.

Clause 17 relates to the sale and supply of prescription drugs. Such drugs may basically only be sold or supplied by doctors, chemists and certain other professionals while acting in the course of their profession. Clause 18 prohibits the sale of a volatile solvent to a person whom the vendor suspects, or ought to suspect, is going to inhale the solvent. Clause 19 prohibits the sale of certain poisons or therapeutic substances by way of automatic vending machine. Therapeutic devices are not included in this prohibition.

Clause 20 empowers the Minister to prohibit the sale or supply of any other substance or device pending evaluation of its harmful properties. Clause 21 prohibits a person from selling a poison, therapeutic substance or therapeutic device unless it conforms with the regulations. This provision enables the imposition of national or international drug stand-

ards. A defence is provided where the vendor could not have known of the fact that the particular item did not conform with the regulations. Clause 22 enables the imposition of labelling and packaging standards. Clauses 23 and 24 similarly provide for the storage and transport of poisons, therapeutic substances and therapeutic devices in accordance with the regulations.

Clause 25 provides that advertisements of certain poisons, therapeutic substances or therapeutic devices is totally prohibited. Clause 26 provides that certain poisons, therapeutic substances and therapeutic devices may only be advertised in accordance with the regulations. Clause 27 provides for the offence of forging or fraudulently altering or uttering a prescription or other document for the supply of a prescription drug, or possessing such a prescription or document, knowing it to be so forged or altered. It is also an offence to obtain a prescription, or a prescription drug, by false representation. A pharmacist may retain a forged prescription and, if he does so, he must forward it to the Commissioner of Police.

Part IV deals specifically with the offences relating to the possession of or trading in drugs of dependence and prohibited drugs. Clause 28 virtually repeats section 5 (1) of the Narcotic and Psychotropic Drugs Act in setting out the offence of possessing a drug of dependence or prohibited drug, consuming such a drug or possessing equipment relating thereto. The penalty where an offence against this section involves the possession or consumption of cannabis or cannabis resin, or the possession of equipment relating thereto, is a fine not exceeding $500. The penalty for any other offence against this section is the same as presently provided in the Narcotic and Psychotropic Drugs Act.

Clause 29 in substance covers the offences set out in section 5 (2) of the Narcotic and Psychotropic Drugs Act. The offence of selling, supplying, manufacturing or producing a drug of dependence or a prohibited drug carries very heavy penalties. If the offence involves over the prescribed amount of cannabis or cannabis resin, then the penalty will be $250 000 and 25 years imprisonment, as dealing in such a large quantity will virtually be viewed as 'drug trafficking'. If the offence involves a lesser amount of cannabis or cannabis resin (or if the actual amount has not been ascertained), then the penalty is $4 000 or 10 years imprisonment, or both, as presently provided in the Narcotic and Psychotropic Drugs Act. The penalties for all other drugs of dependence and prohibited drugs is $250 000 and 25 years of imprisonment for so-called 'trafficking' and $100 000 or 25 years imprisonment, or both, where lesser quantities are involved. Subclause (3) repeats an existing provision whereby a person is deemed to be 'trading' in a drug if he knowingly has more than a prescribed quantity of the drug in his possession. The usual exemptions are given to certain professionals.

Clause 30 gives the Health Commission control over the supply of drugs of dependence by doctors to patients for medical purposes. The approval of the Commission is required where a drug of dependence is to be prescribed for a continuous period of more than two months, or where such a drug is to be prescribed on any occasion for a person who the doctor believes is dependent on drugs. The medical profession itself welcomes such a controlled system, as the responsibility for deciding whether or not a drug of dependence should be prescribed in any particular case is borne by an outside, objective authority.

Division II provides for the assessment of persons who are charged with certain drug offences (other than offences relating to possession or consumption of cannabis or cannabis resin or the possession of equipment relating thereto). Clause 31 provides for the establishment of assessment panels. Clause 32 provides for the assessment of persons (other than children) who are alleged to have committed simple possession offences. If the person wishes to be dealt with by a court, then the assessment is abandoned. If, after an initial interview, the panel thinks that the person should be dealt with by a court, it shall not proceed any further with the assessment, but shall authorise prosecution. It is made clear that these provisions do not derogate from the right of the prosecuting authorities to decide at any time not to prosecute an alleged offender.

Clause 33 gives to an assessment panel certain powers to require the attendance of persons or the production of books and papers. The alleged offender will not be guilty of an offence if he fails to appear before the panel or to answer questions, as if he does so fail, the assessment panel will be empowered to authorise his prosecution for the original offence. Clause 34 provides for the undertakings that may be required by the panel from the alleged offender. All these undertakings relate to assisting the person to overcome his drug dependence. An undertaking is not to be effective for more than six months. Clause 35 provides for the manner in which the proceedings of an assessment panel will be conducted. All such proceedings will be in private.

Clause 36 provides that a prosecution for a simple possession offence shall not proceed except upon the authorisation of an assessment panel. A panel may only give such an authorisation in certain situations. For example, if the alleged offender fails to appear before the panel, refuses to give an undertaking or fails to comply with an undertaking, the panel may authorise his prosecution. It is made clear that the alleged offender may be charged with the offence, remanded in custody or released on bail, but no further steps may be taken in the proceedings unless the panel has authorised the prosecution. Where the panel decides that the alleged offender is to be dealt with by the panel, then the offender must be released if he is in custody, or must be discharged from bail, and the information withdrawn if necessary. Clause 37 makes it clear that nothing said in proceedings before an assessment panel is admissible in criminal or civil proceedings.

Part VI deals generally with penalties and forfeiture. Clause 38 provides an offence of aiding and abetting the commission of an offence, or soliciting or inciting the commission of an offence. Clause 39 provides that offences attracting prison sentences of less than five years are minor indictable offences, those attracting prison sentences of five years or more are indictable offences, and all other offences are to be dealt with in a summary manner. Clause 40 sets out the various matters that a court shall take into consideration when determining penalties. Where the offence is one of manufacturing or trading in drugs of dependence or prohibited drugs, the court shall look at the commercial or other motives of the convicted person and (except where an application for forfeiture has been made) the financial gain that is likely to have accrued to the convicted person as a result of the commission of the offence.

Clause 41 is the usual provision that renders company directors liable for offences committed by the company. Clause 42 provides for forfeiture to the Crown of items the subject of offences against the Act. Clause 43 relates to forfeiture where a person is convicted of an offence against section 29 (that is, manufacturing or trading in drugs of dependence or prohibited drugs). In such a case, the court may order forfeiture to the Crown of anything received by the convicted person or a related person or body (as defined in clause 4) in connection with the commission of the offence, or anything acquired as a result of the commission of the offence. Property of the convicted person used in connection with the commission of the offence may also be forfeited. Where the prosecution applies to the court for forfeiture of certain property pursuant to this section, the

onus shall lie upon the defendant to prove that the property is not liable to forfeiture.

Clause 44 provides for the sequestration of property that is liable to forfeiture under the preceding clause. Clause 45 provides for the joining of a related person or body to an application for forfeiture or sequestration of his property.

Part VII sets out the powers of authorised officers. Clause 46 provides that members of the Police Force are authorised officers, and the Minister may appoint such other persons to be authorised officers as he thinks fit. Clause 47 provides for the appointment of analysts and botanists. Clause 48 sets out the powers of entry, search and seizure. The powers given to members of the Police Force are similar to those currently set out in sections 11 and 12 of the Narcotic and Psychotropic Drugs Act. Except for routine inspections of licensed premises during business hours, or where urgent action is required, the powers conferred by the section require a warrant. A warrant is not to be issued unless the officer of police, special magistrate or justice is satisfied that there are reasonable grounds for the warrant. Clause 49 provides for the analysis of substances by analysts or botanists. Clause 50 provides immunity from liability for authorised officers and accompanying persons, and analysts and botanists.

Part VII deals with miscellaneous matters. Clause 51 provides generally for the granting, refusing or revoking by the Health Commission of licences, authorisations and permits. Clause 52 empowers the Health Commission to grant research permits in respect of poisons, prohibited drugs and therapeutic substances and devices. Clause 53 empowers the Health Commission to prohibit certain manufacturers, suppliers, doctors or chemists from manufacturing, supplying, etc., a specified prescription drug, or any other substance or device, where an offence against the Act has been committed or a licence condition breached, or where a prescription drug has been irresponsibly prescribed or supplied. An appeal to the Supreme Court lies against such an order of the Commission. Clause 54 empowers the Health Commission to circulate amongst doctors, chemists, hospitals, etc., a list of names of persons who the Commission believes on reasonable grounds have obtained or attempted to obtain a prescription or drug by unlawful means. This list is privileged, but may not be disclosed to any person other than those to whom it is circulated.

Clause 55 prohibits authorised officers and others from disclosing trade secrets. Clause 56 empowers the Health Commission to obtain information from certain persons, as an aid to the Commission in its administration of the Act. Clause 57 sets out evidentiary provisions relating to analysis, and the holding of licences, etc. Clause 58 provides that the moneys required for the Act are to be appropriated by Parliament. Clause 59 is the regulation-making power. The Advisory Council is to be consulted on all proposed regulations. Exemptions may be given by, or under, the regulations. The regulations may incorporate a standard, code or pharmacopoeia. Penalties for breach of a regulation are not to exceed $1 000.

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

PRISONS ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 7 December. Page 2468.)

Clause 2 passed.

Clause 3—'Arrangement.'

The Hon. K.T. GRIFFIN: I oppose the clause. This clause presents something of a dilemma because it really provides only a heading for a later Part dealing with the substantive provisions of the Bill. If the change in heading is not opposed, it could be presumed that the more substantive provisions of the Bill will follow automatically.

I intend to speak breifly to the clause in opposing it and to give reasons why the substantive changes will not be supported by the Opposition. If a division is necessary, perhaps it will not be required on this clause, and we can divide on later clauses dealing with the substantive question. To some extent the Committee's decision in respect of this clause will be indicative of its likely decision on the more substantive questions.

The conditional release provisions of the Prisons Act are important in the Opposition's view. They provide that upon remission of a sentence for good behaviour and at the point of release the offender continues to be subject to the original sentence of imprisonment until that original sentence has expired. If there is no reoffending during that conditional period of release, the offender is not liable to return to prison to serve the balance of his term for the balance of an unexpired sentence.

Certain incentives are built into that sort of provision for conditional release because the offender is required to behave under threat of returning to prison if he does not so behave. If he commits another offence to which a prison sentence attaches during that period, the offender is liable to be imprisoned for that offence and there is the additional penalty of serving the balance of the early term which is seen as some sort of incentive in regard to behaviour. The opposition to the change in heading opposed by the Opposition reflects the adherence by the Opposition to the principles of conditional release.

The Hon. C.J. SUMNER: I oppose the honourable member's suggestion. The Hon. Mr Griffin said that this is the fundamental part of the Bill and the basis of the difference between the Government and the Opposition. The Government's proposal does away with the still dormant proposals for conditional releases. I think that in the scheme of the legislation there is no place for conditional release. However, that does not mean that prisoners will get it any easier. That should be understood by the Committee. It means that a prisoner will be under some obligation in relation to all of his sentence as determined by the court. An offender will either be in prison or out on parole. If a prisoner is out on parole, he will be subject to the supervision of a probation or parole officer.

The Hon. K.T. Griffin: That doesn't occur in every case.

The Hon. C.J. SUMNER: It depends on the conditions of release. In any event, an offender will be under an obligation for the period of his sentence. That is quite clear in the Government's Bill. It is probable that an offender will be under the supervision of a parole officer for the period of his parole. However, if that is not the case and a parolee breaches a condition of his parole, he can be returned to prison. It seems to me that there is no argument, in terms of conditional release, in the suggestion that the Government's proposal is softer or easier. The Government's proposal will mean that a prisoner will be under some sort of obligation for the entire period of his original sentence, which is similar to the proposal for the Correctional Services Act. Therefore, on that basis, I do not believe that there are any grounds for acceding to the Hon. Mr Griffin's suggestion.

The Hon. K.T. GRIFFIN: It is part of the whole scheme of the Bill, and it is in that context that the Opposition believes that a change from conditional release, although it is dormant at the moment, should not be contemplated. Although we are supporting some provisions of the Bill,

significant changes to the existing legislation are opposed. This clause is a significant change.

The Committee divided on the clause:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, C.J. Sumner (teller), and Barbara Wiese.

Noes (8)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons Anne Levy and K.L. Milne. Noes—The Hons L.H. Davis and Diana Laidlaw.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 4—'Interpretation.'

The Hon. K.T. GRIFFIN: I oppose the clause, although I do not intend to divide on it. However, I may still divide on other substantive provisions relating to conditional release. The clause gives me the opportunity to make further comments about the Attorney-General's response on the last clause about Government proposals for parole and conditional release. I draw his attention to section 42nc and the amendment that the Government is proposing. Under that section the Parole Board will have the capacity to discharge a person from parole and, under the Government's amendment which follows later, on discharge from parole the prisoner then is absolutely free. That is a different situation from conditional release, where the offender cannot be released from the conditional release period. That is an important point and ought to be highlighted in this clause. I oppose the clause for the same reasons as I oppose clause 3.

The Hon. C.J. SUMNER: It may be that the Parole Board can discharge prisoners from parole. That is a power it has at the present time, but it would be used only under extremely exceptional circumstances. My advice is that it has not been used in the past.

The Hon. K.T. Griffin: It has. Lifers have been out on parole in less than 10 years.

The Hon. C.J. SUMNER: It may have been used, but it is a sensible proposition in any event as far as life imprisonment is concerned. The power has always been there. I still maintain what I said in response to the previous amendment: that the Hon. Mr Griffin is correct—a prisoner would be under parole for the whole of a sentence unless the Parole Board took the positive step of discharging that prisoner from parole. That happens rarely. It may happen in the case of lifers in certain circumstances; otherwise, the person will be on parole for the rest of his life, which certainly would not be appropriate in some circumstances. As to the rest, I understand that that power is used sparingly.

In the great majority of cases, a person would clearly be under parole for the whole of the head sentence unless the Parole Board, for particular reasons or circumstances applying to a certain prisoner, decided that that person should be discharged from parole. If that happened, what the honourable member says is correct: the person would be released from parole. That can happen, in any event, now and could happen under the scheme involving conditional release.

The Hon. K.T. GRIFFIN: There could be no release from conditional release. That, of course, is the difference. The other factor is that if under the Government's proposal there is a breach of parole condition, while the prisoner may be returned to prison he has got to be released from parole when he has served the period for which he was returned, up to a maximum of three months. So there are quite marked differences between the concept of conditional release and a breach of parole condition where, again, there is an obligation of being released after being returned to the prison.

