LEGISLATIVE COUNCIL

Thursday 22 March 1984

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

QUESTIONS

SCHOOL BUSES

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Agriculture, representing the Minister of Education, a question concerning school buses.

Leave granted.

The Hon. M.B. CAMERON: The Kangaroo Inn Area School is located on its own in the heart of bush and farming country approximately 35 kilometres from Millicent. During the Ash Wednesday fires in February 1983, four buses carried 230 children and their teachers from the school to Beachport and safety. In a letter describing the incident the school council said:

> We were very fortunate to escape as several buses had problems with fuel vaporising. The convoy could only barely manage 20 kilometres per hour on that day.

Since the fires the school community has done all in its power to gain upgraded buses for the school, but to no avail. A recent letter from the school council to the Minister of Education, a copy of which was forwarded to me, stated:

> The Kangaroo Inn Area school council is still perturbed about the school bus situation at our school. In your letter dated 21 November 1983 to the Hon. M.M. Wilson, MP, you indicated that the school would be supplied with a diesel bus that was currently being reconditioned to replace the Leyland Terrier petrol bus that caused problems on 16 February 1983. To date this has not happened, thus a passing of 13 months since the Ash Wednesday fires with no improvement in the bus situation. Naturally, the parent body and the school council are very concerned and frustrated as we feel we are being 'fobbed off'.
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> In the same letter you mentioned the provision of another diesel bus that would be a further step towards meeting the school's preference for diesel buses in the area. This statement has also been overlooked. I am sure that you can appreciate the concern of the school council and the fact that the parent body of the school is extremely angry.
>
> Finally, might I add that we feel we should have our bus fleet regularly updated. The lack of reasonable service facilities in the area means that repairs are far too irregular. It has been noted that breakdowns even with replacement motors are quite frequent. Therefore, buses like 713, 725, 743 should be given to areas that have 'better' class servicing arrangements.

The Government's response has been inadequate. In July last year I wrote to the Minister stressing the need for upgrading of the school bus fleet. In my letter I highlighted the experience of the school during the Ash Wednesday bushfires. I ask that members appreciate the need for the following lengthy quote. My letter stated:

> The school council's concern arises directly from the events of Ash Wednesday when the entire school population had to be evacuated by bus from the path of the oncoming fire. As someone who witnessed first hand the devastation of the fires on Ash Wednesday, I can understand how lucky we were that lives were not lost and, in the case of the Kangaroo Inn school, that the whole school was not wiped out.
>
> On that day only four buses were at the school during the day. These four buses carried 230 children through intense heat to Beachport. The school council said, 'We were very fortunate to escape as several buses had problems with fuel vaporising. The convoy could only barely manage 20 kilometres per hour on that day'. This must have been a terrifying situation for everyone involved.
>
> The heat at the school was so intense that the groundsman's car was totally destroyed and the windscreen melted. Nets on the tennis courts also melted. In the Agricultural Science shed buckets and drench guns melted into heaps from radiant heat. The bitumen road over which the party drove *en route* to Beachport was actually cooked and lifted by the intense heat, and limestone formed sections of unsealed road similarly cooked and were blown away by the high winds.
>
> It is clear that the children, parents and teachers had a very lucky and narrow escape from what could have been an absolute disaster. Had even one of the buses stalled (which was a very real possibility) leading to the need for reloading on to one of the other overloaded buses, then total chaos would have resulted and many lives could have been lost. Fortunately, the quick and calm thinking of parents, staff and the CFS averted any disaster on this occasion. Nevertheless, I believe it is essential that your Department take any action necessary to ensure that all risks are minimised. The provision of reliable, diesel powered buses is a must for this school. The school council has taken steps to clear the area around the school of undergrowth which could be a potential fire hazard, and to ensure that in future six buses will always be on site should evacuation be necessary. A decision is also likely that in the event of fire the school will be evacuated where it is safe and possible to do so.

Kangaroo Inn Area School is in a unique position located in the middle of the countryside and surrounded by farmland. On 21 January 1973 a major fire was fortuitously stopped right on the perimeter of the school. That was a previous occasion. Without a wind change the school might have been devastated. Ash Wednesday was not the first fire.

On 15 March 1980, there was a major threat to the school but the fire failed to reach the school perimeter because it was stopped by a border of sunflower crops. On three occasions there was a potential for disaster at the school, and no doubt it will recur in the future. Will the Government immediately investigate the problem and take steps to ensure that Kangaroo Inn Area School is supplied with diesel buses as promised previously and, as there has now been a further summer period gone through without this provision, that it be done as soon as possible?

The Hon. FRANK BLEVINS: I will refer my question to my colleague in another place and bring back a reply.

COMMUNITY PRIVATE HOSPITALS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation prior to asking the Minister of Health a question on community private hospitals.

Leave granted.

The Hon. J.C. BURDETT: The Minister will be aware that non-recognised hospitals, in particular, in the country, believe themselves to be severely disadvantaged by Medicare arrangements. They are classified as private hospitals for Medicare purposes. However, they do not operate for private profit and are, in every relevant sense, community hospitals.

The hospitals in question are at Keith, Kadina, Moonta, Ardrossan and Mallala. In general these hospitals were operating on a sound financial basis prior to Medicare without being a burden on the Health Commission. They are not recognised and receive no on-going funding from the Health Commission. They operate as self-sufficient private organisations although they are, of course, community based.

These hospitals have been placed in category 3 for the purposes of Medicare, and their financial future must be bleak, to say the least. Will the Minister consider helping these hospitals by (1) making representations to the Commonwealth Minister to place all community private hospitals in category 2; or (2) by providing community beds, or what used to be called contract or section beds, in these hospitals; or (3) by any other means?

The Hon. J.R. CORNWALL: To answer first the third question and put the matter in perspective, these are all hospitals that were offered the same terms and conditions as every other country hospital throughout South Australia at the time of the introduction of Medibank in 1975. A group of them—from memory, it is about six—stood out.

As recently as early last week the Executive Director of the southern sector of the South Australian Health Commission called personally at the Keith Hospital and was involved in discussions with the board to offer it yet again the opportunity to become a country recognised hospital; in other words, to become a true community hospital in the best sense of the word, as are all country recognised hospitals around South Australia. That means that they can take both public and private patients. They are able to take any patient who is covered by Medicare or they may take privately insured patients.

Again, as recently as last week the Keith hospital refused that offer, as I understand it. I do not believe that I can do any more. I most certainly will not make any representations suggesting that they be reclassified as category 2 hospitals. In terms of contract beds, it would be ludicrous of me to prop up hospitals that have elected to be private, non-profit hospitals when they have had the opportunity to be fully recognised hospitals within the family of the Health Commission. If they wish to continue as private hospitals, whether for profit or otherwise, that is their democratic right and I would be the last person to interfere with their right to do so, but the question of viability is one for them alone. It is not my intention to use contract beds in private, non-metropolitan hospitals to assist their viability. I am prepared to consider at any time renegotiating with any one of those hospitals that desires to be reclassified as a recognised hospital, but while they wish to continue as private hospitals they are doing their communities a disservice, and I have no intention of assisting them with public moneys.

FRITZ VAN BEELEN

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

Leave granted.

The Hon. K.T. GRIFFIN: A report on 16 March 1984 claimed that on that day a convicted murderer, Fritz van Beelen, applied to the Supreme Court to have a non-parole period fixed. Honourable members will remember that van Beelen is serving a life sentence for murdering a schoolgirl aged 15 years at Taperoo Beach in July 1971. The judge is reported to have adjourned the application by van Beelen to enable a psychiatric report to be obtained. I ask the Attorney-General:

1. Did the Crown Prosecutor appear at the Supreme Court hearing of van Beelen's application to have a non-parole period fixed?

2. If the Crown Prosecutor did not appear, why did he not appear?

3. If the Crown Prosecutor did appear, what were his instructions from the Attorney-General—that is, was he instructed to support, oppose, or say nothing about the application?

The Hon. C.J. SUMNER: I assume that the Crown Prosecutor appeared but, if he did not, I do not know why. He should have appeared. He did not have specific instructions from me. I do not instruct or direct the Crown Prosecutor on every case that he—

The Hon. K.T. Griffin: But it is a significant case.

The Hon. C.J. SUMNER: The honourable member asked the question. I do not instruct (and neither did the Hon. Mr Griffin) the Crown Prosecutors (and there are many of them) in regard to their attitude on every prosecution in relation to which they appear before the courts. That is clear. That is what the Hon. Mr Griffin did, and that is what I did. I assume that the Crown Prosecutor appeared in this case to represent the interests of the Crown, the State of South Australia, and the people of South Australia. No specific instructions were given to him—as they are not given in the great majority of other cases. If specific instructions are sought from the Attorney-General, they are given. Apparently, the matter has been adjourned. I will seek the Crown Prosecutor's view on the state of proceedings.

The Hon. K.T. GRIFFIN: I wish to ask a supplementary question. In the light of that reply, will the Attorney-General also seek from the Crown Prosecutor the nature of his submissions in respect of that application?

The Hon. C.J. SUMNER: I am not quite sure what the honourable member wants me to find out. I will ascertain the current position following the adjournment. I will also (and I would have thought that this was implicit in what I said) find out what, if anything, the Crown Prosecutor put to the court if, in fact, he appeared, as I assume was the case.

MICROPHONES

The PRESIDENT: Before asking for further questions, I would like to make a statement concerning the microphones, about which a number of members have asked questions. Following concerns expressed to me by a number of members, I have ascertained that only members' microphones that have been selected by the operator will be connected to the address system and consequently heard from the speaker boxes in rooms adjoining the Chamber. Interjections are relayed only on a second channel to a tape under the control of *Hansard*. Members who turn off their microphone will interfere with the accurate recording of the proceedings of the sitting.

It is for this reason that all members' microphones are active at all times for the taped *Hansard* recording unless a member chooses to temporarily depress the red button on his microphone. I have been assured that, provided the system is turned on immediately upon my entrance to the Council Chamber and subsequently turned off immediately on the rising of the Council, no private conversations can be relayed through the system to other offices should a microphone remain active. I have directed that accordingly the operation of the system be limited strictly to the duration of the day's sitting. This system is similar to that which has been operating in the House of Assembly for some time.

MUSEUM

The Hon. C.M. HILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for the Arts, a question about the redevelopment of the South Australian Museum.

Leave granted.

The Hon. C.M. HILL: There is great concern amongst those associated with the South Australian Museum and museums generally in this State, because these people have heard that the Government has deferred stage II of the museum redevelopment. This concern is understandable, because the previous Government approved the general overall redevelopment of the museum. From time to time the present Minister for the Arts has indicated publicly that he and his Government support the redevelopment and that they are proceeding with it.

The matter of deferment is mentioned in the recent newsletter which is public property and which is prepared by the Public Buildings Department project team. In the newsletter of March 1984 there is the following paragraph:

Interim Upgrading Works:

One outcome of Government's recent capital works review and decision to temporarily defer commencement of stage II of the project was the perceived need to upgrade the following facilities to provide acceptable interim conditions:

Museum East and North wings
Museum Fullarton Road annexe
Museum Gilles Plains annexe
Art Gallery coffee shop

A feasibility study to identify the extent of work and associated costs involved has now commenced.

People have made the point to me that deferring stage II of the major redevelopment and spending money on items that are mentioned in that report, as some sort of sop to the Government's change of heart, is not acceptable to such people concerned with the museum in this State. My questions are as follows:

1. What was the exact work involved in the proposed stage II of the museum redevelopment?

2. Why was it deferred?

3. What will be the period of deferral?

4. Will the Minister reconsider this matter and take into account the four items to which I have referred, put them aside, and get on with the job of proceeding with the original stage II?

The Hon. C.J. SUMNER: I will seek the information requested by the honourable member.

MEDICAL FRAUD

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking a question of the Minister of Health about medical fraud.

Leave granted.

The Hon. R.J. RITSON: I ask this question of the Minister, although it has a large Federal component because I am aware, as we all are, of his amount of influence amongst the medico-political Caucus of Labor Ministers of Health throughout Australia. It would be my hope that he could exert some influence in this area to which I am about to refer. I refer to a letter in the *Medical Journal of Australia* of 17 March, which I will read in part. It refers to statements made in a doctor-bashing context by the Federal Government referring to $100 million worth of medical fraud throughout Australia. It is written by a person called Don McNeil, who says:

As a statistician with an interest in medical statistics, I have examined this submission (Parliamentary Paper No. 445/1982). I have also studied a statistical review by E.S. Knight of the Commonwealth Department of Health's fraud and overservicing detection system dated 20 May 1983, and a further statement by Dr Blewett on medical fraud and overservicing made in Parliament on 15 November 1983.

The letter goes on to describe the claim that excess doctors' fees in 1982 were about $100 million, broken down to one-third legitimate, one-third fraud and one-third overservicing. I must say that I do not know what legitimate excess fees might be. Then the writer states:

I can say with conviction that there is no statistical or logical basis either for the amount quoted or for the breakdown into categories. The only basis for these figures is the 'expert opinion' of members of the Department of Health, 'supported' by a statistical calculation that is irrelevant and misleading.

The letter continues:

As a scientist, I object most strongly to public policies being formulated on the basis of improper studies. There are sound procedures, well known to biostatisticians and epidemiologists, for estimating the extent and nature of fraud and overservicing in the medical profession.

The procedures involve intelligent (preferably prospective) study design, unbiased statistical sampling from the study population, and careful data management, data analysis and reporting, guided of course by expert opinion. There is no evidence that these procedures have been carried out.

Don McNeil, Ph.D.,
Professor of Statistics,
School of Economic and Financial Studies,
Macquarie University.

Will the Minister draw the letter to the attention of Dr Blewett and to the attention of his colleagues in other States to ensure that the Australian taxpayer is not paying for unnecessarily expensive detection mechanisms and will not have to pay for a cure, as it were, that may be worse than the disease if Don McNeil's caution is perhaps correct?

The Hon. J.R. CORNWALL: If the Hon. Dr Ritson had done his homework a little better he would have been aware that the original claim about the possibility of $100 million was the potential figure for fraud in overservicing and it was certainly not made by Dr Blewett or indeed by any individual politician; that claim was made in the report of an all-Party committee in the House of Representatives. I clearly recall that that report was presented on the first day that I happened to be in Canberra as Minister of Health, in late November 1982. At the time, the Fraser Government was still in office and Jim Carlton was the Federal Minister for Health.

The claim was never made in the first instance by Dr Blewett or by anyone else from what the Hon. Dr Ritson has termed the 'medico-political scene'. If the Hon. Dr Ritson considers it a waste of taxpayers' money to have all-Party committees, standing committees or Select Committees of the House of Representatives, the Senate or the South Australian Parliament, he should really stand up and say that. I repeat for the third time that that claim was not made originally by Dr Blewett, by any other individual politician or by any Minister of any Government, State or Federal, Conservative or Labor. Under the circumstances, I think that I hardly need draw the attention of Dr Blewett or any of my interstate colleagues to the letter in the *Australian Medical Journal.* I think the only observation that the Hon. Dr Ritson made that was somewhere near accurate was his comment that I have substantial influence in the caucus of the Health Ministers around this nation and, of course, that includes Ministers of Health from the Conservative States of Queensland and Tasmania.

The Hon. R.J. RITSON: I desire to ask a supplementary question. Does not the Minister understand that the substance of my question was that the report he referred to is questioned as having no statistical basis? Has not the Minister avoided that issue in his reply?

The Hon. J.R. CORNWALL: No.

TAPING OF PARLIAMENTARY PROCEEDINGS

The Hon. G.L. BRUCE: My question is directed to you, Mr President. Could you inform the Council how many people have access to the second tape, on which private conversations between members in this Chamber are recorded and, secondly, can consideration be given to attaching a separate switch to members' microphones so that they can be activated when a member is speaking publicly in the Chamber?

The PRESIDENT: The short answer to the honourable member's question is 'No, I do not know.' Seeing that the honourable member has raised the matter, at his direction I will obtain information about the position.

MEDICARE

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Health a question about Medicare.

Leave granted.

The Hon. L.H. DAVIS: When the Medicare system was first introduced a pamphlet was issued, which stated:

> Doctors are free to charge any fee they wish and this may be higher than the scheduled fee.

Another pamphlet stated that "all doctors remained free to set their own fees". In the *News* of 9 August 1983, in an interview regarding the operation of Medicare, Dr Blewett, the Federal Health Minister, was asked whether doctors who were in favour of bulk billing their patients would be allowed to advertise that fact. He answered categorically 'No'.

Yet, despite the assurance that doctors' fees may vary, presumably like those of veterinary surgeons, accountants and other professionals, the Hon. Dr Cornwall on 28 December 1983 announced that he would submit a proposal to State Cabinet in January for the Government to compile and publish a list of doctors and clinics prepared to bulk bill patients' accounts direct to Medicare. After ascertaining the list of doctors prepared to bulk bill, the list could then be published in a newspaper advertisement.

The Hon. Dr Cornwall was quoted in the *Advertiser* of 28 December 1983 as saying, 'Quite frankly, bulk billing is in their [the doctors'] own interests.' Given that the costs to a general practitioner amount to 50 per cent of gross fees, a 15 per cent reduction in fees through bulk billing will obviously reduce their income by 30 per cent, although one would concede that there is to be some saving on bad debts and administrative costs, although it will be a very small saving. Only yesterday in this Council the Hon. Dr Cornwall conceded that the large majority of general practitioners were not overpaid. Yet, earlier this year he was seeking to reduce their income significantly.

The Hon. J.R. Cornwall: You have got it wrong.

The Hon. L.H. DAVIS: No, I have not got it wrong. However, in early February the Hon. Dr Cornwall backed down on his earlier statement and instead said that the South Australian Government will monitor doctors' fees during the first six months of Medicare to ensure that South Australian doctors charge no more than the Government scheduled fee. Even that changed policy, announced little more than a month ago, quite clearly is at variance with a claim made in the Medicare pamphlet which stated:

> Doctors were free to charge any fee they wish and this may be higher than the scheduled fee.

First, why is the Minister acting at variance with the statements of his Federal colleague, Dr Blewett, and the assurances in the Medicare pamphlet? Secondly, is the Minister aware of any example whatsoever where a fee for service in the State's metropolitan teaching hospitals in the past two years has been in excess of the common fee? Thirdly, having said only yesterday that general practitioners were not overpaid, why is it that he persists in encouraging a system of bulk billing which could reduce doctors' incomes by as much as 20 per cent? Finally, if the Government, after this six-month trial period, does introduce a system of advertising doctors who bulk bill (that is, who charge only 85 per cent of the scheduled fee), is the Government also intending to publish lists of other professions, trades and services that charge less than their counterparts?

The Hon. J.R. CORNWALL: I am pleased that the Hon. Mr Davis asked those questions as it gives me an opportunity to clarify—and I will make this crystal clear—my position concerning bulk billing. I will give $1 000 to any charity which the Hon. Mr Davis nominates if he can find anywhere on public record that I have ever said that doctors must bulk bill all patients. That is a standing offer. I am confident in making that offer, because at no time have I ever said, on behalf of John Cornwall or as the State Minister of Health or on behalf of the State Government, that doctors must bulk bill their patients.

The Hon. L.H. Davis: You said that it was in their interests.

The Hon. J.R. CORNWALL: What I said is that the Government would encourage South Australian doctors to bulk bill because—

The Hon. L.H. Davis: On 28 December you said that it was in their interests to bulk bill. It is a quotation. Do not resile from it.

The ACTING PRESIDENT (Hon. G. L. Bruce): Order! The Hon. Mr Davis asked the question and he should listen to the answer.

The Hon. J.R. CORNWALL: I said, and I will say again today, that I would encourage doctors to bulk bill patients, because it is more convenient and in their patients' interests if they do so. In all the ranting and raving that has gone on from the other side over Medicare, in all the uproar, not once has a conservative politician in this State or in this nation stood up and gone to bat for the patients. Not once. We have heard a great deal about bulk billing, contracts and section 17. We have seen the greatest campaign of distortion that has ever been carried on in this country since the 1949 nationalisation of banks issue. This is a very different issue, but it is comparable—

The Hon. C.M. Hill: This is nationalisation of the medical profession.

The Hon. J.R. CORNWALL: It is not nationalisation of the medical profession. I will come back to that interjection in a moment, as it is important. It is the greatest—

The Hon. L.H. Davis: You also might like to come back to the questions.

The ACTING PRESIDENT: Order!

The Hon. J.R. CORNWALL: It is the greatest campaign of distortion and deceit that has been carried on publicly in this country since 1949. The Hon. Mr Hill interjects and says that it is about nationalising medicine.

The Hon. L.H. DAVIS: I rise on a point of order. The Hon. Dr Cornwall is not answering my questions.

The ACTING PRESIDENT: The Hon. Dr Cornwall took up the interjection. If members do not want interjections answered, they should not interject. I suggest that there is too much interjecting while members are obtaining an answer. There is no point of order.

The Hon. J.R. CORNWALL: The Hon. Mr Hill has been in this Chamber a long time. He is a former distinguished Minister in two conservative Governments and a man of very considerable experience.

The Hon. C.M. Hill: Two Liberal Governments, if you do not mind.

The Hon. J.R. CORNWALL: Two very conservative Governments, actually. To describe either of those Governments as 'Liberal' is a very imprecise use of the English language.

The Hon. L.H. Davis: You have been a Minister in two Governments, too—but undistinguished.

The Hon. J.R. CORNWALL: Two democratic socialist Governments. That is a very good and apt term for both of them.

The ACTING PRESIDENT: Order! There is too much conversation and back-chatting in this Chamber. Honourable members will address their remarks to the Chair and not across the Chamber.

The Hon. J.R. CORNWALL: The Hon. Mr Hill talks about nationalisation of the profession. What Medicare does (and let me again be very clear about this) is to underwrite fee for service medicine in this country for the next two decades and beyond. Medicare is a system of universal health insurance. It is not a health care system. Nobody has ever said that it is a health care system. It is simply a system

of universal health insurance. It is designed in such a way that it underwrites fee for service medicine as distinct from nationalised or salaried medical practice for the next two decades in this country. The statement attributed to me in the *Advertiser*—which was quite accurate, I might say—on 28 December 1983 simply said that I was considering submitting to Cabinet a proposal that we might compile and publish a list of doctors who were prepared to bulk bill. That was one of several submissions that was considered and ultimately put to Cabinet.

The Hon. L.H. Davis: You were overruled.

The Hon. J.R. CORNWALL: Indeed, I was not overruled.

The Hon. L.H. Davis: You were rolled.

The Hon. J.R. CORNWALL: Nor was I rolled. I assure you that this Cabinet does not operate in that way.

The Hon. L.H. Davis: You just did not get your way.

The ACTING PRESIDENT: I suggest that we would get through Question Time much more quickly if there were fewer interjections.

The Hon. L.H. Davis: The Hon. Dr Cornwall has not started to answer question one yet, Mr Acting President. You might remind him of that.

The ACTING PRESIDENT: The honourable member is not encouraging him to.

The Hon. J.R. CORNWALL: I believe that interjections should be uninterrupted and heard in silence. If the Hon. Mr Davis continues with his barrage of interjections, it is my intention at all times to wait until he has finished before going on with the business of answering the questions. I remind members opposite that by their constant barrage of inane interjections they are achieving nothing except using up their own time. If members opposite think that they are going to provoke me into reacting or overreacting, I can assure them that they have got another think coming.

The ACTING PRESIDENT: Order! I have already given the Minister the protection of the Chair and concede his right to answer the question. I suggest that interjections should not be so frequent. Members have complained about the lack of time available for questions. If questions were asked and answered in a proper manner, we would get through more questions. I ask members to take note of that.

The Hon. J.R. CORNWALL: I was asked why there was a variance in my attitude, but there has been no variance. I was asked why we encouraged bulk billing when I had admitted freely that GPs are not overpaid. I repeat that I do not believe that GPs are overpaid but that I would encourage bulk billing, because it is convenient for patients. I was asked why there was a variance or alleged variance between the statements of Dr Blewett and my own. There has been no variance. With regard to those doctors who suddenly found on 1 February that their costs had gone up by 30 per cent compared to what they were on 31 January, I wonder whether the Opposition really wants to go to bat for them.

As an example, in Ceduna, in a near monopoly situation, two of the general practitioners who operate out of my community health centre, which belongs to the South Australian Health Commission and, through it, to the public of South Australia, suddenly found that on 1 February it was necessary for them to raise from $11.60 to $15.20 their charges for a standard consultation. When in that town a petition was circulated which had near unanimous support from the residents of Ceduna and district protesting against that action, the people were threatened that doctors would withdraw from Ceduna and go elsewhere.

They are the type of actions that I have sought to minimise. That is the sort of situation that I do not want to see arise, and I have done my damndest for the past three weeks to try to get an interim peace arrangement with the medical profession in this State. I have done that with great difficulty and under great provocation, particularly from the Opposition spokesman on health, who has at all times tried to continue to provoke some sort of bloody confrontation.

My actions are on the record for everyone to see. I have continued to negotiate with the AMA, and I am meeting with them again at 4 o'clock this afternoon. I am bending over backwards to ensure that the situation does not arise in South Australia where doctors withdraw their labour. Despite what the *Advertiser* might say editorially, at no stage have I tried to adopt the so-called bullying stance. Price control was invoked from last Tuesday very simply to ensure that private patients in public hospitals would be entitled to receive Medicare rebates for medical services.

The Hon. J.C. Burdett interjecting:

The Hon. J.R. CORNWALL: The Hon. Mr Burdett interjects and says 'quite improperly'. I challenge Mr Burdett to tell me whether he would be prepared, if he were Minister of Health in the same situation, to jeopardise the rights of private patients in public hospitals, particularly cancer patients receiving very expensive radiotherapy treatment from private radiotherapists. Let Mr Burdett stand in his place and tell us whether he would deny patients the right to Medicare rebates under the Federal legislation by refusing to invoke price control. Let us leave aside whether one agrees with the amendments to the Health Insurance Act as passed by both Houses of the Federal Parliament, or whether one disagrees. The simple situation is that, for me to have failed to take action and for the South Australian Government to have failed to take action would have meant that, from last Tuesday, the Medicare computers would have started to reject claims.

The Hon. J.C. Burdett: Unless Blewett changed his stance, which he would have done.

The Hon. J.R. CORNWALL: Leave that aside. If members opposite want to go to the heart of what democracy in this country is all about or to join with the more extreme elements of the medical profession, so be it. But, the Hon. Mr Burdett should stand in his place and tell us whether he would have allowed, in the same situation—

The Hon. C.M. Hill: He would be criticising his Federal Minister.

The Hon. J.R. CORNWALL: Medicare happens to be central to the Prices and Incomes Accord and I support it. I also support my colleague, Dr. Blewett, as I support my colleague and friend Bob Hawke.

The Hon. C.M. Hill: What has he got to do with it?

The Hon. J.R. CORNWALL: He has got everything to do with it. I am very happy to line up behind Mr Hawke. Let Mr Burdett stand in his place—

Members interjecting:

The ACTING PRESIDENT: Order! I ask the Min to answer the question before him and to not digress.

The Hon. J.R. CORNWALL: I am, albeit somewhat circuitously. I have been waiting for this opportunity for three months and I do not want to pass it by. In closing, I challenge Mr Burdett to stand in his place and tell the people of South Australia that, for sheer cynical political purposes he would have allowed the claims for Medicare rebates for private patients in public hospitals (including cancer patients in public hospitals, who happen to have gone in as private patients) to be placed in jeopardy? Some of those rebates would amount to thousands of dollars. That was the alternative that I had, and certainly my interest primarily and almost exclusively has always been and will remain to protect the interests of patients in South Australia.

The Hon. L.H. DAVIS: The Minister did not answer one part of the question. Is he aware of any example whatsoever where a fee for service emanating from the State's metro-

politan teaching hospitals in the past two years has been in excess of the common fee?

The Hon. J.R. CORNWALL: The Hon. Mr Davis misses the point again.

The Hon. L.H. Davis: Come on! Stand up and deliver.

The Hon. J.R. CORNWALL: I am not in a position to be able to say one way or another—

The Hon. L.H. Davis: You are the Minister of Health.

The ACTING PRESIDENT: Order!

The Hon. R.J. Ritson: The hospitals send it out, not the doctor. You have got institutional billing; you are in every position to know that.

The ACTING PRESIDENT: Order!

The Hon. J.R. CORNWALL: Everybody seems to know far more about it than I do. The position, as recently as yesterday when I discussed it with the Chairman of the South Australian Health Commission and the Director of Policy and Projects in the Health Commission, is that an amazing pattern has emerged that has gone on for years. It certainly went on for the three years and two months that the Liberal Government was in office, namely, that a significant number of doctors in our teaching hospitals as well as in our country recognised hospitals have never had a written agreement of any description with those hospitals. That is simple fact.

It is for that reason that earlier this week I asked the Chairman of the Commission to set up a formal request to the hospitals and to prepare for me a formal report on the costs of providing diagnostic services, that is, the cost of providing the expensive equipment, the cost of personnel necessary to service and operate that equipment, and the gross private incomes that are being generated as a result of that.

It has become obvious that that task is such that yesterday I authorised the Chairman to appoint consultants because I have to say that the whole thing is in a mess and has been in a mess, it seems, since time immemorial. The situation is that a significant number of doctors do not have written agreements with their hospitals, and we are not in a position in that circumstance to be able to say whether or not they have charged at any stage above the scheduled fee.

But, again, that misses the point. If every doctor in this State involved in providing diagnostic services has charged at the scheduled fee or less during the past decade or more it makes no difference. The simple fact is that to meet the minimum requirements under the Federal legislation introduced by a democratically elected national Government, and passed by both Houses of the Federal Parliament and under the guidelines that were promulgated by the democratically elected Federal Minister for Health—

The Hon. L.H. Davis: Have the non-Labor States done it?

The Hon. J.R. CORNWALL: That shows a vast ignorance. The patterns of practice and of specialist practice in public hospitals in Queensland, as members would know if they had taken the trouble to look at it, are very different from what they are in other States, and Queensland is not significantly affected by this dispute. That just happens to be historical and accurate fact, but the situation in South Australia, Victoria, Western Australia and New South Wales is that if some sort of action was not taken to meet those minimum requirements under the legislation, under the guidelines and under the Medicare agreement, signed by the heads of Government—the Premier and Prime Minister—the private patients in public hospitals would not at this moment be qualifying for Medicare rebates.