The Hon. C.J. SUMNER: I accept that there are some distinctions, but I do not believe that they are such as to cause concern. Basically, what I said in relation to the parole period is correct—a prisoner is under parole for the whole of his head sentence, possibly under supervision, whereas, under conditional release, if not actually under supervision a person can only be returned to prison for committing another offence. It may be that a prisoner under parole is returned to prison for a breach of parole terms, so there is a slightly different emphasis there. However, in practical terms the distinction is not very great.

Clause passed.

Clause 5—'Transitional provisions relating to the Prisons Act Amendment Act (No. 2), 1983.'

The Hon. K.T. GRIFFIN: This clause relates to the transitional provisions as they affect the Parole Board. I intend to oppose the clause and divide if I am not successful on the voices. Basically, this clause seeks to turn out all the members of the current Parole Board with a view to making new appointments. The membership of the Parole Board is specified in a later section of the principal Act and is dealt with in a later clause of the Bill.

There seems to be no logical reason why the present Board ought to be unceremoniously dumped and a new Board appointed, because if one looks at what the Bill proposes for the criteria or qualifications for membership of the Board, it provides:

> *(a)* one, who shall be the Chairman of the Board, shall be—
> (i) a judge of the Supreme Court;
> (ii) a person who holds judicial office under the Local and District Criminal Courts Act, 1926;
> (iii) a person who has retired from the office of Judge of the Supreme Court or from judicial office under the Local and District Criminal Courts Act, 1926, but who has not attained the age of seventy years;
> or
> (iv) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology or penology, or other related science;

Therefore, the qualifications necessary for chairmanship, for example, will be satisfied under that change in qualifications if the present Chairman is retained. The same applies to other members of the Board, even in respect of the requirement that at least one member should be a man and one should be a woman. Mrs Wallace has been on the Board since 1973 and has served it very well and ably during that time. Therefore, the minimum criterion would be satisfied. The only aspect in which the proposed new qualification would not be satisfied is in respect of the requirement for one of the members of the Board to be of Aboriginal descent. I have already indicated that I certainly do not believe that there ought to be a provision in the principal Act which says that any member ought to come from a particular racial background.

As the Chairman of the Parole Board said in his public comments, the majority of the prisoners of Aboriginal descent do not ordinarily come within the purview of the Parole Board, anyway. Therefore, I really cannot see the need to have clause 5 in the Bill, or for any changes to be made to the present Parole Board in terms of the criteria or qualifications for membership. If the Government of the day wants to make changes in the actual membership as vacancies occur, then that is its prerogative, and that has occurred from time to time. However, generally the Parole Board and its membership have worked satisfactorily as presently constituted. I hope that this amendment is not carried, so I oppose it.

The Hon. C.J. SUMNER: I support the amendment. Again, this is a matter of the fundamental difference between the Government and Opposition which believes that the clause, as currently in the Bill relating to composition of the Board, should be maintained. I believe that it is particularly important that there be a person of Aboriginal descent on the Board. Whilst I appreciate that that has some unusual features about it, it also has to be realised that, in terms of

the prison population in South Australia, Aborigines are grossly over-represented in terms of their numbers in the community. I think that in general terms the proportion of Aborigines in our gaols under sentence is about 15 per cent, compared to something less than 1 per cent of the entire population. At certain times, including remandees, the number of Aborigines in prisons exceeds 15 per cent, and at such times may rise to in the vicinity of 20 per cent to 30 per cent.

The Hon. J.C. Burdett: Many of them are there for short terms.

The Hon. C.J. SUMNER: I accept what the honourable member says. Many of them are for short sentences; that is quite true. Those are proportionally represented by offences of drunkenness, disorderly behaviour, minor assaults and the like. I concede that. Nevertheless, there is still a significant number in prison for serious offences requiring sentences of more than 12 months, which will bring into operation the parole provisions under this new Act.

So, I understand the uniqueness of the situation, but the Government feels that it is justified in this, given the real problems that exist with Aborigines in the justice system in this State. Anything we can do to try to reduce what is a situation of, I suppose, discrimination will be useful. I am not suggesting that it is discrimination in the positive sense, but in the sense that Aboriginals are represented to quite an extraordinary extent. I believe that positive measures need to be taken. I am not suggesting that a member be placed on the Board automatically. I think the provision goes some way towards providing representation for that very disadvantaged group in the criminal system at that very important point in the system, namely, the Parole Board. The matter of male/female representation has been debated on a number of occasions in recent times. I am pleased that the honourable member is not opposing the measure.

The Hon. K.T. GRIFFIN: I still cannot accept the special provisions in a later clause that we will be dealing with in respect to membership of the Parole Board. With respect to the clause before the Committee, can the Attorney-General tell me whether any of the current members of the Parole Board will be invited to join the new Board, and, if any will be so invited, who will they be?

The Hon. C.J. SUMNER: I cannot answer that question. Obviously, that is a matter that has not yet been determined by the Chief Secretary or the Government. It will be a matter for the Government to determine if and when the legislation is passed. The Chief Secretary is a very gregarious, outgoing Minister. He bears no grudges against people, and I am sure that he will consider the question of membership of the Parole Board on its merits. But truly, it is not possible for me to answer the honourable member's question.

The Hon. K.T. GRIFFIN: I would not have thought that a prerequisite to making decisions is that a Minister should be gregarious and outgoing.

The Committee divided on the clause:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, C.J. Sumner (teller), and Barbara Wiese.

Noes (8)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons Anne Levy and K. L. Milne. Noes—The Hons L.H. Davis and Diana Laidlaw.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 6—'Regulations.'

The Hon. K.T. GRIFFIN: I oppose this clause. It relates to section 14 of the principal Act which allows the Governor to make regulations. That part which is to be deleted is the power to make regulations for remission of any part of a sentence of any offender upon certain conditions. It is related to removal of conditional release. I oppose the clause, but if it is passed on the voices I will not call for a division.

Clause passed.

Clause 7 passed.

Clause 8—'Release of a prisoner from prison.'

The Hon. R.I. LUCAS: I take it that the practical administration of this clause is that it would be highly unlikely that the Director would institute this provision for someone who was in prison for only very short periods of 30 or 60 days. It is intended, I take it, to be used for persons who have been sentenced for particularly long periods. The new section allows the Director to release the prisoner on any day during the period of one month preceding the day on which he is due to be released from prison.

The Hon. C.J. SUMNER: There has to be some flexibility. Obviously, it would not be used for prisoners with a sentence of only one month.

The Hon. R.I. Lucas: It is possible.

The Hon. C.J. SUMNER: Yes, but it would be against the spirit of the legislation. I understand that it is designed to give the Director power, where a prisoner's release date may fall on New Year's day, for instance (when he may well have spent two years in prison), to authorise his release on Christmas eve, or something of that kind.

I understand that is the rationale in the section. It could be used in the first situation outlined, but if there is any suggestion of that happening, then the director could be subject to criticism. In my explanation of the reasons for the clause I have said that it is to give flexibility to cope with those special sort of circumstances arising from time to time.

The Hon. R.I. LUCAS: Did the Government, in drafting this Bill, consider in any way making this provision applicable for certain lengths of sentences: that is, exempting small sentences of less than three months? Did it consider it and, if so, was it rejected for any reason?

The Hon. C.J. SUMNER: No, it was not considered in that way. The section is there no matter what the sentence. It may be that in a sentence of a month there could be a situation where a prisoner's term may conclude on Easter Monday, having spent a month in prison, and the Director may feel that release on Maunday Thursday might be appropriate. That is the sort of situation envisaged where it could be used.

Clause passed.

Clause 9 passed.

Clause 10—'The Parole Board of South Australia.'

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

Page 3, lines 21 to 37—Leave out all words in these lines.

This amendment removes effectively subclause *(e)* of this clause. The present membership of the Parole Board has adequately served the administration of justice, and I see no reason to change. In 1981 the membership was increased from five to six members and of those one was the Chairman, who was to have an extensive knowledge of, and experience in, the science of criminology or penology, or any other related science; one was to be a legally qualified medical practitioner to have extensive knowledge and experience in the science of psychology and psychiatry; one was to be a person who had extensive knowledge and experience in the science of sociology; and three were to be nominated by the Minister.

Under the amendment, the range of persons who can be appointed to Chairman has been extended to those holding judicial office in the Supreme Court or the District Criminal Court and who have retired from such a judicial office, but who have not attained the age of 70 years. I have no

objection to the widening of those qualifications, but I would have presumed that the person holding judicial office was already covered in the present criteria. That must have been so because Dame Roma Mitchell (who was then the Hon. Justice Mitchell) was appointed Chairman and held that position for five years and satisfied the criteria. I am not quite sure of the reason for the change, except perhaps the Government wants to impress the prisoners by having someone who holds judicial office.

There is already a woman on the Board but we do not intend to oppose the amendment the Government is moving to make it mandatory that at least one member is a woman. However, we will oppose the provision that at least one of the members is to be a person of Aboriginal descent.

We oppose that part of the Bill that allows the appointment of a Deputy Chairman, because that is a prerequisite to the Board sitting in divisions, and I will have more to say about that later. Therefore, I am prepared to support part of the clause but not that part relating to the two matters to which I have just referred.

The Hon. C.J. SUMNER: The substantive issue has been canvassed under the previous clause, so I do not intend to recapitulate on the question of membership of the Board of a person of Aboriginal descent. The honourable member referred to a person of judicial office being Chairman. That is a matter of some contention, and it must be admitted that the honourable member, as the former Attorney-General, would no doubt know the views of the courts on these matters. Whether we could get a judge to chair the Board is a bit problematical, and I can see the reasoning behind the Chief Justice's reluctance to be involved.

However, if the Government could get a judge to chair the Board, it would certainly give the Board some additional status. In the past judges of the Supreme Court, namely Mr Justice Chamberlain and Justice Roma Mitchell, have been the Chairman of the Parole Board. However, I know that the present Chief Justice takes the view that basically the Parole Board is not a judicial function—it is exercised as an administrative function, and therefore the Chief Justice believes it is not appropriate that a judge of his court should preside over the Parole Board. However, that matter will have to be tackled, and I merely wish to acknowledge the difficulties that may arise in relation to that matter.

The Hon. R.I. LUCAS: There may be a conflict if the sentencing judge and the judge who is Chairman of the Parole Board are one and the same person. A submission from the Parole Board on the proposed new parole system points out that the present Chairman of the Parole Board is not a judge. It was thought by the Government of the day that questions of confidence might arise or seem to arise if a sentencing judge sat on the Parole Board.

I do not wish to pursue that matter any further: suffice to say that I agree with the comments in that submission on the proposed new parole system, but I see some problems in that respect.

The Hon. C.J. SUMNER: I do not see that a conflict will arise between decisions of the Board and the sentencing judge, particularly under the new scheme.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The Parole Board may be chaired by a judicial officer, and there are always conflicts in the courts between judges. I do not say that in any alarmist way, but decisions of judges in the first instance can be appealed against. An appeal may upset the decision of the judge in the first instance. That is a natural part of the judicial process: it is not a matter of conflict between the sentencing judge and the judge who may chair the Parole Board. There is a more fundamentl reason behind the Chief Justice's objection. He sees the activities of the Parole Board as being the exercise of an administrative function, not a judicial function.

It is interesting to note at this point that some members of the Parole Board may tend to see their role as more of a judicial function; they seek independence from the Department and this sort of thing. Basically, the granting of parole is essentially an administrative function. The Chief Justice's objection is that the distinction is being blurred. He has made a number of statements, over the years during the time of successive Governments, which reinforce his view in respect of the separation of the Judiciary from the Executive.

That is one problem, and there is the related problem of embroiling a judge in what may become a political controversy because the activities of the Parole Board may have political connotations in regard to decisions to be made and in regard to actions of the Board in the public arena which may not be appropriate or consistent with the judicial role. Basically, that is the argument.

The Hon. R.I. LUCAS: The Attorney has raised another matter concerning the independence of the Board and the Department. The Parole Board's submission states:

> It is essential that the Parole Board is and is seen to be autonomous and independent of the Department of Correctional Services, the Police Department and, for that matter, any other Government department. Ideally, the Board would seem better attached to the Attorney-General rather than the Chief Secretary who is responsible for the Police Department and the Department of Correctional Services.

Whilst accepting that the present Chief Secretary is a gregarious and outgoing fellow, has the Attorney any views on the Parole Board and on whether it would be more appropriate for it to come under the wing of the Attorney rather than that of the Chief Secretary?

The Hon. C.J. SUMNER: No, I do not have any views on that topic. The Parole Board is appropriately located. There is some confusion in the Board's mind as to its exact status. The Chief Justice takes the view that it is essentially an administrative function and for that reason is unlikely to make judges available to chair the Board. On the other hand, the Board seems to be saying that it has a *quasi* judicial function. My view is that it is more an administrative function and that it is not therefore essential for the Board to be seen to be independent of everyone and, in effect, to have the status of a court, particularly under the provisions of the Bill where basically the Board is setting conditions for release rather than determining actual release. In that context it is important that there be considerable interface and communication between the Board and the Department as to the terms of the release.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. L.H. Davis. No—The Hon. Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 11—'Proceedings of the Board.'

The Hon. K.T. GRIFFIN: I oppose this clause, which allows the Board to sit in separate divisions. The Chairman of the Board will preside over the proceedings of one division and the Deputy Chairman over the other division. As I said during the second reading debate, the Deputy Chairman does not necessarily have any qualifications appropriate to chairing a division of the Parole Board. That concerns me, because decisions will have to be taken that involve the

weighing of material presented to the Board in respect of whether or not a prisoner should be granted parole.

Although sitting in divisions may have some superficial effect of at least giving the impression that the work of the Parole Board is being accelerated, any decisions taken are seen to be made by the full Parole Board. Therefore, any decision made should be on that basis. Another problem is that the Aboriginal member may be sitting in one division while the female member may be sitting in the other division. If that occurs, we are not maintaining the principle sought by the Government, that is, a broad representation in relation to all applications made for release on parole.

If it is intended that all those applications for parole from an Aboriginal prisoner should be made to the division which includes the Aboriginal member of the Board and that those few applications from women prisoners should go to the division that includes the woman member, I suggest that that is quite an inappropriate division of responsibility and an inappropriate mechanism for assessing the desirability or otherwise of that person being released on parole. There are too many inconsistencies in this proposal to make it work. If there is a Parole Board, it ought to act as a Parole Board. It has wide responsibilities although, under the Government's proposal, it will have fewer responsibilities because there will be automatic release at a fixed time. To that extent, I suppose it will largely have only a role of supervising parolees.

However, if the Bill goes through, obviously the amount of work that the Board will have to do will be very much reduced on what is currently being undertaken by it. That contradicts the suggestions being made that the Parole Board is overworked. It will be relieved of much of that work if the Government proposals go through. All in all, I see no merit in the proposal at all. It is contrary to the general principles of consideration of the interests of prisoners and the community if we do not have all members of the Parole Board entitled to attend meetings of the Board which will consider certain applications. For those reasons, I oppose the clause.

The Hon. C.J. SUMNER: The Government does not support the honourable member's proposition. It cannot see any difficulty with the Board sitting in divisions as that situation pertains in other areas. The intention is clear and the Act will provide that, where there is a matter about which the Board is unable to agree as a division, the matter is to go before the full Board. I understand that it is the intention for contentious matters to be dealt with by the full Board (such matters as revocations and cancellations), but that those less controversial matters and issues on which there is little disagreement will be conveniently dealt with by splitting the Board into two divisions.

The Hon. I. GILFILLAN: The Democrats support the clause in its present form. The changed nature of the work load of the Board is apparent to anyone who foresees the result of this Bill in action. There is some justification in the immediate future for providing the Board with the ability to do the routine work of setting conditions of parole as expeditiously as possible. It does have to make decisions unanimously, otherwise matters will have to be referred to the full Parole Board. A quorum for the Board is four members, only one more than the three now operating. We support the clause.

The Committee divided on the clause:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, I. Gilfillan, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Noes (8)—The Hons J.C. Burdett, M.B. Cameron, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons C.W. Creedon and Anne Levy.
Noes—The Hons L.H. Davis and R.C. DeGaris.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 12—'Powers of the Board.'

The Hon. K.T. GRIFFIN: The Opposition opposes clause 12. Section 42f of the principal Act provides at present that a summons may be issued under the hand of the Chairman or a member, and certain other matters under this section relating to the powers of the Board require action by the Chairman. The amendment seeks to delete the reference to the Chairman. As I understand it, ordinarily when summonses are to be issued and other action taken it is a matter for the Chairman, and I see no reason at all for deleting this. Because it is not a matter of great substance, if I lose it on the voices I do not intend to divide.

Clause passed.

Clause 13—'Reports on certain prisoners.'

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

Page 5, lines 4 to 7—Leave out paragraph *(b)*.

The principal section 42g (2) provides that the Board shall, whenever so required by the Minister and, in any case at least once in every year, furnish the Minister with a written report on every prisoner serving a sentence of life imprisonment or of indeterminate duration.

The amendment inserts in subsection (2), a requirement that the Board shall also furnish the Minister with a written report at least once in every year in respect of every prisoner serving a sentence for a term of more than one year in respect of whom a non-parole period has not been fixed. That will undoubtedly extend to a significant number of prisoners presently in gaol. It is obviously part of the Government's scheme and, to that extent, I understand the reason why it is in the Bill. However, because it is part of the Government's scheme and is inconsistent with the position which the Liberal Party desires to retain, I oppose the clause.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, I. Gilfillan, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons L.H. Davis and R.C. DeGaris.
Noes—The Hons C.W. Creedon and Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 14—'Court shall fix or extend non-parole periods.'

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

Pages 5 and 6—
Leave out paragraphs *(a)* to *(j)*.
Leave out paragraphs *(b)* to *(c)*.

These are quite extensive amendments, because they deal with one of the key clauses of the Bill. First, the principal section requires a court to fix a non-parole period in respect of sentences of imprisonment in excess of three months. The Government's proposal is to require a non-parole period in respect of sentences exceeding one year. The Opposition cannot accept that change. We believe that three months is an appropriate sentence after which non-parole periods should be fixed. A person who is sentenced to a year in gaol can be as much of a problem as a person who is sentenced for more than one year. For example, the penalty for common assault was increased during the time of the Liberal Government from one year to three years. It is quite likely that, if a serious case of common assault were brought, the penalty of a year's imprisonment may be fixed, and then under the Government's proposal that person would be eligible for parole at any time while serving that sentence

of one year. I believe that that is a very significant and serious change, and I cannot support it in principle.

Under this clause the court is also to be given power to decline to fix a non-parole period where it thinks there is a special reason for doing so. Again, I do not believe that courts ought to have any flexibility in this respect. They have flexibility with respect to the non-parole period, and if they determine that there is a need for an early review of the prisoner by the Parole Board, then they can fix a suitably low non-parole period. Therefore, I see no reason at all to give the courts a way out of fixing a non-parole period.

A person who is sentenced before this Bill comes into effect and who has had no non-parole period fixed may apply to the sentencing court for an order fixing a non-parole period. I can see that that is the purpose of enabling the procedures of the Bill to be applied to sentences prior to its operation, but if a non-parole period has not been fixed I see no reason to change the working rules to accommodate those persons through the automatic release provisions of this Bill. The Parole Board will continue to review the sentence if there is no non-parole period fixed. I would have thought that that was adequate in order to ensure that the progress of the prisoner through the system was adequately monitored.

The next provision is an amendment, which is included in the clause, that the Crown can apply to the sentencing court for an order extending a non-parole period fixed in respect of a sentence or sentences of a prisoner where that non-parole period is fixed, but, where the Crown makes an application, the court is only permitted to have regard to the likely behaviour of the prisoner (should he be released on parole) and also his behaviour while in prison, but only in so far as it may assist the court in predicting his behaviour if released on parole, and such other matters as the court thinks relevant.

In respect of a prisoner sentenced before this Bill comes into operation where there is no non-parole period and the prisoner is applying for that to be fixed, the court is not to have regard to the behaviour of the prisoner while in prison. I cannot accept that the court should be so constrained in respect of determining whether or not a non-parole period should be imposed and, if it should, to what extent, or whether a non-parole period should be increased. The behaviour of the prisoner is, in my view, a key element in any decision which would be made by the court in respect of that matter.

It is also interesting to note that the court is not to make an order extending the non-parole period unless it is satisfied that it is necessary to do so for the protection of any other person or of other persons generally. That is really tying the hands of the court behind its back so that it is very much constrained in determining whether or not a non-parole period ought to be extended. I do not believe that that sort of constraint should be included.

I notice that the Attorney-General is moving an amendment which removes the right of a prisoner to apply to the sentencing court for an order reducing the non-parole period. I certainly support that because I think it is an improvement, although not an overall improvement, to the basic scheme which the Government is seeking to adopt. New subsection (4c) is consequential upon that amendment. I notice that the Hon. Ian Gilfillan has an amendment which relates to this clause that is presumably consequential. I think the substantial issue in respect of the honourable member's scheme to make the Bill retrospective is in clause 15. I will address that issue at that stage.

The Hon. C.J. SUMNER: The Government opposes the amendments. For practical purposes, the fixing of the non-parole period comes in at one year and that is considered a practical solution to the problem. With respect to current prisoners applying to the sentencing court for the fixing of the non-parole period, the Government feels that that is necessary in order to achieve consistency between those people who have had a non-parole period fixed and those who will have a non-parole period fixed in the future, and those people who may have been sentenced under a different regime. Therefore, the Government feels that the Bill is satisfactory.

Finally, giving the Crown the right to apply to the sentencing court for an order extending the non-parole period is really a safety valve to provide the Crown with some rights in relation to very difficult and exceptional cases. I oppose the amendments.

The Hon. R.I. LUCAS: A number of speakers in both Houses have raised the question as to whether under the new proposal 'non-parole' is an appropriate name for what will occur. 'Non-parole' in many people's minds has meant not getting out of prison. Under the new system that will not be the case. Has the Government considered at all changing the term 'non-parole' if its proposals are successful?

The Hon. C.J. SUMNER: The short answer is 'No'. Everyone knows what is meant by 'non-parole' period. However, if honourable members have any bright ideas I will be interested to hear them.

The CHAIRMAN: I have sought advice and—

The Hon. C.J. SUMNER: With great respect, although I do not want to argue, it is clear cut in that, if the amendment moved by the Hon. Mr Griffin was passed, it would render the Hon. Mr Gilfillan's amendment irrelevant, and this seems to be a somewhat odd procedure to adopt.

The CHAIRMAN: To enable the amendment to be considered, I propose to put the question that the words to be struck out by the Hon. Mr Griffin stand as printed. If those words stand, the Hon. Mr Gilfillan may move his amendment, but otherwise it appears that the clause would have to be recommitted to allow the other amendment to be considered.

The Hon. I. GILFILLAN: If those words were deleted, I would withdraw my amendment.

The CHAIRMAN: I understand that. We would not be confused if we worked along the lines I have indicated—it will work out all right. I put the question that the words proposed to be struck out by the Hon. Mr Griffin down to and including 'imprisonment' on line 35 stand as printed.

The Committee divided on the question:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, I. Gilfillan, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Noes (8)—The Hons J.C. Burdett, M.B. Cameron, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pairs—Ayes—The Hons C.W. Creedon and Anne Levy. Noes—The Hons L.H. Davis and R.C. DeGaris.

Majority of 1 for the Ayes.

Question thus carried.

The Hon. I. GILFILLAN: I move:

Page 6, line 35—After 'prisoner' insert 'after the commencement of the Prisons Act Amendment Act (No. 2), 1983'.

My amendment is consequential and depends on my substantial amendment to clause 15, but I will canvass the whole position now. Last evening I indicated that the purpose of my amendments had been overlooked, I thought regrettably, by the Government and the Department, so that a situation would have arisen under which inmates in prisons in South Australia would have been deprived of any incentive to co-operate with the instructions, regulations and discipline in prisons. Perhaps for some people in the community that may not be a serious oversight, but for people close to the prison system and working in it (I refer particularly to correctional officers, Chief Correctional Officers, probation-

ary and parole people) their concern is dramatic and overwhelming.

The approaches and responses that I have had from them indicated their concern and horror when they realised what the original consequence of the Bill would be. To the credit of the Government and the Chief Secretary (Hon. G.F. Keneally), once I was able to point out the consequences, it was indicated that the Government would support the amendment and accept it as an integral part of the Bill. My amendment seeks to ensure that all prisoners serving non-parole periods in South Australian prisons will become eligible for remission on the same basis as prisoners sentenced from the date of commencement of this legislation. I again refer to the fact that the Hon. Mr Griffin recognised this deficiency in the original Bill.

The Hon. K.T. Griffin: I did not say it was a deficiency—it is an inconsistency.

The Hon. I. GILFILLAN: I would say that an inconsistency is a deficiency.

The Hon. C.J. Sumner: Not in politics.

The Hon. K.T. Griffin: Not in law, either.

Members interjecting:

The Hon. I. GILFILLAN: I stand corrected and in the future I will distinguish between 'deficiency' and 'inconsistency' in regard to details of a Bill. If the Attorney thinks that by staring at the clock and by making wind-up signs he will make me hurry my comments, he is wrong. I have been extremely patient while observing the most extravagant use of words by members throughout the Chamber and there has been only a small percentage that I would have preferred to listen to.

The Hon. C.J. Sumner: We agree with you.

The Hon. I. GILFILLAN: I do not need wind-up signs and the Attorney's looking at the clock. I do not intend to discuss in detail my reactions to the criticisms of the Bill in totality. My first amendment is consequential to a subsequent amendment to clause 15, which seeks to ensure that when the Bill comes into operation there will be a climate that can maintain good relations and discipline within the prison system and a sense of justice between those imprisoned before and after the commencement date of the legislation.

I believe that the amendment is essential for the proper operation of the Bill. It is only in the early stages that it will have any significance. Once those prisoners currently serving non-parole periods have been released from prison, its significance disappears. However, in the early stages of the legislation it is important because everyone serving non-parole periods in the prison system will be affected, unless the amendment is carried.

The Hon. K.T. GRIFFIN: I am certainly most concerned about the amendments. I pointed out that there was an inconsistency between those sentenced after the Bill comes into operation and those sentenced before. I did not concede that that was a deficiency. My concern is that, if the amendment is carried, we will have to consider prisoners such as McBride, who was sentenced to a 20-year non-parole period under a totally different regime. As a result of the Bill McBride will be eligible for automatic release after serving only 13 years. I think that is disgraceful, because the sentencing court imposed a non-parole period on the basis that he should not be eligible to apply for parole for 20 years.

I have on file an amendment that will be debated after consideration of this clause. My amendment will ensure that prisoners who received non-parole periods before the Bill comes into operation will not be released until their non-parole period has been reviewed by the sentencing court. That position should apply if we are to proceed along the track of automatic release.

My amendment will ensure that the courts have an opportunity to reconsider non-parole periods fixed before this Bill comes into operation, in relation to automatic release provisions. However, I will explore that point further when we get to it. My amendment is on file because, having seen how the numbers are going, I am sure that the Hon. Mr Gilfillan's amendment will be carried. If the Hon. Mr Gilfillan's amendment is carried, I will not call a division, but I hope that, when the Committee considers my amendment to insert new clause 14a, the Attorney-General will give it sympathetic consideration.

The Hon. R.I. LUCAS: I strongly oppose the amendment for very much the same reasons as expressed by the Hon. Mr Griffin. I feel strongly about this provision and the Hon. Mr Gilfillan's consequential amendment to clause 15. Prisoners have been given non-parole periods under a different set of laws. It appears that, with the combination of the Government and the Democrats, there will be a new set of rules. If that happens, so be it. The Hon. Mr Gilfillan seeks to make the legislation retrospective. There are some prisoners who have been sentenced under the old laws to non-parole periods of between five and 20 years; under the new set of laws those same prisoners will now receive remissions. Therefore, they will no longer have to serve a non-parole period because they will be able to earn remissions of up to one-third off their non-parole periods. The Hon. Mr Griffin referred to the McBride case where that gentleman—

The Hon. K.T. Griffin: He's not a gentleman.

The Hon. R.I. LUCAS: That offender was sentenced to a 20-year non-parole period on the basis that the sentencing judge believed that he should not be released into the community for 20 years.

The Hon. K.T. Griffin: At least.

The Hon. R.I. LUCAS: Yes, at least 20 years. The Hon. Mr Gilfillan wants us to accept a situation where that person can be allowed back into the community seven years earlier than the time set by the sentencing judge. The Hon. Mr Gilfillan may say that in that case the Crown might appeal.

The Hon. K.T. Griffin: It can't appeal.

The Hon. C.J. Sumner: Yes, it can.

The Hon. K.T. Griffin: You have tied their hands behind their backs.

The Hon. C.J. Sumner: New subsection (2b) of section 42i covers it.

The Hon. K.T. Griffin: You have reduced all the powers of the court.

The Hon. R.I. LUCAS: The Hon. Mr Griffin has pointed out that the Government's hands are effectively tied behind its back in regard to the appeal provision. It is not just the McBride situation which has attracted a great amount of publicity and on which the Government may try to institute that provision.

This proposal of retrospectivity put up by Mr Gilfillan and supported by the Government will apply to a whole range of criminals who have had non-parole periods set and who might not have attracted in the press and media the same degree of publicity that the McBride case has attracted. Nevertheless, such people have had parole periods set under the old law and, because there may not be any publicity, the Government may not feel disposed to institute an appeal. Mr David Angel, the Chairman of the Parole Board, has suggested that, if the changes go through, judges will fix longer non-parole periods, and some people believe that that may be the case. Whether or not that will happen, we are not in a position to say. However, the Hon. Mr Gilfillan and the Government want people like McBride and others, who have not drawn the same amount of publicity, to earn remissions up to one-third of their non-parole period as set under the old law.