NON-GOVERNMENT SCHOOLS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Education, a question about comparisons with non-Government schools.

Leave granted.

The Hon. ANNE LEVY: Two days ago the Minister tabled in the Parliament a response to a question that I had originally asked last May involving comparisons of the resources per student between Government and non-Government schools in this State, both in terms of income and expenditure. There has been considerable discussion of the data that was presented, and various individuals have put to me that it would be very helpful if further information could be provided about these schools that were used in the comparisons, while, of course, maintaining their anonymity. In particular, is the Minister able to give information as to certain characteristics of the Government and non-Government schools that were used in the study, such as whether they are metropolitan or country schools, whether or not they are in areas of socio-economic disadvantage, whether any Government schools have received above average allocation of resources for any reason, and so on?

Furthermore, I know that the Non-Government Schools Advisory Committee has long used a formula for converting primary-secondary enrolment mix schools into secondary-only equivalents in order to rank a wide range of schools so that such formulas for converting primary-secondary mix schools into secondary equivalent schools is well established. Is the Minister able to provide to me further data in a similar format to that provided on Tuesday, which would give comparisons between large non-Government combined schools and large metropolitan Government high schools in the same geographical area using this established formula for conversion to secondary equivalents for the non-Government schools?

The Hon. FRANK BLEVINS: I will refer the honourable member's question to my colleague in another place and bring back a reply.

MATURE AGE UNEMPLOYMENT

The Hon. K.L. MILNE: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, three questions regarding mature age unemployment.

Leave granted.

The Hon. K.L. MILNE: Perhaps all of us are hearing of instances where people in the age group of 40 to 45 to 55 are being retrenched for no apparent reason other than their age. In general they are being told by the Commonwealth Employment Service that they must be prepared to accept the fact that they may never work again and that few vacancies exist for persons over 50. With rulings on pensions as at present, this imposes an almost impossible burden on people in this position, especially when a large number are still encumbered by mortgages and other debts.

The experience of some whom I have encountered has been so shattering that it has significantly affected their health, marriage and general family relationships. We all agree that this is a most serious and urgent problem in our community. My questions are:

1. Will the Government provide statistics for the rate of increase in retrenchments in the 45 to 55 age group?

2. Has the Government made any investigation of this area and, if so, what are the findings and what further action does the Government propose to take?

3. Of the Commonwealth Employment Programme funding allocated to South Australia by the Commonwealth Government, what distribution has been made to *(a)* school leavers, *(b)* under 45s, and *(c)* over 45s?

The Hon. C.J. SUMNER: I will obtain a reply for the honourable member.

COMMONWEALTH EMPLOYMENT PROGRAMME

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about the participation rate by women and girls in the Commonwealth Employment Programme.

Leave granted.

The Hon. DIANA LAIDLAW: The guidelines for CEP highlight the project should give equal access to men and women in employment opportunities created, the objective being to provide women with 50 per cent of employment opportunities. To date, however, women and girls in South Australia have filled only 15 per cent of positions created, even though the employment levels among women and girls are constantly higher than those among men and boys. As section 5.2.3 of the guidelines notes that in each State and Territory all practical steps must be taken to ensure that women must receive an equal share of jobs created, will the Minister advise what steps he has authorised to lift the low participation rate of women and girls in jobs created to date? Has one of the options been to advise sponsors in the CEP Consultative Committee that schemes which provide employment opportunities for women and girls will be given priority for funding over other applications?

If so, is such an objective, however well meaning, in conflict with the guidelines which note that all applications for CEP grants will be considered on their merits by the consultative committee? Finally, would the Minister advise on a question that was raised with me recently, which sought to ascertain whether or not a sponsor of a project specifically for women or a sponsor who indicated to the consultative committee they he wished a position or positions to be filled by women, in effect, was breaching the Sex Discrimination Act?

The Hon. C.J. SUMNER: I will obtain a reply to that question.

PUBLIC WORKS COMMITTEE

The Hon. C.W. CREEDON: I move:

That pursuant to section 18 of the Public Works Standing Committee Act, 1927, members of this Council appointed to the Parliamentary Standing Committee on Public Works under the Public Works Standing Committee Act, 1927, have leave to sit on that committee during the sittings of the Council for the remainder of the session.

Motion carried.

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate on second reading.

(Continued from 21 March. Page 2652.)

The Hon. J.C. BURDETT: I support the second reading. The Bill before us has, since its adjournment from December last year, been the subject of intense debate and discussion within the community. There has been consultation in many quarters, and I believe that the course of discussions since December has justified the stand we took in this place to defer any hasty consideration of the Bill. I am sure that the majority of members have appreciated the opportunity that the three-month deferral has given them to gain a better perspective on the entire Maralinga land rights question.

Prior to the December adjournment, the Leader in this place, the Hon. Mr Cameron, detailed very extensively the Opposition's concerns about this legislation. They were concerns which I share, and I wish to highlight a number of areas where we believe modification to the legislation is entirely reasonable and appropriate. Let me stress again that the Liberal Party supports land rights for the Maralinga people, but we believe that we have a firm obligation to both the Maralinga people and the wider community to ensure that the laws we make regarding this land will work and are fair to all concerned.

Principal to our concern are the following issues:

1. Elders: We believe that this legislation should enshrine within it the traditional Aboriginal laws and practices. In other words, the council of the Maralinga Tjarutja should comprise that body of elders who have tribal authority and not merely a group of Aboriginal people elected under the European system. Tribal authority held by elders is not something achieved through an elective process but is obtained according to the traditional practices and processes of Aboriginal law.

2. Roads: The area involved in this Bill is very extensive. The lands are a buffer to the Unnamed Conservation Park. At the moment, four roads traverse the Maralinga lands, and the legislation presently proposes that they be closed to any form of public access. I believe that these roads should remain open. At the same time I recognise that it is appropriate that the Aboriginal people, as owners of the surrounding land, have some right to be informed that people will be traversing these roads.

After all, it is common in the outback, when one is going into a fairly remote area, to let people know where one is going. In other words, the Aboriginal people should be informed or notified of anyone's intention to traverse the roads, but they should not have a power of veto over this.

3. Reverse onus of proof regarding trespass: believe that the reverse onus of proof provisions presently contained within the legislation are unacceptable and warrant withdrawal.

4. Sacred sites: We believe that a matter of importance to both the Aboriginal people and the wider community is that of sacred sites. The sacred sites issue is a very contentious one and frequently claims and counter claims as to the authenticity of sacred sites are made. In order that the Aborigines' interests are not undermined, I believe that all sacred sites should be identified, either generally or particularly, prior to exploration.

5. Royalties: Presently the legislation provides that the Maralinga Tjarutja should be eligible for one-third of the royalties recovered from the lands; a further one-third shall be paid to the Minister of Aboriginal Affairs to be used towards the health, welfare and advancement of the Aboriginal inhabitants; and the final one-third shall be paid into the general revenue of the State.

Unlike the provision in the Pitjantjatjara Land Rights Act, there is currently no limit on the royalties payable. This is unacceptable. While we would not argue with the break-up of royalties (should any eventuate), we believe that it is appropriate that there be some prescribed limit. I might say that many of the representations made to us in writing have suggested that this legislation should be precisely the same as the Pitjantjatjara legislation, and of course such a provision was contained in that measure. However, in this Bill as it stands there is no such provision.

6. Register of sacred sites: Further to point 4, consideration needs to be given to the whole question of the registration of sacred sites—whether, for example, such registration should be voluntary or compulsory.

7. Area of land involved: We still believe that the extension of the land in question from 132° to 133° should be reviewed. As the Leader pointed out in December, little evidence was presented to the Select Committee to justify addition of the enormous area involved. I believe that, if the Government considers that the addition of the extra 25 000 square kilometres is vital, it must be able to quantify the reasons as to why this land is of special importance. To date it has failed to do so.

8. Conditions to be taken into account by the arbitrator: The Bill as it presently stands requires an arbitrator to have regard to a number of factors which could unnecessarily restrict future development on the lands. We believe that the arbitrator should be required to give consideration to the same factors that apply under the mining and petroleum Acts. These parameters have worked very successfully to date in other regions of the State and give rise to a fair and reasonable consideration of the views of all those interested in a region.

9. There is also the question of access, appeal against refusal, and appeal against capricious refusal of access. This matter was referred to previously. At present, no mode of appeal is provided. If a person seeks access and it is refused, that is the end of the matter. I suggest that there should be some means of appeal against capricious refusal of access, and that appeal probably should be to the local court or to a body of that kind.

I can give an example of this. I refer to a letter of 21 March 1984 signed by the Chairman of the Centennial Expedition Committee which reads:

> Just a short note, as a member of the Royal Geographical Society, to put you in the picture with regards to the planned Centenary Expedition (see enclosed centenary brochure). This expedition has reluctantly had to be cancelled by the council of the Society recently as permission to enter Pitjantjatjara lands was declined after several months of correspondence with the community, and without any reasons being given . . .

He refers to an enclosed letter, which states:

> It seems a great pity that an organisation of such standing as the Royal Geographical Society is refused a permit for a project of legitimate scientific study such as the proposed expedition. I expect that the Society will be officially writing to Mr Crafter, the Minister of Aboriginal Affairs in the near future. This is just an unofficial note to keep you informed in the light of the current debate in the Council.

He makes reference to a meeting. The letter from the Pukatja Community Inc., Ernabella, dated 5 March 1984, states:

> Dear Mr Ward,
>
> Further to your letter of 28 November 1983 re permission for an expedition into Pitjantjatjara lands, council has reconsidered your application and I regret to inform you has declined to grant your Society a permit.
>
> Yours faithfully . . .

As I said, no reasons were given. In the letter that I read from the Chairman of the Expedition Committee, he referred to a pamphlet which was annexed. This is the pamphlet of the Royal Geographical Society of Australasia (South Australian Branch) for its centenary 1885-1985. It sets out the details of the Society, its objects, its foundations, the founders of the Society and, in particular, the celebrations. One of the aspects of the celebrations was to be this expedition which now it appears cannot be carried out. I suggest that it is not reasonable, in the light of this evidence, that access to the lands should finally rest with the council. There ought to be some sort of appeal.

The Hon. M.B. Cameron: Particularly when they have given no reason.

The Hon. J.C. BURDETT: Yes, no reason was given—none at all. If a reason had been given it could have been argued about, but there was nothing to argue with. There was simply a flat blatant banal denial.

The Hon. M.B. Cameron: They are not the only ones.

The Hon. J.C. BURDETT: That is all there was. As the Hon. Mr Cameron says by interjection, I am aware that there have been other refusals of this kind. There has to be some kind of appeal when refusal of access applies. These nine reasons that I have given are areas where further consideration can be given as to the terms of the Bill.

In summary, the Liberal Party continues to support land rights for the Maralinga people but we remain firmly of the view that we would be failing in our duty as an Opposition if we did not air in this place the concerns put to us about certain aspects of the legislation by a wide cross-section of the South Australian community. There is no disputing that land rights is a most sensitive isue, but we need to consider it calmly and reasonably, balancing as far as possible the competing and sometimes completely opposite points of view held about land rights. For these reasons I support the second reading but I will be considering amendments which I believe will be brought up in Committee.

The Hon. R.C. DeGARIS: I rise to support the second reading of the Bill. I must say that I was rather surprised in listening to the contribution of the Hon. Anne Levy when she opened her remarks by claiming that the business of the Council was taken out of the Government's hands late last year. The Council adjourned the debate on the Bill and, whilst there have been other similar comments made on similar acts by the Council—

The PRESIDENT: Order! I have notification that the honourable member spoke on this Bill on 6 December.

The Hon. R.C. DeGARIS: Then there are two good speeches that the Council will not hear.

The Hon. K.L. MILNE: The important thing that we all have to realise and understand in this matter of the Maralinga peoples' land rights is the basic reason for the request by the elders in the first place. After all, they could have gone back on to the land at any time they wanted to, except for the relatively small fenced-off area around Maralinga itself. But had they done so, they would not have had control over their seclusion and privacy. This need for comparative isolation is essential if their plans are to be a success, because it would be very difficult, or impossible, to continue tribal ways and discipline with constant interference from the Western world's culture.

There are a number of differences between the Maralinga/Tjarutja situation and the Pitjantjatjara situation. This is not a case where the Aboriginal people are trying to integrate with other Australians. They are trying to get away from the Western world as far as is practicable. In the Maralinga lands, there are only about three tracks, plus a Government access road right on the western edge, whereas in the Pitjantjatjara lands there are quite a number of roads. In the Maralinga case there are no established and settled Aboriginal communities and the people will be largely nomadic; whereas in the Pitjantjatjara case there are a number of established communities.

Consequently, in the Pitjantjatjara case, the roads are used frequently by quite a large number of people and thus strict control on the use of those roads is essential; whereas in the Maralinga situation, very few people would wish to travel on the three tracks and so the controls can be relaxed to some extent, without adversely affecting the basis of the whole exercise, provided that courtesies are retained and penalties for infringement are enforced.

The Pitjantjatjara lands are occupied in all seasons, continuously, whereas most of the Maralinga lands will be unoccupied except in good seasons, owing to complete absence of fresh water in most years. When some of the Aborigines were camped on the edge of the sandhills just south of Maralinga, water and food had to be carted to them almost daily. The Pitjantjatjara lands are in pastoral lands whereas the Maralinga lands are not, and are of little or no value for agricultural or horticultural purposes.

I think that everyone is pleased with the agreement reached on the composition of the council. The council will now be comprised of the elders of the people, no matter how many there may be, and the only obligation on the council is to notify the Minister of Corporate Affairs at the outset, and regularly thereafter, who those people are. This will give the Maralinga council greater autonomy than in any other legislation in Australia, from what I understand, and will reflect the true nature of their traditional way of making decisions. A European type of council is not appropriate and, in our view, would not work in these special circumstances.

The compromise on access by people other than the Maralinga people should work very well because, as I stated earlier, there are very few roads and very few people wishing to travel on them. The permissible margin on each side of the road is necessary for those who wish to camp, because it may be impossible to get through from north to south in one day. The compromise regarding the conditions under which mining companies may explore without incurring a heavy cash penalty before even starting, I am sure will be helpful. The rules for any agreement reached between the Aboriginal people and a mining company will remain the same as have been worked out over the past few years, apparently without a great deal of difficulty, and from what I can understand, to the satisfaction of both sides. This was certainly the case with Aquitane, and was the case with the Hematite agreement with the Pitjantjatjara people, except for the up-front cash payment which stalled the whole scheme. All other points were agreed.

There have been numerous conferences on the question of sacred sites, and significant sites. It is now generally agreed that it is very much in the interests of the Aboriginal people to list their sacred sites on a confidential register under the conditions laid down in the Bill, because there is no other certain way of protecting them for all time. The arrangement whereby sacred sites on the register are noted on a lease agreement when the Minister discusses it with the Aboriginal people is in our view a big step forward; the requirement for any other sacred site to be noted on the lease before the lease is signed is even more helpful. I understand that the legislation will be drafted so that the extra sites, if any, will only need to be identified in general terms rather than full disclosure, unless a mining company wishes to go towards them in due course when the final procedures are put into operation.

If a sacred site is not noted on the lease before it is signed, then any further sites of significance would need to be negotiated with the mining company concerned, and I believe that this is fair and sensible. The whole object of this is to protect the sites, while avoiding confrontation and criticism which is so damaging to us all. One of the greatest fears of the elders is that the location of sacred sites, and the stories behind them, will get lost through lack of interest shown by many of the present generation.

People from both sides keep referring to what Sir Thomas Playford promised all those years ago. Knowing him well, as I did, for one reason or another, I feel that it is highly unlikely that Sir Thomas would suggest returning these lands to the Maralinga people without some agreement similar to that which we have all arrived at now. He was so keen on mining, and promoted the mining interests to such an extent, that I feel, had he not been a successful politician and a successful cherry-grower, he would have chosen to be a prospector. No-one will know what he really promised because it is not recorded, but I have a feeling that he would be pleased at the consensus, or very near consensus which has been arrived at.

I trust that now this near consensus has been achieved, and that a great deal of resentment has been dispensed with, while a great deal of good-will has been created, everyone will leave these good people alone to carry out their difficult task of preserving their race and customs, which will undoubtedly enrich us all. I congratulate the Minister of Aboriginal Affairs, Mr Crafter, on the way in which he has handled this matter, at times, I have no doubt, under great pressure. His understanding, patience and tact are quite remarkable. I also congratulate the Hon. Mr Arthur Whyte for the clear, decisive stand which he took during these negotiations; his depth of knowledge of the Maralinga lands and its people has been of immense value.

I also place on record the enormous amount of effective work done on this matter by my colleague, the Hon. Ian Gilfillan, through much of last year. His knowledge and experience was a great help to me in the final negotiations. I believe that history will record the contribution of these three men, in particular, with considerable gratitude. Having said all that, both the Hon. Mr Gilfillan and I want to thank the elders of the Maralinga people and others involved in the negotiations for their courtesy, tolerance, co-operation and wisdom during the long period since they first requested the return of this land. The elders, too, must have been under great pressure most of the time. Their attitude and decisions must give everyone confidence in the future of the Maralinga Tjarutja.

We, the Australian Democrats, are committed to establishing land rights legislation which ensures justice and dignity for the Aboriginal people of Maralinga Tjarutja. We have two basic aims among many others. First, we want an arrangement which will allow the Aboriginal people to be sufficiently isolated, private and secluded, to enable them to do all that is necessary to establish or re-establish their traditional way of life—and thus their survival. Secondly, we want to achieve this legislation with a minimum of misunderstanding and resentment from the rest of Australian society and with a maximum of good-will towards the Aboriginal people, so that we can be proud of them and they can regain a respect and trust and affection for us. Now that the handing over of these lands is a fact, and I am sure it will be, very soon now, I would like to see that the Maralinga people set out on this very important mission with no reservations, and with our very best wishes for success. I support the second reading.

The Hon. J.R. CORNWALL (Minister of Health): I have listened to the speeches on this matter with great interest, as the debate has to do with important legislation, dealing with, as you know, Sir, complex and delicate issues. I think it is particularly important for members of this Parliament, who are asked to try to understand some of the complex cross-cultural issues involved in matters of this kind, and attempt to make informed decisions on behalf of, and in the best interests of, another group of people of a vastly different cultural background. The failure of many people of European background to do just that in the past in an effective way has been amply demonstrated by the tragic history of both official and private relationships with the Aboriginal people in Australia since colonisation.

As the Hon. Mr Davis pointed out in his speech, we have seen a great deal of change take place in the pace and direction of matters in Aboriginal affairs over the past 20

years. After nearly 200 years of protectionism and patronisation, we have come through an interim period of equally mistaken 'assimilation' and 'integration' until today we have reached a more mature understanding of the desire and capability of the Aboriginal community to determine and manage its own affairs and retain a real cultural identity.

Despite suggestions from Opposition members about the role of white advisers, the real thrust of the upward movement in Aboriginal self-management has been as a result of activity by Aboriginal people themselves. One of the exciting developments in the whole Australian community, which is just being revealed, is the manner in which Aboriginal people are taking responsibility for their own affairs and proving extremely capable at doing it. Fifty years ago the commonly accepted view was that as a race the Aboriginal people were facing extinction. The vitality of the people in pursuing their aspirations in the face of such negative attitudes by the general white community has, thankfully, put that type of thinking to rest forever. I was encouraged, therefore, by indications from honourable members opposite, in their support for this Bill.

The movement over the past 10 years around Australia to recognise the special affiliation of Aboriginal people to their land, and the right of those people as the original occupants of Australia, to ownership and control of land, has done, and will do, more than anything else to retain and maintain, within our midst some of the values, qualities and strengths of one of the oldest cultures in the world.

Members will be aware that South Australia was the first State to enact any form of legislation which enabled Aboriginal people to hold and manage land in their own right. This was the Aboriginal Lands Trust Act passed in 1966. Subsequently, most of the Aboriginal reserves then existing, and some other smaller pieces of land, were transferred to the ownership of that Trust.

As members opposite pointed out, that did not occur with the North West Aboriginal Reserve immediately, and this recognised the special traditional culture still existing in that area and the need for special consideration to be given to the control of that land before it might be brought under the Aboriginal Lands Trust.

The Hon. Mr Hill pointed out that the situation in relation to Aboriginal land rights has not remained static but is evolving—to use the honourable member's words 'towards the best form of land rights legislation'. The Pitjantjatjara Land Rights Act, which eventually provided land rights over the North West Aboriginal Reserve for the local traditional people, is recognised, by both sides of this Council as pioneering legislation in this area. It, indeed, evolved from and followed extensive and wide-ranging consultation with the Aboriginal people, with a view to ensuring that a full understanding of their wishes and aspirations was obtained, and the ways and means of recognising those in South Australian law. The inquiry was initiated by Premier Dunstan in 1977 and concluded by the Liberal Government in 1981. The principles embodied in that legislation were not, therefore, the result of a hurried or careless approach: they represented the result of four years of in-depth negotiation between the Governments of both complexions, the Aboriginal people and their advisers and other interested parties. Subsequently, the Liberal Government was proud to regard that legislation as a model for Aboriginal land rights which might be followed around Australia.

The legislation now before the Council, which seeks to grant the land to the traditional owners of the Maralinga area is modelled on the Pitjantjatjara Land Rights Act. The principles, which have been supported by the Liberal Party in the past, have been carried forward into this legislation. Members opposite have acknowledged that in their support for the Bill. Indeed, the Hon. Mr Griffin referred to his support for '99 per cent' of the Bill. In view of the important principles which are carried forward from the Pitjantjatjara Act into this legislation, the Government cannot resile from those major principles and I do not think that it is the wish of the Opposition that that should be the case.

However, it was disappointing and frustrating that this Bill was deferred in December last year by the Opposition, which wished to introduce amendments to the Bill to vary it from the provisions in the Pitjantjatjara Act. The Leader of the Opposition made a long speech seeking to justify that situation. However, what he said boiled down to the remarks he made in his introductory statements, that is, his Party's concern about three key issues, namely:

(1) Provisions for mining and exploration on the land;
(2) Access to the lands; and
(3) Register of sacred sites.

Members are aware that there are several matters on which the Maralinga people have compromised already which are not found in the Pitjantjatjara legislation. These relate to access rights for the residents of Cook, the working rights of the rabbit contractor, invitations without permit to other Aboriginal persons, the establishment of a Parliamentary Standing Committee and the application of pastoral and environmental controls to the land.

I wish to discuss the question of access to the land. This matter has been taken out of proportion to the real situation. There have been suggestions that the Pitjantjatjara people have acted unfairly or capriciously in administering this aspect of their legislation. There is absolutely no justification for those criticisms. The Aboriginal people are simply concerned about who comes on to their land, and what is their business—what are they going to do while they are there? This is no different from the concerns of any other landholder (that is, to protect and care for his land).

Members opposite suggested that the legislation should be deferred until the question of access to the land is clarified, following the judgment by Mr Justice Millhouse, whereby he found that the access provisions of the Pitjantjatjara Land Rights Act were invalid in relation to the Commonwealth Racial Discrimination Act. The Government does not accept that position. The matter is the subject of appeal to the High Court, and during that time the appropriate provisions of the Pitjantjatjara Land Rights Act stand and are in operation.

Further, there has been consultation with the Commonwealth Government, and that Government has given an undertaking that, should the High Court uphold the decision of Mr Justice Millhouse, then legislative action will be taken to overcome the conflict between the two pieces of legislation. As the Hon. Mr Griffin pointed out, the Liberal Party, when in power, had sought the same assistance from the Commonwealth Government should such a conflict arise. It is the Government's intention that those provisions of the legislation be not proclaimed until that situation is fully clarified. This is not out of order. When the Pitjantjatjara Land Rights Act was passed in March 1981, there were a number of administrative and other details which had to be put in order before the Act was finally proclaimed to come into operation in October 1981. The same situation will apply to this legislation before it is finally proclaimed to come into operation in 1984.

The Hon. Mr Cameron suggested that there would be no great loss to the Aboriginal people if the legislation was deferred until this matter was dealt with by the court. I would point out to him through you, Mr President, that it is this kind of thinking which has led, in part, to the delay which has built up to a period of 20 years while the people have waited for their land. We can always find some reason why the granting of land to Aboriginal people might be

deferred for yet another time. I will return to the access question later.

There is considerable confusion about the mining provisions in this Bill. They are the same as those in the Pitjantjatjara Land Rights Act. Some members opposite have complained about the attempt by the people under the Pitjantjatjara Act to obtain front-end payments. That clearly is not the case. The payment or demand for front-end payments of any kind is specifically outlawed both under the Pitjantjatjara Land Rights Act and the present Bill. It has been further suggested that the provisions of section 61 of the Mining Act, which deals with compensation for mining operations on any land, are different in principle from those which are found in the Pitjantjatjara Land Rights Act and in this Bill. Certainly, the provisions are wider, but quite clearly the principles are the same; that is, that compensation is payable to a land owner for certain disturbances to the land as a result of mining operations. Under the Mining Act, under the Pitjantjatjara Land Rights Act and under this Bill, mining operations include exploration activities.

The difference that we are looking at is that the Pitjantjatjara Act, which was passed by the Liberal Government, does take account of the need to consider damage or disturbance to the way of life of the people, in addition to any physical damage. In their dealings with the Hematite Company, the Aboriginal people sought to negotiate a suitable recognition of that provision in the legislation. It was clear from the beginning that the mining company was not willing to negotiate on that basis. The legislation anticipated any difficulty which might arise over the questions of compensation at any stage of negotiations and, again following the principles of the Mining Act, provides for an arbitrator. It seems that the mining company is not prepared to take the matter to arbitration. That decision rests with the company or any other company that might be involved. Even if they go to arbitration and are not satisfied with the result, they are still not required to proceed with the work on the lands. Any question of a veto in relation to undertaking mining on the Pitjantjatjara lands or the Maralinga lands therefore rests entirely with the mining companies.

However, when this Bill was adjourned in December last year, the Opposition indicated that it would move to defeat the Bill in its entirety unless changes were made which would accommodate the attitude of the mining industry on the question of compensation when carrying out exploration on the lands. In this regard I was interested to hear the remarks of the Hon. Mr Gilfillan about the attitude of the Aboriginal people toward mining on the land. It is not to be unexpected that their fundamental position is that they would prefer that no mining disturbance, or any other disturbance, take place on the land. On the other hand, living in the world they do today, they accept the fact that the white community wishes to mine on the lands and that some benefits may accrue to Aboriginal people also. Because of this there have already been agreements negotiated over the past few years for mining on some areas of the land, and the people have quite clearly indicated that they would not obstruct mining under suitably agreed arrangements.

We could find that same attitude by Aborignal people being illustrated in other parts of Australia. In the Northern Territory where they have much experience in land rights, a considerable amount of mining is taking place on Aborinal lands. Since 1980 the three biggest mining projects in Central Australia have taken place on Aboriginal lands. In the past two years Aboriginal people and the Northern Territory Government have successfully negotiated about 40 projects that have proceeded in the Territory.

Despite these arrangements, members will be aware that the Aboriginal people have been asked to consider further compromises on the mining and access questions. Several members from the Government and the Opposition, including you, Mr President, have visited the people and held discussions on these issues and on other matters in the Bill which were of concern. As a result the Government has the agreement of the Aboriginal people to make yet further concessions in order that this legislation might pass through the Parliament. I will be introducing amendments therefore which will provide for the payment of compensation for mining exploration to be in accord with the Mining Act. On the question of access to the land, I will be moving amendments which will provide for the right for persons who wish to traverse across the land to do so after notifying the Aboriginal people, but without the need for a formal permit.

In the debate last year, some members expressed interest in the possibility of establishing a register of sacred sites, which might then be available to assist applicant mining companies when negotiating with the Aboriginal people about areas which should be avoided when undertaking mining exploration. The Aboriginal people have serious reservations about the preparation of such a register of sites which are secret to their mythology.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: The elders and the community council made it clear to me when I talked to them.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: I did not act in the patronising sort of way which is characteristic of the visits of Mr Cameron and Mr Olsen. I did not go out there on a media circus but went out there to sit and listen to the people. I have no wish to digress.

Members interjecting:

The PRESIDENT: Order! I ask that Mr Cameron cease interjecting.

The Hon. J.R. CORNWALL: The people believe that the maps are best kept in their heads. However, despite this concern about this intrusion into their sacred matters, purely for the purposes of capital development by non-Aboriginals, the Aboriginal people have agreed to a form of register which might be established and I foreshadow an amendment to the Bill for that purpose.

I will also be bringing forward two further amendments which pick up proposals by the Opposition. The first regards the most appropriate kind of council structure for administering the lands, taking into account the traditional decision-making processes used by the Aboriginal people, rather than a European-style structure; the second will provide for the establishment of offices in Adelaide and on or near the lands.

During the debate last year, several members made reference to the percentage of the State which is being granted to Aboriginal people under this legislation and the Pitjantjatjara Land Rights Act. I would point out to members again that this is an area of South Australia that nobody else has wanted for 150 years, other than for the testing of rockets and atom bombs. The area we are now talking about is 6 per cent of the State. It is generally in an arid zone, a desert area, and not regarded as suitable for pastoral development by the Pastoral Board or by the Department of Environment and Planning. In another connection it should be noted that approximately 40 per cent of the land of South Australia is held under pastoral lease by 358 pastoral lessees.

In concluding these remarks I wish to comment generally about the question of Aboriginal land rights. I have already referred to the development of our thinking in Parliaments and across the nation on this matter over the past 10 to 15 years. In dealing with this issue we are looking at a most important question of natural justice for the indigenous

people of this country. The Pitjantjatjara Land Rights Act was a first step towards recognising the special rights and obligations of a group of those people to their land. This present legislation seeks to go even a step further. It seeks to open the way for a group of Aboriginal people who were deliberately moved from their traditional lands in order that the European community might use those lands to test atomic weapons. What we are now doing is, after a long period of time, seeking to make arrangements for the people to return to their land.