The Attorney-General may wave his hands and say that that is enough, but I believe that this matter is sufficiently serious an attempt to change—

The Hon. C.J. Sumner: I understand your argument.

The Hon. R.I. LUCAS: The Attorney-General ought to reconsider his position on this and not support the amendments moved by the Hon. Mr Gilfillan.

The Hon. C.J. SUMNER: I understand the argument put up by the Hon. Mr Lucas. If this Bill goes through, we will have the potential for a great conflict in the system between those sentenced prior to this Bill coming into effect and those sentenced after it comes into effect.

The Hon. L.H. Davis: It shows how defective the legislation is.

The Hon. C.J. SUMNER: No, it is very good legislation. I appreciate the arguments but do not believe that they can be accepted. The difficulties that have been outlined have been exaggerated. In the case of McBride, there will not be automatic release after 13 years. A person sentenced with life imprisonment must still run the gauntlet of Executive Council. There is no automatic release for a lifer at the expiration of the non-parole period. So, I do not believe the situation is as dramatic as honourable members might indicate.

Furthermore, I have already referred to clause 14 which inserts new subsection (2b) in section 42i and provides the Crown with the right to apply to the sentencing court for an order to extend the non-parole period of a sentence whether that sentence was fixed before or after the introduction of the Prisons Act Amendment Act (No. 2), 1983.

The Hon. L.H. Davis: Do you think that is a good procedure?

The Hon. C.J. SUMNER: It may not be entirely satisfactory, but the ultimate safeguard is that the release of such a lifer is in the hands of Executive Council. This gives the opportunity to a person to earn remissions, but whether at the end of that period he is released will depend—

The Hon. R.I. Lucas: If there is no publicity you will release him.

The Hon. C.J. SUMNER: That is not true. There is often considerable publicity about parolees who are released. I do not imagine that this particular case can be adopted in the near future. So there is a safeguard there. On balance, it is better for consistency of treatment between all prisoners within the system that the Hon. Mr Gilfillan's amendment be accepted.

Amendment carried.

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

Page 6, lines 38 to 43—Leave out subsections (4b) and (4c).

The amendment to clause 14 strikes out those proposed new subsections that provided a right for a prisoner to apply to the sentencing court for the reduction of his non-parole period. The Government believes, on reflection, that this procedure is unnecessary, in that a prisoner always has the right to seek the exercise of the Governor's prerogative of mercy to bring his sentence of imprisonment to an end, should exceptional circumstances arise.

In addition, of course, the prisoner has the right, at the time he is sentenced, to appeal against the fixing of his non-parole period if he believes that it is excessively long. In view of those two considerations, and as the proposal may well have placed a heavy burden on the courts, the decision has been made not to proceed with the proposed provisions.

Amendment carried.

The Hon. K.T. GRIFFIN: I do not propose to proceed with my amendment on page 7 because it was consequential on the earlier amendment that I lost.

Clause as amended passed.

[Sitting suspended from 1.5 to 2.15 p.m.]

New clause 14a—'Review of non-parole periods fixed before commencement of Prisons Act Amendment Act (No. 2) 1983.'

The Hon. K.T. GRIFFIN: I move to insert the following new clause:

14a The following section is inserted after section 42i of the principal Act:

42j (1) Notwithstanding any other provision of this Act, a prisoner whose non-parole period was fixed before the commencement of the Prisons Act Amendment Act (No. 2), 1983, but had not expired before that commencement, shall not be released from prison on parole unless his non-parole period has been reviewed by the sentencing court.

(2) A review under this section shall be instituted by application of the Director, and the Crown and the prisoner shall both be parties to the application.

(3) In carrying out a review under this section, the sentencing court may have regard to such matters as it considers relevant.

(4) Upon completion of a review under this section, the sentencing court may, by order—

(a) Decline to alter the non-parole period the subject of the review;

or

(b) extend the non-parole period, or substitute a new non-parole period, as it thinks fit.

(5) In this section, 'sentencing court' has the same meaning as in section 42i.

This is even more important now that the Hon. Mr Gilfillan's amendments to the previous clause were carried. My amendment seeks to provide that, where a prisoner has been sentenced before the commencement of this Bill and a non-parole period has been fixed, but the non-parole period has not yet expired, that prisoner shall not be released from prison on parole unless his non-parole period has been reviewed by the sentencing court. I want to provide that such a review is to be instituted by the application of the Director of the Department, with the Crown and the prisoner both being parties to that application.

In carrying out the review, the sentencing court is to have regard to such matters as it considers relevant, and when it has completed the review, it can decline to alter the non-parole period, extend it or substitute a new non-parole period as it thinks fit. The sentencing court is the court of the same jurisdiction as that which made the original non-parole order. The Hon. Mr Lucas has, to a large extent, dealt with the reasons for this sort of amendment. Basically, they are as follows. When the courts have imposed a non-parole period until now, they have done so on the basis that the prisoner will not be released necessarily when that period has expired, but that the progress of the offender will be reviewed by the Parole Board. The Board will decide whether or the not the prisoner should be released at that point or whether the application should be deferred or refused.

The courts have been operating since the middle of 1981 on the basis that, when a non-parole period is fixed, that is the minimum time that the offender should be in prison, except in special circumstances. In that event, application can be made to the Supreme Court for a reduction of the non-parole period. Only two such applications were made in 1982-83. It would be grossly irresponsible if this Bill allowed those presently subject to non-parole periods to be released automatically under totally different rules and it is for that reason that I want to ensure that, where a non-parole period is presently fixed, before the prisoner is released the matter should go back to the sentencing court.

The Attorney-General stated earlier that there is already provision for the Crown to apply to the sentencing court for an order extending the non-parole period in respect of a sentence, whether fixed before or after the commencement of the Prisons Act Amendment Act (No. 2) 1983. However, the difficulty is that the court is very much limited in what

it can take into consideration and it is not to make an order extending the non-parole period unless it is satisfied that it is necessary to do so for the protection of any other person or of persons generally. It does not take into account behaviour in prison, except to the extent that it might have some relevance in the light of the behaviour of a prisoner released on parole. I would suggest that those opportunities for a court to increase the non-parole period in the circumstances to which I have referred are quite inadequate, and the court will be making decisions with at least one hand tied behind its back. That should not occur. It should be given the opportunity that my amendment presents.

The Hon. L.H. DAVIS: I share the Hon. Mr Griffin's concern with the provision as it now exists. It will change radically the existing situation. It is useful to refer to statistics compiled by the Government Office of Crime Statistics headed by Dr Peter Grabosky and released by the then Attorney-General just two years ago. There was an in-depth study of 67 cases of homicide and 1 259 cases of serious assault for the three years ended 31 December 1980. About 40 per cent of the homicide offenders and 30 per cent of the assault offenders had previous assault convictions. In addition, about 40 per cent of the homicide offenders and 30 per cent of assault offenders had served previous prison terms.

The then Attorney (Hon. Mr Griffin) stated that the report indicated that bail and parole was not granted indiscriminately and that people who had been granted bail or parole were not responsible for a significant number of further offences. The provisions as they now stand seek to alter that. Certainly, in the case of homicide I would accept that provisions exist, but I am concerned with the current provisions and I believe that the amendment at least goes some way to addressing the situation.

The Hon. C.J. SUMNER: The Government cannot accept the amendment. It is a fact of life that, when new legislation is enacted, there are sometimes difficulties in transition from one scheme to another, and the sorts of problems that have been outlined in relation to this clause and to some of the other clauses come into that category. The Government believed that on balance all those prisoners who are sentenced under past legislation should be placed on the same footing and that to draw distinctions between prisoners depending on when they were sentenced would not be appropriate.

I understand the arguments of honourable members opposite. In the transition from one scheme to another there can be problems and anomalies, but on balance the overwhelming reason for opposing the amendment is to place those prisoners in the prison system on an equal basis and, if we do not do that, there will be distinctions drawn between prisoners in the same prison depending on when they were sentenced, and that can only cause problems.

The Committee divided on the new clause:

Ayes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. Barbara Wiese.

Majority of 1 for the Noes.

New clause thus negatived.

Clause 15—'Repeal of ss. 42k, 42*l* and 42m and substitution of new section.'

The Hon. I. GILFILLAN: I move:

Page 7—After line 24 insert new paragraph as follows:

'(aa) in the case of a prisoner whose non-parole period expired before the commencement of the Prisons Act Amendment Act (No. 2), 1983—as soon as practicable after that commencement;'

Lines 27 and 28—Leave out '—when that non-parole period expires' and insert 'but had not expired before the commencement of the Prisons Act Amendment Act (No. 2), 1983—when the period he has served in prison during the non-parole period and the total number of days of remission credited to him after that commencement together equal the non-parole period'.

Lines 31 and 32—Leave out 'that amending Act' and insert 'the Prisons Act Amendment Act (No. 2), 1983'.

Line 34—After 'that period' insert ', but after that commencement,'

I have argued the substantive case for my amendment on an earlier clause.

The Hon. K.T. GRIFFIN: I do not accept the amendment, which runs contrary to what I believe is a fair and reasonable position if the Bill passes. I do not intend to further elaborate as I have already covered the matter to a large extent. It is obvious that the Government will support it from its earlier indications of support for the Democrats. I will not seek a division if I am defeated on the call of voices.

Amendment carried.

The Hon. K.T. GRIFFIN: I oppose the clause. This is the core of the automatic release provisions of the Bill. I have previously indicated at length why the Opposition cannot and will not support the automatic release after the non-parole period, less any remission that has been reached. The position is that a prisoner with a non-parole period will be released after serving two-thirds of that period in ordinary circumstances, and no reference is paid to the full sentence imposed by the court. This is contrary to what I believe to be good sense and good judicial administration. I do not believe that this provision will solve any of the problems that the Government has in its prisons and I will be most interested to see what the position is next year after the exaltation within our prison has passed.

The Hon. R.J. RITSON: I have some brief questions for the Attorney in regard to this clause. My anxiety arises from the fact that when judges pass a sentence and fix a non-parole period they generally believe that they are committing the prisoner into a system where release will be determined by the exercise of some discretion in each case, as deemed appropriate in regard to parole. They believe that there will be professional discretion exercised, but this is taken away under the Bill. How does the Attorney imagine this clause will operate in the circumstances where a prisoner is mentally ill and dangerous and is under sentence—whether he is in hospital or in prison? What sort of discretionary powers of investigation will the Board have to protect the community and perhaps the prisoner from inappropriate release? In relation to the discretion exercised in the terms of the conditions set by the Parole Board, is it possible that the Board could make it a condition that a prisoner remain under psychiatric care or remain in hospital?

The Hon. C.J. SUMNER: Yes, that type of condition could be applied by the Board. A further condition could be that a person receive appropriate medical treatment.

The Hon. R.J. RITSON: In cases such as that, when the time for automatic parole arrives, how will the Parole Board discover the nature of a prisoner's condition, if it is as I have described? In other words, does the Board actively investigate whether or not an offender is unwell? Is a psychiatric opinion sought in relation to every application for parole? It could be that an application for parole is heard by the division of the Board that does not have the psychiatrist as a member. In that case, that division of the Board would find it difficult to uncover a psychiatric problem.

The Hon. C.J. SUMNER: The Parole Board will have access to information on a prisoner's background, including information pertaining to a prisoner's psychiatric condition.

The Parole Board will also have access to a report on a prisoner's behaviour in prison. Therefore, the Board will be able to determine from the information presented to it whether or not there is a psychiatric problem. If there is some doubt about a prisoner's psychiatric condition and he is appearing before a division of the Board without the psychiatrist, I am sure that he will be referred to the other division.

The Hon. R.J. RITSON: Is a psychiatrist's opinion sought in relation to all applications for parole? If that does not occur, how will the division without the psychiatrist decide which prisoners should be subject to a psychiatric report? I am informed that a psychiatric report is not sought on every application for parole.

The Hon. C.J. SUMNER: Quite simply, a psychiatric opinion is not sought on every application at the moment. A similar condition could have applied since parole was first introduced in this State. I do not see that what will occur under this Bill will be any different in that respect from what has happened previously. Clearly, the Parole Board needs to have some hint of a psychiatric problem before it can order a psychiatric report. Once a problem has been signalled to the Board, it can take appropriate action.

The Hon. R.J. RITSON: Does the Attorney agree that the division of the Board with the psychiatrist will more easily pick up signs of a problem in the information tendered to the Board?

The Hon. C.J. SUMNER: The Board is composed of intelligent people, who will be able to assess whether any psychiatric problems are evident, based on the reports placed before the sentencing judge and in the material supplied by the prison. If there appears to be a problem and the division hearing the parole application does not include the psychiatrist, prudence would demand that the case be considered by the other division.

The Committee divided on the clause as amended:

Ayes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Noes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. Barbara Wiese. No—The Hon. R.C. DeGaris.

Majority of 1 for the Ayes.

Clause as amended thus passed.

Clause 16—'Duration of parole and subsequent expiry of sentence in relation to prisoners serving life sentences.'

The Hon. K.T. GRIFFIN: Section 42na (1) provides:

> A prisoner serving a sentence of life imprisonment who is released on parole shall, unless his release is cancelled, or his sentence is extinguished, remain on parole for the period fixed by the Governor.

The clause amends the principal Act by inserting the words 'the Board and approved by' after the words 'the period fixed by'. This means that the prisoner will remain on parole for a period recommended by the Governor. Actually, the Governor does not recommend anything—an order or decision is made and a recommendation is then made to him. Can the Attorney-General tell me exactly what is intended here?

The Hon. C.J. SUMNER: I wish I knew. Parliamentary Counsel will have to check whether or not some words have been left out during transmission of the Bill from the House of Assembly to the Legislative Council. Perhaps consideration of clause 16 can be postponed until after consideration of clause 27.

Consideration of clause 16 deferred.

Clause 17 passed.

Clause 18—'Prisoner on parole (other than life prisoner) may apply for discharge from parole.'

The Hon. K.T. GRIFFIN: This clause relates to section 42nc of the Act, which allows the Parole Board to make an order discharging a person from parole. Present subsection (3) provides that where a person is discharged from parole he is deemed, from the day of discharge, to have been released upon conditional release. The amendment seeks to delete the reference to conditional release and to provide that where a person has been discharged from parole his sentence of imprisonment shall be deemed to be totally satisfied. I do not agree with the change but recognise from what has happened to votes on previous clauses that the retention of conditional release is a lost cause. I will call against the clause but do not intend to divide on it if that call is lost on the voices.

Clause passed.

Clause 19—'Repeal of s. 42nd.'