The Hon. Dr Ritson referred to their right to obtain the occupation and peaceful enjoyment of that land. In that regard I would remind members of the Letters Patent passed under the Great Seal of the United Kingdom which erected and established the Province of South Australia and fixed the boundaries thereof. That document, signed by King Edward in the sixth year of his reign, provided, amongst other matters, that:

> Provided always that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal natives of the said Province to the actual occupation or enjoyment in their own person or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such natives.

That has been the legal, conventional and moral obligation on European people in this part of the continent from the beginning of colonisation. We are aware that it has not been fulfilled in many circumstances. There are wide sections of our community today who believe that much more should be done to ensure that justice is accorded to our Aboriginal people in gaining an appropriate status in our community, especially in relation to the ownership of land. That right to own this land, to manage it and control it with independence and dignity is what this Bill seeks to ensure.

A number of members of Parliament have visited the Yalata people over the past months and, indeed, over the past several years to talk to the Aboriginal people about this matter. It is not hard to imagine that those people are not a little tired of talk, and are frustrated by the lack of action. The impression I gained on a recent visit was that the Aboriginal poeple view the whole processes of white Government with considerable scepticism and distrust, in view of the continual delays, deferrals and changes in position in relation to commitments already made and, in some cases, made long ago. At the conclusion of a meeting I had with the people, a very telling and pertinent comment was made. One man said something like:

> When the white man wanted to use our land to let off bombs, we were simply got together quickly and taken off the land and sent down to Yalata. We weren't asked if we wanted to go; it wasn't our wish. There were no inquiries or select committees or long talks with politicians. Now, after 30 years we want to go back and look after our land. We have said clearly what our wishes are. Why now must there be so much talk, so many committees, so much waiting, before we can return?

Why indeed? I trust this Council will now use its collective powers and wisdom to bring a swift and happy conclusion to what has been a tragic and unhappy episode in the history of this State.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

CONTROLLED SUBSTANCES BILL

Adjourned debate on second reading.

(Continued from 21 March. Page 2656.)

The Hon. R.J. RITSON: In speaking to this Bill I will be brief and address only a few points contained in it. It has been well canvassed by the Hon. Mr Burdett and, particularly in view of the other material before this Council, I certainly will not attempt to canvass the whole of the Bill myself. I will just make a few comments in support of some matters that the Hon. Mr Burdett has raised, particularly the question of penalties, and I will make a few comments concerning the question of self-medication and the anxieties expressed on behalf of health food interests lest this Bill impinge on such interests.

The whole question about penalties for possession of marihuana is really whether one wants it to be illegal or whether one wants to legalise such practices. I underline the point made by my colleague Mr Burdett that the maximum penalty is a penalty very rarely exacted. It is always kept for a worst possible case. In sentencing there is a wide range of seriousness of any given offence, from a minor and inadvertent first offence through to relatively minor but repeated offences. The persons convicted may be of varying degrees of penitence and they may have varying likelihoods of re-offending. Taking all these things into account, magistrates and judges will, by and large, award penalties near the bottom of the range for first offences not aggravated by any other factor. I am told that fines for simple possession are commonly, therefore, in the range of $100 to $200.

If we reduce the penalty to $500, one could expect the usual penalty for the less serious forms of the offence to be of the order of $25. Quite frankly, a penalty that small really amounts to no penalty, particularly when one relates it to the amount of money that people spend in purchasing these drugs of habituation. So, a penalty of that size would probably in practice simply amount to another minor expense involved in continuing the habit. Whilst the possession of *cannabis* would not have been legalised *de jure*, it would have been legalised *de facto*, all deterrent aspects of the penalty having been abolished. So, I urge the Council strongly to support the Hon. Mr Burdett's contention that the penalty should not be reduced.

The Bill does not specifically attack self-medication or the health food industry in any way. I do not believe that individuals or organisations who are responsibly selling relatively harmless materials for self-medication have anything to worry about, but I support the regulation-making powers so that should any serious degree of harm become evident from such products the matter can be dealt with by the Government of the day. I do not object to the principle of self-medication. I am, as members know, a medical practitioner and I am well aware, as is the Minister of Health, that harm can come from self-medication. But, it can come from self-medication with drugs controlled by prescription, too. People pass tablets amongst themselves; they offer their neighbour a free dose of their tranquilliser over the back fence. One can do oneself as much harm with prescribed asprin as with unprescribed asprin. In fact, if everybody wanting to medicate themselves with some relatively harmless substance for a minor condition had instead to visit a medical practitioner, health services would break down.

So, we have accepted for a long time in our community that self-medication is a necessary aspect of our society, and I am sure that this Bill does not seek to prevent that in all its aspects, but merely to give the Government of the day a little more power to exercise its responsibility in protecting people from substances that may be discovered to be dangerous. In the interests of the business of the Council, that is all that I have to say at this stage. I will support a number of amendments to be moved by the Hon. Mr Burdett, and I support the second reading of this Bill.

The Hon. PETER DUNN secured the adjournment of the debate.

[Sitting suspended from 4.15 to 5.53 p.m.]

PARLIAMENTARY SALARIES AND ALLOWANCES ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The purpose of this Bill is to vary, retrospectively, the determination of the Parliamentary Salaries Tribunal made on 22 December 1983, and to ensure that while the present central wage fixing system operates that the salaries of members of Parliament move in line with and at the same time as indexation increases granted by the Federal and State Industrial Commissions.

Honourable members will need no reminding of the controversy which greeted the Tribunal's determination when it was gazetted in January of this year. While the public reaction to the size of the increase was understandable, given that it came soon after a general indexation rise which appeared to be lower, much of the criticism of the increase was ill-informed and unfortunate. I refer particularly to suggestions that the Parliamentary Salaries Tribunal was in some way not acting independently. Indeed, the main difficulty the Government faced was to take account of community concern, while ensuring that the independence of the Tribunal was not compromised and that the principle that members of Parliament should not set their own salaries was preserved.

I do not intend to go over the various arguments surrounding the determination. However some points need to be made. The Parliamentary Salaries Tribunal is required by section 5 of its Act to have regard to the state of the economy, the likely economic effects, either direct or indirect, of its determination, and the need for an example of restraint by members of Parliament. The Tribunal, in giving its reasons for the determination, made it quite clear that it had given full consideration to these statutory responsibilities.

The Tribunal also made it clear that while it was not bound by the principles and guidelines set down by the South Asutralian Industrial Commission, it had nevertheless applied them. The Tribunal also pointed out that members of Parliament had foregone increases to their salaries for a period of almost two years. Following the gazettal of the increases, the Government formally requested the Tribunal to consider limiting its determination to 4.3 per cent. However, the Tribunal declined to do so citing its observance of the requirements of section 5 and its application of the central wage fixing guidelines. It is the Government's view, however, that additional action must be taken to ensure that the support of the community for the present wage fixing system is maintained. Consequently, this Bill provides for certain variations of the determination of the Tribunal which will have the effect of phasing in the increases in basic and additional salary in four equal instalments. It does not mean that the increases will be cumulative.

The Bill also provides for the insertion of a new section providing for certain limitations on the powers of the Parliamentary Salaries Tribunal. Under the proposed new section, the Tribunal is prevented from making a determination affecting the basic salary or additional salary of a member of Parliament except where the Full Commission of the Industrial Commission of South Australia makes an order under section 36 of the Industrial Conciliation and Arbitration Act varying the remuneration payable generally to employees under awards. In that event, the Tribunal is to make a determination as soon as practicable thereafter, varying the rates of basic salary and additional salary in the same manner and with effect from the same date as is fixed by the order of the Full Commission. Such a determination is to be made only where an order is made by the Full Commission under section 36 during 1985 or subsequently. This ensures that members of Parliament will not receive indexation increases in 1984 which will flow to other wage and salary earners.

The proposed new section is to expire upon a date to be fixed by proclamation. However, such a proclamation is not to be made unless the Governor is satisfied that the principles of wage fixation as adopted by the Full Commission in the State Wage Case decision of 11 October 1983, no longer apply, and that no other principles, guidelines or conditions of substantially similar effect apply by virtue of any decision or declaration of the Full Commission. There remains the question of whether in the future the Tribunal should be formally bound to follow the rulings of the State Industrial Commission. The Government's view is that it should, and we will amend the Industrial Conciliation and Arbitration Act accordingly so that the Parliamentary Salaries Tribunal is a declared wage fixing authority for the purposes of section 146 *(b)* of that Act.

Clause 1 is formal. Clause 2 provides that the measure shall be deemed to have come into operation on 1 January 1984, being the day on which the variations of remuneration made by the determination of the Parliamentary Salaries Tribunal of 22 December 1983 came into effect.

Clause 3 provides for the insertion of a new section 5aa providing for certain limitations on the powers of the Parliamentary Salaries Tribunal. Under the proposed new section, the Tribunal is prevented from making a determination affecting the basic salary or additional salary of a member of Parliament except where the Full Commission of the Industrial Commission of South Australia makes an order under section 36 of the Industrial Conciliation and Arbitration Act varying the remuneration payable generally to employees under awards. In that event, the Tribunal is to make a determination as soon as practicable thereafter, varying the rates of basic salary and addition salary in the same manner and with effect from the same date as is fixed by the order of the Full Commission. Such a determination is to be made only where an order is made by the Full Commision under section 36 during 1985 or subsequently.

The clause makes it clear that remuneration other than basic salary or additional salary may be varied by the Tribunal separately from or as part of a determination made by the Tribunal upon the making of a section 36 order. The proposed new section is to expire upon a date to be fixed by proclamation, but such a proclamation is, by virtue of proposed subsection (5), not to be made unless the Governor is satisfied that the principles of wage fixation as adopted by the Full Commission in the State Wage Case decision of 11 October 1983, no longer apply and that no other principles, guidelines or conditions of substantially similar effect apply by virtue of any decision or declaration of the Full Commission.

Clause 4 provides for the insertion of a new section 18 of the principal Act providing for certain variations of the determination of the Parliamentary Salaries Tribunal made on 22 December 1983 and published in the *Gazette* of 5 January 1984. The proposed new section provides for variation of the terms of that determination in the manner set out in a proposed new sixth schedule to the principal Act. The effect of these provisions is to phase in the increases in basic salary and additional salary provided for by the determination in four equal instalments, the first instalment of the increases to operate from 1 January 1984 (the date

fixed by the Tribunal's determination for the full amount of the increases to come into effect), the second instalment to operate from 1 April 1984, the third instalment to operate from 1 July 1984, and the final instalment to operate from 1 October 1984.

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

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL (No. 4)

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

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The Bill is the result of one of the most intensive investigations ever undertaken of our State's industrial relations system. I am, of course, here referring to the review of the Industrial Conciliation and Arbitration Act undertaken by Industrial Magistrate Frank Cawthorne. That review was set up by the previous Government in November 1980. The terms of reference of that inquiry were 'To review the Industrial Conciliation and Arbitration Act, 1972-1979 and to report to the Honourable the Minister of Industrial Affairs on any requirement for legislative change to meet current and likely future developments in industrial relations.'

The review turned out to be a massive exercise. As a lead up to his final report, Mr Cawthorne released a discussion paper in February 1982 which ran to almost 600 pages. That gives some idea of the diversity and complexity of the issues reviewed and the depth of analysis involved. The discussion paper and final report are impressive documents and Mr Cawthorne has won the acclaim of the industrial relations community for the practical common-sense approach he adopted to the difficult issues involved. Whilst the previous Government commissioned the Cawthorne Inquiry and had the final report available to it in April 1982, none of the recommendations contained in the report were incorporated in legislation and indeed if there had not been a change in Government, the final report and its many progressive recommendations would not have seen the light of day.

This Government recognised the value of the work that had been done by Mr Cawthorne and on assuming office one of our first acts was to obtain a copy of the report, which in itself was no easy process, and then publish and circulate it for comment. In releasing the report, the Government promised that the recommendations contained in the report and any comments received from interested parties would be subject to full consultation and consideration by industrial relations advisory council that the Government intended to establish.

The Government has kept true to that promise and set up a statutory industrial relations advisory council as one of its earliest measures. Prior to its establishment under statute, five meetings of the non statutory council were held in early 1983 to discuss proposed industrial legislation and to date there have been many meetings of the statutory IRAC and its forerunner. Indeed, in its first six months, this Government held more meetings of IRAC than the Liberal Government held over its whole three-year term of office. The business community has responded positively to the Government's initiatives in this area and the Bill now before the Council reflects the policies of consultation that we have so successfully pursued.

It is interesting to note that when the IRAC Bill was first introduced there was criticism about how IRAC would work and doubts were raised about its likely success. This Bill, I believe, should forever silence those critics. The Bill is the outcome of many months of detailed consultation through IRAC. Of the 113 individual recommendations contained in the Cawthorne Report, 78 per cent have been accepted. A number of recommendations have not been picked up at this stage as they require further consideration, and these comprise 4 per cent of the whole. That only leaves 18 per cent of the recommendations that the Government has not, after consultation, seen fit to adopt. In such a complex and sensitive area as industrial relations, that speaks volumes about the overall excellence and practical good sense of the Cawthorne Report's findings.

Not only has the Government adopted the vast majority of recommendations contained in the report, but in addition those particular recommendations, which are incorporated in this Bill, have all been agreed to in principle by IRAC. By anyone's standards this must be considered a remarkable achievement. In such a thorny area as industrial relations, such a degree of consensus is normally considered impossible to achieve. The consensus that has been reached is an outstanding example of the benefits that the Government correctly predicted would flow from the formal consultative processes of IRAC.

Discussions on IRAC have been frank and forthright throughout. Emphasis has been placed on finding practical, workable solutions to the questions raised. Each side has shown a willingness to bend and listen to the other's point of view. The members of IRAC are to be applauded for the spirit in which they approached the job at hand and the consensus which they achieved. Before I discuss the major amendments contained in this Bill, I want to say something about those matters that are not included in the Bill.

Members should be aware that many issues were raised in the Cawthorne Report that are dear to Liberal philosophy, but were cast aside as impractical in the course of that inquiry. For example, the general subject of sanctions against unions was examined in depth. Mr Cawthorne has this to say about the subject in his report:

> The battery of sanctions available against unions which supposedly 'don't play the game' and which have been included in the various arbitration Acts of Australia over the years have had no substantial impact on subsequent industrial action. In addition, sanctions are now widely seen as an impediment to good relations. It is thought that they will not assist in resolving the issues the subject of the dispute which gave rise to the industrial action, but on the contrary may well exacerbate the problem immediately at hand and leave a legacy of bitterness which long outlives the original dispute.

At another point in his report he states:

> The sooner the community stops deluding itself that changes in law of a penal nature are going to have a major effect on the level of industrial action, the better off the community will be.

Needless to say, the Bill before the Council does not contain any such measures.

On the question of the right to strike and its legal restraint, the report points out:

> Strikes have always been a feature of Australian industrial relations. It is clear that prohibitions on the right to strike have met with no or little success in Australia and the experience of the U.K., Canada and the U.S.A. supports this line.

The idea of pre-strike ballots was looked at in the report and found wanting. Pre-strike ballots were found to be unenforceable and likely to delay the settlement of disputes rather than resolve them, were difficult if not impossible to implement and were based on a wrong premise. The report points out:

The assumption which underlies the notion that pre-strike ballots will reduce industrial action, because often workers are less militant than their leaders and if given the opportunity of a secret vote, would vote against going on strike, is questionable, if not wrong.

Similarly, the idea of a statutory cooling-off period, as an aid in limiting industrial action was discarded as impractical as it worked on the assumption that the workers had not considered the matter carefully beforehand and were goaded on by their union officials. Cawthorne explodes both these myths. On the latter he has this to say:

The assumption that often militant union officials 'stir' contented workers into industrial action they do not really want is largely rooted in mythology.

Cawthorne summarises his views on the question of cooling-off periods, as follows:

I do not see that a statutory prescription requiring a cooling-off period prior to the instigation of industrial action is either warranted or would indeed have any discernible effect in terms of being obeyed or, even if this were so, in reducing the incidence of such action.

The thrust of Cawthorne's recommendations and this Bill is to avoid such legalistic measures to control the symptoms of industrial disagreement. Rather, the approach adopted in this Bill is to provide for measures which will facilitate the resolution of matters in dispute by getting to the root causes and seeking the amicable agreement of the parties.

Consistent with that basic approach, Cawthorne recommended some form of immunity in tort for unions and unionists engaged in industrial action. There are strong arguments for such a change and Cawthorne lists these in his report. One of the most compelling of the reasons for removing tort actions is that such actions do nothing to assist in the resolution of dispute situations. If anything they aggravate them and make the task of conflict resolution more difficult. As the report states:

It can be strongly argued that the existence of the remedy in tort is inconsistent with the system of conciliation and arbitration which is specifically designed to assist in the resolution of industrial disputes.

This was an issue over which initially there was some disagreement amongst IRAC members, with the union members wanting the complete removal of torts actions and the employer members arguing for the retention of these common law actions. After considerable discussion the practical compromise suggested by Frank Cawthorne was adopted.

That proposal, which is contained in the Bill, provides that no action in tort shall be taken against unions or unionists unless the Full Commission gives a certificate that the processes of conciliation and arbitration have been exhausted and that there is no prospect of an immediate cessation in the industrial action. This approach will ensure that industrial matters are dealt with and resolved within the system that has been constructed expressly for that purpose. If the arbitral machinery fails to work then the sanction of a common law action is still available. The Government has full confidence, however, that very few, if any matters, will get to the stage where they cannot be resolved by the formal industrial relations machinery.

Whilst we are touching on the general question of restrictions on strike action, it should be pointed out that the Bill also seeks to delete Part X, Division II of the Act that deals with lockouts and so-called illegal strikes. The Bill seeks to repeal these sections as they are not used in practice and in Cawthorne's words are 'patently unworkable'. The Commission will, however, retain some existing powers in this area to hand down orders in the face of industrial action, but any proceedings for the breach of an order in the Industrial Court can only be actioned by leave of the Full Commission. Such a changed approach is consistent with the view that industrial action is not inhibited by pains and penalties but can only be properly resolved by the processes of conciliation and arbitration.

Another underlying theme in this Bill is the further encouragement of registered associations. Under the new proposed objects clause, which follows closely the objects clause in the Federal Conciliation and Arbitration Act, one of the chief aims of the Act will be 'to encourage the organisation of representative associations of employers and employees and their registration under this Act.' Consistent with that objective, the Bill provides for a number of things. First, the Act has been amended to strengthen the power of the Commission to prescribe preference to unionists where it considers it is just and equitable to do so. Under existing section 29 of the Act preference may be awarded by the Industrial Commission to members of registered associations of employees, all things being equal.

Of course they rarely are, with the result that the South Australian provision has been described as the weakest of the preference provisions in Australian legislation. As Cawthorne points out:

The effect of such a provision has been described as rendering an order for preference of not much practical effect and as providing the employer with an easy escape, for what other things have to be equal is indefinite, and what equality means and by whom it is to be judged is arguable.

The Bill picks up the exact wording of section 47 of the Federal Act which deals with question of preference and which dates back to 1947. The question of preference to unionists is one that always manages to generate a great deal of heat from conservative parties. Cawthorne's comments are therefore once again worth quoting where he says:

'What must be borne in mind when faced with the outrage of those who bridle at making any concessions whatsoever in favour of unions is that if an award of preference is made by the Commission, it is more likely to favour the moderate union with potential members in numerous widely scattered small work units, than it is to the militant and strong unions which will win *de facto* compulsory unionism in the field in any event.'

As an added measure, the new preference provision will also allow the Commission to demark areas of employment in favour of a particular organisation and thus will enhance the Commission's ability to settle disputes over questions of contested membership.

Another provision in the Bill that will encourage the organisation of representative associations is a new section that will empower the Commission to award right of entry onto employers' premises to allow union officials to undertake their legitimate duties. This is another area where the South Australian legislation lags a long way behind the other States. The existing provision under the Act allows unions a right of entry to inspect time and wages books but does not recognise the right of a union to otherwise properly service its membership or indeed sign up new members.

The provision contained in the Bill follows closely the draft clause recommended by Frank Cawthorne in his discussion paper. It should be pointed out that under this new provision right of entry is not automatic, but is subject to an award of the Commission and therefore would be subject to such conditions as the Commission considers proper under the circumstances. As part of the agreement with IRAC the Bill also provides for a new section that will ensure employees are not hindered in their duties by a union official where a right of entry is awarded.

The Bill also provides that in future non-registered employee associations will be unable to make new industrial agreements, however, those industrial agreements presently entered into by such associations will be allowed to continue indefinitely, but future variations will be subject to vetting by the Industrial Commission to ensure that they are in the public interest. Whilst such a change may be considered unduly restrictive by some, it should be pointed out that

the South Australian jurisdiction is the only one in Australia that allows unregistered bodies to enter into industrial agreements.

To allow unregistered associations to do this runs counter to one of the basic objectives of the industrial relations system in Australia, which is the encouragement of registered associations. It also hinders the achievement of the desirable goal of a more co-ordinated and therefore more stable industrial relations system. Whilst there are strong arguments for excluding unregistered associations completely, given the long history of existing arrangements, it has been considered appropriate to retain the *status quo* in so far as existing industrial agreements are concerned. In a similar vein, where an unregistered employee association files an award application, the Bill requires the Commission to be satisfied that the making of such an award is in the public interest.

Another theme contained in this Bill is the broading of the general jurisdiction of the Industrial Commission so as to give the Commission more flexibility in dealing with dispute situations. Thus the Bill contains a provision for the Industrial Commission to enquire into and report on any matter referred to it by the Minister. This power of inquiry is similar to that contained under the New South Wales Act and will allow the Commission to formally inquire into a whole range of issues that it might otherwise be precluded from so doing. Shopping hours and contract labour are two areas that could be the subject of such an inquiry. The recent and successful inquiry into shop trading hours by Justice Macken of the New South Wales Industrial Commission is an example of the effective use of such a power in the New South Wales jurisdiction.

The Bill also gives the Commission power to make general orders on matters within its jurisdiction. At the moment minimum standards for certain conditions of employment, such as sick leave and annual leave are set down in the Act. It has been pointed out, however, that this is a somewhat cumbersome and inflexible way of dealing with what are quite often sensitive and complex issues. The power to hand down general orders should enhance the Commission's ability to deal flexibly with a given industrial situation and should, therefore, improve the working of the system.

The Commission already exercises a similar power through the so-called 'test case' approach where minimum standards are determined by the Full Commission, which are then flowed on into other areas on an award by award basis. The concept of a general order power is in fact by no means novel. The Western Australian and Queensland Acts give the arbitral tribunals in those States similar powers to make general orders. The Cawthorne Report makes the further point that the Commission would only make such a general ruling if it were satisfied that it was proper in all the circumstances to do so. In other words there is unlikely to be a rash of such general orders should the power be granted to the Commission.

It is also proposed to widen the Commission's jurisdiction to allow it to regulate the area of contract labour. Any such regulation, however, will take place only after proper inquiry by the Industrial Commission. The approach to be adopted would in fact be similar to that operating in New South Wales. Under the Bill, the Minister, pursuant to the proposed general inquiry power, would direct the Commission to inquire into a particular industry. There would thus be no attempt to pre-empt the issues. Rather, the question of regulation would have to be determined on an examination of the merits, having regard to the needs and practices of each industry and allowing for all interested parties to make submissions to the inquiry. Once the Commission has reported, it would be up to the Minister to determine what action should or should not be taken.

In some cases the contract labour arrangements may be so close to normal contracts of service that only a fine line separates the two. In such cases a provision is contained in the Bill which would allow the Commission to recommend that such a category of contract labour be declared by regulation as employees for the purposes of the act and covered accordingly. In other cases, award regulation might not be appropriate and separate legislative enactment may be necessary. The system proposed therefore contains a number of checks and balances.

Regulations of the contract labour area will not be automatic and may take place only if the Commission, after considering all the evidence, finds that it is in the public interest to do so. It should also be pointed out that IRAC will be closely consulted in this area both with regard to the original referral from the Minister to the Commission to inquire into a particular industry, and also with regard to the action to be taken in relation to the findings of such inquiries.

The Bill also seeks to give the Industrial Commission power to award a date of operation earlier than the date of lodgement of an application to vary an award. This further power will be restricted to cases where there is an established nexus with a parent award, to national wage increases and to consent arrangements. This provision in the Bill will allow awards to reflect dates of operation which are prior to the date of application, but over which there should be little or no dispute.

The Bill proposes substantive changes in the area of unfair dismissal. This has been an area where practical reform has long been overdue. One of the defects with the present act is that it only only provides for one remedy, that of reinstatement in the same position. Problems then arise as a result of the power of reinstatement being a discretionary one. Under the current system there have been cases where the worker has successfully proved wrongful dismissal, but because the employer-employee relationship is so strained—a continuance of that relationship is not practicable and the Industrial Court has accordingly not exercised its discretion to reinstate. The employee is then left in a no-win situation.

The Bill seeks to correct that problem by providing for a range of remedies. The primary remedy should remain reinstatement in the same position. If that is not practicable, then an alterntive remedy can be re-employent in some other suitable job, and if that is not available, then the tribunal will be able to award compensation to the wronged worker. There is substantial international precedent for this alternative remedy of monetary compensation. Article 10 of the new ILO convention on the termination of employment at the initiative of the employer reflects this position, and supports the payment of adequate compensation in cases where a tribunal hearing such matters considers a dismissal unjustified but is not prepared for various reasons to reinstate the worker.

When this matter of alternative remedies was raised some employers expressed their concerns about a possible rush of actions being taken under the new provisions. The practical compromise worked out by IRAC was to agree to the recommendation contained in the Cawthorne Report that the tribunal concerned be given the discretion of awarding costs against frivolous or vexatious claims. To ensure that dismissed workers are not discouraged from making claims, however, it is proposed that there would first take place a pre-hearing conference where the issues could be canvassed in broad detail. If it then became apparent that a claim may be in the 'frivolous or vexatious' category, due warnings could be given about possible costs being awarded if the claim were unsuccessful. In the ordinary case, of course, costs would not normally apply. The insertion of a provision providing for costs to be awarded, where proceedings have

been instituted vexatiously or without proper cause, is seen as part of the re-employment package endorsed by IRAC.

Another concern of some employers was that the alternative remedy of placement in another job may not be practicable as a suitable job may not be available. This point has been addressed in the Bill and the tribunal in determining this matter must have regard to the practicality of that remedy which should include consideration of the availability of alternative work.

A further change proposed in the re-employment jurisdiction is to have industrial commissioners handle these matters in lieu of the Industrial Court. In his report Mr Cawthorne pointed out that there was a need for greater informality in re-employment proceedings and that currently many would-be applicants are disuaded from commencing an action for reinstatement because of the formality of the Industrial Court jurisdiction.

It is well recognised by industrial relations practitioners that industrial relations issues are much to the fore in dismissal matters and that many can be negotiated through to some sort of settlement. With these thoughts in mind, Mr Cawthorne recommended that the industrial commissioners could be used to act as conciliators to clarify the issues and attempt to get a negotiated settlement. If that process failed, the matter would then go before the Industrial Court in the normal way for a formal hearing of the issues.

In the Government's view, however, there is a danger that such an approach might add a further step to the hearing of dismissal matters and act to slow down their final resolution. Another concern the Government has with Mr Cawthorne's proposal is that intransigent employers would refuse to co-operate during the pre-hearing phase in the knowledge that the industrial commissioners had no power to hand down binding orders.

The desirability of a more informal approach and possibly faster consideration of cases were factors in IRAC's support of the wrongful dismissal jurisdiction being wholly transferred to the Industrial Commission. It is felt that the Commissioners' skills in concliation would be an additional factor that would make for the success of the proposed new arrangements. In New South Wales, conciliation commissioners have exercised this function for decades and there is a high measure of support for the Commission's handling of such matters.

Whilst on this question of wrongful dismissal, it should be noted that the Bill also strengthens the position of workers' safety representatives by providing that an employer shall not dismiss or injure in employment an employee by reason only of the fact that the employee is a workers' safety representative or a member of a safety committee appointed under the Industrial Safety, Health and Welfare Act.

A number of changes are proposed to the Act to overcome various legal problems that have arisen and to generally tighten up the Act's operation. Thus it is proposed that boards of reference be given power to make binding orders on matters referred to them. As they are presently empowered boards of reference have served little useful purpose. This can be contrasted with the Federal system where they have been most successful. One of the areas where it is proposed boards of reference should have binding powers is in the area of demotions. It is considered that the less formal machinery of boards of reference should provide an efficient way of handling such serious matters. The decisions of such boards will, of course, be subject to appeal.

Another area that has been remedied in this Bill to overcome existng problems relates to defects in proceedings. Under the Bill the Commission and Industrial Court will be empowered to recitify defects in proceedings that would otherwise, on a minor technicality, render those proceedings void. The Bill also corrects the problem that has arisen with overlapping awards and industrial agreements. At the moment, the degree to which an industrial agreement prevails over an award is a somewhat grey area. The Bill remedies this problem by making it clear that an award of the Commission will have no effect on the parties to an industrial agreement, except to the extent mentioned in the agreement. The Bill will also allow for the calling of voluntary and compulsory conferences in the conciliation committee jurisdiction. This will overcome a present anomaly whereby conferences can be called in all other areas under the Act but not in the area of a conciliation committee's jurisdiction.

The Bill remedies a problem that has arisen where a registered association seeks to amend its rules. Under the existing legislation the Registrar is powerless to bring an association's constitution rule into line in situations where the groups sought to be covered in the amended rules were more properly wthin the jurisdiction of other registered associations. The Registrar has been given more flexibility to make such changes and also to waive compliance with certain prescribed technical conditions for registration that would otherwise unfairly stop an organisation becoming registered. These changes should lead to an avoidance of the undue litigation of a most technical kind that has arisen in this general area in the past.