The Hon. K.T. GRIFFIN: I am concerned about this clause because while one part of it is consistent with the scheme that the Government is proposing in the Bill, another part is not related to that scheme. That part relates to the Board being able to cancel the release on parole of a person if the Board is satisfied that the person obtained his release on parole by unlawful means. The Government's amendment will delete that provision. I am surprised that it is being deleted. I am not surprised about the second part being deleted; namely, that if there are other reasons why a person may not have been released on parole the Board may cancel the release. It is still quite conceivable that a prisoner might forge papers that will result in his release at an earlier time than would have otherwise have been the case. It may be a remote case, but there is that potential. Will the Attorney-General say why section 42nd is to be deleted?

The Hon. C.J. SUMNER: It is deemed not to be necessary any more. Where a prisoner has to apply for parole, there is a much greater scope for putting forward information that might mislead the Parole Board deliberately, thus effectively achieving release by fraudulent means. Now there is an automatic release at the end of the non-parole period that possibility has been restricted substantially. Therefore, it is difficult to conceive of a situation in which that condition for cancelling release on parole might apply. There may be some examples of when that could occur, but one would have thought that records are carefully kept by the police, who usually have an up-to-date recording situation, and that it would be very difficult to fool the authorities in that respect. I think that, in practice, the need for retention of the provision that the honourable member has referred to is minimal.

The Hon. K.T. GRIFFIN: Even if it is minimal, there is still a possibility that release may be obtained by unlawful means. I therefore believe that it is a necessary provision. I will call against clause 19. However, if I lose on the voices, I do not intend to call for a division.

Clause passed.

Clause 20—'Cancellation of parole for breach of condition.'

The Hon. K.T. GRIFFIN: I have a real problem with this clause because of what it does. It provides for the cancellation of parole where the Board is satisfied that there has been a breach of a condition of that parole but the parolee can only be returned to prison, as I understand the clause, for a period not exceeding three months before he is out in the wide world again, presumably on parole. I think that a period of three months places an unreasonable limitation on this period. I think that, in the context of the scheme the prisoner ought to be returned to prison for the balance of his term, although I am not averse to a proposition that if he behaves during the further period in gaol he may

become eligible for parole again. I will be voting against this clause.

The Hon. C.J. SUMNER: The Government supports the clause as it is an essential part of the scheme developed by the Government in this area. The Government considers that a sentence of three months for breach of parole is sufficient. If that breach amounts to a criminal offence then the prisoner will be returned to prison to serve the balance of his sentence and, of course, will be sentenced for the additional offence.

The Committee divided on the clause:

Ayes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Noes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. Barbara Wiese. No—The Hon. R.C. DeGaris.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 21—'Cancellation is automatic.'

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

Page 9, lines 38 to 43—Leave out all words in these lines.

Clause 21 relates to section 42nf, which provides for automatic cancellation of parole where there is a sentence of imprisonment for an offence committed during the period of the prisoner's release on parole. There is an exception in respect of those persons sentenced to imprisonment after the commencement of the Prisons Act Amendment Act. That is part of the Government's scheme and it is also part of the scheme which the Opposition does not support. Because this amendment is very significantly linked to earlier amendments that I have lost, I do not intend to call for a division if my amendment is lost on the voices.

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

Page 9, lines 39 and 40—Leave out 'sentenced to such imprisonment after the commencement of the Prisons Act Amendment Act (No. 2), 1983,'.

The amendment to clause 21 is designed to clarify the situation regarding prisoners who are returned to prison upon cancellation of parole as a result of being sentenced to further imprisonment for an offence committed while on parole. It is made clear by the amendment that such a prisoner is not liable to serve the whole of his unexpired sentence if a non-parole period has been fixed, whether before or after the commencement of the amending Act. If a non-parole period has been fixed, then the new provisions relating to release at the end of that period will apply.

The Hon. K.T. GRIFFIN: Again, I need not canvass the reasons why I oppose the amendment. I oppose the amendment, but I do not propose to call for a division if my amendment is lost on the voices and the Attorney-General's amendment is carried on the voices.

The Hon. K.T. Griffin's amendment negatived.

The Hon. C.J. Sumner's amendment carried; clause as amended passed.

Clause 22 passed.

Clause 23—'Proceedings before the Board.'

The Hon. K.T. GRIFFIN: I oppose the clause. It provides for a person appearing in respect of an application for cancellation of parole or discharge from parole to be represented by a legal practitioner. The Parole Board is not another court; nor is it a tribunal. It is an administrative body that carries out administrative functions under the provisions of the Prisons Act. It is intolerable that legal practitioners will represent prisoners who appear before the Board in those circumstances.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Well, it is contrary, certainly, to the view of many lay people about the involvement of legal practitioners in all sorts of boards, tribunals and administrative bodies. Ordinarily, I would be delighted to consider supporting the legal profession, but I cannot believe in this context that we ought to be changing so dramatically the nature and character of the deliberations of the Board such that legal practitioners will become directly involved.

Undoubtedly, it will add to the time that the Board is required to spend on each application, and undoubtedly it will lead to litigation. We have already seen one case—perhaps two—being taken to the courts in respect of refusals by the Parole Board to grant parole. One was the case of Van Beelen, which, as I understand it, went up to the High Court, but the High Court refused to grant leave for Van Beelen's application to be heard. This will only encourage that sort of litigation, and I do not believe that parole proceedings are appropriate places for that to occur. Accordingly, I will vote against the clause.

The Hon. R.I. LUCAS: I have two questions for clarification: first, I assume that as a result of this clause being passed, the Board no longer has to notify the Commissioner of Police of the day and time fixed for hearing the application. Secondly, will the Commissioner of Police or any police officer authorised by him still be able to make submissions to the Board in writing as he thinks fit?

The Hon. C.J. SUMNER: The first assumption is correct. As to the second proposition: no, he does not have any involvement with the parole proceedings.

The Committee divided on the clause:

Ayes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Noes (9)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Pair—Aye—The Hon. Barbara Wiese. No—The Hon. R.C. DeGaris.

Majority of 1 for the Ayes.

Clause thus passed.

Clause 24—'Repeal of section 42ni.'

The Hon. K.T. GRIFFIN: In view of the Committee's decisions on previous provisions, I will not call for a division on this clause, but I oppose it.

Clause passed.

Clause 25—'Amendment of section 42q—Regulations.'

The Hon. K.T. GRIFFIN: I oppose this clause but, because of the Committee's decisions in relation to previous provisions, I will not call for a division.

Clause passed.

Clause 26—'Repeal of Part IVB and substitution of new Part.'

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

Pages 10 and 11—Leave out clause 26 and substitute new clauses as follows:

26. Section 42ra of the principal Act is amended by striking out from subsection (1) the passage 'The Prisons Act Amendment Act, 1981' and substituting the passage 'this Part'.

26a. Section 42rb of the principal Act is repealed and the following section is substituted:

42rb. (1) Subject to subsection (2) the Director shall, at the end of each month served in prison by a prisoner to whom this Part applies, consider the behaviour of the prisoner during that month and may, if he is of the opinion that the prisoner has been of good behaviour, credit him with such number of days of conditional release, not exceeding fifteen, as he considers appropriate.

(2) The Director shall not, in considering the behaviour of a prisoner for the purposes of subsection (1), take into account unsatisfactory behaviour in respect of which the prisoner is likely to be dealt with under any other provision of this Act or any other Act or law.

(3) Where the Director makes a decision under this section to credit, or not to credit, a prisoner with any days of conditional release, he shall notify the prisoner in writing of that decision and of his reasons for the decision.

(4) Where, at the end of a month served in a prison by a prisoner, it appears that the prisoner, if he were to be credited with fifteen days of conditional release at the end of the next month, would be entitled to be released from prison before the expiration of that next month, the Director shall thereupon credit the prisoner with fifteen days of conditional release.

(5) Notwithstanding any other provision of this Act, a prisoner shall (unless released earlier under any other provision of this Act or any other Act or law) be released from prison when the total number of days of conditional release credited to him and the period he has served in prison together equal the term, or terms, of imprisonment to which he was sentenced.

Essentially, this amendment seeks to reinstate conditional release. There is a substantial provision in the original Act that deals with conditional release. The Government's amendment provides for a remission of sentence rather than the substantive issue of conditional release. I have already spent a great deal of time stating why I prefer conditional release and I will vote against the remission of sentence provision. Although to a large extent the question of conditional release against automatic release has been resolved, this is one of the clauses on which I will call for a division if I lose the vote on the voices.

The Hon. L.H. DAVIS: What will be the practical effect of the legislation? How many prisoners are likely to be released pending a review of their situation following the introduction of this measure? Secondly, the Parole Board in the year ended 30 June 1983 rejected 277 applications for parole release. Presumably, the Department of Correctional Services has reviewed the impact of this legislation and will be in a position to give advice as to how many prisoners will obtain release and how many of those 277 prisoners who had parole applications rejected last year would otherwise be released. I appreciate that the Attorney may not have that information at his disposal now, but I would appreciate a reply later.

The Hon. C.J. SUMNER: I do not have that material to hand, but I will make available that information.

The Hon. I. GILFILLAN: I move:

Page 10, line 29—After 'fixed' insert ', whether before or'.

This amendment is consequential on an earlier amendment to clause 15.

Amendment carried.

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

Page 11—

Line 20—After 'prisoner' insert ', other than a prisoner to whom subsection (7) applies,'.

After line 25—Insert new subsection as follows:

(7) Notwithstanding any other provision of this Act—

(a) a prisoner returned to prison upon cancellation of parole pursuant to section 42nf (whether before or after the commencement of the Prisons Act Amendment Act (No. 2), 1983);

or

(b) a prisoner returned to prison upon cancellation of parole pursuant to Section 42ne before that commencement,

in respect of whom a non-parole period has not been fixed shall (unless released earlier under any other provision of this Act or any other Act or law) be released from prison when the total number of days of remission credited to him after cancellation and the period he has served in prison after cancellation together equal the total period of imprisonment that he was, upon that cancellation, liable to serve.

The amendment to clause 26 provides that a prisoner returned to prison upon cancellation of parole, whether before or after the commencement of the amending Act, and in respect of whom a non-parole period is not fixed, will be able to reduce his sentence-remission. Thus the remission system will operate very effectively in respect of the majority of prisoners, whether as a reduction of non-parole periods or, alternatively, as a reduction of the actual sentence. At the moment, a prisoner returned to prison upon cancellation of parole is not eligible to earn remission, thus giving yet another example of prisoners who have no inducement to behave well while in prison.

The Hon. K.T. GRIFFIN: I do not support that amendment. I will call against it, but I will not call for a division. However, I intend to call for a division on the principal clause. I am conscious of the time pressures and I think that to a large extent the issues have been resolved, but the principal clause is of such importance to the Government's proposal that, if I lose on the voices, I will call for a division on the clause as amended.

Amendment carried.

The Committee divided on the clause as amended:

Ayes (7)—The Hons Frank Blevins, G.L. Bruce, J.R. Cornwall, M.S. Feleppa, I. Gilfillan, C.J. Sumner (teller), and Barbara Wiese.

Noes (7)—The Hons L. H. Davis, R.C. DeGaris, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.J. Ritson.

Pairs—Ayes—The Hons B.A. Chatterton, Anne Levy, and K.L. Milne. Noes—The Hons J.C. Burdett, M.B. Cameron, and R.I. Lucas.

The CHAIRMAN: There are 7 Ayes and 7 Noes. So that the situation can be further considered, I give my casting vote for the Noes.

Clause as amended thus negatived.

New clauses 26 and 26a.

The Hon. K.T. GRIFFIN: Despite that unexpected victory, I recognise the writing on the wall, and I will not be able to resist a plea from the Government to reconsider the earlier provision. As I strongly believe that conditional release is the appropriate mechanism, the easiest way out of the difficulty now created is for me not to proceed with my amendment. I merely recognise that my recent victory will be short-lived. Also, in view of the hour and what is still ahead of us, I will not call for a division if I am beaten on the voices, although I still adhere strongly to the view that conditional release ought to remain.

New clauses 26 and 26a negatived.

Clause 27—'Punishment.'

The Hon. K.T. GRIFFIN: The amendment standing in my name to this clause is consequential on the system of conditional release. As I have lost earlier amendments and because of the consequential nature of this amendment, I will not proceed with it, although I will call against the clause but not call for a division.

Clause passed.

Clause 16—'Duration of parole and subsequent expiry of sentence in relation to prisoners serving life sentences.'

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

Page 8, line 49—After 'recommended by' insert 'Board and approved by'.

The Hon. Mr Griffin pointed out words that were omitted. Apparently they were left off in drafting, and this amendment solves the problem.

The Hon. K.T. GRIFFIN: I support the amendment, because it corrects a drafting error.

Amendment carried; clause as amended passed.

Title passed.

Bill recommitted.

Clause 26—'Repeal of Part IVB and substitution of new Part'—reconsidered.

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

To reinsert clause 26 as previously amended.

The Hon. K.T. GRIFFIN: I oppose the clause. Because of the difficulty when the Bill was last in Committee I will not call for a division. I acknowledge that the majority of the Committee has already voted in favour of the spirit of

the clause. While I have already expressed the view that conditional release is a feature of the principal Act and should be retained, I recognise that the numbers are against the Opposition.

Clause 26, as amended, inserted.

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: I cannot let this opportunity pass without expressing my strong opposition to the Bill as it comes out of Committee. In fact, I expressed strong opposition to the Bill even before it went into Committee. While the Bill assists in some minor respects in relation to procedures with which the current Parole Board has experienced some difficulty, the major parts of the Bill are unacceptable to the Opposition.

Automatic release, a major feature of the Bill, survived the Committee stage. I am disappointed by that, because I think it is a retrograde step. I do not think that it will solve any of the problems being experienced in the prison system.

The present parole system has worked adequately in achieving a reasonable balance between the rehabilitation of a prisoner and the protection of the community. Therefore, I believe that there is no reason at all to change the present system. Automatic release will create considerable problems for the community at large. It may well provide some advantages for the administration in that there will be fewer prisoners within the system, at least in the early stages.

However, I believe that the courts will impose longer non-parole periods to compensate for the automatic remissions provided in the Bill. In fact, I believe that longer sentences generally may well become the order of the day as a result of the Bill.

There is no flexibility in the proposed system. Certainly, it gives prisoners a degree of certainty which perhaps they do not enjoy at the moment but only in respect of parole applications. After all, when it comes to the bottom line, the certainty in the present system is that a person is sentenced to a particular period in prison. A non-parole period is merely an indication by the court as to the time before which a prisoner should not even be considered for release.

I believe that it is a retrograde step to change that system. As I have said, the new system will in no way affect the tensions existing within the prison system. It is for those reasons and the reasons that I explored in greater detail during the second reading debate that I oppose the third reading.

The Council divided on the third reading:

Ayes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, C.J. Sumner (teller), and Barbara Wiese.