The Bill also corrects a problem faced by registered employer associations with members who are self-employed and who do not fit the category of 'employer' for purposes of registration under the Act. In addition, the special position of the UTLC has been recognised under the Bill to enable the UTLC to intervene in Commission hearings as a party in its own right. Whilst the two major employer organisations may be represented in Commission proceedings because they are registered pursuant to the Act, the UTLC is for purely technical reasons legally unable to become registered and thus does not have the same rights of appearance. The Bill remedies that problem and gives formal recognition to a situation that has applied on a *de facto* basis but which was open to objection.

In this speech so far I have canvassed what could be considered the major issues. In addition to those matters referred to, however, there are a large number of amendments that seek to improve the general functioning of the Industrial Court and Commission.

The proposed machinery amendments contained in this Bill include a proposal for greater consultation with interested parties by the President in allocating industry assignments to tribunal personnel; provision for acting Deputy Presidents; Full Commission Benches of more than three to be possible in some cases, such as on State wage case hearings. Appeals from Industrial Magistrates will go to the Full Industrial Court consistent with the current position in relation to appeals from single judges handling similar matters. There will be changes in the procedures for aged, slow, infirm or inexperienced workers' certificates which will ensure that more appropriate authorities make the necessary decisions. Industrial awards are to be provided by the employer for perusal on request by the individual employee to overcome problems with the present system of employers displaying awards.

The President of the Industrial Commission is to be required to furnish a report to the Minister for presentation to Parliament on the activities of the Industrial Court and Commission so as to improve the accountability of those tribunals; the appointment of one Commissioner at a time is proposed in lieu of the current inflexible provision which requires two Commissioners to be appointed at a time; provision is to be made to enable the appointment of lay Deputy Presidents of the Commission, being persons of high standing in the community, so as to bring a broader range of expertise to the Commission consistent with the

approach adopted under the Federal Conciliation and Arbitration Act. Penalties contained under the Act have also been increased by nominal amounts; however, it is foreshadowed that further consideration will be given to this complex question.

The Bill also proposes new provisions which will allow members of the South Australian Industrial Commission to confer with their Federal counterparts on matters of joint concern as well as allowing proceedings in the Federal and State Commission to be dealt with together in joint sittings in appropriate cases. These provisions will complement the recent changes to the Federal Conciliation and Arbitration Act introduced by the Federal Minister for Employment and Industrial Relations. These changes should provide for improved co-ordination of the work of the Commonwealth and State tribunals, and are based on recommendations put forward by a Commonwealth/State working party. The changes will also assist in the implementation and operation of the Federal Labor Government's prices and incomes policy.

In summary, this Bill has resulted from one of the most in-depth reviews ever undertaken of an industrial relations system in Australia. It contains measures that will foster good industrial relations through an avoidance of 'pains and penalties' provisions and the positive encouragement of the processes of conciliation and arbitration. In furtherance of that latter objective the Bill contains provisions that will assist the organisation of registered associations by giving them improved rights and by restricting access to the commission of unregistered associations. The jurisdiction of the Commission has been widened to enable the Commission to more flexibly meet emerging industrial issues such as the question of contract labour. A number of legal anomalies that exist under the present Act will be remedied by this Bill, and the general Industrial Court and Commission framework will be improved and made more workable. Significant changes have been made to the re-employment jurisdiction by providing for alternative remedies in cases of wrongful dismissal.

The Government believes that this Bill is a model of what good legislation is all about. It was arrived at after an in-depth independent inquiry. It has been considered in detail over many months by IRAC and faithfully mirrors the consensus of views reached by that body. I commend the Bill to the Council.

Clause 1 is the short title. Clause 2 provides for the commencement of the measure. Clause 3 proposes the insertion of a new section 3 in the principal Act, providing for the prescription of the principal objects of the Act.

Clause 4 provides for the amendment of section 6 of the Act, which deals with the various definitions required by the legislation. A recommendation of the Cawthorne Report was that the Act should enable the regulation of contract labour on an industry-by-industry basis. It is therefore proposed that the concept of 'employee' may be expanded to include persons engaged for remuneration in industry, if they are of a class declared by regulation to be a class to which the Act applies. Such regulations are to be made only upon recommendation of the Full Commission. A consequential amendment will be required to the definition of 'employer'. In addition, it is proposed to repeal Part X, Division II (Lockouts and Strikes) and so it is appropriate to delete the definitions of 'lockout' and 'strike'. Finally, it is proposed to clarify the status, authority and obligations of the Public Service Board in respect of Public Service employees (as originally proposed in 1979).

Clause 5 relates to section 9 of the principal Act, which deals with the appointment of the President and Deputy Presidents of the court. Presently, a person is not eligible for appointment to the Court unless he is eligible for appointment as a judge of the Supreme Court. It is proposed that Deputy Presidents now be appointed from legal practitioners of not less than seven years standing, which is a similar qualification to that appearing in the Local and District Criminal Courts Act, 1926.

Clause 6 amends section 10 of the principal Act by striking out subsecion (3), which provides for the appointment of acting Deputy Presidents of the Court. Such a provision is now to be included in section 12. Clause 7 amends section 12 of the principal Act by inserting provisions dealing with the appointment of acting Deputy Presidents. Clause 8 proposes amendments to section 15 of the principal Act. It is proposed that applications under section 15 (1) *(e)* now be heard by the Commission, and so reference to the Court hearing applications for re-employment must be deleted. Furthermore, proposed new section 15 (3) complies with a recommendaiton in the Cawthorne Report that the Court be authorized to allow payment of judgment debts by instalment.

Clause 9 provides for the amendment of section 17 of the principal Act. The various amendments relate to the operation of section 17 (1) *(l)*, and were recommended by the Cawthorne Report after consideration of a decision of the Supreme Court in 1975 in relation to a comparable provision in section 28 of the Act. The amendments would clarify the operation of the relevant paragraph and ensure that the Court can properly correct errors, irregularities or defects in proceedings before it. Clause 10 provides for the repeal of section 18 (3). This provision presently prevents a Deputy President from dealing with money claims not exceeding one thousand dollars. However, it has been submitted that the restriction does not recognize that small claims may also be test cases. The repeal of the subsection would allow the President far greater flexibility in constituting the Court under section 14.

Clause 11 proposes amendments to section 22 of the Act, which concerns Presidential members of the Commission. The Cawthorne Report recommended that the Act allow for the appointment of suitable lay Deputy Presidents of the Commission, and proposed new subsection (3) implements that recommendation. In addition, in conformity with another recommendation, provision is made for the appointment of acting Deputy Presidents. Finally, proposed new subsection (6) precribes the persons who are eligible for appointment under these proposals.

Clause 12 relates to section 23 of the Act. As it is proposed that there be acting Deputy Presidents of the Commission, subsection (3) requires recasting in general terms to ensure that persons who cease to be Commissioners may nevertheless finish part-heard matters when their term of office expires. Subsection (5) is to be recast to provide what should be a slightly more practicable formula for the appointment of Commissioners. Clause 13 provides for the amendment of section 24 of the Act. The Cawthorne Report recommends that the President should be able to constitute a bench of more than three members of the Commission in appropriate cases. The proposed amendment to subsection (2) will allow this. However, this is to be qualified by a proposed provision that the Full Commission shall not be constituted of more than three members if a party to the proceedings objects.

Clause 14 proposes that new sections 25*a* and 25*b* be inserted in the Act. The Cawthorne Report recommends that the Full Commission be given powers to make general orders on any matter within its jurisdiction. The proposed new section 25*a* will implement that recommendation, to the extent of enabling the Full Commission to set minimum standards for the regulation of remuneration or conditions of employment. Organizations are not to be precluded from negotiating more favourable terms and conditions. An award pursuant to this section may only be made upon the appli-

cation of the Minister, certain industry groups, or by a registered association with leave of the Full Commission. New section 25*b* relates to a recommendation that the Commission be given power to consider and report on any industrial or other matter referred to it by the Minister.

Clause 15 amends section 26 of the Act, primarily to allow a Presidential member or a Commissioner to direct a Committee to mediate in an industrial matter, in addition to being able to act himself. Clause 16 amends section 27 of the Act. Proposed new subclause (1) would provide that the President may direct either a Committee, a Presidential member or a Commissioner to call a compulsory conference in respect of any industrial matter, as well as acting himself if he so decides. Section 27 presently relates to conferences presided over by Presidential members or Commissioners. Other consequential amendments are proposed, and proposed new subclause (9*a*) allows the referral of matters to the Commission under subsection (9) to be done orally and without formality.

Clause 17 proposes various amendments to clause 28 of the Bill. As previously noted in relation to clause 9 of the Bill, a Supreme Court decision has prompted the recasting of provisions in the Act relating to the correction of errors, defects or irregularities. Paragraphs *(a)* and *(b)* relate to this issue. Furthermore, the Cawthorne Report recommends that the cost of an expert's report provided under section 28 (1) *(k)* should be met from public funds in appropriate cases, and a new subseciton (1*a*) is proposed in accordance with that recommendation.

Clause 18 proposed various amendments to section 29 of the principal Act. It is proposed that paragraph *(b)* of subsection (1) be recast in conjunction with other provisions relating to boards of reference. These other provisions are to be found in the new subsections replacing subsection (2). Proposed new subsection (2) requires boards of reference to notify parties to the award of the times and places at which they propose to sit, and any of their determinations. Proposed new subsection (3) provides that the powers of a board may include power to grant relief to employees who have been unfairly demoted. Subclause (2*b*) provides an appeal to the Full Commission. Subclause (2*c*) relates to the appointment of a chairman. Furthermore, other amendments within this clause implement a Cawthorne Report proposal that it be possible to authorize a union official, subject to such conditions as are appropriate, to enter premises to inspect records and work, and interview employees in relation to membership of their association. It may be noted that proposed subclause (2*d*) prescribes that an official should not act in such a manner as to hinder an employee in carrying out his duties of employment. Another part of this amendment implements the Cawthorne Report proposal that the Commission be given a discretion to direct that an award shall have effect from a day earlier than the day on which the relevant application was lodged.

Clause 19 proposes the insertion of a new section 29*a* in the Act, dealing with awards providing preference in employment to members of registered associations or, in some cases, to persons who are willing to join registered associations. Clause 20 proposes an amendment to qualify section 30 (1) *(b)* and *(c)* of the Act and is inserted upon a recommendation of the Cawthorne Report concerning proceedings by individuals or unregistered groups in respect of an award. Such proceedings may only be entertained if the Commission considers them to be in the public interest.

Clause 21 provides for the insertion of a new section 31 dealing with the issue of unfair dismissal. The proposal is that applications in relation to harsh, unjust or unreasonable dismissals be heard by the Commission and that the remedy be either an order for re-employment or, if this is impracticable, an order that monetary compensation be paid. Re-employment will therefore be the primary remedy. To attempt to avoid employers delaying re-employment, or refusing to comply with an order of the Court, proposed subsection (4) ensures that the employee remains entitled to remuneration until he is re-employed. Furthermore, the Cawthorne Report was keen to ensure that steps be taken to discourage any frivolous claims for unfair dismissal. Subclause (5) does that, and further subclause (6) directs that a conference be held between parties to an application for the purpose of considering resolution of the problem by conciliation and, if the matter is to proceed, for the purpose of ensuring that the parties are aware of the possible consequences of further proceeding upon the application.

Clause 22 provides for the amendment of section 34 to allow the United Trades and Labour Council to intervene in certain circumstances. Clause 23 relates to the assignment of Commissioners under section 40 (2) to a particular industry or group. It is proposed that assignments be for a period not exceeding two years and not occur without prior consultation with interest groups. Clause 24 proposes the insertion of new clauses to facilitate co-operation between industrial authorities.

Clause 25 relates to the appointment of inspectors under section 49, and, in accordance with a Cawthorne Report recommendation, provides that an inspector shall produce his certificate of appointment when so required. Clause 26 proposes the amendment of section 50 of the Act to compel inspectors to produce their certificates of appointment before searching premises, etc., and to provide for the removal of some records for examination and copying. Clause 27 proposes amendments to section 54 of the Act as part of the implementation of the Cawthorne Report that the Full Commission, and not the Minister, be given the responsibility for establishing and controlling conciliation committees.

Clause 28 effects consequential amendments on section 55 by virtue of the amendments to section 54. Clause 29 provides for the repeal of sections 56 and 57 and for the substitution of a new section 56. Again, this amendment results from a recommendation that committees be established by the Full Commission. The new provision would set out the various functions that are necessary for the constitution, control and dissolution of committees.

Clause 30 provides consequential amendments to section 58 of the Act. In particular, paragraph *(a)* continues the policy that the chairman of a committee should be a Commissioner (as presently provided in section 61 of the Act). Clause 31 proposes the introduction of a new section 59, upon the repeal of sections 59 to 68 (inclusive). As committees are now to be within the jurisdiction of the Full Commission, the provisions may be repealed to accord with this new approach. However, the new section will provide for one matter that should be dealt with in the Act, being the appointment of a Commissioner to act in place of the chairman, if the chairman is absent.

Clause 32 provides various amendments to that section of the Act dealing with the jurisdiction of committees. The various new provisions are similar to others appearing in relation to the powers of the Commission. Clause 33 proposes the introduction of a new section 69a, empowering a chairman of a committee, where he considers that mediation in an industrial matter may be appropriate, to direct that the committee convene a voluntary conference, or to convene one himself. Clause 34 provides various consequential amendments to section 76.

Clause 35 amends section 81 of the Act, which relates to annual leave. The amendments are as proposed in legislation previously introduced to the Parliament and are recommended by the Cawthorne Report to allow the determination by the Full Commission of all ancillary matters relating to annual leave. Clause 36 provides for the repeal of section

85 of the principal Act. The Cawthorne Report recommends that some rationalisation is needed between sections 85 and 153. The repeal of section 85 and complimentary amendments to section 153 will provide that rationalisation.

Clause 37 effects various amendments to section 88, concerning aged, slow, inexperienced or infirm workers. In accordance with a recommendation of the Cawthorne Report, the Commission is to have authority to grant a licence under this section. Furthermore, provision is made for the Commission to notify interested registered associations of an application under the section. As recommended, power to allow the Industrial Registrar to act in relation to an application is included. Finally, appeals would be dealt with in accordance with general principles.

Clause 38 is a proposed amendment to section 90. The effect is to permit the Minister to draw a distinction between various activities of a charitable organisation, when acting under this section. Clause 39 effects a recommendation of the Cawthorne Report that the Commission be given power to rescind an award on the ground that it is obsolete. Notice of proceedings under this section must be given in the *Gazette* and a newspaper. Clause 40 proposes amendments to the appeal provisions of section 93. The effect of the proposed amendment would be to allow the Full Commission to refer an order to another judge.

Clause 41 proposes an amendment to section 94 similar to those for section 93. Clause 42 would effect an amendment to section 101 of the principal Act, which allows the reference of matters to the Full Commission. A proposed amendment is that the President should consult with parties before acting. Another amendment clarifies that part of a matter only may be referred. Clause 43 proposes a provision that would allow the Registrar to state a question of law for the opinion of the Court.

Clause 44 proposes the insertion of further subsections in section 106 of the Act. The effect of the subsections is to provide that unregistered associations of employees cannot enter into new agreements after the commencement of the amending Act. Clause 45 provides for the inclusion of a provision to allow the Commission to approve industrial agreements. One point of particular note is the direction that the Commission should consider any relevant principles, guidelines or conditions arising by virtue of a declaration under section 146b. Clause 46 effects an amendment to section 109 to provide that registered associations (and employers) only may concur with an industrial agreement.

Clause 47 proposes an amendment to section 110 to clarify the effect of industrial agreements. Clause 48 proposes the insertion of new subsections in section 115 of the principal Act. New subsection (2) provides for the inclusion of matters presently dealt with by cross-reference to section 114. New subsection (2a) dispels a possible argument about the effect of prescribing various classes under subsection (2). Subsection (2b) would effect a recommendation that registered associations of employers should not have to be exclusively composed of employers.

Clause 49 is principally concerned to effect an amendment to section 116 in order to implement the proposal that the Registrar, upon an application for registration by an association, have authority to amend the rules of an association to bring them into uniformity with prescribed conditions, or to waive compliance with prescribed conditions. Clause 50 provides for the revamping of section 121 of the principal Act. Provision is included for the Registrar, where he considers it necessary so to do, to give notice of an application under the section and to inform interested registered associations. A date may then be fixed for hearing any objections.

Clause 51 proposes the insertion of a new section 143a in the principal Act. The proposed section would, in accordance with a recommendation of the Cawthorne Report, provide that no action in tort lies in respect of an industrial dispute, except as provided by this section. Subsection (2) provides for the continued existence of various actions that should not be barred in any event. Subsection (3) preserves a right in the Full Commission to allow an action in the event that the processes of conciliation and arbitration fail.

Clause 52 provides amendments to section 144, in accordance with a Cawthorne Report recommendation. Proposed new section 144 (3) should ensure that all discrimination against the holders of certificates be unlawful. Proposed new section 144 (5) provides for the payment of amounts received by way of fees into the general revenue of the State (payment is presently made to The Adelaide Children's Hospital Inc.).

Clause 53 provides for the inclusion of a new section relating to the preparation of an annual report, which is to be laid before both Houses of Parliament. Clause 54 provides for the inclusion of the Parliamentary Salaries Tribunal in the definition of 'industrial authority' in section 146b. Clause 55 would amend 146b by striking out subsection (4). Such a provision would be catered for by the proposed new section 108a. Clause 56 provides for the repeal of Division II of Part X, in conformity with a recommendation of the Cawthorne Report. Clause 57 is the complementary provision to an earlier proposal that the operation of section 153 be rationalised to take into account section 85.

Clause 58 provides for various amendments to section 156 to introduce the concept of injury in employment to this provision. Clause 59 proposes the recasting of section 157 of the principal Act. Included is reference to persons acting under the Industrial Safety, Health and Welfare Act. Clause 60 proposes a new provision, allowing for the award of compensation against a person who has committed an offence against sections 156 and 157. An order for re-employment may also be made. Clause 61 would amend section 159, which relates to the records that employers should keep. Records relating to age should specify the date of birth of the employee; records relating to worked hours should include a record of meal and other breaks.

Clause 62 proposes the insertion of a new subsection (2) in section 161 of the Act, which would compel employers to make available copies of awards for the perusal of employees. Clause 63 provides for the amendment of section 174 in two respects. Of particular note is the inclusion of a provision that no proceedings may be commenced in respect of an offence by virtue of the breach of an award or order of the Commission without leave of the Full Commission.

Clause 64 provides for the amendment of penalties by provisions contained in the schedule to the amending Act. Clause 65 makes an amendment to the Judges' Pensions Act to include all Deputy Presidents within the ambit of that legislation.

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

MARALINGA TJARUTJA LAND RIGHTS BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 2738.)

Clause 2 passed.

Clause 3 negatived.

Clause 4—'Interpretation.'

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

Page 2, lines 13 and 14—Leave out definition of 'Aboriginal person'.

The definition of 'Aboriginal person' is an addition to the original Bill considered by the Select Committee in another

place. The aim of this amendment is to delete the definition, and at a later stage I will move an amendment to allow Aboriginal people to invite on to their lands any person of their choice. This amendment is consequential on that later amendment. It is important that people other than Aboriginal persons can be invited on to the land by Aboriginal persons, and I believe that this amendment may well prevent conflict between this Bill and the Commonwealth racial discrimination legislation.

Amendment carried.

The Hon. J.R. CORNWALL: Some of these amendments have only just been drafted and I have not had an opportunity to look at them. I was not able to pick up immediately the import of the amendment that was just before the Committee. Therefore, my colleagues and I were not able to cast an intelligent vote. In the circumstances, it is imperative that the Committee adjourn.

[*Sitting suspended from 6.5 to 7.30 p.m.*]

The Hon. J.R. CORNWALL: There was some difficulty immediately before we adjourned for dinner. Later I will ask for the early part of clause 4 to be recommitted. I move:

Page 2, lines 17 to 22—Leave out the definition of 'the Council' and insert new definitions as follows:

'the Council' means the Council of Maralinga Tjarutja constituted under this Act:

'exploratory operations' means all operations carried out in the course of—

(a) prospecting or exploring for minerals within the meaning of the Mining Act, 1971;

or

(b) exploring for petroleum within the meaning of the Petroleum Act, 1940,

and includes operations conducted under a retention lease within the meaning of the Mining Act, 1971:

This is an amendment which is being put forward by the Government following sensible consultation. It refers to the composition of what will now be the Council of Maralinga Tjarutja, which will represent more closely the traditional structure of the Maralinga people.

The Hon. M.B. CAMERON: The Opposition has absolutely no argument with this amendment because it was part of an original amendment that has been on file since December on behalf of the Opposition.

Amendment carried.

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

Page 2, after line 24—Insert new definition as follows:

'leader', in relation to the traditional owners, means a person who has been accepted, in accordance with the customs of the traditional owners, as one of their leaders:

The Hon. M.B. CAMERON: The Opposition also accepts this amendment as it is an exact replica of an amendment that the Opposition has had on file since December.

Amendment carried.

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

Page 2, after line 33—Insert new definition as follows:

'sacred site' means part of the lands that is, in accordance with the customs and traditions of the traditional owners, of fundamental importance to the traditional owners:

This amendment refers to the definition of 'sacred site', which again is inserted as part of a sensible amendment that the Government is moving after conversation with the Opposition, the Democrats and the Maralinga people.

The Hon. K.T. GRIFFIN: The Opposition supports this amendment. It is probably one of the key amendments in the Bill, because it relates to subsequent provisions which endeavour to establish a register of sacred sites which will be the basis upon which those sites will be protected, when exploration licences and, subsequently, mining leases are granted by the Minister of Mines and Energy after consultation with Maralinga Tjarutja.

The difficulty, of course, for the draftsman is that the concept of a sacred site is not easy to translate into the English language. I must commend Parliamentary Counsel for the way in which they have come to grips with this particular concept. The provision identifies sacred sites as sites which are of fundamental importance to the traditional owners in accordance with the customs and traditions of the traditional owners. So whilst, if there is ever any dispute about this, it may be necessary to adduce evidence or information about the customs and traditions of the traditional owners it seems to me that this particular emphasis on fundamental importance takes it away from some sort of country which may be of just general importance or interest to the Aboriginal people, particularly to the traditional owners.

We will have an opportunity to talk about the sacred site register during later amendments, but I could not let this opportunity pass without saying that this definition is fundamental to the whole concept of the register and the protection of sites during the course of exploration and mining work, on the basis that some early identification is to be made of those sites if, in fact, they are to be protected during the exploration and mining phases.

The Hon. K.L. MILNE: I simply want to say that we would feel exactly the same. This is a very big addition to the legislation on Aboriginal land rights and it is, for the first time, an attempt by the Parliament to recogise the fact in legislation that there are such things as sacred sites and significant sites. That, surely, must be a great relief to the Aboriginal people, because it will obviously appear in legislation in the future.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Powers and functions of Maralinga Tjarutja.'

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

Page 3, lines 43 and 44 and page 4, lines 1 to 5—Leave out paragraph (i).

This means that we will delete the constitution as originally proposed and revert to the original structure. As such, I commend the amendment to the Committee.

The Hon. M.B. CAMERON: Again, this is an important amendment and one that sets the scene for later amendments which deal with the constitution of the council. It was previously moved by the Opposition and is one that we obviously now accept, because it is an important change and recognises the tradition of the Aboriginal community in light of its power structure.

Amendment carried; clause as amended passed.

Clauses 7 to 11.

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

Pages 4 and 5—Leave out these clauses (including the headings to Division III and Division IV) and insert the following heading and clauses:

Division III—The Council of Maralinga Tjarutja

7. (1) All persons who are for the time being leaders of the traditional owners are members of the Council.

(2) The Council—

(a) shall within thirty days after the commencement of this Act and, thereafter, before the thirty-first day of October in each ensuing year; and

(b) may at any other time,

give notice in writing to the Corporate Affairs Commission of those persons who are, at the date of the notice, members of the Council.

(3) An apparently genuine document received by the Corporate Affairs Commission purporting to be notice given under subsection (2) of the persons who are at the date of the notice members of the Council (being the last such document received by the Commission) shall constitute proof, in the absence of proof to the contrary, of the membership of the Council.

8. (1) The powers, functions and affairs of Maralinga Tjarutja shall be exercised and administered by the Council.

(2) An act done or a decision made by the Council in the exercise or administration of the powers, functions or affairs of Maralinga Tjarutja is an act or decision of Maralinga Tjarutja.

9. The Council shall in making its decisions and conducting its business—

(a) consult with the traditional owners; and

(b) act in all other respects,

in such a manner as may be determined by the Council having regard to the customs of the traditional owners.

10. (1) The Council may delegate the exercise of any power or function of Maralinga Tjarutja to any member, officer or employee of Maralinga Tjarutja.

(2) A delegation under this section shall be revocable at will and shall not derogate from the power of the Council to act itself in any matter.

This amendment inserts an entirely new Division III headed 'The Council of Maralinga Tjarutja'. Of course, that follows on from our earlier discussion, which refers to all persons who are for the time being leaders of the traditional owners. They would be members of the council in the traditional tribal sense.

The Hon. M.B. CAMERON: The Opposition accepts this amendment which is almost a replica of previous amendments that have been on file since December on behalf of the Opposition, and it recognises that there are different traditions in the Aboriginal community in relation to the people who assert the power structure in those communities. It is a sensible amendment and one which I am sure will be acceptable to the Aboriginal community.

The Hon. K.T. GRIFFIN: I, too, support the amendment. Of course, the clauses which are the subject of deletion are really clauses which follow the provisions in the Pitjantjatjara Land Rights Act. I remember at the time we were negotiating that Act that there was some concern about the concept of elections being held among Pitjantjatjara people so far as they were traditional owners of land in South Australia. However, at that time we had some difficulty converting what was understood to be the traditional structure into an Act of Parliament. I think that over the four years since those negotiations there has been some greater understanding of the structure, and these amendments reflect a more appropriate basis for establishing a council.

I would hope that when this Bill is passed some consideration will be then given to the Pitjantjatjara Land Rights Act with a view to amending the structure specified there, so that we dispense with the concept of elections and annual meetings, and move to what I think everyone accepts now as the traditional sort of structure reflected in these amendments. Of course, it does leave a bit more to what we would regard as chance. I suppose that there is a greater level of uncertainty about it, but to some extent that is compensated for by the fact that details of the membership of the council comprising the leaders of the community are to be notified to the Corporate Affairs Commission at least by 31 October in each year or more frequently if the council so resolves. Therefore, at least the membership of the council for the purposes of this legislation will be on the public record in the Corporate Affairs Commission, and that will be the basis for decision making as it relates to access to the land and other dealings which affect Maralinga Tjarutja. So, I believe that the amendment is a considerable advance on what was included in the Pitjantjatjara land rights legislation four years ago.

The Hon. R.I. LUCAS: I refer to new clause 10 (1), which provides that the council may delegate the exercise of any power or function, and to new clause 10 (2) which provides that such delegation shall be revocable at will and that it will not derogate from the power of the council. I take it that there would not have to be a formal meeting or any formal notification in any sense. Is there any intention that the person whose power is being revoked is to be told? I can envisage a situation where a person having been given the power of Maralinga Tjarutja to engage in negotiations, or whatever, suddenly somehow (I am not sure how) has those powers removed but is not made aware of it. The Hon. Mr Griffin referred to an annual report of the people on the council, so that would be one sort of formal notification. I am at a loss to understand exactly how the removal of powers could come about, and, secondly, how a person would become aware that they were no longer in possession of any power in relation to the function of the Maralinga Tjarutja.

The Hon. J.R. CORNWALL: The council will take the decision meeting as council. It will be entirely the council's business, because that has been provided for in the legislation by an amendment that has been passed. As to how a person will know, let me assure the honourable member that the council will tell him or her. It is very simple.

The Hon. K.T. Griffin: The will can only be expressed by decision of the council.

The Hon. J.R. CORNWALL: Exactly.

Existing clauses struck out; new clauses inserted.

Clause 12—'Evidentiary provision.'

The Hon. J.R CORNWALL: I move:

Page 5—

Line 28—Leave out 'a resolution of Maralinga Tjarutja and'.

Line 42—Leave out all words in this line and substitute the following heading: 'Division IV—Offices'.

The amendment to line 28 is a simple amendment which is consequential on the major amendment. The other amendment provides for a new heading to Division IV.

Amendments carried; clause as amended passed.

Clause 13 passed.

Clause 14—'The approved constitution.'

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

Pages 5 and 6—Leave out clause 14 and substitute new clause as follows:

14. (1) Maralinga Tjarutja must, by notice in writing, served on the Corporate Affairs Commission, specify the addresses of two offices at which legal process, notices and other documents may be served upon Maralinga Tjarutja or the Council.

(2) One office specified by Maralinga Tjarutja under subsection (1) must be situated within thirty kilometres of the General Post Office at Adelaide and the other office must be situated on the lands, or at a place that is reasonably accessible from the lands.

This amendment refers to a new requirement which after consultation was arrived at by consensus. The new requirement for the Maralinga Tjarutja is to have two offices.

The Hon. M.B. CAMERON: The Opposition accepts the amendment, which is a replica almost of an amendment which has been on file by the Opposition since December. People who require to give notice to the Maralinga people or who have business with them can do so more easily than going through an office in Adelaide. The provision is important for people who live in the area which is closely associated with Maralinga. I think mostly of people in Ceduna and adjacent areas. Those people are more likely to be travelling through the lands and will be seeking to notify the people of Maralinga that they will be doing so and also will be seeking permits to travel on the land.

The Hon. K.L. MILNE: I accept the principle, which is a good idea, but why has 30 kilometres from the centre of the city been chosen and, for the country office, what does 'reasonably accessible' mean? Does it mean as far away as Ceduna?

The Hon. J.R. CORNWALL: I understand that it would almost certainly be at Yalata. There is no intention that it should be at Ceduna, which is just a fair stretch of the legs. The logical place seems to be Yalata, and I understand that that is where it will be put.

The Hon. M.B. CAMERON: That is correct. Also, an office further than 30 kilometres from the GPO, is not an office in metropolitan Adelaide, yet that is where it has to be.

The Hon K.L. MILNE: Why was it allowed to be so far out?

The Hon. M.B. CAMERON: If the Hon. Mr Milne wants to make it closer I do not think he would have an argument. It is in the normal boundary of what is metropolitan Adelaide—not the city of Adelaide but the city area.

The Hon. K.L. MILNE: I am thinking of people (there will not be that many) who want to visit the office for a permit or have a discussion, and 30 kilometres seems a long way out. Is it intended to be closer than that?

The Hon. M.B. CAMERON: If people find difficulty travelling 30 kilometres to get a permit in Adelaide they should not be going to the Maralinga lands, because that will be much further to travel.

Existing clause struck out; new clause inserted.

Clauses 15 to 17 passed.

New clause 17a—'Register of sacred sites.'

New clause 17a—'Register of sacred sites.'

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

Page 6, after line 38—Insert new Division as follows:

Division IA—Sacred Sites

17a. (1) Maralinga Tjarutja may compile a register of sacred sites recording—

(a) where a site has been identified with particularity—the boundaries of the site; or

(b) where a site is known to exist but has not been identified with particularity—the boundaries of the area within which it is known to exist.

(2) A register compiled pursuant to subsection (1) shall be kept by Maralinga Tjarutja in such manner as it considers appropriate to prevent disclosure of its contents without the authority of Maralinga Tjarutja.

This new clause refers to sacred sites and might reverently be known as the Whyte amendment in other circumstances. Everybody is aware that there has been particular discussion about the possibility or desirability of registering sacred sites. I guess there are two major arguments that could be advanced in this area: one is that it is very neat and tidy and, from the mining companies' point of view in particular, it is nice to know in advance precisely where sacred sites might be (that is the tidy European approach to a far more complex matter within tribal law). The other end of the argument says that the maps should stay in the heads of the elders of the tribe and the community council, and be transferred from generation to generation. As it was put to me, once something is on paper it could fall into inappropriate hands. It seems that the proposed amendments are as close as possible towards the middle. There is a map existing which is in a safe deposit and can only be viewed by five of the senior members of the Maralinga people, and then only three of those five present themselves at any one time. That is in a bank vault at Ceduna and that is common knowledge. Of course, I do not know what is on it. That does put something down on a piece of paper and if that were produced at some point in negotiations with a mining company in a pre-exploration phase, or indeed at some later stage of negotiations, then it could be said that the site on that map for example had been identified with what this amendment refers to as 'particularity', and that would give absolute protection to the site, as I understand it.

On the other hand, where a site is now in existence and has not been identified with particularity, it would simply be the boundaries of the area within which it is known to exist. So, what we have tried to put together in this amendment, is an amalgam, to the extent that is possible, of traditional law within the Westminster system of Government, as we understand it, and the tribal law of a very ancient and proud people, as they understand it. This is about as close as we can get. I think that it is a reasonably happy compromise and I commend it to the Committee.

The Hon. M.B. CAMERON: This is a very important part of the amendments and I must say that I congratulate the Government on moving towards what is probably a first in Australia and that is the step towards full protection, if the Aborigines desire it, for their sacred sites. It means that they have the opportunity for declaring their sacred sites or declaring a sacred site within an area, and it means that they have absolute protection if they desire it for that site. That is an important step forward because that has not occurred before as I understand it in any legislation, and you, Mr Chairman, must accept some congratulations also for the arrival at what I consider to be a very reasonable compromise between what the Minister has said is a compromise between the two cultures. That is a very difficult situation. It is difficult for them to match our society to theirs.

The Hon. J.R. Cornwall: And vice versa.

The Hon. M.B. CAMERON: And vice versa; I accept that. I think it is important that these people have the opportunity of either declaring their sites at a particular spot or, if they do not know exactly where they are located at this time (and I understand and accept that that is a problem, as evidence has been presented to me to that effect), they can indicate an area where they know there is a sacred site. At the point of issue of an exploration licence they can either declare a specific site or an area that contains a site. That is an important move for them, because it means that they have protection and, also, that in future people who do not have this knowledge cannot come along and declare a site that does not exist. That is also important, because I believe that that could lead to many problems in the future. It provides machinery whereby these people can obtain protection either now or in the future in relation to sites within their knowledge. I accept that the Government has made a big step forward within the legal system as we know it in an attempt to match the two laws and obtain at least some declaration of where sacred sites exist and give them protection if the community so desires.

The Hon. K.T. GRIFFIN: The clause must be read in conjunction with proposed clause 21*(a)*. At this stage I will not deal with clause 21*(a)* but simply say that that point needs to be made. The two-tier system referred to in clause 17*(a)* is relevant to the mechanisms established in proposed clause 21*(a)*. The system of registration of sites is not full-proof. I think that is freely acknowledged because, generally speaking, there will be no challenge to a site that may be placed on the register by Maralinga Tjarutja.

The boundaries of the area in which a site is known to exist can be quite extensive. I suggest that there are two safeguards: first, if the placing of sites that are claimed to be sacred reaches a proportion that demonstrates a lack of *bona fides*, there would be credibility problems for Maralinga Tjarutja, and I doubt whether they would ever want to get to that point. Secondly, I think that the Parliamentary Committee of Review is a mechanism that can review not only the operation of other parts of the Act but also the way that the provisions of the sacred sites register are maintained and applied.

There are two checks on what in some areas may be regarded as possible abuses of the system. Notwithstanding the imperfections in the proposal, I agree with the Leader in that this is a significant advance toward endeavouring to identify sacred sites or areas that contain sacred sites before exploration or subsequent mining work occurs. That will avoid some of the potential conflicts and ultimate confrontations that have occurred in Australia in recent years where sites have been identified after discoveries and at a stage where developers are negotiating with a Government for more secure tenure to enable the expenditure of large sums of money to develop mineral or petroleum resources. I believe that this provision has a good potential for operating satisfactorily to the advantage of the Maralinga people, as well as those who wish to explore and subsequently exploit the mineral and petroleum resources of South Australia.

New clause inserted.

Clause 18 passed.

Clause 19—'Unauthorised entry upon the lands.'

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

Page 7, after line 36—Insert new subclause as follows:

(5a) Maralinga Tjarutja shall not unreasonably or capriciously refuse permission to enter the lands.

The purpose of this amendment is quite clear. We have had evidence brought to our attention in relation to the Pitjantjatjara lands where people have been unreasonably prevented from entering the lands. That should not be the case. As an example, in May last year an application was made by Australian Wildlife Film and T.V. Productions for permission to enter the Pitjantjatjara lands to film native birds and animals. The application was made in writing clearly setting out the purpose of the visit and work that would be carried out. It was a polite and courteous letter. A roneoed *pro forma* reply was received simply saying that the application had not been approved. That reply was received more than one month after the original application.

This example is not the only instance brought to our attention. Problems relating to access and the granting of permits were raised in the Select Committee. Unfortunately, the Government failed to acknowledge the problems and support any changes. In my second reading speech I expressed concern on the part of some South Australians that we were setting up a system which would make it easier for people to get into a foreign country than it would into a large section of their own State. This has to be avoided. At the same time we recognise that in transferring this land the Maralinga Tjarutja have a right to agree to people they wish to traverse it, and we believe that this is a sensible compromise.

I raise the problem that Mr Burdett spoke of this afternoon, namely, that a society in South Australia which has been in existence since the beginning of the State has expressed a desire to have a re-enactment of the Elder scientific expedition of the late nineteenth century. It was a very important expedition and one which taught us a lot about the State.

The people concerned have been refused in what I would say are crude terms. They have received a letter that outlines no reason. These people went to a lot of trouble, and I believe that it would have been a very important event in the 150th anniversary celebrations. We must avoid this sort of problem, because not only does it create anger within the community but it also creates a bad attitude towards the Aboriginal community, and that is something that we should avoid if possible. I move this amendment in the hope that we will avoid such problems in the future.

The Hon. J.R. CORNWALL: The Government opposes this amendment. One or two stories that the Leader has been touting about to me during this debate are supposed to be the one swallow that makes the summer. In fact, the rights of the Pitjantjatjara people in the North-West of the State in their homelands have been observed, on all the evidence available to me and the Government, with a very substantial degree of common sense and sensitivity. I believe it is being paternalistic in the extreme to start imposing these sorts of conditions. Rather than inserting such a provision, which would substantially take away the spirit and intent of the Bill, I believe the time has come for the Government to dig in its toes, as it were. We have given a lot of ground, and we have moved in a spirit of compromise to try to obtain consensus wherever possible. We have moved substantially in the interests of common sense and also in the interests of the Maralinga people. However, at this point we can and will move no further.

The Hon. I. GILFILLAN: I oppose this amendment, principally because it denies what I understand to be the intention and spirit of the Bill. In fact, it is rather an insult: the Maralinga people having been offered the right to own and control the land, this amendment tends to stand in judgment on the validity and the basis on which they exercise the power that the Bill intends to give them. I agree with the Minister in charge of the Bill that the amendment would negate what I see as a major intention of the Bill. As a matter of pure practical consequence, I can imagine that, even if the amendment was passed, it would be very difficult to put into place any structure to effect the consequences. It would be difficult to see how the provision could be implemented. Apart from that point (which I believe is relatively insignificant), I oppose the amendment.

The Hon. M.B. CAMERON: I do not accept what the Hon. Mr Gilfillan or the Minister said. Surely the word 'capriciously' covers this issue.

The Hon. Peter Dunn: Or 'unreasonable'.

The Hon. M.B. CAMERON: Yes. Regarding the way in which the Pitjantjatjara Land Rights Act has operated, there has been example after example of people capriciously or unreasonably refusing access and giving no reason whatsoever for refusal apart from a bald letter saying 'Your application has been refused.' The Royal Geographical Society, which could not be called irresponsible, received a letter that gave absolutely no reason for refusal. That is capricious and unreasonable. Surely to goodness, if these people want to refuse access, they should give a reason. They should have been polite enough to say why they did not want people to go across their land. I think that the Minister gave the game away a bit when he referred to 'homelands'. I wish he would not use that word: it is not a good word to use. I suggest that the Minister should not use that word, because it has a South African connotation.

I must say that I do not agree with their philosophy, and I hope that the Minister does not, either. I do not agree with the homelands philosophy, and I suggest that he does not use that word in relation to these lands because it is not a good word: it has bad connotations. We do not want to set up two nations within this nation; we want one nation. I accept the Aborigines as part of my society. I hope that they accept me as part of their society, and I hope that that is the way that it stays.

It is important that this amendment passes so that if a refusal were given for entry, as with almost every part of South Australia (if someone came to my place I would at least give them a reason why I wanted them to go), it would be fair enough in the case of a very large part of South Australia if at least some reason had to be given for a refusal.

The Committee divided on the amendment:

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

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

Pairs.—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons. Frank Blevins and Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 8, line 22—Leave out 'an Aboriginal' and insert 'a'.

This is for the purpose of the earlier amendment that I moved to ensure that Aboriginal people can invite on to the land as their guests not only Aboriginal people but also persons of European descent. This is an important clause which is designed to ensure that we do not run into similar problems such as the Pitjantjatjara people have in relation to the Commonwealth racial discrimination legislation.

The Hon. J.R. CORNWALL: I am sure that you, Sir, would recall with great clarity, as would other members, that in my second reading reply I covered this point. It is a spurious argument, for reasons that I outlined at that time. We believe that this is an important clause and that it is important to defeat the proposed amendment, because we do not believe that it is reasonable. It is certainly not desired by the Maralinga people that Aboriginal people should be able to bring anybody at all on to the lands—that would defeat the purpose. We do not believe that there should be any exemptions to that simple requirement, which would require a permit to be obtained to enable one to come on to the land in those circumstances.

The Hon. K.T. Griffin: The council selects your friends.

The Hon. J.R. CORNWALL: The honourable member knows very well the reasons behind it. We will not accept this amendment. It may very well be that the honourable member wishes to please his mate, the member for Eyre, but it is not my intention to accept the amendment on those grounds or any others. The amendment is unacceptable. We do not believe and, far more importantly, the Maralinga people do not believe, that that amendment should be accepted. The Government vehemently opposes it.

The Hon. M.B. CAMERON: This is as close to apartheid in this country as we will ever get. The Minister can say what he likes, but, when an Aboriginal person can have only Aboriginal friends, we are really getting close to that point. For a Minister to introduce a member in another place as a reason for my supporting this amendment is, to my mind, despicable, because that is not the case. I moved this amendment because I believe that it is quite reasonable for an Aboriginal person to have other than Aboriginal friends whom he or she wishes to invite on to this land.

For the Minister to say that he vehemently supports it means that he is getting very close to the example I gave earlier in regard to South Africa, and I reject that absolutely. I believe that these people should be entitled to have friends within the Ceduna area, for example, who are white people and who should not have to get permits to travel to see their friends in Maralinga. If the Minister thinks that that is a reasonable proposition then he has a lot to learn about the way that this country should operate and I would urge him to change his mind about this amendment.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons. Frank Blevins and Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 8, after line 23—Insert new paragraph as follows:

'(ea) the lawful or *de facto* spouse, or child, of a person who is referred to in paragraph *(a), (b), (c)* or *(e).'*

This amendment will result in the spouse, *de facto* spouse or a child of a person being able to enter the lands without a permit. Those persons involved are: *(a)* a police officer acting in the course of carrying out his official duties (in other words, a police officer or his wife who may be travelling with him in a caravan or camping with him, or his child, may enter the lands without a permit); *(b)* any other officer appointed pursuant to Statute acting in the course of or carrying out his official duties (this applies to a person who may be acting on behalf of the Government in this area who for reasons best known to himself desires his wife or his *de facto* spouse or his children to travel with him); *(c)* a person acting upon written authority of the Minister of Aboriginal Affairs who enters the lands for the purposes of carrying out functions assigned to a Minister or instrumentality of the Crown or the department of Government (that is very similar to the first two provisions); or, *(d)* an Aboriginal person who enters the land at the invitation of the traditional owner (if he has a European or white spouse, or *de facto* wife, he can bring her along with him without a permit). This seems to me to be a very reasonable provision. If honourable members do not agree to this, then we are really getting very close to a separate State which envisages some sort of apartheid. I trust that the Australian Democrats and the Government will see fit to at least agree to this amendment, which I believe is extremely reasonable.

The Hon. J.R. CORNWALL: The Government opposes this amendment. It really gets up the conservatives' noses that we should be giving the Aboriginal people the right to decide who should go on to their lands.

The Hon. M.B. Cameron: But they can invite other Aboriginals but not Europeans.

The Hon. J.R. CORNWALL: The Maralinga people do not want a provision stipulating that any Aboriginal person can invite anyone on to the lands. We rejected that. The Opposition has now put forward this strange amendment and further on it has another amendment on file which would give the superior whites, as they see it, appeal rights against any attempt which might be made by the Maralinga people to exercise the rights being granted under this legislation. When on his feet the Hon. Mr Cameron referred to the spouses of a variety of people and in every case he said 'he'.

The Hon. M.B. Cameron: No, you are wrong; you can examine the *Hansard* record in the morning.

The Hon. J. R. CORNWALL: In every case the honourable member was referring to the spouse of a male person. He was taking it for granted that the spouse of that male person would be female and referred to the wife of the policeman, the wife of so and so, and so on, it is all in there.

What about the situation that exists where one of the nurses employed by the Aboriginal Health Organisation or, as I would hope in the not too distant future, by the community-based and community-controlled Aboriginal Health Service, happened to have a husband who had been guilty at various times of all sorts of bad attitudes towards the Maralinga people and who had been guilty at some stage of running booze into the area, of transgressing in a myriad of ways, as some white people have over many years and over many generations?

Does the Hon. Mr Cameron and does Her Majesty's Opposition seriously suggest that that male person should be let on to those lands without let or hindrance, the land rights legislation being in place notwithstanding? That is a ridiculous proposition to put, but it is characteristic of the way in which white neo-colonial conservatives think in this place. Fortunately, there are enough people of good intent who have entered into the spirit of what we are about with this legislation, and it is pretty clear at this stage that it will go through substantially in the form originally submitted and, indeed, improved, but it will not be improved in any way by accepting this amendment.

I must say that the Government is disappointed, to put it mildly, to see the amendment even moved; quite frankly, it is more than disappointed to hear all this nonsensical talk about apartheid. The honourable member, if he knew how the separate but equal development of apartheid worked in South Africa, would know that it is a vastly different situation indeed to the land rights movement that is currently and quite rightly sweeping this country. I hope that the honourable member does not persist with that spurious

argument, because it does him and the Opposition no credit at all.

The Hon. M.B. CAMERON: First, I want to correct the Minister, because I have been well trained by the Hon. Miss Laidlaw on our side in relation to ensuring that I say in all matters, 'He or she' or 'spouse' relating to both, and I intend to keep that up. The Minister should look at *Hansard* tomorrow to see that I said, 'He or she' and 'spouse'. I know as well as anyone that 'spouse' can mean a person of either sex. It is a basic part of the English language that can mean either. I know exactly what it means and, if ever I transgress, I have someone on my side to ensure that I come back to it. I do not need it, but I have someone and I get it, anyway, whether or not I need it. Indeed, I am sure that, if I transgressed, someone from the other side who is equally certain, as I am, that all people in this State are equal, will say the same thing.

So, let us get rid of that nonsense for the sake of the Minister and get back to the point of this amendment. The Minister is saying that people who are directly associated by relationship with people who are allowed on to the land without permit cannot enter without permit. What a ridiculous sitation. The Minister claims that is not apartheid. I have friends living in South Africa, and I reject absolutely their attitudes, and I tell them.

However, I can read into what is happening here that it is exactly the same as their attitudes. The Minister can say what he likes, but this is exactly what they are talking about—just what is going on here. We are setting up a separate State, and I must say I am surprised that members of the Labor Party are deciding to set out on this course. I accept that my amendment will not pass; so be it.

People in the future will regret this because this situation will not be allowed to continue. Sometime in the future someone will look at this and say 'It is ridiculous' and they will change it, as they will with the red meat Bill. There are people in this Council who have already made mistakes on matters that are very important. They are making a mistake tonight by not supporting the amendments that try at least to move us all towards equality. This means that an Aboriginal person with a white wife or a white husband will have to obtain a permit to go and visit friends. If they live in Ceduna, the first thing they will have to do is to go to an office and say, 'Could I please have a written permit to go and visit my friends?' What happens if that person is refused a permit? Does the husband or wife visit the friends, one without the other? What a ridiculous situation! This is the beginning of stupidity. I trust that the people on the other side and, if necessary, the Australian Democrats (and I am not sure that they will come to reality on this amendment that I am moving, but they might, and I trust that they will) sometime in the future when this is changed will remember what I am saying: that this will be, if it is passed, another act of stupidity, another act towards inequality in society, and one that ought to be rejected by this Committee as a step towards inequality in this society.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons. Frank Blevins and Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 20—'Special provisions for the residents of Cook'.

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

Page 9, line 41—Leave out 'thirty-two' and insert 'forty'.

I have discussed this matter with various people and I understand that the distance required is sufficiently covered by the word 'forty'. I do not think we should require unnecessary intrusion upon this land without discussion with the Aboriginal community or without discussion between the Aboriginal community and the people of Cook.

The Hon. J.R. CORNWALL: A spirit of compromise and common sense has characterised this debate. I take this opportunity to congratulate my colleague in another place, the Hon. Greg Crafter, for the superb job that he has done as a negotiator.

The Hon. M.B. Cameron: Leave that until the third reading.

The Hon. J.R. CORNWALL: I could not allow that opportunity to pass me by. The Minister informed me that the Government is prepared to accept this as a reasonable amendment.

Amendment carried; clause as amended passed.

New clause 20a—'Use of roads to traverse the lands.'

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

Page 9, after line 43—Insert new clause as follows:

20a. (1) Notwithstanding the other provisions of this Division, a person (other than a traditional owner) shall be entitled to use a prescribed road subject to the following conditions:

(a) that the use of the road is limited to that involved in, or reasonably associated with, traversing the land; and

(b) that the person gives Maralinga Tjarutja reasonable prior notice of the time and place of his entry upon and departure from the lands.

(2) Where a person contravenes or fails to comply with a condition referred to in subsection (2), he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) For the purposes of this section—

'prescribed road' means a road delineated in the map in the second schedule including land either side of the road to a distance of not more than one hundred metres from the centre of that road.

The new clause provides for persons traversing the lands. Once again, the amendment is the result of a compromise. Originally, the Maralinga people took the view, for which I must say that I had a deal of sympathy, that it should be necessary for everyone who entered their land to have a permit. However, it was put to them that a reasonable compromise would be that people traversing their lands in a reasonable manner should simply be required to give notice to that effect. That is a courtesy that prevails in much of the arid zone and pastoral country, as you would be aware, Mr Chairman.

I point out that, when referring to roads, we should be aware that at best in many instances we are referring to fairly rudimentary tracks. I have completed the trip to Cook, for example, coming straight down the line and passing a lot of scrub. In some places, because of good rains, the phenyl was thriving and it was quite difficult to see the two wheel tracks, which was basically the road as marked on the map. City slickers, unlike you and me, Mr Chairman, who do not get out into the back country frequently to find out what it is all about, may well have some sort of mental picture. I am sure the Hon. Miss Laidlaw would because she is terribly urban and, in fact, urbane.

The Hon. Diana Laidlaw: Don't apologise!

The Hon. J.R. CORNWALL: The honourable member should disabuse herself of any notion that there is a four-lane bitumen highway out there as marked on the map: it is very much a rudimentary track.

The Hon. Diana Laidlaw: The Chairman had offered to take me out there and then he withdrew the invitation.

The Hon. J.R. CORNWALL: The honourable member should take it up, as she could not get a much better guide.

The Hon. M.B. Cameron: Pity you hadn't gone with him.

The Hon. J.R. CORNWALL: No, I have been right through that country and have a very warm regard for the Pitjantjatjara people generally. I would be so bold as to suggest that following the initiative taken to establish community based and community controlled health services that warm regard is reciprocated by many of those people. As you and I know, Mr Chairman, as we have both traversed that country, the last time I went through I had to get a permit from the Commonwealth authority, notwithstanding that I was the Minister for Environment and Planning. It was still restricted country.

The Hon. R.C. DeGaris: Have you got a hospital out there?

The Hon. J.R. CORNWALL: We have a hospital at Cook.

The Hon. C.M. Hill: He was trying to get the local doctor to sign the letter.

Members interjecting:

The Hon. J.R. CORNWALL: It was back in happier times and easier portfolios. It is difficult in some areas to make 70 or 80 miles a day. It is not unreasonable that people should move to 100 metres on the inside of a road to camp, but they must make reasonable progress. There are substantial penalties under this amendment if people disobey what is a reasonable requirement for travel. On balance, it is a reasonable amendment. I believe the Maralinga people think it is reasonable and, accordingly, the Government moves to have it inserted.

The Hon. M.B. CAMERON: The Opposition accepts this amendment because, after all, it is another of the amendments that the Opposition has had on file in another form since December. Of course, we agree. It is important that, as there has been access to these lands for almost the whole of the history of the State since white settlement, they should remain that way and that people are able to traverse the lands at least on the roads that are still established.

I accept what the Minister says that anybody who goes out there really should know what they are doing because it is indeed difficult land. It is important that they notify somebody, and I do not mind whether it is the Maralinga people or who it is. There ought to be some notification and probably the Maralinga people, being closest to the area, would be the most appropriate people to notify. The Minister implied in a rather underhand way that members of the Opposition do not know the area. The Hons. Miss Laidlaw, Mr Lucas, Mr Dunn and I spent some time out in this area and all northern areas visiting Aboriginal settlements, and we know something of the area.

The Hon. J.R. Cornwall: But you fly—they are whistle stops.

The Hon. M.B. CAMERON: I have also been on roads. One does not have to travel on roads to know the area, the people and the problems they face. We also know something of the problems of health that they face as we visited hospitals. We do not have to be Ministers of Health to do that. We visited the hospital at Indulkana.

The Hon. J.R. Cornwall interjecting:

The Hon. M.B. CAMERON: The Minister is insulting it.

The CHAIRMAN: Order! I hope the Hon. Mr Cameron will not digress too far.

The Hon. M.B. CAMERON: I reject the idea that we know nothing of the area, because we do know it. We have made a point of visiting the area, even though in terms of political support one would not believe that we have majority support in those areas. The people need the support of all members, and we certainly intend to ensure that they realise that they are represented in this place. We accept the amendment. We believe it is important that there be access to these roads. I will move an amendment later to ensure that the reverse onus of proof does not apply and that people are protected in that way.

I am not sure that the penalty should be as high as it is, but that penalty has been set by the Government and therefore we will not interfere. It would be unfortunate if people who strayed off the roads unwittingly were faced with such a penalty, but I guess that they would set about proving their innocence in that situation. In some of these areas it is difficult to know whether or not one is off the main road. There are problems associated with that.

The Hon. R.I. LUCAS: I believe that there is an error in the printing and that under new clause 20a (2) 'subsection (2)' should read 'subsection (1)'.

The Hon. J.R. CORNWALL: Yes. It will be corrected accordingly, and I congratulate the Hon. Mr Lucas on showing again what an eager beaver he is.

The Hon. R.I. LUCAS: New clause 20a (1) *(b)* refers to 'reasonable prior notice'. Whilst accepting that a specified period could be too restrictive, I ask the Minister to indicate what would be a reasonable time. It would be helpful to those people who want to travel through these lands to have a rough idea, otherwise a person may give what he believes to be reasonable notice, he may think he is in the clear, and he may find that he is guilty of an offence. I presume that under new clause 20a (2) a person would be guilty of an offence only if the Maralinga Tjarutja decided that the notice was not reasonable. Although accepting that there are problems in setting out a specified period, I wonder whether the Minister can give a rough idea of what we are talking about?

The Hon. J.R. CORNWALL: The logical point at which people would lodge notice at this stage (and I guess in the foreseeable future) would be at Yalata. As I understand (and I could be corrected), in general terms if people turn up at Yalata and simply notify the people that they are passing through and that they intend to traverse the land from the south through to the Unnamed Conservation Park, for example, or by way of the other road that is clearly marked, there would be no difficulty. It is a question of who is going where.

The Hon. R.I. Lucas: What if they were coming from the other end?

The Hon. J.R. CORNWALL: If they were coming from the other end they would be very sensible to make arrangements in advance because there is no way that a high-rise office will be set up at the northern end of the Maralinga lands. It is not the sort of country one goes in to without making a lot of advance arrangements. The time I passed through in 1979, we took four four-wheel drive vehicles.

The Hon. M.B. Cameron: You are an expensive Minister.

The Hon. J.R. CORNWALL: There were a lot of people and we were doing a lot of very good things. It took two four-wheel drive vehicles carrying fuel, supplies and refreshments to support the other two vehicles. One does not run into service stations too frequently between the Northern Territory and Cook. If one was going through from the top one would need permission from the Pitjantjatjara people under their legislation as well as notifying the Maralinga people. It would be a matter of using a good deal of common sense.

The Hon. R.I. LUCAS: I take it from what the Minister is saying, talking about people coming through Yalata, that basically if they arrive there and give notice they can then head off. He is not talking about requiring weeks or months notice prior to going. The Minister gave an instance of people arriving at Yalata, telling someone there and then heading off to the Maralinga lands as sufficient notice. They could well do that within a space of a few hours. That is the sort of reasonable notice envisaged under this provision? Secondly, I take it that contact does not have to be formally

in writing. There could be verbal contact, as he has already inferred, or telephone or any sort of contact?

The Hon. J.R. CORNWALL: No, it is not my understanding. It is not spelt out at all. There is not any intention that it has to be a formal written application. One of the reasons I mentioned Yalata is because it has a reasonable telephone service. The courteous, sensible thing to do would be to ring and tell them what one intended doing, which would be a formality to meet the requirements of the legislation. In practice, I do not see that would be a problem, provided that one tells them what route one is following and sticks to it.

New clause inserted.

Clause 21—'Mining operations on the lands.'

The Hon. J.R. CORNWALL: I indicate that I intend to move the following amendment:

Page 11, lines 13 to 21—Leave out subclauses (11), (12) and (13) and insert subclauses as follows:

(11) Upon the receipt of a request under subsection (10), the Minister of Mines and Energy shall confer with the Minister of Aboriginal Affairs, Maralinga Tjarutja and the applicant with a view to resolving the matter by conciliation.

(12) If steps taken under subsection (11) have failed to resolve the matter within a reasonable time after receipt of the request, the Minister of Mines and Energy shall refer the application to an arbitrator.

(13) The arbitrator shall—

(a) in relation to an application for permission to carry out exploratory operations—be a judge of the Supreme Court of South Australia (being a judge upon whom the jurisdiction of the Land and Valuation Court is conferred) or a legal practitioner of not less than 10 years standing appointed by the Minister of Mines and Energy to be arbitrator; or

(b) in any other case—be a judge of the High Court, the Federal Court of Australia, or the Supreme Court of a State of Territory of Australia or a legal practitioner of not less than 10 years standing appointed by the Minister of Mines and Energy to be arbitrator, the Minister having first afforded Maralinga Tjarutja and the applicant a reasonable opportunity to make representations as to that appointment.

Again, this is a matter on which a significant and major amendment is requested. It relates to the matter of conciliation and arbitration. It has been arrived at after a lot of discussion between a lot of parties. It is a very sensible, comprehensive amendment, and I commend it to the Committee.

The Hon. K.T. GRIFFIN: It is a significant variation to the present clause, which relates to the whole process of access for exploration and mining. The present clause 21 follows almost verbatim the provisions in the Pitjantjatjara Land Rights Act, which were negotiated over a long period with the Pitjantjatjara people and their representatives.

The amendments introduce two things: first, the concept of conciliation before the point of arbitration, that conciliation activity taking place with the Minister of Mines and Energy, the Minister of Aboriginal Affairs and the Maralinga Tjarutja as well as the applicant. I think that that is a useful provision to include in advance of arbitration. Secondly, if arbitration is necessary in respect of exploration, the Minister of Mines and Energy can appoint a judge of the Supreme Court, who is the judge exercising jurisdiction of the Land and Valuation Court, or a legal practitioner of not less than 10 years standing. That legal practitioner's qualifications, of course, are the minimum qualifications for appointment to the Supreme Court bench.