Noes (8)—The Hons M.B. Cameron, L.H. Davis, R.C. DeGaris, H.P.K. Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.J. Ritson.

Pairs—Ayes—The Hons Anne Levy and K.L. Milne. Noes—The Hons J.C. Burdett and R.I. Lucas.

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

TRUSTEE ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1, page 1, line 18 (clause 3)—Leave out 'by striking out from'.

No. 2, page 1, lines 19 to 21 (clause 3)—Leave out all words in these lines and insert:

(a) by striking out subparagraph (ii) of paragraph *(d)* of subsection (3) and the word 'or' immediately preceding that subparagraph;

and

(b) by inserting after subsection (3) the following subsection:

(3a) Notwithstanding the provisions of subsections (2) and (3), a trustee—

(a) is empowered by subsection (1) *(c)* to invest in debentures of a company;

and

(b) is empowered by subsection (1) *(f)* to invest on deposit with a company,

if the company is declared by regulation for the purposes of this subsection to be a company in the debentures of which, or on deposit with which, a trustee is authorised to invest trust funds.

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

The House of Assembly's amendments be agreed to.

When this matter was before the Council on a previous occasion the Hon. Mr Davis moved an amendment to the Bill to address the anomaly that trustees may invest in certain relatively small listed finance companies but may not invest with some of the larger finance companies which are subsidiaries of major banks. The Government saw the logic of the honourable member's amendment and acceded to it.

The matter was given further consideration in the House of Assembly by the Government which, along with the Treasury, has been concerned about several parts of section 5 of the Act for some time and had intended to make submissions on them. In Treasury's view, the parameters of subsection (3) of section 5 (that is, paid up capital of $4 million; payment of a dividend in each of the preceding 10 years) are too inflexible and should be changed. The Hon. Mr Davis's amendment opened up for consideration the desirability of extending the provisions of section 5 to cover anomalies other than those with which he dealt when the matter was previously before the Council.

In particular, as I indicated then, there were other anomalies such as the one involving the larger merchant banks. There may well be other situations that need to be covered. Furthermore, close consideration of Mr Davis's amendment indicated that it would resolve the finance company anomaly in relation to deposits by trustees but not in relation to the purchase of their debentures. It does not seem possible to develop a simple form of words to cover, in a specific way, the companies and the transactions that the Government believes should be included.

Therefore, the general approach set out in the amendments inserted by the House of Assembly has been devised. It provides an amendment to enable trustees to invest in the debentures of or on deposits with companies prescribed by regulation. That amendment would take the form of the amendment inserted by the House of Assembly.

For the reasons that I have outlined, and primarily to overcome the sorts of anomalies to which the Hon. Mr Davis drew attention, and about which there seems to be universal agreement, I believe that the amendment should be accepted.

The Hon. L.H. DAVIS: I am happy to accept the amendments proposed by the House of Assembly. When the Council last considered this matter, it accepted an amendment which I suggested and which would have had the effect of making bank affiliated finance companies trustee securities for the purposes of the Act. However, the amendment proposed in the other place further broadened that concept and not only takes in bank affiliated companies and finance companies but also enables the Government to declare by regulation such other companies that are deemed to be suitable as trustee securities.

One would envisage, for example, that companies with a substantial parent backing, such as Elders Lensworth Finance

Limited, might comply with this provision. New subsection *(b)* provides that companies declare that an investment on deposit by a company declared by regulation for the purposes of that new subsection can be deemed to be an authorised trustee. This extension to the original amendment agreed to by this Council will pick up major merchant banks and cash management trusts which accept moneys at call or for a fixed term. I think that it is a most acceptable amendment and am happy to support it.

Motion carried.

REAL PROPERTY ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 6 December. Page 2364.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill, which is necessary to overcome two problems, one arising out of the coming into operation of the Planning Act, 1982, and the other in respect of a difficulty experienced by those seeking to extend a strata title. The Bill is to operate from the date of commencement of the Planning Act, 1982.

I am prepared to support retrospectivity in the application of this Bill. There is a paragraph in the second reading speech which states that an open space contribution that has been made in circumstances which are covered by the amendment since November 1982 will be refunded. There is nothing in the Bill which specifically enables those repayments to be made.

Ordinarily, if these sorts of payments had been made pursuant to Statute, unless they were made under protest, there would be no legal right to recover. I presume that the Government proposes to make *ex gratia* payments to those who have made refunds, but I would like assurance from the Minister that regardless of how fees have been paid the Government proposes to honour all commitments for refund on all applications covered by the amendments. That would be the way that it would ordinarily be done if there were no statutory provision in the enactment.

Concerning the two matters relating to strata titles that the Bill deals with, I first refer to the requirement on a division of land to make some provision for open space. Prior to the coming into operation of the Planning Act there was no obligation on the creation of strata titles for that to be done. To take it back to the position prior to the Planning Act is appropriate and important.

The other difficulty to which the Bill addresses itself relates to the boundaries of the strata title. When this was required prior to this legislation there had to be a new strata plan, new titles issued and an additional contribution in relation to each unit of the new scheme in respect of the open space required. I am pleased that the Bill will provide that where there is such a variation or adjustment the contributions will not be required except in relation to the units which exceed the number of units under the old scheme. So, if there is an increase in the number of units within the scheme (for example, by subdivision of existing units) there will be a contribution, but in other cases there will not. Both provisions are commendable, and I will accordingly support the second reading.

The Hon. J.R. CORNWALL (Minister of Health): I thank the honourable member for his contribution. The question that he raises is very pertinent. It is my understanding that what would happen departmentally is that staff will go back through the dockets and, where there has been an overpayment because of the operation of what is clearly a legislative error, there will be a simple refund of money paid over and above the appropriate amount. That is a firm undertaking that I give.

Bill read a second time and taken through its remaining stages.

MINISTERIAL STATEMENT: CONSTITUTION ACT

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement on section 26(3) of the Constitution Act, 1934-1982, in relation to the Maralinga Tjarutja Land Rights Bill.

Leave granted.

The Hon. C.J. SUMNER: In the light of certain views expressed recently, I wish to provide some advice to the Council on the interpretation of section 26 (3) of the Constitution Act, 1934-1982, and in particular on the rights of the President of the Legislative Council under that section generally.

It has been suggested that it would be competent for the President, in the event of an 11-10 vote on either or both the second or third readings of the Maralinga Tjarutja Land Rights Bill, to indicate his non-concurrence in the passing of such second or third reading, and thereby cause the Bill to lapse as would be the case in the event of an 11-11 or tied vote.

Section 26 of the Constitution Act, 1934-1982 deserves to be quoted in full as follows:

> 26. (1) The Legislative Council shall not be competent to proceed with the dispatch of business unless there are present, including the President, or the person chosen to preside in his absence, at least ten members of the Council.
>
> (2) All questions which arise shall be decided by a majority of the votes of those members of the Council who are present exclusive of the President, or the person chosen as aforesaid, who shall be allowed a casting vote.
>
> (3) Where a question arises with respect to the passing of the second or third reading of any Bill, and in relation to that question the President, or person chosen as aforesaid, has not exercised his casting vote, the President, or person chosen as aforesaid, may indicate his concurrence or non-concurrence in the passing of the second or third reading of that Bill.

Subsection (1) deals with the simple, mechanical question of the quorum of the Council which is required before its business can be commenced or continued.

Subsection (2) clearly indicates that all questions which arise for resolution by the Council—whether on motion or otherwise—are to be decided by a simple majority of the members of the Council who are actually present in this Chamber at the time a decision is made. However, in determining who has the right to a deliberative vote on any question before the Council this subsection is quite explicit: the President only has a casting vote and he is not to be reckoned as a member of the Council for the purposes of any deliberative vote. This is confirmed by the first sentence of Standing Order 231 of the Legislative Council Standing Orders, which reads:

> In the case of an equality of votes, the President shall give a casting voice, and any reason for his vote stated by him shall be entered in the Minutes.

The principles upon which a casting vote is given, when a division is equal, are well-settled by precedent, and honourable members are referred to May's *Parliamentary Practice* (19th edition) at pages 403-406.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: At least three Q.C's support the opinion. Therefore, if upon the second and third readings of the Maralinga Tjarutja Land Rights Bill there is a simple majority of 'Ayes', bearing in mind that the President's vote is not reckoned, the matter is concluded. The Bill is then

said to have 'passed' and there is no cause or occasion for the President to exercise his casting vote.

Subsection (3) is by its very terms directed to a very limited category of Bills. The subsection speaks of a question arising 'with respect to the passing of the second or third reading of any Bill . . .' In that event, provided the President has not exercised his casting vote, he may indicate his concurrence or non-concurrence in the passing of the second or third reading of that Bill.

Honourable members should note the significant change in terminology from subsection (2) to subsection (3): the former talks in terms of votes, the latter only in terms of 'concurrence or non-concurrence'. This very change means that one's attention should switch to section 8 of the Constitution Act, the first part of which is as follows:

> The Parliament may, from time to time, by any Act, repeal, alter, or vary all or any of the provisions of this Act, and substitute others in lieu thereof:

This much is clear. However, the exercise of such a power of repeal, alteration or variation of the constitution Act or any of its provisions, is subject to a very clear proviso, the material provisions being as follows:

> *(a)* it shall not be lawful to present to the Governor, for His Majesty's assent, any Bill by which an alteration in the constitution of the Legislative Council . . . unless the second and third readings of that Bill have been passed with the concurrence of the absolute majority of the whole number, of the members of the Legislative Council . . .
>
> *(b)* every such Bill which has been so passed shall be reserved for the signification of His Majesty's pleasure thereon.

In other words, section 8 provides for the manner and form with which legislation, to alter the constitution of the Legislative Council, must conform. Therefore, subsection (3) of section 26 is directed to the President's powers solely with regard to Bills that fit the description of altering the constitution of the Legislative Council.

The Hon. D.A. Dunstan, when moving the second reading of the Constitution and Electoral Acts Amendment Bill (Council Elections) on 19 June 1973 had this to say of the provisions which are now subsection (3), after discussing section 8 of the Constitution Act—

The Hon. M.B. Cameron: Did he give you this opinion?

The Hon. C.J. SUMNER: I refer to the debate that is shown in *Hansard* of 1973 in relation to section 26 (3) of the Constitution Act. That is the section with which the opinion is concerned.

The Hon. K.T. Griffin: You know that *Hansard* reports are irrelevant.

The Hon. C.J. SUMNER: What I am concerned to do is to point out the opinion of the Solicitor-General, and there are two other opinions, which I will mention subsequently. The legal opinion indicates that there is no deliberative vote in relation to the Maralinga Land Rights Bill. There are three opinions to that effect and I add (and this is the point I am making now) that from the *Hansard* debate of 1973 it is quite clear what the intention was. The intention, as stated at that time, is what the Premier—

Members interjecting:

The PRESIDENT: Order! Let us hear the Attorney-General.

The Hon. C.J. SUMNER: It was stated in *Hansard:*

> When one turns to section 26 of the Constitution Act one finds that, whenever the votes cast on a matter in the Legislative Council are not equal, one member, the President or member presiding, is by operation of section 26 deprived of his right to express his concurrence or, as the case may be, his non-concurrence in the passing of the second or third reading of a Bill. The only time he gets a vote is when the votes in the House are equal. This seems fundamentally wrong, since it can be hardly argued that by reason of holding office as President, the President is no less a member of the Legislative Council. Accordingly, it is intended that the President or member presiding will be afforded an opportunity, if he wishes, to express his concurrence or non-concurrence, in passing of a second or third reading of a Bill, in any case where he is not called on to exercise his casting vote.

The concluding phrase, in particular, is to be emphasised for the benefit of honourable members. On 20 June Mr Dunstan reiterated the role that section 26 (3) would play.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Honourable members should listen to this quote.

The PRESIDENT: Order! If the Attorney-General addressed me instead of other honourable members, they might not interject.

The Hon. C.J. SUMNER: Mr Dunstan on 20 June 1973 stated:

> There is only one class of Bill to which this clause refers, that is Bills to amend the Constitution, because the concurrence of a President or a Speaker does not arise in other circumstances in normal internal proceedings. It arises only under section 8 of the Constitution Act, which requires that a Bill to alter the Constitution of either House be concurred in by an absolute majority of the whole number of the members of the House.

That was stated by the Hon. Mr Dunstan, who was in charge of the Bill in 1973. He stated explicitly that section 26 (3) of the Constitution Act applied to one class of Bill. That was the Parliamentary intention, as explained by Mr Dunstan. It is that intention that is backed up by the opinion of the Solicitor-General, which I am now indicating to the Council by way of a Ministerial statement. Of course, what has been said in relation to section 26 (3) applies with equal vigour to the provisions of section 37 (4) and the analogous position of the Speaker of the House of Assembly.

The Government has sought and obtained the opinion of the Solicitor-General (Mr M.F. Gray, Q.C.) on the interpretation of section 26—and in particular subsection (3) thereof—and this opinion is now tabled before this Council. It is the learned Solicitor-General's opinion which this Government accepts that—

> *(a)* the provisions of section 26 (3) only apply to Bills that fit the description of those to which section 8 of the Constitution Act applies; and
>
> *(b)* the President of the Legislative Council possesses no deliberative vote, but a casting vote only which is solely exercisable in the event of a tied division on the floor of the Council; and
>
> *(c)* the President of the Legislative Council may not express either his concurrence or non-concurrence in the second or third readings of the Maralinga Tjarutja Land Rights Bill, as it is not a Bill to which the provisions of section 8 of the Constitution Act applies; and
>
> *(d)* the second sentence of Standing Order 231, which reads:
>
> > When the President has not exercised his casting voice, he may indicate his concurrence or non-concurrence in the passing of the second or third reading of any Bill
>
> is subject to the same limitations as is section 26 (3). The President's concurrence or non-concurrence can only be forthcoming where a section 8 Bill is in question and where no cause or occasion has arisen for the exercise of his casting voice.

On 29 November 1973 the then President, Sir Lyell McEwin, purported to exercise the power conferred by section 26 (3) on the third reading of the Criminal Law (Sexual Offences) Amendment Bill to make the numbers equal on both sides and to cause the Bill to lapse. It is the view of the Solicitor-General which is accepted by the Government that such a ruling was not authorised by section 26 (3) or by any other provision. I can add, and I trust that the

interjectors will take some note of this, that this view of the Solicitor-General is supported by advice given to the solicitor acting for the traditional owners by Mr J.J. Doyle, Q.C., of Adelaide and Mr A.R. Castan, Q.C., of the Melbourne bar. As you know, Mr President, I advised you of the opinion of the Solicitor-General.

The PRESIDENT: I would like to say that I appreciate the proceedings that have been undertaken by the Attorney-General. I know that he has been busy, but he has made a special effort on this occasion to obtain that opinion. I thank him very much.

The Hon. M.B. CAMERON (Leader of the Opposition): I seek leave to make a short statement without notice.

The PRESIDENT: I rule it out of order.

STATE LOTTERIES ACT AMENDMENT BILL

In Committee.

(Continued from 7 December. Page 2456.)

Clause 2—'Percentage of value of tickets to be offered as prizes.'

The Hon. J.R. CORNWALL: When we last dealt with this matter I reported progress so that we could get further advice in regard to the import of the amendment of the Hon. Mr Lucas on file and his intention to insert the words 'within 12 months after the drawing of that lottery' in regard to the distribution of prizes. The Government was concerned that as the junior partner in Lotto Bloc with Victoria we did not want to be in a position of being the only soldier marching in step. The Government is concerned that we do nothing to detract significantly from the advice given by the Victorian Treasurer (Mr Jolly).

There have been discussions with the Hon. Mr Milne on the matter, and he has taken advice from a senior person in the Lotteries Commission. The Government is willing to give the Committee an undertaking in three parts. The Government will give an undertaking, first, that it will inform the Lotteries Commission of the wish of Parliament that moneys not be withheld from the prize pool for a period of more than 12 months; secondly, that it will request the Lotteries Commission to inform it immediately of any request from the Lotto Bloc for moneys to be withheld from the prize pool for a period in excess of 12 months; and, thirdly, that it will inform Parliament at the earliest possible opportunity of any such request being made, that is, to the Government from the Lotteries Commission. In many ways that is the best of both worlds. There is an assurance that the Government will insist that the Commission will inform Parliament if there is any deviation from the 12-month period. There is an undertaking that the Government will advise Parliament, as the correct and proper thing to do, and at the same time it enables us within the legislation to have the necessary flexibility should situations arise, particularly in Victoria where our participation under more restrictive legislation may be placed in jeopardy. I ask the Committee to accept that undertaking which was sought in good faith and which was given in good faith so that it will not be necessary to include the amendment in the Bill, the fear being that it may unnecessarily tie our hands in participation with Victoria and others in Lotto Bloc and Jackpot Lotto Bloc, in which our participating is desirable.

The Hon. K.L. MILNE: I thank the Minister for what he has said. I have discussed this matter with officers and the difficulty encountered was explained to me. I have discussed the matter with a representative of Treasury and the Lotteries Commission. We came up with this idea that I hope will satisfy the Hon. Mr Lucas and the Opposition in regard to such an undertaking. In those circumstances, I indicate to the Hon. Mr Lucas that I will not support the amendment. I am pleased to have the Government's assurance and undertaking on this matter, which will have the same effect as was required in the amendment, and it may not be needed at all.

The Hon. R.I. LUCAS: I move:

Line 22—After 'shall be applied' insert 'within twelve months after the drawing of that lottery'.

I will not canvass my amendment again as this was done fully last night. If the amendment fails at least the undertaking given will go part way towards achieving what we set out to achieve.

I point out that I obtained at short notice from the Under Treasurer (Mr Barnes) yesterday evening a guesstimate of the cost of 2 per cent over 12 months in regard to the moneys involved. He guessed that it was $3 million. As I said last night, I would not hold the Under Treasurer to that sum, and today he has advised me in a hand-written note, as follows:

A better guesstimate would be something in the region of $1 million accumulated over 12 months.

It is only fair to the Under Treasurer to put that on the record.

The Hon. J.R. CORNWALL: I need say no more but to remind the Hon. Mr Lucas, as part of the learning processes that he has to go through in this place, that a gentleman's word in this place is his bond.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 2346.)

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

That this debate be further adjourned.

The Council divided on the motion:

Ayes (12)—The Hons J.C. Burdett (teller), M.B. Cameron, L.H. Davis, R.C. DeGaris, H.P.K. Dunn, I. Gilfillan, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Majority of 3 for the Ayes.

Motion thus carried; debate adjourned.

The PRESIDENT: I put the question 'That the adjourned debate be taken into consideration—'

The Hon. C.J. SUMNER: On motion.

The PRESIDENT: Those in favour say 'Aye'; against say 'No.' The Ayes have it.

[Sitting suspended from 4.20 to 5.40 p.m.]

The Hon. C.J. SUMNER (Attorney-General): I move:

That Orders of the Day, Government Business, No. 2, adjourned on motion, be taken into consideration forthwith.

Motion carried.

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

That the debate be adjourned.

The Council divided on the motion.

Ayes (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, K.L. Milne (teller), and R.J. Ritson.

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

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. C.W. Creedon.

Majority of 3 for the Ayes.

Motion thus carried; debate adjourned.

The PRESIDENT: The question is 'That the adjourned debate be made an Order of the Day for—'

The Hon. C.J. SUMNER: On motion.

The Hon. M.B. CAMERON (Leader of the Opposition): I move:

That the words 'on motion' be struck out and 'Tuesday 20 March 1984' be inserted.

The Hon. C.J. SUMNER: In reply to the debate on this motion, and the amendment, may I say that the Government is committed to the Maralinga Tjarutja Land Rights Bill. This matter has been before the Parliament now for several months: it was introduced into the House of Assembly, and there was debate in that House on the second reading; it was referred to a Select Committee which considered all aspects of it—

The Hon. M.B. CAMERON: I rise on a point of order, Mr President. I understand that debate on a motion of this kind can only be related to the actual date involved. I do not believe that the Attorney-General is relating his remarks to that aspect and I ask you to draw his attention to this matter.

The PRESIDENT: I take the point of order. The honourable Attorney-General.

The Hon. C.J. SUMNER: My remarks are clearly relevant to the date. I intend to argue that the Council proceed to debate this Bill today. The Hon. Mr Cameron has moved his amendment, and I am replying at the conclusion of the debate. What I am indicating—

The Hon. M.B. Cameron: You are not concluding it.

The Hon. C.J. SUMNER: Yes, I am. I moved the motion, it was seconded, and if the Leader wished to speak he had his opportunity. What I am putting to the Council is very pertinent to the question of when debate should resume. The Government, as I have indicated, is committed to this Bill. The Government believes that there has been adequate discussion through the mechanisms that I have outlined to this Council—Select Committee debate, debate in the other place, debate in this place and many hours of discussion between the various interested parties.

Therefore, in response to the Leader's amendment, which he has moved in response to my motion, I say that there is no case for deferral of the Bill until March. It is for that reason that I have moved that the matter be considered on motion. This means that it can be brought back on today after the dinner adjournment and debate can proceed. I merely wish to make the point that there has been significant Parliamentary consideration of this Bill already. I do not believe that there is a case for further delay. It was a commitment of this Government that we believe should be honoured during this year.

The PRESIDENT: The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I—

The Hon. C.J. SUMNER: I rise on a point of order. As I understood the position, I moved the motion—

The Hon. M.B. Cameron: Are you trying to gag the debate?

The PRESIDENT: Of course, the Minister closed the debate because he moved the motion. I put the question.

The Hon. I. GILFILLAN: A point of order, Sir. Is it out of order for me to speak to the amendment that the Hon. Martin Cameron moved, because I believed that the Leader of the House was speaking to the amendment and not to his original motion?

The PRESIDENT: The Hon. Mr Gilfillan has asked a question. Yes, the debate is closed because the mover of the original motion closed the debate. I put the question 'That "on motion" stand as part of the question.' Those in favour of the question say 'Aye'; those against say' No'. I think that the Noes have it.

The Hon. C.J. Sumner: Divide!

The Council divided on the question:

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

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

Pair—Aye—The Hon. C.W. Creedon. No—The Hon. R.C. DeGaris.

Majority of 3 for the Noes.

The PRESIDENT: The words are so struck out. I put the question 'That Tuesday, 20 March 1984' be inserted. Those in favour say 'Aye'; those against say 'No'. I think that the Ayes have it.

The Hon. Frank Blevins: Divide!

The Council divided on the question:

While the division bells were ringing:

Members interjecting:

The PRESIDENT: Order! The sitting is not suspended.

Members interjecting:

The PRESIDENT: Order! This is quite a serious matter. I hope that I do not need to take any other action than is being taken at the moment.

Members interjecting:

The Hon. Anne Levy: Ask the Aborigines now whether they think that you are supporting them.

The PRESIDENT: I ask the Hon. Miss Levy to desist. She can make as many speeches as she likes when this has been resolved.

The Hon. Anne Levy: I am not allowed, Mr President. They are gagging me. I have my speech ready now.

The PRESIDENT: The question is 'That "20 March 1984" be inserted.'

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

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

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. C.W. Creedon.

Majority of 3 for the Ayes.

The PRESIDENT: The question being carried, the debate is adjourned to 20 March 1984. The question now is 'That the motion as amended be agreed to.' Those in favour say, 'Aye'; those against say, 'No'. I think that the Ayes have it.

Motion carried.

EDUCATION ACT AMENDMENT BILL

At 6 p.m. the following recommendations of the conference were reported to the Council:

As to Amendments Nos 1 and 2:

That the Legislative Council do not further insist on these amendments but make the following amendments in lieu thereof:

Clause 4, page 1—

Line 24, after 'amended' insert '—

(a)'

After line 26, insert paragraph as follows:

and

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

(3) A person who is either an officer of the Department or employed as a teacher in, or in the administration of, a Government or a non-government school is ineligible for appointment as the Chairman of the Board.

(4) Before the Minister nominates a person for appointment as the Chairman of the Board, he shall consult with the Advisory Committee on non-government schools in South Australia, in relation to the proposed appointment.

Clause 5, page 1—

Line 27, after 'amended' insert '—

(a)'

After line 28 insert paragraph as follows:

and

(b) by striking out subsection (5) and substituting the following subsection:

(5) Each member of the Board who is present at a meeting of the Board (including the person presiding at the meeting) shall be entitled to one vote on any question arising for the decision of the Board at that meeting and, in the event of an equality of votes, no casting vote shall be exercised.

And that the House of Assembly agree thereto.

As to Amendment No. 5:

That the Legislative Council do not further insist on the amendment but make the following amendment in lieu thereof:

Clause 12, page 4, lines 9 to 17—

Leave out paragraphs *(a)*, *(b)* and *(c)* and insert the following paragraphs:

(a) by striking out from subsection (1) the passage 'a person or persons' and substituting the passage 'a panel of not less than three persons';

(b) by striking out from subsection (1) the passage 'a person so authorised' and substituting the passage 'the members of the panel';

(c) by striking out from subsection (1) the passage 'in his authority' and substituting the passage 'in their authority';

(d) by inserting after subsection (1) the following subsection:

(1a) A panel referred to in subsection (1) must include—

(a) an officer of the Department or of the teaching service;

(b) a person employed as a teacher in, or in the administration of, a non-government school;

and

(c) the registrar of the Board;

and

(e) by striking out from subsection (2) the passage 'an authorised person' and substituting the passage 'the members of a panel'.

And that the House of Assembly agree thereto.

Consideration in Committee of the recommendations of the conference.

[Sitting suspended from 6.7 to 7.45 p.m.]

The Hon. FRANK BLEVINS: I move:

That the recommendations of the conference be agreed to.

In support of the motion I would like to thank the managers from this Chamber who attended the conference and represented the Council so well. Particular thanks must go to the Hon. Mr Lucas, who says that it was the first conference that he attended where he was able to speak. I am sure he found it interesting in making his contribution. The conference was held in a good atmosphere and there was obviously a desire by the managers of both Houses to reach agreement. The House of Assembly managers were most accommodating.

The result of the conference concerning the amendments to which I referred prior to the dinner adjournment are testimony to that. In essence, two points were in contention, the first, of which is the composition of the Board. As members will recall, the old Board consisted of seven people, four from the non-government sector and three Ministerial appointments, which included the Chairman, who had both a deliberative and a casting vote. After a great deal of discussion, the conference came to agreement that the new Board would consist of eight members, four from the non-government sector and three Ministerial appointments, plus an independent Chairman, 'independent' meaning that that person cannot come from either the non-government sector or the Government sector. Also, there would be prior consultation with the non-government sector before that person was appointed. The Chairman of the new Board, as it will be constituted when these amendments pass, will have a deliberative vote only and a casting vote.

So, it was a very good compromise. Most managers at the conference had some input to that recommendations which, I think, again demonstrates the consensus arrived at by the conference.

The second area under contention was the inspection panel. The new arrangement before the Council at the moment formalises what already exists, which means that, as before, the nomination of the inspection panel will be made by the Board and approved by the Minister. But, the additional requirement—one which apparently always occurred but which was never written into the Act—is that the panel must now include as a minimum one person from the Government sector, one person from the non-government sector plus the Registrar. The conference was very wise in coming to that decision. It formalised, within the Act, the present arrangement, which was satisfactory to all.

I repeat my thanks to the managers from this Council for the spirit in which they approached the conference. I feel that the results are satisfactory to all. While neither House entirely had its own way, the managers from both Houses ultimately agreed with the result. I commend the motion to the Council.

The Hon. J.C. BURDETT: I, too, commend the motion to the Council. I agree with what the Minister said, that two matters were in contention: first, the composition of the Board and, secondly, the inspection panel. Regarding the composition of the Board, the Liberal Party and the Democrats said several times when they spoke in this Council that they could see nothing wrong with the Board as it was presently comprised. I recall the Hon. Mr Milne and the Hon. Mr Lucas asking over and over again whether the Government would say what was wrong with the Board, but they received no answer.

The other reason why the Liberals and Democrats supported the present system was that, originally, the exercise of the Registration Board had been an exercise in self-regulation, or at least co-regulation, where there was an input from the Government sector, where a competent commercial private sector capable of regulating itself had been doing just that, and where no-one had suggested that there was anything wrong.

Previously there were seven members, four from the non-government schools sector and three from the Government sector. What the Government sought to do in this Bill was to make it four from each sector. The compromise which was accepted I think was a reasonable one, namely, that the council members agreed with the Government to have eight members, four from the non-government sector and, in regard to the Government sector, three appointed by the Minister. The Chairman, as the Minister said, is to be a person from neither sector, an independent person, neither from the Government nor the non-government sector, a person appointed by the Minister but after consultation with the non-government sector, and not to have a casting vote.

That seems to me to have maintained the balance of power which is there already. It seems to me to be in accordance with what the non-government sector wants as well as the Government sector, and it is quite satisfactory.

In regard to the other matter, the question of the inspection panel, what has now been suggested had not been raised before or suggested in the Bill before. It is simply to formalise

what happens already, that is, to provide that on the inspection panel when a school is inspected, a fairly important matter, a matter fairly close to the hearts of schools, if they are inspected, is that at least one person shall be departmental, at least one person from the private sector, and the Registrar of the Board, without any upper limit. So it can be as many as you like, but at least one shall come from the department, at least one from the private sector, and the Registrar. That seems to me to be perfectly proper. I cannot see that there is any dispute at the present time.

It is perhaps hard to see why there was a dispute in the Council when we have been so readily able to arrive at this compromise, I support the compromise. I join the Minister in congratulating the people who took part in that conference.