The introduction of the judge of the Supreme Court exercising jurisdiction in the Land and Valuation Court is relevant, because as I understand it the appeal from a Warden's Court under the Mining Act is to the Land and Valuation Court. The relevance of this in the context of exploration operations is that the arbitrator thus appointed must have regard to those factors set out in the Mining Act which govern entry for the purpose of exploration.

These amendments also are to be related to the amendments to clause 25 which limit the extent of up-front payments for exploration purposes. I will have more to say about that when we get to that particular clause. While the amendment does not go so far as to say that all matters relating to exploration are to be dealt with in accordance with the Mining and Petroleum Acts, nevertheless the amendment is a reasonable compromise which recognises at least that the exploration stage has different characteristics from the mining development stage. That is important in the context of the compromise that has been reached on this clause and subsequent clause 25. So, the Opposition is prepared to support this amendment.

The Hon. K.L. MILNE: I would first like to ask a question. It seems to me that this is now rather repeating what appeared to be a difficulty in the Pitjantjatjara Land Rights Bill—that the matter shall be referred to arbitration. There is a conciliation provision here involving the Minister of Mines and Energy, Minister of Aboriginal Affairs, the Maralinga people and the applicant. It states:

If steps taken under that section have failed to resolve the matter within a reasonable time—

and I do not know what a reasonable time is—

after receipt of the request the Minister of Mines shall refer the application to an arbitrator.

I have complained in all these negotiations that I do not like the word 'arbitrator', because the very word itself means that he or she is going to make an arbitrary decision. It was the fear of this arbitrary decision which I think went wrong in the Hematite arbitration or suggestion of arbitration.

Does this mean that, once an applicant joins in the conciliation machinery, and if then the Minister of Mines and Energy refers the matter to an arbitrator, the applicant has to be one of the parties? Does an applicant have to take part in the arbitration or can the person concerned back out?

The Hon. J.R. CORNWALL: It follows subclause (10), which I think is worth reading, because it follows sensibly and logically:

Where—

(a) Maralinga Tjarutja refuses its permission under this section or grants its permission but subject to conditions that are unacceptable to the applicant; or

(b) the applicant has not, at the expiration of one hundred and twenty days from the date of the application, received notice of a decision by Maralinga Tjarutja, upon the application,

the applicant may request the Minister of Mines and Energy to refer the application to an arbitrator.

It then goes on under the proposed amendment, as follows:

Upon the receipt of a request under subsection (10), the Minister of Mines and Energy shall confer with the Minister of Aboriginal Affairs, Maralinga Tjarutja and the applicant with a view to resolving the matter by conciliation.

Therefore, first there is that necessity to conciliate. If the Maralinga people have refused permission under the section, but subject to the conditions that are considered unacceptable by the applicant, or the applicant does not get any sort of reply at all, within four months, he may request the Minister of Mines and Energy to refer the application to an arbitrator—may request. Once he has done that, if he decides to take that decision ('he' may be a corporate entity, incidentally, or a female), upon receipt of a request under subclause (10) the Minister of Mines and Energy shall confer. Therefore, conciliation is the first step, which is very well understood in this country. We have had a tradition of conciliation and arbitration that goes back a very long way in our relatively short history of European settlement, so we understand conciliation. New subclause (12) of clause 21 provides:

If steps taken under subsection (11) fail to resolve the matter within a reasonable time after receipt of the request—

that is, if conciliation fails within a reasonable time, and 'reasonable' in that sense would be in the understanding of any average reasonable person—

the Minister of Mines and Energy shall refer the application to an arbitrator.

An arbitrator is one who arbitrates, not one who takes arbitrary decisions, as I would understand it. My learned friend the Hon. Mr Griffin may wish to comment on that. However, the arbitrator shall in certain circumstances (which, again, are spelt out) be a judge of the Supreme Court of South Australia, or in other cases a judge of the High Court, the Federal Court of Australia or the Supreme Court of a State or Territory, and so it goes on. It spells out who the arbitrator shall be in certain circumstances. I think it spells out in very clear language and outlines in a sequence of events that are unmistakable how the process is first of conciliation and then, if necessary, of arbitration. I really cannot imagine that anyone at this point should have very much difficulty with it.

The Hon. R.I. LUCAS: I am puzzled by the drafting of new subclause (13) *(a)* and *(b)*. Paragraph *(b)* provides that the arbitrator shall:

in any other case—be a judge of the High Court...the Minister having first afforded Maralinga Tjarutja and the applicant a reasonable opportunity to make representations as to that appointment.

That is similar to the provision that was in the original Bill under clause 12. So, in appointing someone as an arbitrator both parties (if I can use that term) can make representations to the Minister about that appointment, and I suppose that, if both parties are vehemently against it, the Minister may reconsider and appoint someone else. I suppose that that is the inference we are to draw from that provision. However, under new subclause (13) *(a)*, relating to application for permission to carry out exploratory operations, a different judge would be appointed as an arbitrator. Although that is not the point I wish to raise, he is merely appointed by the Minister of Mines and Energy. There is no opportunity for the applicant and Maralinga Tjarutja to have a reasonable opportunity to make representations as to that appointment. Therefore, under new subclause (13) *(b)* if it is thought that the arbitrator is a particularly odious person and is not wanted, it is possible to make representations, and the Minister can change the decision.

However, as proposed new subclause 13 *(a)* is drafted, if both the applicant and the Maralinga Tjarutja consider that the judge is a particularly odious person and that they do not want him or her, they do not have that same opportunity to make representations to the Minister of Mines and Energy. I suppose it has been done that way for a reason. I ask the Minister what is that reason, particularly having regard to the provisions of the clause 12 in the original Bill, which provided that:

The Minister must consider any representations of Maralinga Tjarutja in relation to a proposed appointment.

There is no reference there to the applicant. So, at least in proposed new subclause (13) *(b)* it has been extended to give the opportunity to the applicant as well as to the Maralinga Tjarutja. So it is a simple question for the Minister, namely, why the difference?

The Hon. J.R. CORNWALL: Proposed new subclause (13) *(a)* clearly refers to exploration only, and that is rather different from subclause (13) *(b)*, where in some cases at least it may well be that what is being considered are the conditions that may apply to a billion dollar development. We could be talking about another Roxby Downs, although that is clearly an extreme case.

The Hon. M.B. Cameron: You support Roxby Downs?

The Hon. J.R. CORNWALL: I support the Government policy on Roxby Downs. I am always an enthusiastic supporter of Government policy. I can only show the flexibility that is necessary to accommodate the decisions made in June every year and July every other year. We are a very democratic Party.

The idea of the difference is that, where issues in dispute in relation to an application for exploratory work have been narrowed down to compensation only and discussions as to what arrangements will be necessary to restore or make good any damage that has been done, the provision is specifically made in proposed new subclause (13) *(a)* for the Minister to appoint a judge from the Land and Valuation Court as an arbitrator. That is entirely appropriate for new subclause (13) *(a)*, which simply concerns exploration. However, new subclause (13) *(b)* could apply to a whole range of things, which might involve many millions of dollars. The project could be past the exploration stage; minerals could have been discovered; and it could be near the exploitation stage—the commercial production stage. Different arrangements would then be made. It seems to me that that is not only appropriate but also self-evident.

The Hon. R.I. LUCAS: I accept in part what the Minister says. He referred to million dollar developments in regard to subclause (13) *(b)*, but under new subclause (13) *(a)* the arbitrator has considerable powers in respect of exploration. He or she can decide whether or not the exploration can go ahead. A mining company may well be extraordinarily confident or as confident as it could ever be at that stage that it had a good prospect of a find, so it might well be worth millions and millions of dollars, too, in its best guesstimate.

So, whilst I can see the distinction in part, even though the stakes may not be as high in regard to new subclause (13) *(a)* as they are under subclause (13) *(b)*, I do not think that that is necessarily the case, because the arbitrator can rule against such an exploration. It is not just a matter of compensation that will be decided by the arbitrator.

The arbitrator can rule against or for that exploration. I raise that point in opposition to what the Minister said. I return to the Minister's original Bill and new subsection (12) and ask specifically whether under that provision Maralinga Tjarutja would give the Minister of Mines and Energy, for the exploration stage, the chance of representation on the appointment of the arbitrator. Under the original Bill in new subsection (12) would Maralinga Tjarutja be able to make representations to the Minister about what is discussed in subclause (13) *(a)*, that is, exploration?

The Hon. M.B. CAMERON: It is not an important point in terms of the Government, but it is important in terms of ensuring that both parties have absolute faith in the system. All Opposition members would accept a judge of the Supreme Court as having the necessary impartiality to give a reasoned judgment. I know of many legal practitioners of 10 years experience, some of whom, I am sure, would have the necessary knowledge to make the decisions that would be required under this Statute. It would probably require only a simple amendment or an addition to the Minister's amendment to add the words 'the Minister, having first afforded both parties, Maralinga Tjarutja and the applicant a reasonable opportunity to make representations as to the appointment' at the end of paragraph *(b)*.

That will not cause a great problem. It simply means that both parties would be able to say, 'I like him,' or 'I do not like him.' The Minister does not have to accept either party's summing up, and it would not make a great difference to the system. The Minister is still left in total control of the appointment, but it would afford both parties the opportunity of making representations and allowing them to be satisfied. Will the Minister consider adding those words at the end of paragraph *(b)*? It will merely mean that he will

have some discussions with both parties before he makes that appointment. That seems to me to be reasonable.

The Hon. K.L. MILNE: I am still unhappy about it. An arbitrator may not be well versed in Aboriginal affairs. if one is talking about arbitration in relation to the ordinary Arbitration Act to which I have been accustomed, one realises that 90 per cent of arbitrations under that Act involve bulding arbitrations, where there are two arbitrators.

The Hon. J.R. Cornwall: Why not three? You could not get a draw then.

The Hon. K.L. MILNE: They have two arbitrators, one for the home owner and one for the builder. In this case you have two interests—the Aboriginal people and the mining company. Why cannot we have two arbitrators? If you insist on having arbitrators, of which I disapprove, why not have two, because the volume of money is very great? Will the Government consider that? One could be appointed by the Minister of Mines and Energy and the other by the Minister of Aboriginal Affairs. It is not fair to either side to have one arbitrator appointed by one Minister interested in one side of the question.

I do not intend to agree to the amendment as it is. What the Opposition has said has partly improved the situation but, if it is a good idea to have two arbitrators for a building contract, which may involve only $100 000 or less, it would be a good idea to have two arbitrators especially in view of the enormous sums that could be involved. Under new subsection (13) *(b)*, it could obviously involve millions of dollars.

Would the Government consider deferring this clause so that we can have another look at what would be the fairest thing to do? I do not think that it is fair on the Aborigines themselves to have the arbitrator appointed by the Minister of Mines. I ask that the matter be held over until we have had an opportunity to discuss it again and to find something, which in my opinion, would cope with the volume of money involved. The system did not cope with the volume of money involved in the Hematite dispute and we do not want that to occur again. Will the Government hold this matter over for further discussion later this evening?

The Hon. M.B. CAMERON: Mr Chairman, I will repeat what I said earlier, that this is a very reasonable proposal. It was suggested by the Hon. Mr Lucas that the provision in the second part of this section should also refer to the first part; that is, that the people concerned in the arbitration procedure should have absolute faith in the person who becomes the arbitrator. One way that they can achieve this is to have some say in who the arbitrator is. Whilst they will not be able to put a veto on it, they will be able to put a representation on that appointment. I believe that it is important that people have faith in the system and that they have some say in it.

The Hon. J.R. CORNWALL: I am perfectly happy to accept that the points raised by the Hon. Mr Lucas and followed up by the Hon. Mr Cameron are reasonable. I move:

Page 11, lines 13 to 21—Leave out subclauses (11), (12) and (13) and insert subclauses as follows:

(11) Upon the receipt of a request under subsection (10), the Minister of Mines and Energy shall confer with the Minister of Aboriginal Affairs, Maralinga Tjarutja and the applicant with a view to resolving the matter by conciliation.

(12) If steps taken under subsection (11) have failed to resolve the matter within a reasonable time after receipt of the request, the Minister of Mines and Energy shall refer the application to an arbitrator.

(13) The arbitrator shall—

(a) in relation to an application for permission to carry out exploratory operations—be a Judge of the Supreme Court of South Australia (being a Judge upon whom the jurisdiction of the Land and Valuation Court is conferred) or a legal practitioner of not less than ten years standing appointed by the Minister of Mines and Energy to be arbitrator or;

(b) in any other case—be a Judge of the High Court, the Federal Court of Australia, or the Supreme Court of a State or Territory of Australia or a legal practitioner of not less than ten years standing appointed by the Minister of Mines and Energy to be arbitrator;

the Minister having first afforded Maralinga Tjarutja and the applicant a reasonable opportunity to make representations as to that appointment.

The Hon. R.I. LUCAS: The Minister having moved his amendment in that way, I am happy to support it. That is precisely the point that I made earlier: it will come under both sections. It will afford both the applicant and the Maralinga Tjarutja people the opportunity to make submissions and to discuss with the Minister who will be appointed as arbitrator. Of course, the Minister retains, as this clause envisages, the ultimate right to make that decision, but this at least gives both parties to a particular arbitration an opportunity to put a view to the Minister. I think this is a useful amendment and I thank the Minister for moving it.

The Hon. J.R. CORNWALL: I thank honourable members for that. The other point raised by the Hon. Mr Milne was to the effect that two arbitrators are better than one. I suppose that we could move to a situation where we required a Full Bench, if we kept extrapolating that argument. I am not attracted by it, I must say, and I am not inclined to accept it on behalf of the Government.

The Hon. K.L. MILNE: Where does that lead if they have reasonable opportunity? It does not give them any idea. What if they do not agree with the arbitrator? What if one side does not want the arbitrator appointed? Do they have an opportunity to discuss and agree to the arbitrator appointed? That is the normal practice.

The Hon. M.B. CAMERON: I do not want to answer for the Government, but in a situation like that, if the arbitrator eventually makes a decision that is not agreeable to the applicant, I suppose they will not explore. It really strikes at the heart of the problem. We must have some faith in some system somewhere. The system may have potential problems, but it must be accepted by us, otherwise we could have no faith in anything connected with this Bill. We must have faith in someone within the system, be it the Minister or an arbitrator. While I have some misgivings about the arbitrator system, it is, after all, the Governments Bill and it has decided on this system. One can only hope that it works. If it does not work, I have no doubt that the Bill will come back before Parliament in the future and the system will be changed.

The Hon. J.R. CORNWALL: The system is simple and extremely reasonable. The Minister of Mines and Energy shall refer the application to an arbitrator. The arbitrator will be, in the case of *(a)* a judge of the Supreme Court of South Australia being a judge upon whom the jurisdiction of the Land and Valuation Board is conferred. I have explained why that was put in: because, if it was a question of compensation only, it is sensible that it should be decided by a judge upon whom the jurisdiction of the Land and Valuation Board is conferred. Alternatively, in the case of *(b)* the arbitrator can be a legal practitioner of not less than ten years standing appointed by the Minister of Mines and Energy. Therefore, the arbitrator will be either a judge of the Supreme Court, the highest court in South Australia, or a legal practitioner of not less than ten years standing. That was done because the Chief Justice pointed out during discussions, again, very sensibly, that it would not always be possible to obtain a judge of the Supreme Court by clicking the fingers and saying that we would like an arbitrator quickly. That is not the way that the system works. Therefore, we have either a judge of the Supreme Court or

a senior practitioner in the legal profession chosen by the Minister of Mines and Energy to be the arbitrator.

As a further protection the Minister says, 'I think that Jim Smith QC or His Honour Judge whoever, would be ideal for this job.' As a further protection to both parties, under the amended amendment, the Minister will not only say that he thinks J. Smith QC or a particular judge of the Supreme Court is an ideal arbitrator, but the arbitrator will go to Maralinga Tjarutja and the person applying to explore, exploit or develop and will discuss the application with the parties individually and/or collectively.

I do not think one could possibly go any further than that. That seems to be an entirely reasonable and sustainable position which is all about common sense and not about politics. Once the parties have been to conciliation and those steps have failed, one then moves to arbitration. The Minister of Mines and Energy, having chosen somebody, then has to confer with the parties.

The Hon. M.B. CAMERON: I give a further assurance to the Hon. Mr Milne that, if any Minister of Mines and Energy, having gone down the track of consulting with both bodies and receiving a vehement rejection by one body, then decided to appoint that person, he would certainly get his name on the front page of the newspapers because the aggrieved party would not remain silent in the face of rejection of its opinion. If any Minister ignored the advice of either party he would be subject to severe criticism and I am not sure that he would enjoy the publicity that would flow from that. We have to accept some goodwill on the part of any Minister of Mines and Energy in relation to a matter like this.

Amendment carried; clause as amended passed.

New clause 21a—'Application for mining tenements and sacred sites.'

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

Page 12, after line 36—Insert new clause as follows:

21a. (1) Where an application has been made for a mining tenement in respect of part of the lands, the Minister of Mines and Energy and the Minister of Aboriginal Affairs shall consult with Maralinga Tjarutja to determine whether any sacred site or part of a sacred site registered on a register kept pursuant to section 17a is within the land to which the application relates.

(2) Where the Minister of Mines and Energy and the Minister of Aboriginal Affairs are satisfied that a sacred site or part of a sacred site registered on a register kept pursuant to section 17a is within the land to which the application relates, the Minister of Mines and Energy

(a) shall provide the applicant with such information as to the sacred site and its location as he and the Minister of Aboriginal Affairs determine to be appropriate; and

(b) shall, subject to subsection (3)—

(i) in granting any mining tenement upon the application, make necessary provision for the protection of the sacred site—

(A) in the case of a sacred site that has been identified with particularity—by excluding land from the tenement or imposing conditions of the tenement; or

(B) in the case of a sacred site that is known to exist but which has not been identified with particularity—by imposing conditions of the tenement to protect the sacred site until it is so identified, and

(ii) in the case of a sacred site referred to in sub-subparagraph (B), when it is so identified, make further or other provision for the protection of the site by excluding land from the tenement or imposing conditions of the tenement.

(3) The Minister of Mines and Energy shall not, in granting a mining tenement relating to land to which another mining tenement (being a mining tenement granted after the commencement of this Act) previously related, make provision under subsection (2) *(b)* for the protection of any sacred site within the land unless provision for the protection of that sacred site was made under that subsection in granting that earlier tenement.

(4) Land may be excluded from a mining tenement under this section and, subject to subsection (5), conditions may be imposed, varied or revoked under this section in respect of a mining tenement, by notice in writing to the holder of the tenement.

(5) Conditions shall not be imposed under this section in respect of a mining tenement, and any conditions so imposed shall not be varied or revoked, without the consent of Maralinga Tjarutja.

(6) Where information is provided as to a sacred site and its location pursuant to subsection (2), the Minister of Mines and Energy may, in consultation with the Minister of Aboriginal Affairs, impose conditions prohibiting or restricting disclosure of the information and any person who knowingly contravenes any such conditions shall be guilty of an offence and liable to a penalty not exceeding $5 000.

It is a lengthy amendment which I will not canvass in detail. It refers to the consultations that go on between the Minister of Mines and Energy and the Minister of Aboriginal Affairs concerning sacred sites and the registration of sacred sites pursuant to new clause 17a. Subsection (2) *(b)* deals with making necessary provision for the protection of the sacred site in granting any mining tenement. Members will recall that I referred to that in some detail when we discussed new clause 17a.

The entire thrust of new clause 21a is to give a degree of certainty to the protection of sacred sites according to the degree of certainty that they have been accorded by being prerecorded. It is consequential upon new clause 17a.

The Hon. M.B. CAMERON: There have been discussions earlier about this matter. It is a very important part of the Bill because it refers to an important part of the culture of the people who will now have control of this land.

It is important that the community accepts that certain areas of land are important to these people and should be kept separate from the normal processes of mining and development. This matter was raised by you, Mr Chairman, at an early stage of consideration, and I believe that the people who have been concerned with these negotiations realise that you have played an important role in our arriving at what is at least a starting point of acceptance of the concept of sacred sites. The concept is probably not perfect, but certainly it attempts to ensure that sites are protected at law, and that is important. It also ensures that sites are identified at an early stage of any development procedure and that the people do not necessarily have to identify sites immediately.

To ensure protection, sites must be identified in either particular or general terms before allocation of an exploration tenement. Once that tenement has been issued, there can be no additions. There has been a suspicion, rightly or wrongly, that from time to time extra sacred sites have been found for various purposes. That may or may not be right, but there is a suspicion within the community, and it is important to get rid of it once and for all. In this case, I trust that we will get rid of that suspicion and that people will accept that all the sites that are identified are genuine and that the sites that are not identified in particularity are also genuine, because in some cases these people have not been on the lands for a long time and it is unfair to expect them to identify sites immediately. I understand that in some cases it is 30 or 40 years since they have been to these areas, and this measure will afford protection. This is a reasonable attempt to provide protection, and on behalf of the Opposition I say that it is a very sensible move towards a sensible solution to what is a very vexed problem, not only in this State but also in the rest of Australia.

New clause inserted.

Clause 22 passed.

Clause 23—'Royalty.'

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

Page 13, line 41—Leave out 'The' and insert 'Subject to subsection (2a), the'.

Page 14, after line 2—Insert new subclauses as follows:

(2a) If the income of the fund maintained under subsection (1) exceeds in any financial year the prescribed limit, the excess shall be paid in full into the general revenue of the State.

(2b) No moneys shall be paid out of the fund maintained under subsection (1) unless a regulation is in force prescribing a limit for the purposes of subsection (2a).

This provision is identical to that contained in the Pitjantjatjara legislation. As part of a deal negotiated over a long period in relation to the Pitjantjatjara Land Rights Bill, it was resolved that there could be a prescribed limit on the amount of royalties paid. The mineral resources contained beneath the South Australian land surface should be developed to the benefit of all South Australians and, while we accept that there should be some special benefit to the Aboriginal people with authority over the Maralinga lands, we cannot accept an open-ended cheque type situation involving royalties.

The State Government has a responsibility to assist all disadvantaged groups, and royalties are an important contribution to State revenue coffers and a source of funds available to the Government to enable it to do this. I have no doubt that in many cases, if there is mineral development in this land, the State Government will be called on to provide facilities to developments in that land. It is important that there be some return to the State. I trust that this clause will be accepted because it is, as I said, a part of an agreement already entered into with the Pitjantjatjara people. It was accepted after long negotiations, and I trust that the Government will support this clause.

The Hon. J.R. CORNWALL: I must protest. We cannot support this clause. It really is quite paternalistic. It is symptomatic of the approach of the Opposition to this matter of royalties. It was displayed in the way the original Pitjantjatjara land rights legislation was watered down by the present Opposition when it was in Government for that interregnum between 1979 and 1982. However, the hour is late and the night is dark, and I do not want to keep people here for very much longer; we must call against this on principle, but it is not my intention to divide.

The Hon. K.T. GRIFFIN: When the Pitjantjatjara land rights legislation was being negotiated we had some debate about the limit on royalty that the Government desired to fix and the unlimited royalty that the Pitjantjatjara wanted in that legislation. We gave an undertaking that the limit on the fund would be fixed after consultation with the Pitjantjatjara people and would take into consideration their desires in respect of providing services, facilities and other benefits to the Pitjantjatjara community.

That was then accepted, although I have noticed subsequently that they have been moving towards seeking the present Government's approval and support to have the limit removed. At present it is reasonable to have a limit fixed by regulation. If this limit were in operation when the Liberal Government was in power we would adopt the same criteria for fixing the limit as was proposed in the Pitjantjatjara land rights legislation, and it would be fixed after consultation. That seems fair and reasonable and to take into account all the competing claims and interests with respect to the rewards that flow from mining development.

The Hon. I. GILFILLAN: I oppose the amendment. I believe that the opportunity for reconsideration of the amount of royalties is adequately catered for in the fact that there is a review committee and in my respect for the Maralinga Tjarutja. If the situation gets to the stage where there needs to be an understanding that will result in discussions rather than legislation at this stage.

Amendment carried; clause as amended passed.

Clause 24 passed.

Clause 25—'Certain payments or other consideration to Maralinga Tjarutja must represent fair compensation.'

The Hon. J.R. CORNWALL: This amendment should be read in conjunction with the proposed amendment to be made after line 27, which inserts a whole new subclause. Would it be possible to put the two together so that we can speak intelligently to them, Sir?

The CHAIRMAN: Yes, I think that is a good idea.

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

Page 14—

Line 24—Leave out 'A' and insert 'Subject to subsection (2a), a'.

After line 27—Insert new subclause as follows:

(2a) A person shall not be required to make or give, or to agree to make or give, any payment or consideration to which this section applies in respect of the carrying out or proposed carrying out of exploratory operations on the lands other than a payment of such amount (if any) as is or would become payable as compensation under the Mining Act, 1971, or the Petroleum Act, 1940, (as the case may require) in respect of the carrying out of such operations.

This is actually a very important amendment, because it is the culmination of much discussion, and it is one area in which I can claim to have been involved because when I went out and spoke to the Maralinga people last week there was quite some spirited discussion about whether there should be so-called compensation money agreed in advance in return for allowing exploration, to put it in simple language which is understood by everyone. Even at that late stage there was still a division of opinion.

It was significant that the Maralinga women were quite vocal in their insistence that there should be some money for social disturbance. That insistence, in my view, most certainly did not come from any spirit of acquisitiveness or wanting to become rich or wealthy. I believe it came particularly from the older women because they have had a vast and long experience in the sort of social disturbance that can be caused by miners, by other people who have come on to the land, and even, of course, by the armed forces who have come exploding atomic bombs.

So, it was interesting to note that the women were quite adamant that they should hold out for adequate compensation for social disturbance. I found the men, the elders of the community council in particular, were not of a mind to insist to the extent that it might have slowed down the passage of the land rights legislation. On balance, it is now clear that since you went back, Sir, with the Minister, Mr Crafter, and the Hon. Mr Milne, they had given further consideration as I asked them to do on that Tuesday when we met and they have decided on balance that this is acceptable. Again, I think it is a victory for common sense. It does not detract in any significant sense from the land rights which we are about to grant these people, but it does draw back from setting a precedent that could cause a back lash that could be quite difficult to sustain with the population at large. The amendment as drafted, I very warmly commend to the Committee.

The Hon. M.B. CAMERON: The Opposition warmly accepts this amendment, as it cures a situation that did arise, albeit for many reasons, and there have been many reasons given but the situation did arise where a large amount of money was lost to South Australia in exploration mainly because of the decision to ask for what are commonly called front-end payments.

It was most unfortunate that that happened. It was most unfortunate that this money, as I understand it, was spent in China rather than spent in Australia and that in the short term at least we have lost an opportunity to discover what is under our land. I think that in the end the advantage would be not only to Australia and South Australia but also to the Aborigines, because it is important to them also

because they have advantages that no other South Australian has. They have the right to some royalties, and that is certainly something that I as a landholder do not have. I must say that, if I thought that there was something under my land and I had some royalties, I might even pay someone to have a look at what was under the land.

An honourable member: There probably will be one day.

The Hon. M.B. CAMERON: There could well be: it might even be water. I believe that this is a very sensible amendment and one that overcomes the problem that has occurred. I trust that it will lead to no hiccups in the system as occurred in the Maralinga lands. I commend the amendment to the Committee and congratulate the Government on bringing it forward.

Amendment carried; clause as amended passed.

Clauses 26 to 31 passed.

Clauses 32 to 34.

The Hon. M.B. CAMERON: These clauses relate to the provision of a tribal assessor. I am not at all convinced that there is a need for this appointment because I have faith in the Aboriginal people to be able to run their own affairs. I have faith in the system to which we have now agreed of tribal elders running the land and I think that, if anything, it shows a lack of trust in the Maralinga people, which is a disappointment.

The Hon. R.I. Lucas: A touch paternalistic.

The Hon. M.B. CAMERON: If anything was paternalistic in this Bill, it is this provision where we say that we will set up this wonderful council and these people can now run themselves, but there will be a tribal assessor who is appointed from outside by the Minister to decide disputes. I cannot accept that. I believe that these people are capable of running their own lives. They did it for a long time before we got here and they will do it for a long time to come. I believe that we should oppose the appointment of this person, whoever he or she might be. I believe that the Aborigines are mature people who are able to make decisions in their own lives and in disputes. They have a council now which I believe is set up under the normal traditional processes. I would be surprised if they in fact agreed to the appointment of this tribal assessor.

Who will it be? How will he or she be appointed? Who will make the determination of whether he or she is acceptable? I ask the Government to not have this paternalistic attitude towards the Aboriginal community and to support me in voting against these three clauses, which I believe show a very paternalistic attitude towards the Aboriginal community which is composed of very mature people. I have met many of them. They are very mature people and quite capable of running their own lives without the Government's stepping in and applying some sort of paternalistic father on top of them. I urge the Committee to support me in rejecting this concept.

The Hon. R.I. LUCAS: I rise to speak very briefly and, to use the Minister's own words (and I support the Hon. Mr Cameron), it is an extraordinarily paternalistic series of clauses. I will not expand at length on what the Hon. Mr Cameron said; he summarised the situation most adequately. It surprises me that the Minister handling the Bill in this place, in effect, accused the Hon. Mr Cameron and other members on this side as adopting a paternalistic attitude to certain clauses in the Bill, and yet the Minister is asking us to accept clauses 32 to 34, which to a much greater degree adopt that very paternalistic nature for which he criticises members of the Opposition. So, I am most surprised at the Minister's attitude on this matter and I join with the Hon. Mr Cameron in hoping that the Minister will reconsider his position on behalf of his Party and agree to support the Hon. Mr Cameron's most worthwhile amendments.

The Hon. K.L. MILNE: I am a little confused about this matter, because I understand that this clause or a very similar clause is part of the Pitjantjatjara Land Rights Bill introduced by the former Government. I can understand the Opposition's point of view that it in one way could be termed paternalistic, but I can also see the Government's point of view in wanting someone there to stop arguments, particularly in the early years. Perhaps a safeguard could be inserted with a view to removing the clause from the legislation at some future date or after the matter has been reviewed at some time in the future. I understand that the tribal assessor has never been used in the case of the Pitjantjatjara so far, but could I have an explanation as to why the provision was included in the Pitjantjatjara legislation and why it is considered it is not needed in this case?

The Hon. M.B. CAMERON: I think the Hon. Mr Milne should understand that in regard to the Pitjantjatjara Land Rights Bill there is not the system of elders being the council, so we have elected representatives, and there is a possibility of the people who are not considered to be the leaders of the community being elected. That can happen. We see it in our own society sometimes. However, in this case it is the elders who are being appointed. They are the mature people of the society; they have run the society for a long time as have their forefathers before them. They have a system, and we must accept that that system has worked in the past and will work in the future. We must show some faith in their system. For that reason I believe that we should now accept that there has been a dramatic change by putting into place a new system of council, and we should accept them as the mature people, able to carry out their responsibilities in a mature fashion and at least in the short term run their own lives.

The Hon. J.R. CORNWALL: I must say that my attitude to this is somewhat ambivalent. The Government's quite clear policy on a whole range of issues is about community based, community controlled services for Aboriginal people. I believe there is an element of paternalism in clauses 32 to 34. I suspect that those clauses probably got there in the first place because they were in the Pitjantjatjara Land Rights Act. In view of the fact that they are in the Bill, on balance I am inclined to continue to support them on behalf of the Government. However, I think it ought to be recorded that it may well be very wise in view of the special tribal nature of the council (which we have now put in by amendment) that someone ought to review the operations of the tribal assessor and whether indeed such a person needs to be used at all at the expiry of some reasonable period, say, five years.

I do not think there is any need to hold it up or sunset it, but it should be recorded that during debate the question of tribal assessor was discussed. It was not a matter on which the Government wished to accept amendments, but perhaps a Government in four or five years should undertake a review.

The Hon. M.B. CAMERON: The Minister is really saying that he would not lose the Bill on this matter. I have a view where such a situation arises. Who is the tribal assessor for the Pitjantjatjara people? Perhaps it is better to follow the old axiom 'When in doubt, leave out'. If it is needed in the future we can put it back. It could be unwise to have additional appointments within the society or have a potential father figure who is never needed and who might never be needed. It is far better to show acceptance of these people as a mature society and show our faith in them. We have given them the sort of council that they should have and everything they need to run their society. They ran their society for about 30 000 years before the advent of the white man.

The Hon. R.I. Lucas: They didn't have a tribal assessor during that period.

The Hon. M.B. CAMERON: No. This provision appears in the Bill because it was in the Pitjantjatjara Land Rights Bill, and it was included in that Bill because we were nervous about the situation. As we have changed the system of tribal authority we should no longer be nervous. The elders are in charge and we should take out that provision. If a problem arises we can put the provision back in. Therefore, for the time being it would be better to take it out and show our faith in these people as a society.

The Hon. I. GILFILLAN: It is clear that the Maralinga Tjarutja want to see this provision in the Bill. Whoever is appointed must be approved by the Maralinga Tjarutja. With respect to the Leader of the Opposition, who is making a constructive effort, it would be better to reverse his view and have the provision remain. If experience shows that it is necessary to remove the adviser, that is how it should be done. It is the wish of the Maralinga Tjarutja that the provision remain, and I see this as a safeguard, that the assessor must meet with their approval. That seems adequate.

The Hon. K.L. MILNE: I am mystified and a little ambivalent, as the Minister was heard to say. The tribal assessor does not have to be appointed now. I understand that no tribal assessor so far has been appointed under the Pitjantjatjara legislation. No-one has been appointed. The person would be appointed if the occasion arose. Could the Minister clear that up?

The Hon. M.B. CAMERON: I understand that section, from the Hon. Mr Griffin, might not have been explained. However, that 'there shall be a tribal assessor' does not allow any interpretation at all: those words are absolute. I wonder whether we could specify a period of, say, 12 months or two years, so that this clause sunsets after that time. Surely it would not be difficult to arrive at a form of words that would allow these clauses to cease to operate after a period of, say, two or three years, and at that stage they could be reconsidered unless they were brought back to life. Would the Minister consider that?

The Hon. J.R. CORNWALL: I do not have any problems any longer, because I conferred with my colleague and friend the Minister of Aboriginal Affairs, and he made two points. However, the first point I make myself is that that section of the Pitjantjatjara Land Rights Act has been explained, but the Pitjantjatjara people have never seen fit to appoint a tribal assessor. That was a point also made by the Hon. Mr Gilfillan, and it is accepted, as it seems to me to be very sensible.

The second point, made by the Minister, is that clause 32 (2) provides:

> The tribal assessor shall be appointed by the Minister of Aboriginal Affairs with the approval of Maralinga Tjarutja.

So that in fact, if the Maralinga Tjarutja people do not approve of the person or the appointment proposed by the Minister, it does not happen. In practice the situation would be most likely that, if there was to be a tribal assessor appointed, the initiative for that appointment would come from Maralinga Tjarutja themselves because there were disputes arising within the community. In that sense I have been able to satisfy myself that it is neither paternalistic nor maternalistic and, in view of the fact that the Maralinga people want it, I have no option but to support those clauses.

Clauses 32 to 34 passed.

Clause 35—'Summary procedure.'

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

Page 17, lines 5 to 21—Leave out subclause (2).

The amendment seeks to remove the reverse onus of proof which is not a provision normally contained within legislation in this State, nor do I think it should be in this legislation. There is a requirement for a very heavy fine for those people who trespass on the Maralinga land.

I think that that in itself is enough of a disincentive for people who travel outside the prescribed distance off those roads that continue to be open to the people of South Australia, apart from the Maralinga people themselves. I believe that it would be an unnecessary hardship to make people prove that they had not trespassed. That is not fair; it is not a part of our normal system of law; and, therefore, should not be a part of this Bill.

The Hon. J.R. CORNWALL: The Government opposes the amendment. In many circumstances it will be difficult to get a successful prosecution against people who trespass and do not obey the legislation. The clause as it stands will make that somewhat less difficult. It is perhaps not the most important clause of the Bill but, nonetheless, I am forced to protest at the amendment. I indicate again, because I am anxious to see the Bill pass tonight (and it is an historic occasion for the Maralinga Tjarutja people) that I do not intend to take up the time of the Committee by calling a division.

The Hon. K.L. MILNE: I think the Minister himself provided the best illustration of why we should be very careful in this area. He said himself that the route which he took from north to south on many occasions comprised only tyre tracks and in some places it had been rubbed out by rain. I can quite easily foresee people getting lost, even though only about 100 people a year would use these tracks. Frequently, people get lost, as I myself have done so in areas such as this. My experience in this type of terrain, and from what the Minister and the Hon. Mr Cameron have said, leads me to think that the clause as it stands is unfair in the circumstances. It will not be a large or frequent issue. I propose to support the Opposition in this matter.

The Hon. K.T. GRIFFIN: I am delighted to hear that the Hon. Mr Milne supports the amendment. The fact is that section 38 of the Pitjantjatjara Land Rights Act, which is the equivalent section, provides:

> Proceedings in respect of offences against this Act shall be disposed of summarily.

The reverse onus provisions will undoubtedly make it easier to obtain convictions. That does not necessarily mean that there is any justice in that, because a heavy onus is placed on any defendant who may be prosecuted under this clause. I agree with the Hon. Mr Milne that we should be particularly cautious about reverse onus provisions not only in this Bill but in all legislation. For that reason I support the amendment.

Amendment carried; clause as amended passed.

Clause 36 passed.

New clause 36a—'Application to Local Court.'

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

Page 17, after line 26—Insert new clause as follows:

36a. (1) A person who is aggrieved by a decision of Maralinga Tjarutja to refuse to grant him permission to enter the lands may apply to a local court of limited jurisdiction within the meaning of the Local and District Criminal Courts Act, 1926, for an order under this section.

(2) An application under subsection (1) must be instituted within one month of the making of the decision by Maralinga Tjarutja.

(3) Maralinga Tjarutja shall, if so requested by an applicant under this section, state in writing the reasons for its decision to refuse him permission to enter the lands.

(4) Subject to subsection (5), the local court may, on the hearing of an application under this section, do one or more of the following:

(a) affirm, vary or reverse the decision to which the application relates;

(b) refer the matter to Maralinga Tjarutja for further consideration;

(c) make any further or other order as to costs or any other matter that the case requires.

(5) The local court shall not make an order under subsection (4) reversing a decision of Maralinga Tjarutja unless it is satisfied that permission to enter the lands was unreasonably or capriciously refused.

(6) The powers conferred by section 28 of the Local and District Criminal Courts Act, 1926, include power to make rules regulating the practice and procedure in respect of applications under this section and imposing court fees with respect to those applications.

This clause means that anyone who is aggrieved by a decision to refuse permission to enter the lands will have a right to apply to a local court of limited jurisdiction for an appeal against that refusal. We have indicated tonight examples where this refusal has been given, in my opinion and in the opinion of many people, capriciously and unreasonably and without due reason being given to the people concerned. For the sake of the Committee and for the purposes of supporting this amendment, I will repeat the example given by the Hon. Mr Burdett earlier this evening where the Royal Geographical Society of South Australia—a very old, trustworthy, and conservative (in terms of its impact on society and its desire to conserve the better parts of society) organisation—has been refused permission for a very important event. I have received a letter from the Chairman of the Centennial Expedition Committee, as follows:

Just a short note, as a member of the Royal Geographical Society, to put you in the picture with regards to the planned centenary expedition (see enclosed centenary brochure). This expedition has reluctantly had to be cancelled by the council of the Society recently as permission to enter Pitjantjatjara lands was declined after several months of correspondence with the Pukatja community, and without any reasons being given (refer enclosed letter).

It seems a great pity that an organisation of such standing as the RGS is refused a permit for a project of legitimate scientific study such as the proposed expedition. I expect that the Society will be officially writing to Mr Crafter, the Minister of Aboriginal Affairs in the near future. This is just an unofficial note to keep you informed.

I have a further letter from the community concerned which states:

Further to your letter of 28 November 1983, re permission for an expedition into Pitjantjatjara lands, council has reconsidered your application and, I regret to inform you, has declined to grant your Society a permit.

Yours faithfully,
Secretary.

I also wish to read out what the organisation plans to do. I read an account of this expedition some time ago. I found it extremely interesting and it was obviously a very worthwhile project in the early days of South Australia. This relates to the centenary celebrations of 1985. The pamphlet is put out by the Royal Geographical Society of Australasia (South Australian Branch) Incorporated from 1885 to 1985—100 years next year. The brochure states:

Some of the major projects envisaged are:

1. A centenary expedition retracting part of the route of the Elder scientific exploring expedition of 1891-92.

The Elder Expedition was financed by Sir Thomas Elder. The Society acted as his agent, supervised the conduct and organisation of the expedition, and published the journal. The expedition was initially instructed to explore the unknown country west of the Everard Ranges and the unknown West Australian desert.

The expedition was a large one, equipped with 44 camels. There were six scientific officers, four assistants, and five Afghan camel drivers. Beginning at Warrina, the expedition travelled to Mount Squires (in Western Australia), Queen Victoria's Spring, the Fraser Range, and finally the Murchison goldfields. The extraordinary diffficulty of the country traversed made the journey (without loss of personnel, animals, or equipment) a remarkable feat.

However, much of the country remains relatively unexplored scientifically, especially from a biological point of view. The Society intends to sponsor a follow-up scientific expedition. This will be a highlight of the centenary celebrations.

I have read the account of this expedition, which was led by Mr Charles Winnecke, a very important person in the early exploring history of the State. I believe that the route should be retraced, and I am surprised that the Aboriginal community has refused permission for this to be done. I regard this as a capricious and unreasonable refusal. These people have no right of appeal, except perhaps to the Minister. There should be some other way. Undoubtedly, the refusal will be reviewed by the Minister, but I believe that the ordinary person in this State should have access to some appeal measure.

From time to time when I have travelled in Aboriginal lands I have heard that people have been refused access, and that this has left them totally frustrated. They must wait a considerable time, yet the refusal is accompanied by no information. It is probably simpler now to get a visa to another country than to gain access to some parts of this State. I do not believe that we can allow this to happen without providing some means of appeal, and I urge the Council to support the amendment, which will enable an appeal against unreasonable and capricious refusal of entry to people who are on reasonable business.

The Hon. J.R. CORNWALL: The Government opposes this amendment. It is paternalistic, cumbersome, unnecessary, and, perhaps most importantly, it devalues the Bill. In fact, under the system that has operated in the North-West of the State since the Pitjantjatjara land rights legislation was passed, I am told that there have been 1 400 applications for permits and that all but 24 have been granted. Applications were certainly not rejected, and have never been rejected, capriciously: I understand that they have never been rejected without good and valid reasons or objections put forward by at least one of the communities in that area. It is normal for permit questions to be reviewed by the communities at Indulkana, Amata, Ernabella, Mimili and Fregon acting as local communities and taking a decision.

I am not aware why the application of the Royal Geographical Society was rejected, but there could be a number of grounds, the most likely, presumably, being that the Aborigines do not like big crowds of people in an organised expedition, because they are very sensitive about large numbers of people, particularly camera touting tourists (and anyone who has been to that area would know that they are very sensitive about that)—

The Hon. M.B. Cameron: Be careful about how you describe the Society.

The Hon. J.R. CORNWALL: I am being very careful about that. I accept without reservation—

The Hon. M.B. Cameron: They are not camera touting—

The Hon. J.R. CORNWALL: I will come to that. I said that the Aborigines are very sensitive about bus loads of camera touting tourists. On the other hand, there are reasons for them to be sensitive about scientific expeditions, whether of high reputation—or otherwise. There are reasons why the community is sensitive about these matters. I do not know the reasons why communities are sensitive about these matters, so I will not even speculate, but I put forward two defensible reasons in relation to the matter. The third is that they have, on occasions, rejected people whom they have regarded as of bad character or of bad record and who in the past have done harm to the communities in that area. This very much goes to the heart of the spiritual concept of the land rights legislation; it very much goes right to the spirit and intent of the Government's legislation. I would feel quite devastated if this were to be put in because it would say, 'when all else fails', and this has been the thrust all night. It started off at clause 4 (page 2), where the Opposition wanted us to delete the definition of 'Aboriginal person' so that anybody could go on to the land accompanied by a local Aborigine, and it has gone on at various times since. I conclude as I started by saying that we very strongly oppose this proposed amendment.

The Hon. M.B. CAMERON: I am very disappointed that the Minister has attempted to infer that this strikes at the heart of this legislation. That is absolute nonsense.

The Hon. J.R. Cornwall: The spirit of it.

The Hon. M.B. CAMERON: Even the spirit of it; it is absolute nonsense. I cannot accept that. It is overstating the case. I put a couple of examples, and I can give the Minister plenty more if he wants to come to my office, of people who have been unreasonably and capriciously refused entry; worse than that, they have waited an enormous number of months for permission to enter. I trust that that will not happen with Maralinga, but in the case of the Pitjantjatjara lands there has been no office set up in Adelaide as I understood that there would be; so permission has to be gained through an office in Alice Springs. That office sends out messages to the community, which eventually replies. There only has to be one reply in the negative and it is finished. That in itself is a problem, but I trust that it will not happen in the case of the Maralinga lands. From what I know of them these are very sensible people, but one has to safeguard against the possibility of people being unreasonably and capriciously refused entry. I have no complaint if people are refused entry provided that they are given reasons because they can feel satisfied then that at least they have had some reason given to them for that refusal.

The Hon. K.L. Milne: One cannot always do that, of course.

The Hon. M.B. CAMERON: One should be able to. One has to be honest in this world.

The Hon. K.L. Milne: It is a question of slander, and all that.

The Hon. M.B. CAMERON: One can go into all sorts of reasons without getting to the core of the matter, but one has to give some reasons for a refusal. If that is the reason why some of these people have been refused it would be slanderous because there is no reason that could be given for not allowing entry to the land. There is just not any reason given. For instance, I know of a case—and I gave this example to the Minister and he took me to task because I gave the wrong name to the person—where a minister of religion of one of the senior churches in the State was refused entry; it was pretty hard to give a reason to him. That case was straightened out, but it was a refusal. It was very difficult. There are plenty of examples like that. The Minister has told me that there is a mechanism under his control and working in the field in relation to this matter, but I do not think that that is enough.

I do not believe that that is enough. I think people have to have some mechanism whereby they can gain entry through an appeal if they have been refused unreasonably or capriciously. If they are not given a reason, they feel aggrieved and if they can go to a court, that court will tell them why they have been refused. They will certainly know then and there will not be any case of slander, so that gets over that problem, if it is a problem. I urge the Minister, first, not to overstate the case against this and, secondly, to give consideration to accepting the very reasonable amendment.

The Hon. I. GILFILLAN: I do not feel that the Minister in charge of the Bill has overstated the matter, nor do I consider that Mr Martin Cameron is making a frivolous attack on the Bill. I believe it reflects a profound difference of understanding of the intention of the land rights Bill. I put it in the same terms. I do not have to give a reason if I refuse someone entry to my house. That is the way in which the Maralinga Tjarutja regard their lands. It is in that sort of cherished sense of possession. I feel there is a difference in the understanding of a non-Aboriginal person in regard to the way in which Aborigines regard people coming into that land. I think it is very difficult for us to assess that.

My second point, which I made earlier, is that it is very hard to say we are giving land rights to a group of people who will say 'Yes' or 'No' to those wanting to come on the land and then have another authority outside them altogether who will determine whether that decision was right or wrong on an arbitrary non-Aboriginal set of criteria, unreasonable or capricious. So, without any hesitation I oppose the amendment.

The Committee divided on the new clause:

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

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

Pairs—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons. Frank Blevins and Anne Levy.

Majority of 1 for the Noes.

New clause thus negatived.

Clauses 37 to 41 passed.

Clause 42—'Parliamentary Committee.'

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

Page 18, after line 44—Insert new subclause as follows:

'(12) This section shall expire upon the expiration of the period of five years from the commencement of this Act unless each House of Parliament resolves within six months before the expiration of that period that the section shall continue in operation.'

Quite simply, all this amendment does is insert a new sunset provision in clause 42, which sets up a Maralinga Lands Parliamentary Committee. I must say that, during the second reading debate late last year, I expressed my personal reservations about the whole concept of the Maralinga Lands Parliamentary Committee, particularly when we have a Select Committee of both Houses at present considering standing committees and committee systems of the Parliament, and I expressed reservations about Parliament proceeding in such an *ad hoc* sort of way to appoint a Maralinga Lands Parliamentary Committee. So, I reiterate my personal reservations about the whole concept of having a Parliamentary Committee.

With what experience I have gained in the 15 months I have been in this place, I realise that the numbers are not there to get rid of the thing yet. There is not much support to get rid of it. Perhaps there is some support to get rid of it, but certainly not enough to get rid of it. Therefore, the next best thing in my view is to put in a sunset clause so that those who have reservations can have their estimates as to its effectiveness tested; that is, after five years the Parliament will be able to make a decision as to whether it has been an effective body and whether it ought to continue in its operation.

If the Parliament decides that it is an effective body, then the Parliament can decide for it to continue. If the Parliament does not want it to continue, then it can automatically lapse. That is the test or the terms of the sunset clause.

I think that the whole concept of the Maralinga Lands Parliamentary Committee (once again to use the Minister's words) has a touch of paternalism about it. It is a wee bit patronising. Do we have a Parliamentary Standing Committee on the disabled? Do we have a Parliamentary Standing Committee on ethnic minorities? Do we have a Parliamentary Standing Committee on the unemployed? Do we have a Parliamentary Standing Committee on divorced, separated or single supporting parents? No, we do not. I defy anyone to say that those problems are not any harder for us as a community and a Parliament to solve than the Maralinga land rights legislation.

So, why do we have the Maralinga Lands Parliamentary Committee? Once again, I would repeat the Minister's own words: if there is anything patronising or paternalistic about sections of this legislation, I would have thought that the Minister's own words could be used with respect to the whole concept of this Committee.

I hope that members will consider this. I know that there is support for it and that there are people who will oppose it, but I hope that members will consider it and vote on its merits so that the Parliament in five years time can decide automatically whether we ought or ought not to have such a body as the Maralinga Lands Parliamentary Committee.

The Hon. M.B. CAMERON: At the risk of being at odds with one of my esteemed colleagues, I indicate that I support the concept of a committee. The only doubt I have concerns the composition of it, with all members coming from the House of Assembly. As we all know in this House, members from this place are able to carry out many of these duties in a much better fashion than can members in the other House. Of course, they may call me down there before the bar tomorrow for saying that.

The Hon. K.T. Griffin: They have no jurisdiction for doing that.

The Hon. M.B. CAMERON: It is just as well that I am protected. Apart from that, I think there are some advantages to be derived from a committee such as the one proposed. First, I point out that these people will have continuing problems with this land. Once the glory of being a person who is promoting land rights has gone, I doubt whether many members of Parliament will head up into that area, apart from members of the Legislative Council. Some of us have already shown our desire to do that. Certainly, I think it is very doubtful whether members from the House of Assembly who are not directly related to the land will go there.

The Hon. R.I. Lucas: Gunny will.

The Hon. M.B. CAMERON: Yes, the member for Eyre has always been very religious in his representation of this area. He does an excellent job.

The Hon. J.R. Cornwall: Not much of a polly but he is a good member.

The Hon. M.B. CAMERON: I think he is an excellent politician and he certainly shows a very reasoned attitude (unlike the Minister) towards many matters.

The Hon. J.R. Cornwall: That is grossly unfair as well as being totally inaccurate.

The Hon. M.B. CAMERON: The honourable member can take it as he likes: he is being unfair to Mr Gunn. I think he is an excellent politician.

The Hon. J.R. Cornwall interjecting:

The CHAIRMAN: Order! Let us not get bogged down.

The Hon. M.B. CAMERON: Many of the amendments are in the Bill now as a direct result of Mr Gunn's participation. He served on the Select Committee and put forward many amendments that are now part of this legislation. Many of these amendments are now in the legislation due to his common sense. The Minister who is responsible for this legislation would well know that. Mr Gunn is a person who had a very reasoned and dispassionate attitude towards this legislation.

I think the existence of the committee will do no harm at all. It will virtually have no power; it will write the report on the legislation but will have no power to take any action. It will give a report to the Minister. In my opinion perhaps it will be a good thing to have a committee of the Parliament going up there and looking at this land, because it is very difficult for only one member representing that area to convey all the problems of that area to the Parliament. In this way he will have at least four other members making a report which will back up what he is saying about any problems that may exist in the area.

I understand what the Hon. Mr Lucas is saying about the paternalistic concept of this, but I think it has other advantages that overcome that, like the Minister argued on the tribal assessor process. So, I would urge the Committee not to accept this amendment. If in future it is found to be unnecessary there is nothing to stop the Parliament removing the provision from the legislation. That has happened before with committees of the Parliament. In the meantime, I think it would be a pity to make this a sunset provision.

The Hon. DIANA LAIDLAW: Briefly, I support Mr Lucas's amendment. The Leader of the Opposition mentioned earlier that if in doubt we should leave out, and that certainly applies to this.

The Hon. K.T. Griffin: Leave out the amendment, then.

The Hon. DIANA LAIDLAW: Leave out the clause. I remind the Committee that the duties of the committee will all be duties that this Parliament has performed in looking at this Bill.

It has reviewed the operation of the Pitjantjatjara from the experiences of that and has applied its recommendations to this Bill. It has inquired into matters in the Pitjantjatjara areas that affect the interests of the traditional owners of this land. I could go into all the duties of the proposed committee but I will not detain this Committee any further. All those duties are duties that this Parliament has performed to date and I would expect that, as hard working members of Parliament, we would continue to perform. If honourable members saw that things were going wrong, they would report to Parliament as individuals and to the Minister and seek amendments to the Bill. It is sad that at the end of this debate we are coming up with a clause that is so paternalistic when we are giving back to these people land which is justly theirs. We have established a committee of tribal elders and we have done a good job based on the experience of the Pitjantjatjara, but then to come out recommending a committee such as this is a sad note on which to finish the Bill.

The Hon. R.J. RITSON: I will be brief, as I will not be supporting the amendment, for a couple of reasons. First, I became aware of the amendment only a couple of hours ago and now have the opportunity to cast an informed vote; I see some merit generally in the principle of sunset legislation. I see nothing peculiar about this Bill as a Bill on which to experiment in this regard. I am not sure whether there is more justification for experiments in sunset legislation in this matter than there is in sunsetting, for example, the Public Accounts Committee. Probably because of lack of any particular reason to do this with this Bill at this time rather than any objection to sunset legislation, I hesitate to support the amendment.

The Hon. J.R. CORNWALL: I must say at the outset that I am pleased to accept it. It does the Hon. Mr Lucas great credit and the Hon. Miss Laidlaw substantial credit to support it, but I am dumbfounded: the back-bench is fighting the front bench. The troglodytes on the front-bench are fighting with the young Turks on the back-bench. We see the Opposition in almost total disarray.

The Hon. C.M. Hill: You're jealous that you don't have our system; we don't sign pledges.

Members interjecting:

The CHAIRMAN: Order!

The Hon. J.R. CORNWALL: Indeed, you just take away preselection at the very next opportunity! I understand that there have been some difficulties in the Liberal Party over this legislation. That is not really giving away secrets. It is interesting to see. This is a fairly dramatic example, although I am not one to kick people when they are down.

The Hon. C.M. Hill: What about the doctors?

The Hon. J.R. CORNWALL: I do not think the doctors need defending, not even by the Hon. Mr Hill. They have done a good job of defending their privileged position.

The Hon. C.M. Hill: You've cut their salaries by 15 per cent.

The Hon. J.R. CORNWALL: The Hon. Mr Hill should stick to the truth. He has been here long enough to know that. It is sad to see this once great Party falling about. We see the ambitious young Turks—the Hon. Mr Lucas can hardly wait to get on the front bench and the Hon. Miss Laidlaw is very anxious to represent the interests of women, and the community in general, which she does quite well.

The honourable member can hardly wait for some sort of vacancy to occur on the front bench, and it is nice to see the Opposition taking this initiative. It seems that democracy in South Australia may yet be in safe hands.

The Hon. M.B. Cameron: Particularly on this side.

The Hon. J.R. CORNWALL: I seem to recall it being said over a period of two decades that weak Opposition is made of poor Government. I hope that the young Turks are helping the Opposition get its act together. Having said that, I do enthusiastically support the amendment moved by the Hon. Mr Lucas.

The Hon. R.I. LUCAS: I am delighted to hear that the Minister will support this amendment. Let me say that the show of independence by two members at least, possibly more, on this side of the Chamber is one of the strengths of the Liberal Party, and hopefully it will be one of the strengths of the Legislative Council as a House of Review in the future.

The Committee divided on the amendment:

Ayes (12)—The Hons. G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, R.C. DeGaris, M.S. Feleppa, I. Gilfillan, Diana Laidlaw, R.I. Lucas (teller), K.L. Milne, C.J. Sumner, and Barbara Wiese.

Noes (5)—The Hons. M.B. Cameron (teller), Peter Dunn, K.T. Griffin, C.M. Hill, and R.J. Ritson.

Pairs—Ayes—The Hons. J.C. Burdett and L.H. Davis. Noes—The Hons. Frank Blevins and Anne Levy.

Majority of 7 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 43—'Regulations.'

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

Page 18—

After line 45—Insert paragraph as follows:

(aa) prescribing a form of agreement as a model form of agreement under which exploratory operations may be carried out on the lands and providing that such a model form of agreement shall form the basis of negotiations between Maralinga Tjarutja and any applicant for permission to carry out exploratory operations on the lands;

After line 12—Insert subclause as follows:

(1a) A regulation shall not be made under subsection (1) *(aa)* except with the approval of Maralinga Tjarutja.

I think that the amendments are self-explanatory and I commend them to the Committee.

The Hon. M.B. CAMERON: As the Minister has said, they are self-explanatory. In the future, legislation will provide a model form of agreement under which exploratory conditions can be undertaken. I understand that the basis will be a form of agreement already arrived at between one of the major companies and the Maralinga people. I have not seen the agreement because, of necessity, certain parts of it contain information that the company does not want to disclose, but the basic form of the agreement will be disclosed and will become a part of the agreement to be used. I understand, and the Minister has given an indication, that before the agreement is put into the regulations there will be discussion and agreement with the Maralinga people, as provided in the legislation, with the miners and with people who wish to explore for minerals on the land. I am not sure that that should not have been part of the Bill, but I suppose that at this stage it is very difficult to work out who will be exploring. I accept the Minister's undertaking that before any agreement is put forward in the regulations, he will have discussions and come to at least a preliminary agreement with the people who represent the mining industry in this State.

The Hon. K.T. GRIFFIN: I am not averse to the provision. However, I think that the new subclause to be inserted after line 12 tends to negate the effectiveness of proposed new paragraph *(aa)* and tends to suggest, on the face of it, without the background supplied by the Hon. Mr Cameron, that it will be a rather one-sided agreement. If the Minister gives the commitment that consultation will occur with potential applicants as well as with the Maralinga Tjarutja and that there will be an endeavour to have an even-handed form of model agreement, the provision cannot do any harm and, in fact, may help with future negotations. As I have said, without the background supplied by the Leader, and seeing the provision boldly in print, it all seems to be somewhat self-defeating.

The Hon. J.R. CORNWALL: It is true to say on the one hand that, as the Hon. Mr Griffin has interpreted it, it is a somewhat literal and possibly over legalistic interpretation. Again, I do not say that in a carping way—the law is the law. On the other hand, the provision is inserted within the spirit of the proposed legislation.

In effect, it stops some politicians, or some Minister of Mines and Energy, for possibly malicious reasons, at some time in the future who wanted to act outside the spirit and intent of the legislation from doing so in a unilateral situation. In other words, regulations cannot be made under new subclause (1) *(aa)* except with the permission of the Maralinga Tjarutja. Although the honourable member makes a valid point in legal terms, if one examined it and lined it up with the spirit and intent of the legislation, one would probably concede on balance that it was a reasonable amendment.