The Hon. R.I. LUCAS: I support the comments made by the other honourable members on the conference. I think it is an indication that the Parliamentary process when followed can work. I will not cover the ground that the Hon. Mr Blevins and the Hon. Mr Burdett covered in such detail, but I do want to highlight one or two major points.

The Government originally sought three things in this particular Bill. The first was wider powers of the Board. The second was to effect Government control of the Board, and the third, to effect a greater role in power for the Education Department officers within the inspection panels. I believe what we now have by way of compromise in the major sections of the Bill will be, first, that the wide powers of the Board with respect to registration which the Government sought had been agreed to by all concerned.

There will be no problem there. As the Hon. Mr Burdett and the Minister said, there has been a compromise in relation to the composition of the Board. I will not go into the details except to highlight one matter relating to the Chairman. As has been said, the Chairman will be independent, and will be nominated by the Minister following consultations with the non-government sector. More importantly, the consultation process will involve the advisory committee on non-government schools. I think that that is a very good way of approaching the consultation process with the non-government schools sector.

An alternative approach might have been to consult the Catholic Schools Commission and the Independent Schools Board. That would have meant consultation with only the established schools system and may have meant that the smaller and newer developing schools, such as the fundamentalist schools, Buddhist schools, Jewish schools, and so on, may not have been consulted. I think that the approach that has been adopted, through the advisory committee, will enable consultation with a wider group in the non-government school sector—wider than the Independent Schools Board and the Catholic Schools Commission. I think that that is a healthy sign for the future and something that I hope will be quite successful.

In relation to the inspection panels, the Hon. Mr Burdett indicated that, as a result of a compromise, what happens at the moment will be prescribed legislatively. In relation to inspection panels, I highlight the fact that the compromise means that at least one Education Department representative and one non-government schools representative will ensure that there is considerable flexibility for the Board when appointing individual inspection panels. If it so chose, the Board could have a representative from the Education Department and, under the second provision, could have a representative from the Catholic schools sector and a representative from the independent schools sector—more importantly, it could also include a representative from the newer and smaller schools that have opposed many provisions of the Bill.

The people who attended the meeting that I attended along with the Hon. Mr Milne and the Hon. Dr Ritson on Monday evening expressed a lot of opposition to the Bill and the parent Act. Those people can take some solace from the compromise amendments resulting from the conference. Admittedly, the compromise reached is not exactly what they wanted. As I think many of us indicated during the second reading debate, we did not agree with many of the things that they wanted, anyway. However, in the future, the smaller and newer schools will possibly have a greater say in the operation of the Non-Government Schools Registration Board. If that is the case, I think that that is a healthy sign for the future of the non-government school sector. I support the compromise amendments of the conference, and I support the Bill in its amended form.

The Hon. ANNE LEVY: I, too, support the recommendations from the conference and, in so doing, state that I believe the House of Assembly conceded far more than did the Legislative Council in arriving at a compromise.

The Hon. L.H. Davis: You are supporting the Council.

The Hon. ANNE LEVY: I am stating my opinion that I think the House of Assembly conceded far more than did the Council.

The Hon. R.I. Lucas: We were all being reasonable until you got up, Anne.

The Hon. ANNE LEVY: It was not an incorrect statement that I made.

The Hon. R.I. Lucas: It is a subjective opinion.

The CHAIRMAN: Order! The Hon. Ms Levy.

The Hon. ANNE LEVY: It is my subjective opinion, having been a manager on that conference on behalf of the Legislative Council, that the managers of the House of Assembly conceded far more to arrive at a compromise than did the managers of the Legislative Council. I fail to see any reason why I should be criticised for making that statement.

There are just two points that I make, apart from that one. Whilst I agree with the compromise that has been reached, I would perhaps point out that we are spelling out in great detail the composition of the inspection panels and the composition of the Board. I, for one, have no objection to this whatsoever, but I do recall that other members of the Legislative Council objected very strongly, only a few hours or days ago, to spelling out matters such as 'two shall be men' and 'two shall be women'. However, when it comes to spelling out in very fine detail the composition of the Board and the panel, their objections to so doing seem to have vanished. I applaud this change of heart on their side so that a compromise was able to be reached.

In selecting a person for appointment as Chairman of the Non-Government Schools Registration Board, the Minister will consult with the Advisory Committee on Non-Government Schools in South Australia. As indicated by the Hon. Mr Lucas, I think, this is a broader body than consulting with either the Catholic Schools Commission or the Independent Schools Board. However, we must remember that it is not a statutory body: it is a body set up entirely nominated by the Minister. No-one other than the Minister chooses the members of this committee with which he will consult.

It is a measure of the sagacity of Ministers that the people that various Ministers have chosen to form this Board have been widely representative of the non-Government schools sector and that no criticism of the selection for this Board have ever been raised. I cannot understand why people felt that his selections to another Board might not meet with approval from across the educational sphere and why they were so adamant in opposing his original suggestion. However, we now have the situation where he will consult with the Board entirely selected by him. I presume that this Board will continue to be as widely representative as it

always has been, meeting with the approval of all sections of the education fraternity. I support the motion.

The Hon. K.L. MILNE: I will not go through all the arguments of other speakers, who have proved to my satisfaction that they understood what we did. I am very pleased about that, as I think is the Minister. I thought he was very erudite in his discussion of what happened. It may appear to the Hon. Anne Levy that the House of Assembly conceded a great deal, but I think each side has conceded about half. It was one of those pleasant conferences which proved the wisdom of the system, and I was very pleased to be a part of it. I congratulate the Minister of Education for his handling of the matter and I am quite sure that the House will be pleased with the result. I commend it to honourable members, and I support the motion and will support the Bill as amended.

Motion carried.

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

A quorum having been formed:

ADJOURNMENT

The Hon. C.J. SUMNER (Attorney-General): I move:

That the Council at its rising adjourn until Tuesday 20 March 1984.

In moving that motion, which is the traditional adjournment motion at the end of this part of the session, I take the opportunity to thank everyone who has participated in the functioning of Parliament during the past 12 months. It seems somewhat strange that we may well be finishing the last night of sitting at such an early hour, but I can assure the Council, and I am sure you are aware, Mr President, that that was not any fault of mine.

I take the opportunity of thanking the Clerks, who have assisted us so much during the year, and in particular for their assistance over the past few weeks. That applies also to all of those who have assisted in the Parliament; Attendants, *Hansard*, and the catering staff. It is traditional at the end of a session for there to be a build-up of business and for a number of issues to have to be dealt with. I believe that on this occasion we have managed the business as between the Government and the Opposition reasonably well, in the sense that we have, on occasions, started sittings in the mornings and have not sat through too late at night, except on one occasion.

Late night sittings, whether they be reasonably late nights or very early mornings, place very great pressure on the staff, including all those people I have mentioned—the messengers, *Hansard*, catering staff and other staff members who must make accommodation for the idiosyncracies of the Parliament and the people who happen to be members of it. I would like to thank them particularly for their work during the year and, more particularly, for what they have done, as they always do, towards the end of the session when it is necessary to be involved in a degree of flexibility to make sure that business is completed.

I take the opportunity of wishing them all the compliments of the season and a happy new year. I also thank you, Mr President. I take this opportunity to thank Opposition members for the way in which they voted (but not in relation to the most recent vote on a matter of significance, which was not exactly the action that should have been taken). Nevertheless, I believe that, in terms of getting business completed, we have been able to co-operate reasonably well on what have been a series of quite difficult Bills. The co-operation with the Government last night in not sitting late and in foregoing Question Time has meant that this Council was able to conduct its business in a reasonably civilised fashion without what I might call the difficult situation of sitting very late and into the early hours of the morning. In that sense, I thank all members for their co-operation in that respect.

May I also mention those people who sit in the gallery on the other side of *Hansard*—the representatives of the fourth estate. Sometimes I think that I should thank them and at other times I have other things to say about them. Nevertheless, the press require members of Parliament, and members of Parliament require the press. I suppose that this is the most characteristic love-hate relationship in human relations. The only thing I am disappointed about is that I did not receive, once again, one of those awards that are handed out each year by the press. In fact, I understand that this year there were more awards than usual, but I still did not manage to get one. Nevertheless, the press plays an important part in the democratic process by reporting what goes on in this Parliament, whether we agree with what they say or not. May I also thank members on this side of the House who have assisted with the running of this first year of the Bannon Government: I refer, of course, to the Ministers on the front bench and to back-benchers.

I conclude by wishing everyone the compliments of the season. I hope that they have a good break until 20 March, that they enjoy the Festival of Arts in the first two weeks of March and that they come back refreshed and in a co-operative mood in 1984.

The Hon. M.B. CAMERON (Leader of the Opposition): I would like to second the motion moved by the Attorney-General and to indicate that we, too, on this side of the Council appreciate the assistance that we have been given throughout the year by the staff at the table, who have been extraordinarily patient at times, even when dealing with people who obviously, from time to time, have disagreed with the advice that they have been receiving. We wish to thank the messengers for their very helpful behaviour throughout the year. I suppose that the best way of putting it is that we really appreciate the service that we receive from them. From time to time they must wonder at the sanity of this place, with the hours that we force them and other members of the staff to keep. They are extraordinarily patient. Not many people realise that they are at work before us and after us, on many occasions. There is a lot of work involved in the running of this Council.

I express my thanks and the thanks of the Opposition to *Hansard*, who do an extraordinary job and who try patiently to listen to the members of this Council, sometimes in very difficult circumstances because I know that from time to time matters get slightly out of control. That is not any reflection on you, Mr President, because you have done your best throughout the year to ensure that their job is made as easy as possible. Sometimes we think that you try too hard, but that is not always the case.

We also thank the catering staff, particularly the manager, who deals with an extraordinary situation because there is some unreliability in the sittings of the Council from time to time. It must be very hard to ensure that staff are available to provide for members. I know that the staff do their best, although they also are forced sometimes to put up with very difficult hours, and it is not always easy for them. We appreciate all that they have done for us. We also appreciate the assistance of the Fourth Estate, referred to by the Attorney-General. Without them some members would have nobody to talk to, particularly some of the Ministers, who spend an extraordinary amount of time gazing at them and talking to them. They are certainly a part of the Parliamentary establishment. Without them the Parliament would be relatively unknown within the community.

I wish everybody the compliments of the season. I thank the Government for its co-operation. If it was not for the Opposition and the move made by it tonight we might not be so friendly towards each other, and we might have been performing this task at about 7 o'clock tomorrow morning. I am sure that, in spite of their resistance earlier, Government members are now very grateful to us for taking the steps that we took, thus ensuring that this Council session ended in a friendly spirit and atmosphere. I wish everybody the compliments of the season and a happy new year and trust that we all come back refreshed from the break and ready for a co-operative season in March.

The Hon. K.L. MILNE: The Hon. Mr Gilfillan and I would join with the remarks of the previous speakers. We congratulate the Government and its Leader in this Council on the year's work, which was conducted under considerable difficulties at times. It is not an easy time to be in Government, and we realise that. We thank members of the Government for their courtesy to us, which sometimes, or perhaps often, must have been under circumstances where they would rather explode. We, too, would like to thank the Parliamentary staff on whom we continuously rely. When one thinks of who they all are, a tremendous number of people are required to make the Parliament work.

I thank the Clerks, the Black Rod, the Clerk Assistant, the librarians, the caretakers, the messengers, the dinner maids, Tim Temay and Nancy, the dining room staff, the staff in the servery, the staff in the kitchen (whom we seldom see), the switchboard operators, the electricians and the engineer, and *Hansard*. There is never a hitch with the *Hansard* staff, day or night, whatever the time. I also thank the press and the media, especially for my prestigious award. It was a big surprise to me, and I am most grateful. The fact that I have cancelled my subscription to the *Advertiser* is beside the point. I might renew it again.

We thank you, Mr President, for your conduct of the Council with a minimum of disruption, a maximum of goodwill, and a maximum of determination, I would think. We thank the Opposition and the Leader (Hon. Martin Cameron) for their help and, at times, guidance. They have all been very kind and helpful to us, and we appreciate it indeed. The Hon. Mr Gilfillan and I jointly wish all members a happy and healthy Christmas, a good holiday, and the best of the best for 1984.

The PRESIDENT: Before putting the motion moved by the Attorney, I would like to add my thanks to the expressions of gratitude of previous speakers. I would also like to convey to the table staff, the messengers, *Hansard*, the catering staff, the librarians and the press my heartfelt thanks for the effort they have put in. Most of these people go well beyond the normal routine to ensure that our lot is made a little easier. I am most sincere in my praise and thanks to the people who serve us. It might be appropriate to mention at this time that Trevor Blowes, who is progressing towards being one of the table staff, has passed his Arts examinations with very favourable marks. I am sure that we all congratulate him and wish him well.

More notable perhaps is our Black Rod, who is one of those women who always seems to fit in her many duties ever so comfortably. She has just received her Bachelor of Arts degree with credits and distinctions. What we would do without her I am not sure. We thank you, Jan. I thank the Leaders for their kind words about me. I am not sure whether I am judged by what I have done or by what I failed to do, but let me say that it was all done with the best intent to provide a service to the State. I thank you very much for the co-operation I have received and I wish all members and their families every best wish for Christmas and the New Year.

Motion carried.

SITTINGS AND BUSINESS

The Hon. C.J. SUMNER (Attorney-General): I move:

That Standing Orders be so far suspended as to enable the Clerk to deliver messages to the House of Assembly when this Council is not sitting.

Motion carried.

[Sitting suspended from 8.30 to 9.30 p.m.]

STOCK DISEASES ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

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

KLEMZIG PIONEER CEMETERY (VESTING) BILL

Returned from the House of Assembly with the following amendment:

Page 1, line 34, insert new clause 4 as follows:

4. (1) Vesting of the land in the council—The land is vested in the council for an estate in fee simple.

(2) The land is freed and discharged from any trust, mortgage or encumbrance affecting the land immediately before the commencement of this Act.

(3) The Registrar-General shall, upon application by the council and production of the appropriate duplicate certificate of title and such other documents as he may require, issue such new certificates of title or make such entries or notations upon existing certificates of title as may be necessary to evidence the vesting of the land under this Act.

(4) No fees or stamp duty are payable in respect of an application made under subsection (3).

Consideration in Committee.

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

That the House of Assembly's amendment be agreed to.

The amendment inserts in the Bill a clause that was in erased type, as it is a money Bill. That clause has now been inserted, and I suggest that the Council accepts the amendment.

The Hon. K.T. GRIFFIN: The Opposition supports the amendment.

Motion carried.

LEGAL SERVICES COMMISSION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

PRISONS ACT AMENDMENT BILL (No. 2)

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

EDUCATION ACT AMENDMENT BILL

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

ADJOURNMENT

At 9.39 p.m. the Council adjourned until Tuesday 20 March 1984 at 2.15 p.m.