The Hon. K.T. Griffin: This Government will therefore endeavour to reach a model form of agreement after consultation?

The Hon. J.R. CORNWALL: That would be it.

The Hon. K.T. Griffin: And prescribe it?

The Hon. J.R. CORNWALL: Yes.

Amendments carried; clause as amended passed.

First schedule.

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

After 'Out of Hundreds' insert ', excluding the portion of the land comprised in section 1446 which is east of longitude 132°00'E'.

This amendment is moved on the basis that no real reason has been given for the extension of the Maralinga lands to longitude 133. It has occurred without any reason being given. It grants these people another huge area of the State, and I am yet to be convinced that it was part of their lands or that it should form part of the present agreement. For that reason, I have moved my amendment.

The Hon. J.R. CORNWALL: The Government opposes the amendment with all the vigour that it can muster. It is a stupid and impractical amendment. Even if the Opposition were to save that additional strip of land—which has for a long time been promised to the Maralinga people—it is quite unsuitable for pastoral use. Had it been suitable for pastoral use, it would have been used for that purpose decades ago. If one examines the reports of the Pastoral Board, the Department of Lands, the Department of Environment and Planning or of anybody else who knows anything about it, one will see that there are two options: first, that it be returned to the Maralinga people (which is the preferred option as far as the Government and I am concerned) or, secondly, that it be dedicated as a conservation park. The Government and I believe that it is most appro-

priate for it to be included in the lands that we are dedicating or giving back to the Maralinga Tjarutja. The Government opposes this amendment very vigorously indeed.

The Committee divided on the amendment:

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

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

Pairs—Ayes—The Hons J.C. Burdett and L.H. Davis. Noes—The Hons Frank Blevins and Anne Levy.

Majority of 1 for the Noes.

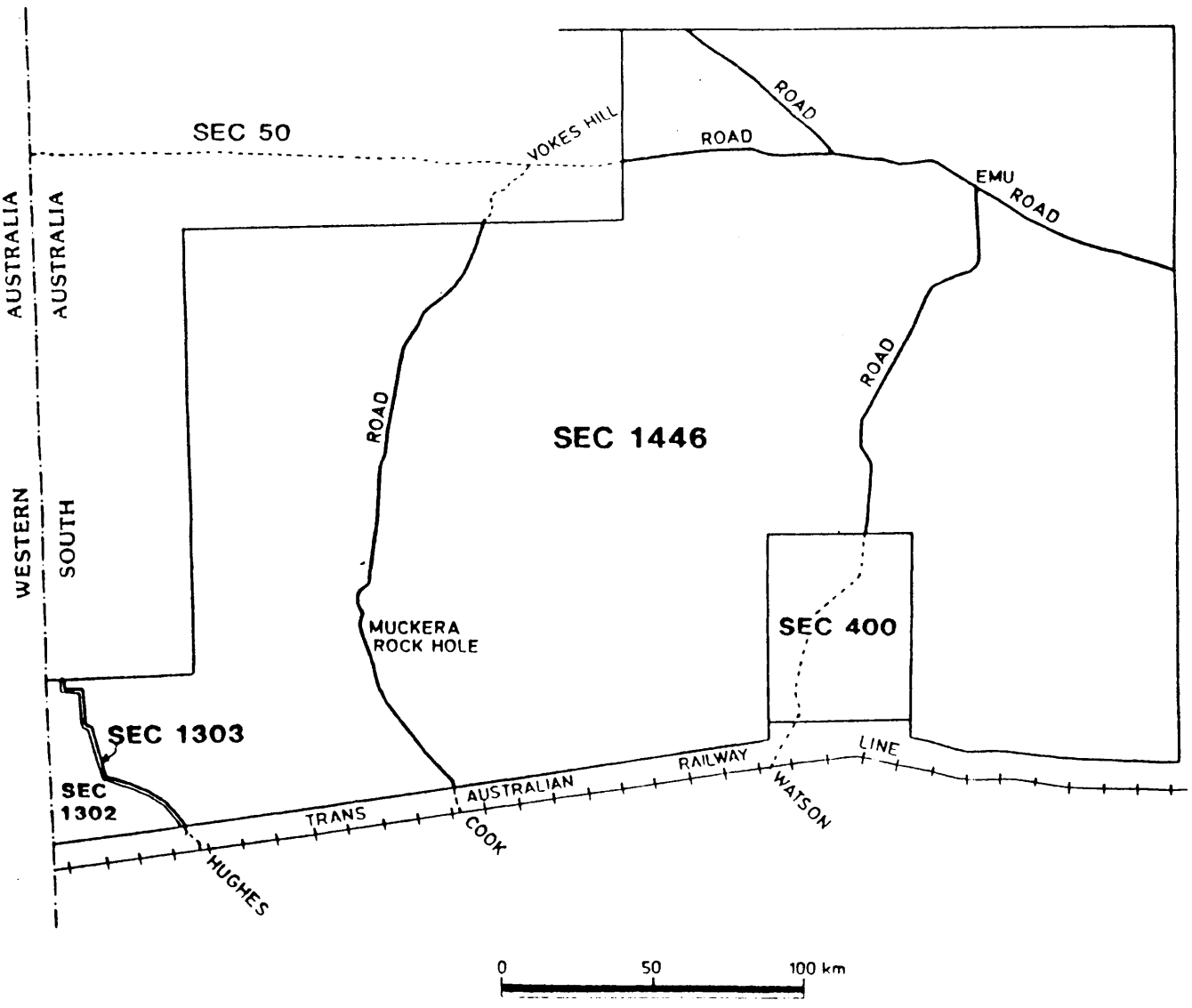
Amendment thus negatived; schedule passed.

New schedule.

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

Page 20, after the first schedule—Insert schedule as follows:

OUT OF HUNDREDS



This new schedule is a map of the area.

New schedule inserted.

Second and third schedules and title passed.

Bill reported with amendments.

Bill recommitted.

Clause 2—'Commencement'—reconsidered.

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

Page 1, after line 21—Insert subclause as follows:

'(3) A proclamation shall not be made for the purposes of subsection (1) unless the Governor is satisfied that the Pitjantjatjara Land Rights Act, 1981, has been amended so that

its provisions correspond to the provisions of this Act to such extent as is practicable having regard to local variations.'

I thank the Minister for recommitting clause 2. There is further need to exmaine clause 4, as we know. The Bill before the Council today has been in the Council for some time, but not many of us knew what the Bill was really about until we got into Committee. In Committee we virtually had a new Bill to debate. In passing, I convey my congratulations to the Minister (Mr Crafter) for the way that he has handled this Bill in this Parliament; although he has not been in the Council he has had an influence on the Bill as finally drafted.

We now have two separate pieces of legislation dealing with land rights in this State. There is a variation between these two Bills. The fundamental principles involved in land rights should be exactly the same between both those pieces of legislation. Every member will admit, on what has happened with this Bill, the Parliament made mistakes in the Pitjantjatjara legislation. Now we have a new Bill that has reached almost the end of the Committee stages. The principles we have adopted should apply to both the Maralinga and the Pitjantjatjara Bills. Many members of this Council—both Government and non-Government—would agree with that base principle.

The only way that Parliament can have an influence on that matter is by asking that the Pitjantjatjara legislation be brought into line with this Bill. That involves accepting the change in clause 2. Before this Bill is proclaimed the Pitjantjatjara Bill must be so amended. I had three courses available to me: first, to amend the Pitjantjatjara legislation in this same Bill, which is very difficult because the title itself would have to be changed; secondly, to ask the Government at the third reading stage to introduce legislation for the changes in the Pitjantjatjara legislation, but that takes away the lever that Parliament has to influence that change; or thirdly, to move the amendment that I have moved.

It is an odd amendment, but, nevertheless, the only way in which Parliament can retain its influence to change the Pitjantjatjara legislation. Already we have made changes in this Bill to what exists in the Pitjantjatjara legislation. Both Government and those not of the Government have agreed to those changes. Therefore, it is necessary that Parliament should insist on changes being made to the Pitjantjatjara legislation that meet the principles and fundamentals that we have adopted in this Bill.

The Hon. J.R. CORNWALL: The Government opposes this amendment very strongly. The principal reason for that is that it would hold up, quite possibly indefinitely, the proclamation of this very important piece of legislation. The Maralinga Tjarutja people have waited for almost 30 years—certainly for a generation—for their land, of which they were dispossessed, to be given back to them. I anticipate that before midnight this Bill will have passed both Houses and that at last, after many frustrations and disappointments, the Maralinga people will have their land rights in principle, and, hopefully, soon by proclamation they will have them in practice. Anything that might jeopardise the proclamation of this legislation I would have to oppose very vigorously. If the Hon. Mr DeGaris wishes to espouse this principle forms are available to him.

If the honourable member believes that it is such an improvement on the Pitjantjatjara Land Rights Act as it exists then there are numerous forms available to him and his colleagues within this Parliament for them to move to amend that Act accordingly. But it would be tragic in the extreme if we were to hold up the proclamation of this legislation because we possibly believe that it is better than the existing Pitjantjatjara Land Rights Act. That would seem to me to be an extraordinary course for us to take. If members believe that this is better legislation that has come out of this Council then, of course, the sooner it is proclaimed the better.

If after a couple of years in practice that proves to be the case, I would suggest that that may just possibly be a suitable time to review other land rights legislation. But, it would be tragic in the extreme to hold up its proclamation. I might say that when it was necessary for this legislation to be held up during the pre-Christmas period (I have been told by people involved in health care and in monitoring the health status of the Aboriginal people at Yalata) there was a marked increase in depressive illness and alcohol related problems.

The Hon. M.B. Cameron: We all have that at Christmas.

The Hon. J.R. CORNWALL: This was for rather different reasons, I can assure the honourable member. There is now an expectation that land rights will be granted quickly. There is an optimism abroad and some of the older people have already moved out to Pebinga. There is all sorts of evidence, anecdotal and otherwise, that that has had a quite dramatic effect on their spiritual and mental health as well as their physical health. The sooner they are granted full land rights, the better. I oppose the amendment on behalf of the Government and I urge all other members of the Council to join me in that opposition—not that I wish to denegrate the point that Mr DeGaris wished to raise. I believe that he has used the forms of the House to do that and to do it effectively, but I urge everybody to resist the practical effect of this proposed amendment at this time.

The Hon. M.B. CAMERON: While I support in principle the motivation behind the Hon. Mr DeGaris' move, I do agree now we have seen this Bill go through this amending stage because of the work of this House, and particularly the work of the Opposition in the pre-Christmas period, that it is now a better Bill, and will be a better Act than the Pitjantjatjara Land Rights Act is.

An honourable member: Maybe.

The Hon. M.B. CAMERON: There is no 'maybe' about it. It is in my very firm opinion a better Act. That is not saying that the work done by the people who brought in the Pitjantjatjara Land Rights Bill did not attempt to do the best they could. However, we are always moving forward in society. Naturally, if there are problems seen in any legislation then it is as well to fix them. I have sympathy for the point of view put forward by the Minister, that we should not hold up this particular Act for the purpose of getting changes in the Pitjantjatjara Land Rights Act. If the amendment had been in the form of bringing the amendments that are here in the Pitjantjatjara Act I certainly would have considered it, but I would not have held up this Bill for the purpose of attempting to force changes in the Pitjantjatjara Act. I do not accept that as the way to go about implementing the alterations required, so I certainly will not be supporting this move. That does not mean that I necessarily speak for other members on this side because this is not a matter that has been considered by us as a group. But, certainly from my own point of view, I would be very loath to hold up the passage and proclamation of this Bill for the purposes outlined in this amendment.

The Hon. DIANA LAIDLAW: I rise briefly to support Mr DeGaris. It is my view that this Bill as amended is certainly a better Bill than the present Pitjantjatjara Bill. I have no doubt that the Government believes this also, otherwise it would not have introduced extensive amendments that we have accepted this evening. I would like to ask the Minister if, in view of his earlier comments in response to Mr DeGaris, he will give an indication of how long the Government will accept two classes of land rights in South Australia, and if it is the Government's intention

to introduce an amending Bill relating to Pitjantjatjara land rights so that there is no disharmony between the two.

The Hon. J.R. CORNWALL: My position is that I do not consider myself competent to give an answer to that off the top of my head. It is certainly a question to which I would have to give very deep consideration and, more importantly, the Minister concerned would have to give due consideration to it, and it would be a matter for full Cabinet and Government decision. I am not so over enthusiastic about the whole performance tonight that I am about to suggest that we ought to rush out and start passing major amendments to the Pitjantjatjara Land Rights Act. I would imagine that the Pitjantjatjara people themselves would have a few things to say about that, and I think quite rightly so.

The original Act as it was passed by the previous Government was indeed a watered down version of the legislation which was being proposed by the Dunstan and Corcoran Governments. In the event, it may be that in some areas the Pitjantjatjara people got the worse of both worlds. They certainly did over Granite Downs and Indulkana. There were a few deals down there which I think were rather doubtful as far as the previous Government was concerned. However, on this happy occasion I do not want to canvass it in any great detail, but I am certainly not about to give an undertaking off the top of my head on behalf of the Bannon Government that we will conduct some sort of major review of the Pitjantjatjara Land Rights Act.

If the Pitjantjatjara people themselves feel that they would like the legislation as it relates to their land rights reviewed at an appropriate time, then quite clearly they have open access to the State Minister of Aboriginal Affairs and the Government, and I think that it would be to a very large extent up to them to initiate changes to their legislation.

The Hon. R.C. DeGARIS: First, I thank the Hon. Diana Laidlaw for her comments, which I think are well related to this matter. As I pointed out, once this Bill goes through, the lever that the Parliament has to insist that the Pitjantjatjara legislation be re-examined is lost. Therefore, the reason I moved the amendment was to give Parliament the right to influence what I believe is now a situation which should not exist; that is, one has two separate pieces of legislation dealing with land rights with varying fundamental principles.

I do not believe that that is justified. I believe that the Government should give some undertaking that it will examine this legislation and ensure that the land rights issue is covered by one piece of legislation in the State of South Australia, not a variety of them.

The Hon. G.L. BRUCE: I have not entered the debate, but I have listened with great interest to this point and it concerns me that an amendment such as this can be used and called a lever. I would resent that because I believe that both Houses have put a lot of work into this. Particularly in the last three months a lot of work has been done by this House and the Minister in the other House to come to some agreement and consensus which is acceptable. We have reached that, and that agreement has now been threatened and used as a lever to force some other legislation into line with it. Maybe the principle is right: the two pieces of legislation should line up, but I do not believe that it should be used as a lever. These people have been denied justice for so long. Therefore, I violently oppose this amendment, but not the principle possibly behind the amendment.

Amendment negatived.

Clause 4—'Interpretation'—reconsidered.

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

Page 2, lines 13 and 14—Reinsert the words 'Aboriginal person' and the definition of an Aboriginal person.

Before the dinner adjournment I realised that there were about 15 amendments that I did not have time to consider. I hope that I have demonstrated that I did a bit of quick homework between 6 and 7.30 p.m. This amendment goes hand in glove with the amendment made to clause 19 concerning leaving out the reference to an Aboriginal person. That was opposed by the Government and with the support of the Democrats was defeated. It is consistent that we should now reconsider the amendment made to clause 4. I urge honourable members to support the amendment.

The Hon. M.B. CAMERON: I do not intend to divide on this issue again, because subsequent amendments which flow from this have been defeated. I think it is very unfortunate that we now have a situation whereby a person might be married to a person of Aboriginal descent and be living in a town nearby the Maralinga lands and find that he or she cannot go with his or her spouse on to the lands because he or she did not receive a permit to go there. That is a most unfortunate situation for that person. It means that a couple who decide to go for a holiday out on this land may find that one half of the partnership cannot go because he or she did not receive a permit or because it did not come back in time for the weekend. That is the situation that now exists. The Government and those who support it can wear it, but I am quite certain that at some time in the future that provision will be brought back and altered because it will be seen to be opposed to the Racial Discrimination Act passed by the Commonwealth Parliament. I am sure that some Justice in South Australia will receive a challenge and it will be rejected and the Government will be left with egg on its face. So be it—at least we will not have egg on our faces.

Amendment carried; clause as further amended passed.

Bill reported with further amendments. Committee's reports adopted.

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

That this Bill be now read a third time.

The Hon. M.B. CAMERON (Leader of the Opposition): I wish to say a few words about this Bill now that it has reached this stage and about some of the matters that have transpired during its passage. You, Mr President, have played a very important role in the period since the Bill was adjourned before Christmas, and I want to place on record my appreciation and the appreciation of the Party that I lead in this Council for the role you have played, because it has been important. Mr President, you did have a deeper understanding of these people than did most members in this Chamber, and the role you have played in ensuring that the matters of concern were brought to these people was important. Some of the results that have flowed from that will, I am sure, be appreciated by the community to which these land rights will now apply.

Again, I reject absolutely the criticism of the Opposition that was flung about in the pre-Christmas period when we were forced to adjourn this debate. The agreement now reached shows how important that period of time was and how important it is in matters as difficult as this to allow sufficient time for all parties to get together and work out their differences: differences that have now finally been resolved, and resolved to the satisfaction of everyone. Not everyone has everything they wanted, but at least a conclusion has been reached that is acceptable, and that is important.

It is the result of a role that this Council has played, and it is the result that quite often these days shows out not only in legislation but in other matters. I trust that those people who oppose the role of this Council will see it once again in its proper light: as a House of Review, as a House that allows people time for proper consideration without

the heat of politics upon them, giving people time to get out, and in this case get out a long way in South Australia, talk to people concerned, and reach agreement.

The Opposition is pleased with the agreement that has finally been reached. As I have said, it does not contain all the matters that we consider should be in the Bill. It does not contain all the matters that the Government sought. It does not contain all the matters that the Government initially thought should have been in the Bill, but that is how agreement has been reached, and I am sure that the people of Maralinga will find that this legislation will work better than the Pitjantjatjara land rights legislation has worked.

Indeed, I would not be surprised if the Pitjantjatjara people were not before long asking that there be some changes to their legislation. I may be being optimistic but I believe that that could be the case. Also, I wish to indicate my appreciation of the role that some of the advisers to the Aboriginal people have played in ensuring that the Opposition has been able to talk to the people, to go to the people, and to discuss the matters that were in dispute with the people. It is with much pleasure that I support the third reading.

The Hon. K.T. GRIFFIN: During the course of the Committee debate the Minister made reference to the fact that the Maralinga people had been waiting 20 years for this legislation or some mechanism by which their entitlement to the land was recognised. I do not think that anyone can dispute the fact that it is 20 years since Sir Thomas Playford made a commitment in 1964 that the land would be returned to the Maralinga people.

It should be pointed out that, since 1964, there have been 14 years of Labor Government and, although there has been a great deal of talk about the Liberal Party's delaying the transfer of this land back to the Maralinga people, the fact is that since 1964 (in those 20 years) there has been 14 years of Labor and six years of Liberal Government. I ask this question: why did not the Labor Party do something about it when it had such a period in which to do something about it? I suspect that, when Sir Thomas Playford made the commitment, there was no particular vehicle envisaged by him then by which the land would be transferred or in some way recognised as being returned to the Maralinga people.

Perhaps he had in mind some amendment to what was then the Social Welfare Act, which from memory contained a provision which dealt with the old North-West Aboriginal Reserve, which is now the core of the Pitjantjatjara lands. It should be remembered that in 1967, under either the Walsh Government or the Dunstan Government, the Aboriginal Lands Trust Act was passed. It was that Act which the Liberal Government in 1980 and 1981, and up to 1982, was proposing to use as the vehicle for recognising the title of Maralinga people to this land. Up until 1982, and the middle to latter part of 1982, it was agreed with the Maralinga people that the Lands Trust Act would be the appropriate vehicle, provided of course that there were certain proclamations made recognising agreements in respect of exploration and mining. It was towards the middle and latter part of 1982 that the Maralinga people changed their attitude and resolved to seek to have title conveyed to a statutory corporation, much as the land for the North-West of South Australia was transferred and vested in the Pitjantjatjara Council.

So, whatever the reason for the delays, whatever vehicles have been discussed, tonight is an important occasion because it does represent a large measure of agreement as to the recognition of title to the Maralinga lands. However, it does so in the context of that land as part of the wider community of South Australia and all the land rights issues have to be resolved in that context, that both Aboriginal and non-Aboriginal communities are interdependent, that they would not be able to service their lands and do what they now wish to do on their lands unless they relied on certain material and technological developments of the non-Aboriginal society. The non-Aboriginal society is dependent upon Aboriginal communities for again some of the benefits which flow to the whole of the South Australian community. Very much the whole issue of land rights has to be resolved in the context that the issues and the peoples and their cultures are very much interdependent.

I would like to make one further point. Whilst it is not now likely to be necessary for you, Mr President, to make a decision as to whether you will indicate your concurrence or non-concurrence at the third reading stage, during the moments of drama on the last sitting day of 1983 the Attorney-General tabled an opinion from the Solicitor-General and made a Ministerial statement asserting that under the Constitution Act the President of the Legislative Council (and by virtue of the provisions of the Act, the Speaker of the House of Assembly) did not have a right to vote or otherwise to concur or not concur with the second and third reading of all Bills, but only on Constitution Bills. I assert quite positively and strongly that that opinion is wrong.

The Hon. C.J. Sumner: John Doyle's too?

The Hon. K.T. GRIFFIN: Yes, John Doyle's too.

The Hon. C.J. Sumner: And the Victorian silk? You are on your own.

The Hon. K.T. GRIFFIN: I am not. I have taken independent legal advice.

The Hon. C.J. Sumner: Who from?

The Hon. K.T. GRIFFIN: From equally eminent counsel.

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

The Hon. K.T. GRIFFIN: Mr President, there will be another day when we will fight that battle over whether or not the President has a right to exercise a vote at the second and third reading stages.

The Hon. C.J. Sumner: Have you read Dunstan's second reading speech on it?

The Hon. K.T. GRIFFIN: The Attorney-General believes that the second and third reading debates in this place are relevant to interpreting the Constitution. He ought to know from his most early days at law school that *Hansard* debates are irrelevant in determining the construction of a statute.

The Hon. C.J. Sumner: Don't talk nonsense.

The Hon. K.T. GRIFFIN: We will see who is talking nonsense.

The Hon. C.J. Sumner: This is not a court. You know what the intention is.

The Hon. K.T. GRIFFIN: I am referring to statutory interpretation. The fact remains that the President of the Legislative Council does have a vote at the second and third reading of Bills. There will be a day when that is tested. I believe that when it is tested it will be shown without doubt at all that the decision of the Attorney-General and the opinion of the Solicitor-General are wrong. I think it is important to have that issue placed on the record clearly and positively.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I rise to support the third reading. The Bill that we now have before us is a sensible compromise. I believe that there has been compromise on all sides. During the second reading debate I welcomed the early compromise that was made by the Liberal Party when it accepted a change from placing this land in the hands of the Aboriginal Lands Trust and making it freehold. As the Hon. Mr Cameron said, there has been compromise on all sides, but I will not mention that again.

I place on public record my dismay at the conduct of proceedings this afternoon and this evening. I believe that it was absolutely disgraceful that we as individual members of the Legislative Council were given at 4.30 this afternoon a batch of amendments which, in the words of the Hon. Mr DeGaris, virtually amounted to a new Bill. At about 5.45, 75 minutes later, we were then expected to have considered all the amendments, formed views on them, and were to have been able to debate them sensibly in this Chamber. On this occasion I give some credit to the Minister of Health who, when confronted with a situation of having to ram the measure through before 7 p.m. threw up his hands and said that he could not do it.

The Hon. C.J. Sumner: It was Cameron's suggestion.

The Hon. R.I. LUCAS: I do not care whose suggestion it was—the Attorney agreed to it. In my view it should not have occurred. We have picked up two (admittedly small) changes in the amendments put to us as a package, but that was only after debating them for four hours. Who is to say that if other people and other groups had been given the opportunity to look at the amendments they would not have been able to pick up possible errors or make improvements to the package of amendments that were worked out over the past few months. A small number of members in this Chamber and in another place were aware of the amendments. They had worked them out while the rest of us were left blissfully ignorant, other than what we managed to pick up by way of bits and pieces in the press or the media or from corridor gossip.

I think it is absolutely disgraceful that less than two or three hours after first seeing the amendments we were expected to debate them which, in effect, removed the opportunity for many people in the community to at least look at the amendments that had been worked out and put their views to representatives on both sides of the Chamber before they were debated, finalised and rammed through Parliament. I feel very strongly about this, and that is why I take this small amount of time in the third reading debate to place on the record my views and disappointment in relation to the conduct of this matter.

The Hon. C.J. SUMNER (Attorney-General): I enter the debate to refute the slur which has been cast on three eminent silks—two in this State (the Solicitor-General, Mr Gray, and a very well respected silk, Mr Doyle) and a Victorian silk, Mr Caston. Opinions from those three barristers were tabled in this Council during the debate.

The Hon. K. T. Griffin: You didn't table Doyle's and Caston's.

The Hon. C.J. SUMNER: I did actually.

The Hon. K.T. Griffin: You did not table them.

The Hon. C.J. SUMNER: They were made available.

The Hon. K.T. Griffin: They weren't tabled.

The Hon. C.J. SUMNER: They were made available to honourable members. The problem is that when I interjected and said that the opinions of Mr Doyle and Mr Caston supported the views of the Solicitor-General, Mr Griffin replied and said, 'Well, they were representing Aboriginal interests.' That is a slur of the worst kind on two very well respected barristers. It ill-behoves a former Attorney-General such as Mr Griffin to engage in that slur. Those opinions were presented by people who hold them genuinely, as indeed does the Solicitor-General. There were three opinions to that effect. Mr Griffin has not produced one opinion to the contrary. I suggested to him that he study the second reading debate when this clause was introduced into the Constitution Act. Mr Dunstan made clear—

The PRESIDENT: Order! I was probably wrong in allowing Mr Griffin to raise this matter, but it would be wrong to have a full scale debate on the third reading of another Bill.

The Hon. C.J. SUMNER: It is very pertinent to the Bill, having been raised by the Hon. Mr Griffin.

The Hon. K.T. Griffin: You raised it in 1983.

The Hon. C.J. SUMNER: It obviously had to be raised and had to be drawn to the attention—

The Hon. K.T. Griffin: You are browbeating the public.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That is nonsense and I refute that. The opinions from Mr Doyle and Mr Caston were made available to the Government. In light of that, it was necessary to obtain the opinion of the Solicitor-General. It would be absolutely irresponsible not to have done so. Having got that opinion, it would have been irresponsible not to have tabled it in the Parliament. All of that was done. I merely now refer the Hon. Mr. Griffin to the record of the *Hansard* debate when that section was inserted in the Constitution Act and he will see clearly what the intention was. He says that that is not relevant to statutory interpretation. It is not relevant if the honourable member is in court, but it is very relevant in the Parliament to determine what the intention of the Parliament was.

The Hon. K.T. Griffin: It is no different.

The Hon. C.J. SUMNER: The honourable member is saying that the court is no different from the Parliament.

The Hon. I. Gilfillan: Get on with discussing the Bill—this is not relevant.

The Hon. C.J. SUMNER: It is relevant to the Bill. The matter has been raised by the Hon. Mr Griffin, who has cast a slur on two eminent QCs by saying that they concocted an opinion.

The Hon. K.T. Griffin: I did not say that they concocted it.

The Hon. C.J. SUMNER: The honourable member said that they represented Aboriginal interests. The clear implication was that because they represented Aboriginal interests it affected the opinion they gave. That was the implication of what he said and all I am concerned to do is put on record that I defend those two barristers, I defend the Solicitor-General's opinion—

The Hon. K.T. Griffin: I have got a very high regard for them, too.

The Hon. C.J. SUMNER: That is not what the honourable member said. He said that they were representing Aboriginal interests and that that affected their opinion. I do not accept that. I think that any honourable member can read *Hansard* and see what was intended. I only entered the debate to refute that aspect of the Hon. Mr Griffin's contribution.

The Hon. J.R. CORNWALL (Minister of Health): I believe that congratulations are due to you, Sir, to the Minister of Aboriginal Affairs (Mr Crafter) and particularly to the Maralinga people, who have waited so long and so patiently, with such great dignity, under extremely adverse circumstances. It is no secret that you, Mr President, were placed under very substantial pressure by members of your Party. It was interesting to see the orgy of self congratulations that has been occurring on the benches opposite in relation to how marvellous will be this legislation that is to emerge from the Legislative Council, and about what a marvellous job the Upper House has done, and so forth.

But the reality is that many members opposite and many members in Liberal Party rooms from both Houses would, for cynical political purposes, have been very pleased to see this Bill defeated. So let us not become too involved in this cant and hypocrisy that members opposite have done such a great job. Members on this side and the people of South Australia know the reality: for short-term perceived political gain, many members opposite would have been pleased to see the Bill defeated. So I congratulate you, Mr President, because you have shown great courage, and you deserve the

congratulations of every caring citizen in South Australia.

I repeat that the State Minister of Aboriginal Affairs has done an exceedingly good job in steering this legislation through the Parliament under difficult and often substantially controversial and very trying conditions, especially when he has been asked on occasions to compromise. In the event, those compromises were reached, by and large in a sensible way, and in a number of areas that did not destroy the general spirit and intent of the Bill. So I take the opportunity to congratulate Greg Crafter.

Lastly, before the Bill finally passes, I take the opportunity to congratulate the Maralinga Tjarutja people, who have waited for a generation for this promise to be fulfilled. The promise was made to them after they were taken from places such as Ooldea, after they were virtually kidnapped and transported as they came in for rations to sidings like Ooldea more than 30 years ago so that the Maralinga lands could be granted to the British, ironically for the explosion of atomic weapons.

As was pointed out quite recently, the Maralinga people are among the few people in the world who have really been exposed and whose lands have been exposed to the horrors of several atomic explosions. I conclude by congratulating them. On balance, this is indeed a very happy occasion and, as I promised that the Bill would be through by midnight, it is time that I resumed my seat.

Bill read a third time and passed.

ADJOURNMENT

At 12 midnight the Council adjourned until Tuesday 27 March at 2.15 p.m.